

# AGENDA - \*Revised

*Added a Board Discussion Items*

**Wednesday, November 8, 2017 - 10:00 AM**

## **BOARD OF COUNTY COMMISSIONERS**

Beginning Board Order No. 2017-120

### **CALL TO ORDER**

- Roll Call
- Pledge of Allegiance

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

1. Veteran's Day Presentation (Erika Silver, Health, Housing & Human Services)

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

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

1. First Reading of Ordinance No. \_\_\_\_\_ Amending Title 11.03, Transportation System Development Charge of the Clackamas County Code and Declaring an Emergency (Diedre Landon, Department of Transportation & Development)

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

### **\*County Counsel**

- \*1. Resolution No. \_\_\_\_\_ Declaring a Local State of Emergency and Declaring emergency Measures to Address Housing Crisis (Stephen Madkour, County Counsel)

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

### **A. Health, Housing & Human Services**

1. Approval of an Intergovernmental Agreement with the Estacada School district for Implementation of the Teen Mentor Program – *Children, Youth & Families*
2. Approval of an Agency Services Contract with Youth MOVE Oregon for the Youth/Young Adult Peer Support Program – *Behavioral Health*

3. Approval of a Professional Services Agreement with CompHealth Locum Tenens for Temporary Physician Staff – *Health Centers*

**B. Finance Department**

1. Resolution No. \_\_\_\_\_ for a Clackamas County Transfer of Appropriations for Fiscal Year 2017-2018
2. Resolution No. \_\_\_\_\_ for Clackamas County Budgeting of New Specific Purpose Revenue for Fiscal Year 2017-2018
3. Approval of Contracts with: Carlson Testing, Inc., Columbia West Engineering, Inc., KPFF, Inc., Materials Testing and Inspection, Inc., and Professional Service Industries, Inc., for Materials Testing and Special Inspection Services - *Procurement*

**C. Elected Officials**

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

**D. Disaster Management**

1. Approval of Fiscal Year 2016 Flood Migration Assistance Repetitive Loss Home Acquisition Intergovernmental Grant Agreement with Oregon Emergency Management

**V. WATER ENVIRONMENT SERVICES**

*(Service District No. 1, Tri-City Service District & Surface Water Management Agency of Clackamas County)*

1. Approval of the Goods and Services Contract between Clackamas County Service District No. 1 and Waste Management Disposal of Oregon for Biosolids and Grit Disposal - *Procurement*
2. Approval of the Goods and Services Contract between Water Environmental Services and Waste Management Disposal of Oregon for Biosolids and Grit Disposal - *Procurement*
3. Approval of the Goods and Services Contract between Clackamas County Service District No. 1 and Hillsboro Landfill, Inc. for Biosolids and Grit Disposal – *Procurement*
4. Approval of the Goods and Services Contract between Water Environment Services and Hillsboro Landfill, Inc. for Biosolids and Grit Disposal – *Procurement*
5. Approval of the Goods and Services Contract between Clackamas County Service District No. 1 and Wasco County Landfill for Biosolids and Grit Disposal – *Procurement*
6. Approval of the Goods and Services Contract between Water Environment Services and Wasco County Landfill for Biosolids and Grit Disposal – *Procurement*

**VII. COUNTY ADMINISTRATOR UPDATE**

**VIII. COMMISSIONERS COMMUNICATION**

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

November 8, 2017

Board of County Commissioners  
Clackamas County

Members of the Board:

Recognition of Veterans Day

<b>Purpose/Outcomes</b>	Acknowledge the service, commitment and sacrifices of those who have served our great nation. Appreciation and support for those who have served and those who are currently serving, and for the family and friends who are also impacted by military service.
<b>Dollar Amount and Fiscal Impact</b>	N/A
<b>Funding Source</b>	N/A
<b>Safety Impact</b>	N/A
<b>Duration</b>	N/A
<b>Previous Board Action</b>	N/A
<b>Contact Person</b>	Erika Silver, Manager, Social Services Division 503-650-5725
<b>Contract No.</b>	N/A

**BACKGROUND:**

The Social Services Division of the Health, Housing & Human Services Department present the recognition of Veteran’s Day. Since 1938, the United States has commemorated the sacrifices of its armed forces by designating November 11<sup>th</sup> as a national holiday. Today, the Program Manager of the Clackamas County Veterans Service Office and the Director of Community Solutions for Clackamas County come before the Board of County Commissioners to acknowledge the service, commitment and sacrifices of those who have served our great nation. While Veterans Day is an annual commemoration and reminder, appreciation and support for those who have served and those who are currently serving, and for the family and friends who are also impacted by military service, is needed every day.

Clackamas County continues is actively engaged in providing services and administering programs for veterans including:

**The County Veterans Service Office (CVSO)** assists veterans to obtain Veteran’s Administration (VA) financial and medical benefits. Last year the County’s Veterans Service Office staff members, Janice Harlan-Tafoya, Gina Thomas, Heather Miewald, and Jackie Bauer worked intensively with 1,729 veterans and had 1,580 claims granted. The CVSO helped secure more than \$10.2 million dollars in new federal benefits for Clackamas County veterans in 2016-17.

**Community Solutions** assists veterans in need of training and employment with individualized workforce services. Veterans engaging in these services must overcome multiple complex barriers including poverty, disability, and criminal justice involvement. Last year 40 veterans

*Healthy Families. Strong Communities.*

were served, 60% of those served became employed and the remaining veterans continue to be actively engaged in case management and training in preparation for employment. Average wage for those who became employed was \$14.04 an hour. Veterans continually rank Community Solutions staff and the programs administered as excellent.

The County maintains an active Veterans Advisory Committee that ensures that the perspective of a broad diversity of Clackamas County veterans have the opportunity to impact County plans and services.

In support of the Performance Clackamas goal of cutting veterans homelessness in half, 49 of the 51 Veterans Administration Supportive Housing, (VASH) vouchers administered by the Housing Authority of Clackamas County are being used to house formerly homeless veterans, two have been issued to veterans and they are in the search process. The Housing Veterans First program, developed by Clackamas County is actively housing 11 veteran families and the County continues to work diligently on standing up an innovative tiny home village shelter for homeless veterans which should be open to house 15 to 30 veterans in the coming months. The attached power point focuses on one of these programs, the county funded Housing Veterans First project and will highlight some of the direct impacts that program has had on the lives of those being served.

Clackamas County convenes the Homeless Veteran Coordination Team which meets monthly and includes the VA, Clackamas County Department of Health, Housing and Human Services and numerous community partners serving homeless veterans. This coordination team is committed to collaboration and the efficient and effective use of resources for veterans.

Clackamas County supports its veterans.

**Recommendation**

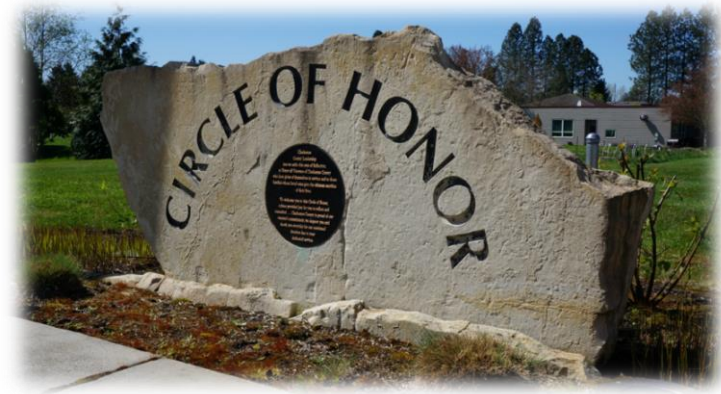
Staff respectfully requests that the Board recognize and honor the service, commitment and sacrifices of all Veterans, military personnel, reservists and their families.

Respectfully submitted,

Richard Swift, Director  
Health, Housing & Human Services



# Veteran's Day 2017



# Veterans in the State and County

Veterans in Oregon	310,333
Veterans in Clackamas County	34,735*
Veterans in County Workforce	

-Every level, every Department, major impact on County infrastructure and services.

\* 85 homeless Veterans found in the 2017 Homeless Count



# GOALS for Veterans in Clackamas County

- Employment, training and education opportunities so that veterans can obtain living wage jobs
- Easy access to VA benefits through County Veterans Service Office
- Homeless veterans have services and supports needed to regain stable housing

# Services and activities



# Clackamas Veterans Service Officers

During 2016-17, CVSO staff

- Met with 1,729 veterans and family members
- Filed 854 initial compensation claims
- Had 1,580 claims granted. Generated new federal monetary benefits of \$10.2 million dollars (this will continue to increase as more claims are processed).

# Clackamas Veterans Workforce Program

## (Community Solutions)

- Served 40 Veterans
  - 60% became employed
  - 40% still in training
- Average wage \$14.04



Jobs included: manufacturing, construction, health care, transportation, security, retail/ customer service and warehouse

### Demographics

15% people of color, 13% female, 18% receiving public assistance, 33% receiving veterans benefits, 65% disabled, 30% offenders.

# Housing Veterans First

## Housing Veterans First Rapid Re-Housing

- County funded project to increase housing for homeless veterans and conduct landlord outreach
- Two year program with gradually decreasing rent and utility assistance, focus on increasing incomes, linkage to needed services and community integration
- 11 new homeless veteran households including 19 adults and 12 children have been served so far, two more are in the housing search process.
- 100% housing retention, including two exits.
- Seven veterans (63%) have increased their income.



# Landlord Outreach

- Helps all Social Service homeless housing programs house people quickly.
- 28 new apartment complexes or property management companies and two private owners identified who are open to working with homeless program participants
- Relationships maintained with 15 additional properties whose ownership or management change.
- In total, this represents more than 3,000 housing units.
- Coordination with Housing Authority is also ongoing.



# Marty:

## 53 year old veteran, single father of two



- Staying in a homeless family shelter, housing barriers included evictions, low income and some convictions. Wanted to work but needed transportation and reliable day care.
- Daughters were his first priority. Case Manager helped him get hired at a local sheet metal company and access apartment in Milwaukie.
- Today he is still working, has reliable transportation, insurance and daycare. Girls enjoy their new school. Marty is happy about his progress and wishes to keep his girls smiling.

# Don:

## 54 year old Air Force Veteran

- Living under a bridge. Lost his ID in 1997
- when working for carnival, difficult to get
- another ID or employment.
- Very receptive to getting off the streets
- after being homeless for 21 years.
- Some believe that “all homeless people”
- have addiction issues or person to person
- crimes, he has NEITHER.
- His hopes and dreams for future include getting a drivers license, car insurance and stable employment. With Housing Veterans First he will have support for up to two years to accomplish these goals.



# Housing Contacts

- Coordinated Housing Access
- Phone 503-655-8575
  
- Homeless Veterans Outreach
- Phone 503-650-5775

# Please Contact the CVS0!

## Public Services Building, Room 281

2051 Kaen Road, Oregon City

Monday – Thursday

7 a.m. to noon

1 p.m. to 5 p.m.

- Phone 503-650-5631
- Email [veterans@clackamas.us](mailto:veterans@clackamas.us)
- Website

<http://www.clackamas.us/socialservices/veterans.html>

# Please Contact the Clackamas Veterans Workforce Program!

## Community Solutions Location:

12 11<sup>th</sup> St. in Oregon City

Monday – Thursday

7:30 a.m. to 5 p.m.

- Phone 503-655-8848
- Email KenBie@clackamas.us
- Website

<http://www.clackamas.us/communitysolutions/employment.html>



# THANKS VETERANS







M. BARBARA CARTMILL  
DIRECTOR

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

November 8, 2017

Board of County Commissioners  
Clackamas County

Members of the Board:

**First Reading of Ordinance amending Title 11.03,  
Transportation System Development Charge of the Clackamas County Code  
and Declaring an Emergency**

<b>Purpose / Outcomes</b>	This is the first reading of the proposed amendments to Title 11.03 of the County Code. These amendments fall into three categories: 1) Adoption of a revised methodology report, updated project list and a new rate schedule via resolution; 2) Amendments to reflect the termination of the Happy Valley Joint TSDC District, and 3) Clarifications to better define current program operations.
<b>Dollar Amount and Fiscal Impact</b>	<ul style="list-style-type: none"> <li>• Countywide TSDC rates will be aligned with the cost of construction and will be spread equitably among projects forecast for the anticipated growth within the county.</li> <li>• The City of Happy Valley and Clackamas County will no longer participate in a shared TSDC capital projects fund.</li> </ul>
<b>Funding Source</b>	<ul style="list-style-type: none"> <li>• Clackamas Countywide TSDC Funds (Fund 223)</li> <li>• Happy Valley Clackamas County Joint TSDC Funds (Fund 227)</li> </ul>
<b>Duration</b>	<ul style="list-style-type: none"> <li>• Termination of the Joint TSDC district will be effective December 31, 2017.</li> <li>• New TSDC ordinance, rates and methodology will take effect on development applications in Clackamas County beginning January 1, 2018.</li> </ul>
<b>Previous Board Action</b>	<p>The Board has reviewed and discussed this project at seven policy sessions over the past two years.</p> <p>03/15/16: TSDC methodology update process and work group approach  05/24/16: TSDC project selection criteria  03/14/17: TSDC methodology project update and public outreach discussion  06/27/17: TSDC project list  07/18/17: TSDC rate structure and measuring traffic impact  08/01/17: TSDC rate structure and draft IGA to terminate Joint TSDC District  08/17/17: Approve IGA setting terms of separation for the Joint TSDC District</p>
<b>Strategic Plan Alignment</b>	<p>This supports the mission of the Department of Transportation &amp; Development <i>to provide transportation maintenance and construction, land use planning, permitting services ... to residents, property owners, businesses and the traveling public so they and future generations can experience and invest in a safe, well-designed and livable community.</i></p> <p>This supports the County goals of <i>growing a vibrant economy, building strong infrastructure and building trust through good government.</i></p>
<b>Contact Person</b>	Diedre Landon, DTD Administrative Services Manager @ 503-742-4411

Local governments rely on System Development Charges (SDCs) to collect money for capital improvements on a variety of infrastructure systems, such as roads, water, sewer, storm drains and schools. Transportation System Development Charges (TSDCs) are one-time fees assessed to new or expanded developments to help cover the cost of adding to the capacity of transportation facilities for motorists, bicyclists and pedestrians to accommodate new trips added by the development. TSDC fees are based on the number of vehicle trips a particular land use generates, and are paid by the developer when a building permit is issued.

Clackamas County currently has two TSDC districts – one with the City of Happy Valley for areas in and around Happy Valley, and one for the remainder of the county. The joint district with Happy Valley will be dissolved effective December 31, 2017, and beginning January 1, 2018, each jurisdiction will manage its own district with its own rates (Attachment B).

In early 2016, the County and Happy Valley began updating our 10-year-old TSDC methodology in order to:

- Update the list of capital projects eligible to receive TSDC revenue;
- Update the TSDC rates charged to different kinds of development, and
- Streamline and simplify the TSDC program for our customers.

Over the past year and a half, staff has been meeting to develop the new methodology with representatives from the commercial and residential development community, the Home Builders Association and engineering firms that represent the site development community. During this process, we met with the Board of County Commissioners seven times and brought work group recommendations back to the Board on four occasions.

## **ORDINANCE AMENDMENTS**

In order to adopt the new plan, we need to amend our existing TSDC ordinance and amend our code to reflect our separation with the City of Happy Valley. Prior to the public notice period for the methodology update, as required by state law, we drafted ordinance amendments (Attachment A) to reflect the necessary changes so that we could gather public feedback on the ordinance changes.

The draft ordinance amendments, and the methodology report with the project list and rate schedule (Attachment C) have been available on our web page for 60 days and we have been seeking public comment on these documents. Notice to interested parties was published in the Daily Journal of Commerce and online, distributed through social media, via email and distributed to participants of a recent Development Forum.

The proposed ordinance amendments fall into three categories:

- 1) Adoption of a revised methodology report, updated project list and new rate schedule to account for changes in the cost of acquiring and constructing transportation facilities in Clackamas County;
- 2) Amendments to reflect the termination of the Happy Valley Joint TSDC District, and
- 3) Clarifications and other minor changes to better define current program operations.

## **TSDC METHODOLOGY UPDATES**

*Changes were necessary to adopt the new TSDC methodology, project list and rate structure.*

- We chose to adopt the plan, project list and rate schedule as a resolution with separate exhibits to allow for future updates of the project list or rate structure without a full ordinance amendment. We also added language to outline the process for updating the list between methodology updates.

- Under the new plan, we have consolidated similar land uses to streamline the rate structure and simplify the fee structure. This required modifications to code language that allows a developer to submit a traffic study when a unique land use is proposed that does not fall within an existing category. We needed to define the criteria for trip rates/trip study requirements under the consolidated rate model.
- Our previous TSDC methodology used vehicle trips to estimate the impact new development would have on the transportation system. Under the new plan, the work group chose to transition to people trips to reflect the addition of multi-modal project elements.

### **TERMINATION OF THE HAPPY VALLEY JOINT TSDC DISTRICT**

*Changes were necessary to reflect the separation of the Happy Valley Joint TSDC district.*

- Our existing code references the Happy Valley Joint TSDC District. We removed any references to the joint district to reflect the separation on December 31, 2017.

### **CLARIFICATIONS**

*During the legal review of our ordinance, we compared our current language with state law and best practices and identified some clarifications and other minor modifications to incorporate into the proposed changes.*

- Annual inflation adjustment. We had been using three factors to try to better represent the cost of a transportation project. However, since some of the information is unavailable as agencies discontinue indices, we are transitioning to one well-known and reliable index for our annual adjustments.
- Expanded application of mixed-use area discounts to allow for a reduction between parcels under different ownership that reduce trips on the adjacent roadway. Previously, two parcels had to be under the same ownership to qualify for the discount.
- Process for determining credit eligibility and the reimbursement rate for qualified public improvements. While our current ordinance restricts credits to only a percentage of the oversize improvement value, state law and best practices provide for a less restrictive application. The proposed language provides developers with a credit that matches the value of the oversize improvement. The changes will increase the amount of credit developers receive for constructing oversize public improvements on behalf of the County.
- In light of the larger credit voucher values, we are proposing a geographic restriction on voucher transfers in unincorporated areas. With a single district in the unincorporated area, this will help align the use of the credits for oversize improvements with the direct impact area of the development using the credits.
- Credit vouchers expire after 10 years. Under the current code, we restrict the transfer of vouchers between years 7 and 10. We are removing these ownership restrictions from the code language.

## **ATTACHMENTS**

- Attachment A\*: Ordinance 11.03 Transportation System Development Charges  
Attachment B: Executed Intergovernmental Agreement between Clackamas County and the City of Happy Valley Regarding Administration of the Joint Capital Improvement Plan Area  
Attachment C\*: Transportation System Development Charges Methodology Report  
*\*Each of these documents have been published online for 60-days for public review and input.*  
Attachment D: Process Overview: Transportation System Development Charge Plan Update  
Attachment E: TSDC Ordinance Amendments and Methodology Adoption - Presentation

## **RECOMMENDATION:**

Staff recommends the Board of County Commissioners read the proposed ordinance by title only and proceed to a second reading of the ordinance on November 30, 2017.

Respectfully submitted,

Diedre Landon  
Administrative Services Manager, Snr.

**ORDINANCE NO. \_\_\_\_\_**

**An Ordinance amending Title 11.03, Transportation System Development Charges of the Clackamas County Code and Declaring an Emergency**

**WHEREAS**, the Board of Commissioners finds that Title 11.03, Transportation System Development Charges, of the Clackamas County Code should be updated to adopt a revised methodology report, an updated project list and adjustments to the calculation rates to account for changes in the cost of acquiring and constructing transportation facilities within Clackamas County;

**WHEREAS**, during the 2017 TSDC program update the County has reviewed TSDC program successes, and identified issues and needed reforms;

**WHEREAS**, the Board of Commissioners finds Title 11.03 should be updated to address clarity of administrative processes, consistency with state law, definitions and terminology;

**WHEREAS**, amendments to Title 11.03 are needed to reflect the termination of the Happy Valley Joint TSDC District; and due to the December 31, 2017, termination of the Happy Valley Joint TSDC District, the Board of Commissioners finds it necessary to declare an emergency allowing for the effective date of January 1, 2018, to provide for a seamless transition to the new TSDC program; now, therefore;

The Board of Commissioners of Clackamas County ordains as follows:

**Section 1:** Title 11.03 of the Clackamas County Code is hereby amended as shown on Exhibit "A", attached hereto and incorporated herein by this reference.

**Section 2:** Emergency Clause

The Board of Commissioners hereby finds and declares that an emergency exists inasmuch as the immediate effect of this Ordinance is necessary for the peace, health and welfare of the residents of the County. Accordingly, this Ordinance shall be effective January 1, 2018.

ADOPTED this \_\_\_\_\_ day of November, 2017.

BOARD OF COUNTY COMMISSIONERS

\_\_\_\_\_  
Chair

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

# Clackamas County – Section 11

## Development Regulation

CLEAN VERSION: CHANGES ACCEPTED

<b>11.03 TRANSPORTATION SYSTEM DEVELOPMENT CHARGE .....</b>	<b>2</b>
11.03.010 Purpose .....	2
11.03.020 Definitions .....	2
11.03.030 Application .....	6
11.03.040 Collection.....	11
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11.03.070 Dedicated Funds, Project Lists.....	18
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### **TSDC METHODOLOGY UPDATES**

Changes were necessary to adopt the new TSDC methodology, project list and rate structure.

### **TERMINATION OF THE HAPPY VALLEY JOINT TSDC DISTRICT**

Changes were necessary to reflect the separation of the Happy Valley Joint TSDC district.

### **CLARIFICATIONS**

During the legal review of our ordinance, we compared our current language with state law and best practices and identified some clarifications and other minor modifications to incorporate into the proposed changes.

# Clackamas County – Section 11

## Development Regulation

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### Chapter 11.03

#### 11.03 TRANSPORTATION SYSTEM DEVELOPMENT CHARGE

##### 11.03.010 Purpose & Applicability

- A. New Development within Unincorporated Clackamas County contributes to the need for increased capacity on Arterial and Collector roads, and Multi-Modal facilities and related improvements, and therefore should contribute to the funding for such facilities. The TSDC will fund a portion of the needed auto, bicycle and pedestrian system capacity for New Development.
- B. ORS 223.297 through 223.314 grant the County the authority to impose a TSDC to equitably spread the costs of essential capacity increasing capital improvements to New Development. The County may enact one or more charges in areas that are smaller than the entire unincorporated County.
- C. The TSDC is incurred upon the issuance of a permit to develop property at a specific use or density. The TSDC is separate from other fees provided by law or imposed as a condition of development. It is a fee for service because it relates a development's fee to receipt of services based upon the nature of that development.
- D. The TSDC is not a tax on property or on a property owner as a direct consequence of ownership of property within the meaning of Section 11b, Article XI of the Oregon Constitution or the legislation implementing that section.
- E. The TSDC shall be established and may be revised by resolution of the Board. The resolution shall set the amount of the charges (Rate Schedule), the Methodology for calculating the charges, and the list of TSDC Capital Improvement Projects intended to be funded by Improvement Fees (referred to as the TSDC Capital Project List).
- F. The TSDC constitutes a mandatory collection method based upon the guidelines set forth in ORS 223.297 – 223.314, and is intended as a financing mechanism for the increased capacity in Multi-Modal improvements, and Arterial and Collector roads associated with New Development, and does not represent a means to fund maintenance of existing roads.

##### 11.03.020 Definitions

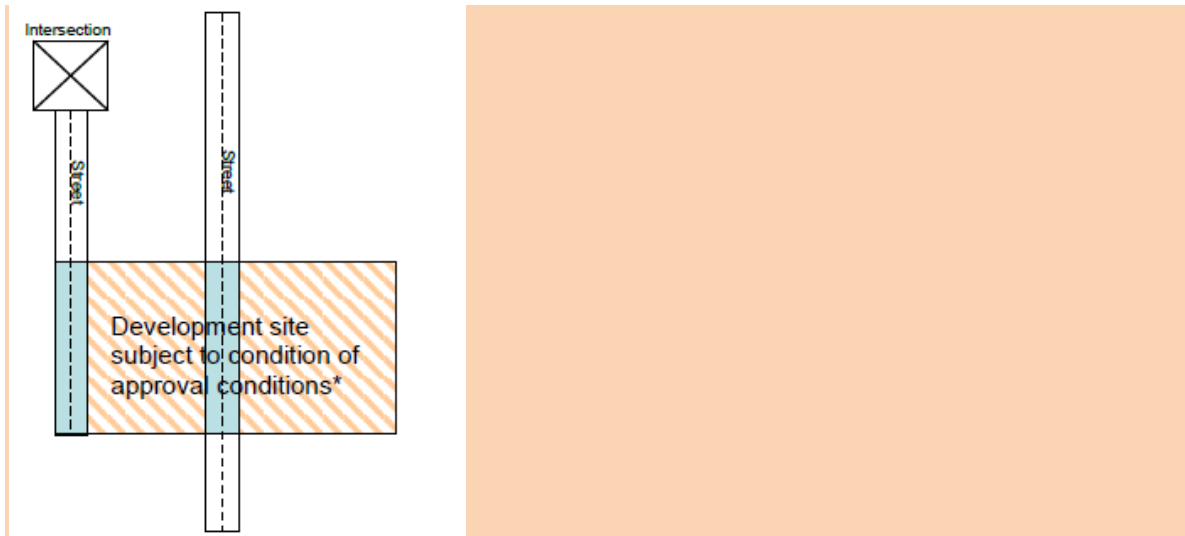
All terms not defined below shall be defined by the permitting jurisdiction in the Clackamas County Zoning and Development Ordinance.

- A. ACCESSORY DWELLING UNIT means a unit complying with Clackamas County ZDO 839. Accessory Dwelling Units will be charged the adopted rate for the Institute of Transportation Engineers (ITE) classification of “220 - Apartment.”



- B. **AFFILIATE** is any entity that directly controls, is controlled by or under common control with the applicant. As used herein, the term “control” or “controlled by” means the power to direct the management of such entity through voting rights, ownership or contractual obligations.
- C. **ARTERIAL** means that term as defined and used in Chapter 5 - Transportation System Plan of the County Comprehensive Plan.
- D. **AVERAGE WEEKDAY TRIPS** means the average 24-hour total of all vehicle trips counted to and from a study site from Monday through Friday. Average Weekday Trips are calculated by using the Institute of Transportation Engineers (ITE) Manual or as otherwise provided by this Chapter.
- E. **ASSIGNMENT** refers to the transfer of a credit voucher or portion of a credit voucher that is transferred to another party.
- F. **BOARD** means the Board of County Commission of Clackamas County, Oregon.
- G. **BUILDING OFFICIAL** means that person, or his designee, certified by the State and designated as such to administer the State Building Codes for the County.
- H. **BUILDING PERMIT** means that permit issued by the Building Official pursuant to the most recently published versions of the State of Oregon Structural Specialty Code, and the Oregon Residential Specialty Code. In addition, Building Permit shall mean the Manufactured Home Installation Permit issued by the Building Official, relating to the placement of manufactured homes.
- I. **BUS TRANSIT CORRIDOR** includes current fixed-route public bus service (excludes dial-a-ride shuttles and taxi service).
- J. **COLLECTOR** means that term as defined and used in Chapter 5 – Transportation System Plan of the County Comprehensive Plan.
- K. **COMPREHENSIVE PLAN** means the County generalized, coordinated land use map and policy statement that interrelates all functional and natural systems and activities relating to the use of lands, including but not limited to sewer and water systems, transportation facilities, recreational and natural resources and air and water quality management programs.
- L. **CONSTRUCTION COST INDEX** means that index published by the Engineering News Record (ENR) Northwest (Seattle, Washington) titled “Construction Cost Index.”
- M. **CONTIGUOUS** means that a property and an improvement or portion thereof share a common boundary line. A determination of contiguous includes all property subject to the development approval. The boundary lines and area of an improvement shall be determined by the Right-Of-Way and easement areas for the improvement. In addition, multiple properties under common ownership separated by features such as a common area, non-motorized vehicle or pedestrian way, creek, wetland, park, or similar areas; up to a distance of not more than 100 feet between the properties at the boundary with the improvement, are deemed to include the feature in their combined boundary line. Any portion of an

improvement that is located beyond the frontage of a property, as determined by the extension of boundary lines perpendicular to the frontage of the property, is not deemed to be contiguous to that property. An intersection improvement shall be deemed contiguous to all property with frontage on the intersection, or that touches the intersection at a point.



All intersection and street improvements are conditions of development approval. Shaded portion of streets are considered Contiguous to the development site; remainder of streets and intersection are non-contiguous.

\* “Contiguous” is defined based on frontage of site prior to subdivision or partition.

- N. COUNTY means Clackamas County, Oregon.
- O. DEVELOPMENT AGREEMENT means the tool the County will use to secure the developer’s compliance with the commitment to build-out a phased master-plan project, qualifying the initial phases for a reduction under the Station Area and/or Mixed-Use reduction provisions.
- P. DEVELOPMENT PERMIT means a grading, excavation, engineering, building, land use or similar permit issued by the County that approves New Development as defined by this ordinance.
- Q. DEPARTMENT means the Clackamas County Department of Transportation and Development.
- R. DEPARTMENT DIRECTOR means the Director of the Clackamas County Department of Transportation and Development, or his or her designee.
- S. FLOOR AREA RATIO (FAR) means the ratio of the total amount of enclosed Gross Floor Area within a structure to the amount of buildable acreage. For purposes of calculation, both floor area and net site area shall be converted to square feet. (For example, a single-story building constructed on one-quarter of the net developable site would have a floor area ratio of 0.25. If a second story were added, the floor area ratio would increase to 0.50, etc.)
- T. GROSS FLOOR AREA for the purposes of this ordinance will mirror the definition in the most recent ITE manual.

- U. GUEST HOME means a unit complying with Clackamas County ZDO 833.
- V. HEARINGS OFFICER is defined as the Hearings Officer for the Department, or other official as appointed by the Board.
- W. IMPROVEMENT FEE means a fee for costs associated with capital improvements to be constructed.
- X. INTERNAL CAPTURE RATE is defined as a percent reduction of trip generation for component land uses to account for trips made internally on site. A reduction of trip generation rates can potentially decrease traffic impact and help reduce external congestion. The Internal Capture Rate is the percent reduction of trip generation estimates for land uses to account for trips made internally on a Mixed-Use Development site.
- Y. ITE TRIP GENERATION MANUAL means the most recently published edition of the manual entitled Trip Generation, published by the Institute of Transportation Engineers. A copy of the ITE Trip Generation Manual shall be kept on file with the Department
- Z. LIGHT RAIL TRANSIT STATION AREA is defined as the passenger station platform along a fixed-route light rail alignment.
- AA. LEGAL COUNSEL means the Office of County Counsel for Clackamas County, Oregon.
- BB. LONG TERM FINANCING Bonds issued by the County to finance a capital improvement in accordance with ORS 223.205 – 223.295.
- CC.METHODOLOGY means the narrative, formulas and charts that serve as the framework for determining the TSDC.
- DD. MIXED-USE DEVELOPMENT is generally planned as a single real-estate land development project with a structure, or structures, containing two or more different and interacting land uses. These areas are characteristically higher density, compact walkable areas. Mixing of uses typically includes residential (townhomes, apartments, or detached homes on small lots), retail (mostly specialty and convenience), restaurants, hotels, office buildings, movie theatres, and any other compatible and complimentary uses. for further definition of project requirements to qualify for a Mixed-Use Development reduction, reference Table 2 – Mixed-Use Development TSDC Reduction Requirements, in Section 11.03.030(G).
- EE.MULTI-MODAL means vehicular, transit, bicycle, pedestrian and wheel chair transportation
- FF. NEW DEVELOPMENT means site improvements that increase overall trip generation.
- GG. QUALIFIED PUBLIC IMPROVEMENT means a capital improvement that is required as a condition of development approval, identified in the TSDC Capital Project List adopted by resolution and is:
- a. Not located on or Contiguous to the New Development site, or
  - b. Located on or Contiguous to the New Development site, and as demonstrated in the traffic study for the New Development is required to be built larger or with greater capacity (over-capacity) than is necessary for the New Development to mitigate for

transportation system impacts attributable to the New Development.

HH. RATE SCHEDULE means the TSDC associated with New Development types, as adopted by resolution.

II. RIGHT-OF-WAY means that portion of land that is dedicated for public use. Public uses may include but are not limited to pedestrian facilities (e.g., sidewalks, plazas), utility placement, signage, etc.

JJ. STATION AREA includes parcels with some portion of the development site located within a 0.25-(one quarter) mile radius (straight line distance measurement) of a Light Rail Station Platform or a Bus Transit Corridor, both of which facilitate travel to multiple geographic routes, typically resulting in reduced impact to the transportation system by encouraging Multi-Modal transportation and reducing the impact on the surrounding transportation system. For further definition of project requirements to qualify for a Station Area reduction, reference Table 1 – Station Area Development TSDC Reduction Requirements, in Section 11.03.030(F). TRANSPORTATION SYSTEM DEVELOPMENT CHARGE (TSDC) means the fee to be paid pursuant to Section 11.03.030 of this Chapter.

KK. TSDC CAPITAL PROJECT LIST means a list of capital projects adopted by the Board identifying the estimated cost, timing, and portion of project costs to be funded by the TSDC.

LL. ZONE OF INFLUENCE shall be identified by drawing a border around the outermost intersections/facilities studied in the Traffic Impact Analysis to develop a boundary. If the improvements that generated the original credits are within the Zone of Influence boundary of the development receiving the credit, the credits may be reassigned because the two developments have similar impacts and traffic patterns.



### 11.03.030 Application

- A. A TSDC may be imposed upon all New Development within unincorporated Clackamas County for which a Development Permit is required.
- B. The applicant for a Development Permit shall, at the time of application, provide the Department with all of the necessary and applicable information, such as the description of use, number of dwelling units or square footage of structures, information about occupancy and size of any existing use on the site, necessary to calculate the TSDC. The Department shall notify the applicant of the right to appeal the decision on the calculation of the charge pursuant to Section 11.03.080.
- C. The amount of the TSDC shall be determined as identified in the Methodology and Rate Schedule adopted pursuant to Section 11.03.010(E), and amended pursuant to Section 11.03.030(D), and Section 11.03.090 or adjusted pursuant to Section 11.03.030(F) or 11.03.030(G).
- D. If the County has not assigned a TSDC category for the identified land use listed in the adopted Rate Schedule, the Department shall at its option either:
1. Identify the land use category that is most similar to the use in question and apply that rate.
  2. Consider trip generation data, gathered in a credible manner, preferably by a registered traffic engineer, for the same or similar use. Such a study shall be prepared at the applicant's expense and must be submitted at least two weeks prior to expected issuance of a Development Permit. The Department Director has the right to accept, accept in part, modify, or reject the calculations offered under this option.
  3. The following guidelines apply to data collection under Section 11.03.030(D)(2) for land uses not in the ITE Manual.
    - a. The applicant shall submit a list of similar uses with similar characteristics in Oregon, Washington, California, or preferably in the Portland region. Uses must have been open for business for at least a year.
    - b. The Department will determine the number of sites and locations, and if applicable for consolidated land use categories, the types of uses for which the applicant will be required to submit traffic counts.
    - c. The applicant shall supply the Department with the following information for each site:
      - i. Monthly adjustment factors to adjust trip generation to the fourth highest business (earnings) month.
      - ii. Standard days and hours of operations.
      - iii. Counts from sites on a weekday (mid-week – two day minimum) from 7:00 to 9:00 a.m. and from 4:00 to 6:00 p.m. Actual counting time and days may vary depending on uses and standard days of operation and shall be approved by the Department. Data collection shall be compliant with the ITE Trip Generation Manual.

- iv. Quantification of pass by, pedestrian, bicycle and transit trips when applicable.
  - v. A vicinity map for each site.
- d. The applicant shall adjust this data as follows:
- i. Adjust a.m. and p.m. trips to Average Weekday Trips based on the proportion of similar uses in the current edition of the ITE Manual.
  - ii. Adjust daily number to Average Weekday Trips if weekend data are collected.
  - iii. Adjust Average Weekday Trips to the fourth highest month based on monthly adjustment factors supplied by the applicant.
  - iv. Adjust pass by, pedestrian, bicycle, and transit trips for potential trip reduction.
- e. The Department shall review the applicant’s data collection and adjustments, and the Department Director shall issue a final ruling to the applicant regarding which data and adjustments will be used for calculating the TSDC. A fee will be charged for the review of formal alternate trip generation data. The fee will be set by Resolution.
- E. Any developer requiring the execution of a formal Development Agreement to clarify TSDC assessments, reductions for Station Area Development (Table 1), or reductions for Mixed-Use Development (Table 2) will be required to pay a deposit (as set by Resolution) prior to staff drafting the agreement.
- F. Station Area developments reduce vehicle trips on the adjacent roadway. Projects meeting the development density requirements that fall within a Station Area are eligible to receive a reduction that correlates to the reduced impact of the eligible development. An approved Station Area Development is eligible for a reduction on TSDC assessments as outlined in Table 1 (below) when some portion of the development site is located within a 0.25-(one quarter) mile radius (straight line distance measurement) of a light rail station platform or a Bus Transit Corridor route alignment. This reduction may be combined with any applicable Mixed-Use Development reduction (Table 2).

Table 1 – STATION AREA DEVELOPMENT TSDC REDUCTION REQUIREMENTS			
REDUCTION LEVEL	TSDC REDUCTION (% TRANSPORTATION IMPACT REDUCTION)	TRANSIT ACCESS REQUIREMENT (WITHIN 0.25 MILE RADIUS)	DEVELOPMENT DENSITY REQUIREMENT(S)
Level 1	5% Vehicle Trip Reduction	Bus Transit Corridor <sup>2</sup>	Minimum residential density of 24 units per acre
			Minimum FAR of 2.0 per acre for non-residential development

Table 1 – STATION AREA DEVELOPMENT TSDC REDUCTION REQUIREMENTS (Cont.)

REDUCTION LEVEL	TSDC REDUCTION (% TRANSPORTATION IMPACT REDUCTION)	TRANSIT ACCESS REQUIREMENT (WITHIN 0.25 MILE RADIUS)	DEVELOPMENT DENSITY REQUIREMENT(S)
Level 2	10% Vehicle Trip Reduction	Bus Transit Corridor <sup>2</sup>	Minimum res. density of 24 dwellings per acre <b>AND</b> minimum FAR of 2.0 per acre for non-res. development
Level 3	5% Vehicle Trip Reduction	Light Rail Transit Station <sup>3</sup>	Minimum residential density of 12 dwellings per acre <sup>4</sup>
			Minimum FAR of 1.0 per acre for non-res. development
Level 4	10% Vehicle Trip Reduction	Light Rail Transit Station <sup>3</sup>	Minimum Res. Density of 24 dwellings per gross acre
Level 5	15% Vehicle Trip Reduction	Light Rail Transit Station <sup>3</sup>	Minimum Res. Density of 24 dwellings per acre <b>AND</b> at least 15% of the total gross res. & non-res. floor area devoted to commercial/retail uses
			Minimum FAR of 2.0 per acre for non-res. development
Level 6	20% Vehicle Trip Reduction	Light Rail Transit Station <sup>3</sup>	Minimum res. density of 24 dwellings per acre <b>AND</b> minimum FAR of 2.0 per acre for non-res. development

<sup>1</sup> Some portion of the development site must be located within a 0.25-(one quarter) mile radius (straight line distance measurement) of a Light Rail Station Platform or a Bus Transit Corridor route alignment to qualify for TSDC reduction.

<sup>2</sup> Bus Transit Corridors include current fixed-route public bus service (excludes dial-a-ride shuttles and taxi service).

<sup>3</sup> Light Rail Transit Station Area is defined as the passenger station platform along a fixed route alignment.

<sup>4</sup> The stated residential density for this TSDC reduction level has been interpolated based on ITE Trip Generation Handbook results.

Source: ITE, Trip Generation Handbook, 2nd Edition, Appendix B, with noted exception.

G. Mixed-Use developments generate internal trip capture, thus reducing external trip generation rates on surrounding roads. In such event, the Department, for purposes of establishing the TSDC for a Mixed-Use Development, shall apply a Mixed-Use Development TSDC reduction to the eligible structure, or structures, which correlate to the internal trip capture of the proposed



development as detailed in Table 2 (below). This reduction may be combined with any applicable Station Area Development reduction (Table 1).

Table 2 - MIXED-USE DEVELOPMENT TSDC REDUCTION REQUIREMENTS		
REDUCTION LEVEL	TSDC REDUCTION (% TRANSPORTATION IMPACT REDUCTION)	DEVELOPMENT DENSITY REQUIREMENT(S)
Level 1	7% Vehicle Trip Reduction	Mixed-Use Development with at least two different land use types (e.g., retail and office) within the same tax lot or master-planned area
Level 2	10% Vehicle Trip Reduction	Mixed-Use Development with a minimum residential density of 12 dwellings per gross acre <b>AND</b> minimum of 0.3 FAR per gross acre for non-residential development
Level 3	14% Vehicle Trip Reduction	Mixed-Use Development with a minimum res. density of 24 dwellings per gross acre <b>AND</b> minimum of 0.3 FAR per gross acre for non-residential development
Level 4	16% Vehicle Trip Reduction	Mixed-Use Development with a minimum residential density of 32 dwellings per gross acre <b>AND</b> minimum of 0.3 FAR per gross acre for non-residential development
Level 5	18% Vehicle Trip Reduction	Mixed-Use Development with a minimum residential density of 40 dwellings per gross acre <b>AND</b> minimum of 0.5 FAR per gross acre for non-residential development

*Source: derived using EPA Mixed-Use Trip Generation Model v4.0.*

- H. If the proposed development includes more than one parcel of land and/or more than one structure, the Mixed-Use Development and/or Station Area reductions shall be authorized as part of a development approval outlining the final build-out of the master plan development area. The applicable reduction shall be memorialized in a Development Agreement (the tool the County will use to secure the developer's compliance with the commitment to build-out a phased master-plan project, qualifying the initial phases for a reduction under the Station Area

and/or Mixed-Use reduction provisions) and recorded as a right-to-lien against each parcel included within the approved development area, allowing for renewal on active development projects.

- I. If a development avails itself of the Mixed-Use Development and/or Station Area reductions and does not construct the development within the term of the Development Agreement, the County will capture any unwarranted reduction provided by the Department at the time of permitting any built structures based on the original conceptual plan that the final built development does not warrant, by:
  1. The Developer paying the TSDC reductions that were attributed to a built structure within the Mixed-Use Development and/or Station Area; or
  2. The County collecting the TSDC reductions that were attributed to a built structure within the Mixed-Use Development and/or Station Area by filing a lien against the benefitting parcels.
- J. Notwithstanding any other provision, the rates adopted pursuant to 11.03.030(C) shall, annually, be adjusted to account for changes in the costs of acquiring and constructing transportation facilities. The adjustment factor shall be based on the change in the Construction Cost Index.

The Construction Cost Index shall be used to adjust the TSDC Rate Schedule each fiscal year, unless it is otherwise adjusted by the Board based on adoption of an updated Methodology or TSDC Capital Project List.

### **11.03.040 Collection**

- A. The TSDC is due and payable at the time of issuance of the Development Permit. The Development Permit shall not be issued, except as provided in Section 11.03.040(C)(3) or 11.03.040(D) of this Section, until payment is made. The TSDC rate in effect at the time that a complete Development Permit or Building Permit, whichever submittal is received last by the County will be applied to that permit.
- B. That TSDC rate is effective for 180-days from the date the land use approval is given or the Development Permit is submitted to the Building Department, whichever comes last. At the expiration of the 180-day period, if the permit is not yet issued, any adjustments applied under Section 11.03.030(H) can be applied to the permit.
- C. Notwithstanding Section 11.03.030(A), the following are exempt from the TSDC:
  1. Guest Homes will not be charged a TSDC assessment because these units share a kitchen and laundry facility with the primary dwelling on the parcel, and as such are not used for boarding, lodging, or rental.
  2. Alteration permits for tenant improvements, new construction or remodeling where:
    - a. no additional dwelling unit(s) or structure(s) are created; or
    - b. a change of use, building addition, or other modification which does not result in an increase in Average Weekday Trips as determined in the manner set forth in a

Methodology adopted pursuant to Section 11.03.010(E), or as provided in Section 11.03.030(D) or 11.03.030(E), whichever is applicable.

3. Relocation of any structure originally located on property that the County acquires in-fee as a part of a capital transportation project that results in a building encroachment over public Right-Of-Way or easements, when the remaining remnant will not be redevelopable, such that the structure is relocated to another parcel within the same system development charge district. Except to the extent such relocation creates additional dwelling units and/or additional Average Weekday Trips as determined in the manner set forth in a Methodology Report adopted by Section 11.03.010(E), or as provided in Section 11.03.030(D) or 11.03.030(E), whichever is applicable.
4. Replacement of any structure located on excess property that the County acquires in-fee as a part of a capital transportation project that can be marketed, or available for occupancy, except to the extent such remodeling or replacement creates additional dwelling units and/or additional Average Weekday Trips as determined in the manner set forth in a Methodology Report adopted by Section 11.03.010(E), or as provided in Section 11.03.030(D) or 11.03.030(E), whichever is applicable, provided:
  - a. The agency has been provided a reasonable period of time to meet public notification requirements for sale or other disposition (i.e., public auction); and
  - b. Upon completion of the project, after access has been restored and/or recorded whichever is the later, such that the property has legal ingress/egress for development or occupancy purposes.

- D. Payment of the TSDC by a person who is also eligible for a credit voucher for construction of an increased capacity facility may be delayed until a date certain to be set by the Department at the time of development or Building Permit issuance.

Payment may only be delayed for the same development which is associated with the construction of the capital improvement for which credit is given, and the permittee shall provide the Department with security to secure payment of the Charge. The security shall be in an amount determined by the Department, and must be in a form outlined in Section 11.03.040(D)(1), (2) or (3) below, or an alternative method approved by Legal Counsel.

A permittee eligible for delay of payment of the TSDC pursuant to this section shall secure payment of the assessment, prior to issuance of the development or Building Permit, by any of the following:

1. Placing cash in the amount of the assessment in an escrow account accessible by the County. Permittee shall reconcile any remaining balance after applying the credit voucher to the outstanding balance, or revenue in the escrow account shall be withdrawn to cover the balance. Once the balance is reconciled any remaining revenue in the escrow account shall be released, but not later than 180-days after the issuance of the credit voucher against the improvement pursuant to Section 11.03.050.
2. Issuing a letter of credit in the amount of the assessment which is accessible by the County. Permittee shall reconcile any remaining balance after applying the credit voucher to the

outstanding balance, or the County shall send a demand to draw down on the letter of credit to cover the balance. Once the balance is reconciled any remaining balance on the letter of credit shall be released, but not later than 180-days after the issuance of the credit voucher against the improvement pursuant to Section 11.03.050.

3. Applying for delay of payment of the TSDC pursuant to ordinance Section 11.03.040(D). Once the credit voucher is issued, the permittee can apply all (or a portion of) the credit voucher toward the principal and interest balance on the account, or continue making installment payments in accordance with the payment plan throughout the duration of the loan. If the installment plan is continued, the applicant would pay an administrative fee at a rate adopted by resolution and interest would begin accruing on the principal balance as of the date of credit voucher issuance.

E. When a TSDC is due and payable, the parcel owner may apply to the County for payment in twenty (20) semiannual installments, secured by a lien on the property upon which the development is to occur, to include interest on the unpaid balance, if that payment option is required to be made available to the permittee by ORS 223.207.

1. A parcel owner may request installment payments for up to \$500,000 in TSDC assessments; any remaining balance must be paid in full prior to issuance of the Development Permit.
2. The County shall prepare the agreement for installment payments, which shall include a waiver of all rights to contest the validity of the lien, except for the correction of computational errors. The application fee for this option shall be set by resolution.

3. The applicable interest rate shall be determined as follows:

<b>Principal</b>	<b>Interest Rate</b>
\$0-24,999	Current prime lending rate plus 3.0 percentage points
\$25,000-\$500,000	Current prime lending rate plus 2.0 percentage points

4. An applicant requesting installment payments shall have the burden of demonstrating the authority to assent to the imposition of a lien on the property and that the interest of the permittee is adequate to secure payment of the lien. The Department Director may order the imposition of the lien as recommended by the Department.
5. Upon the order of the Department Director, the Department shall cause the lien to be recorded on the lien docket kept by the County Clerk. From that time the County shall have a lien upon the described parcel for the amount of the TSDC, together with interest on the unpaid balance at the rate established by the Department Director. The lien shall be enforceable in the manner provided in ORS Chapter 223, and shall be superior to all other liens pursuant to ORS 223.230. Upon satisfaction of the obligation the Department Director shall request the County Clerk to release the lien.

F. With the passage of Article XI, Section 11 B of the Oregon Constitution, progressive payment shall be taken for all unpaid debt. The Department Director will be notified immediately by the

Department of any account thirty (30) days or more past due. The Department Director shall then send a letter to the defaulting party demanding payment no later than thirty (30) days following the date of the demand letter. The demand letter shall require payment of all amounts to bring the account current including any applicable interest or other penalty and shall demand full compliance with a “time is of the essence” clause according to the type of obligation at issue. The time for payment to bring the account current shall be left to the best professional judgment of the Department Director depending upon the type of debt and amount owed but in no event shall time for payment exceed the next payment due date or any other requirements imposed by debt instruments executed by the County in favor of any third party or other agreements that may have been executed by the County.

1. If payment has not been made following the first notice, the Department Director shall refer the matter to Legal Counsel who send a second notice detailing the prior defaults and notices thereof indicating that further action, including legal action, will be taken.
2. If, following the second notice, time for payment has expired, then Legal Counsel shall include the defaulting person or entity on a list entitled “Collection/Foreclosure” and consult with appropriate staff regarding the most efficient and cost effective method for collection of the debt.
3. Legal counsel shall determine if the matter will be retained for pursuit by Legal Counsel, or referred to a debt collection agency or other method for collection. If retained by Legal Counsel, a demand letter to the debtor shall be sent declaring a default, accelerating the entire balance and requiring full payment within a reasonable period of time not to exceed thirty (30) days. If no satisfactory response is forthcoming, Legal Counsel may extend the time limits for legal action in cases of extraordinary hardship; such determination shall be at the sole discretion of Legal Counsel and not subject to review by the Board.
4. Upon referral and direction by the Board, counsel may proceed with foreclosure of the assessment lien or take other legal action authorized by law which is deemed most appropriate under the circumstances.
5. If the Legal Counsel determines that it is most effective to use the services of a collection agency, Legal Counsel may solicit proposals and make a recommendation to the Board regarding selection of a firm consistent with the Clackamas County Local Contract Review Board Rules and ORS Chapter 279. Legal counsel shall be authorized to negotiate a contract regarding the amount of compensation, length of term and methods of collection, subject to final review and approval by the Board. However, the contract shall specifically provide that the collection agency shall fully comply with the Fair Debt Collection Practices Act, 15 U.S.C. 1601, et seq., and shall provide for full indemnification and protection of the County from any and all claims for unfair or unlawful debt collection practices.

### **11.03.050 Credit**

An applicant for a Development Permit, shall be entitled to a credit against the TSDC for payment of a fee-in-lieu of construction or for the construction of a Qualified Public Improvement. Calculation of any TSDC credit value will be based on this Ordinance and the Methodology in place as of the date the County receives a complete TSDC credit application. The applicant shall

have the burden of demonstrating in its application for credit that a particular improvement qualifies for credit.

A. The County shall provide credit for the documented, reasonable cost of construction (whether paid via fee-in-lieu of or a constructed improvement) of all or part of a Qualified Public Improvement listed in TSDC Capital Project List, adopted pursuant to 11.03.010(E), based on the following criteria:

1. Transportation improvements located neither on nor contiguous to the property that is the subject of development approval shall be considered for credit at 100% of the cost of the qualified improvements.
2. Transportation improvements located on or contiguous to the property that is the subject of development approval, and required to be built larger, or with greater capacity than is necessary for the particular development project shall be considered for credit. Credit for these improvements may be granted only for the cost of that portion of the improvement that exceeds the capacity needed to serve the particular development project or property.
3. Developers are constructing Qualified Public Improvements in lieu of the County capital projects group. In accordance with County Code Section 7.03.099(B), utility relocations to accommodate these road designs should be performed at no cost to the developer.
4. No more than 13.5 percent of the total qualifying construction cost shall be creditable for survey, engineering, and inspection.
5. No credits shall be granted for Oregon Department of Transportation (ODOT) facilities unless clearly identified as a Qualified Public Improvement listed in the TSDC Capital Project List.
6. Road Right-Of-Way dedicated pursuant to the applicable development conditions shall be considered for credit as follows:

- a. Road Right-Of-Way located neither on nor contiguous to the property that is the subject of development approval shall receive credit for the dedication.
- b. Road Right-Of-Way located on or contiguous to the property that is the subject of development approval, and required to be built larger, or with greater capacity than is necessary for the particular development project shall be considered for credit to the extent necessary to construct the facility in excess of the capacity needed to serve the particular development project or property.
- c. Credit for right of way shall be allowed based on:
  - i. Reasonable market value of land purchased by the applicant from a third party and necessary to complete the improvement; or
  - ii. A certified market appraisal, paid for by the applicant, that establishes the land value when the property was donated for the needed right of way; or
  - iii. A per square foot value using the then current real market value for the real property shown in the records of the County Tax Assessor.



- B. All requests for credit vouchers must be in writing and filed with the Department not more than ninety days after acceptance of the improvement. Improvement acceptance shall be in accordance with the practices, procedures and standards of the Department.
- C. The amount of any credit shall be determined by the Department and based upon the actual cost incurred by the applicant to construct the improvement, as supported by contract documents, and other appropriate information, provided by the applicant for the credit. In the request, the applicant must identify the improvement(s) for which credit is sought and explain how the improvement(s) meet the requirements of this section.
- D. The applicant shall also document, with credible evidence, the value of the improvement(s) for which credit is sought. If, in the Department's opinion, the improvement(s) meets the requirements of this section and the Department concurs with the proposed value of the improvement(s), a credit shall be granted for the eligible amount.
- E. The value of the credits under this Section shall be determined by the Department based on the actual cost of construction and Right- Of- Way, as applicable, as verified by receipts and other credible evidence submitted by the applicant. Upon a finding by the Department that the contract amounts, including payments for Right-Of-Way, exceed prevailing market rates for a similar project, the credit shall be based upon market rates.
- F. The Department shall respond to the applicant's request in writing within 45 days of receipt of a complete request. The Department shall provide a written explanation of the decision on the credit request.
- G. Upon approval, the Department shall provide the applicant with a credit voucher signed by the Department Director, on a form provided by the Department. The credit voucher shall state a dollar amount that may be applied against any TSDC imposed against the subject property. In no event shall a subject property be entitled to redeem credit vouchers in excess of the TSDC imposed on the subject property, except as provided for in Section 11.03.050(J).
- H. A credit shall have no cash or monetary value and a remaining balance on a voucher shall not be a basis for any refund. A credit shall only apply against the TSDC and its only value is to be used to reduce the TSDC otherwise due, subject to all conditions, limitations, and requirements of this chapter.
- I. When issued by the Department, a credit shall be the personal property of the applicant. Applicant may transfer all or part of any earned credit to one or more Affiliates of the applicant. Credits shall remain the personal property of the applicant, unless transferred by the applicant or its authorized agent as transferor. Any person claiming the right to redeem a credit shall have the burden of demonstrating ownership of the credit.
- J. Prior to permit issuance, upon written application to the Department, a credit shall be applied to the TSDC on a permit for development on a lot or parcel within the confines of the property originally eligible for the credit. In the case of multi-phase development, excess credit generated in one phase may be applied to reduce the TSDC in subsequent phases of the original development project.
- K. Credits may be reassigned from the applicant to another individual or entity for use on another

property if all the following conditions are met.

1. A request for Assignment of a credit voucher must be made in writing with a notarized letter to the Department signed by the person who owns the credit. The request for Assignment of a credit voucher shall contain all the information necessary to establish that such an Assignment is allowable under this subsection. The burden of proof that an Assignment is allowable is on the applicant. The Department shall respond in writing to the applicant's request for Assignment within 30 days of receipt of the request.

2. Credits may be Assigned if the Department determines that either:

- a. The lot or parcel that is to receive the credit is adjacent to and served by the transportation improvements that generated the credits, or
- b. The transportation improvements that generated the original credits are located within the Zone of Influence of the Department traffic impact analysis for the development receiving the credit.

3. When a credit voucher or portion of a credit voucher is Assigned, a notarized Assignment of Transportation SDC Credits notice shall be sent from the Department to both parties clarifying the Assignment. The amount Assigned shall be deducted from the transferor's credit voucher balance and Assigned to the transferee.

- a. The Assignment shall reference the original credit voucher number, which is associated with the property to which the initial credit was issued.
- b. The Assignment shall have the same expiration date as the initial credit voucher.
- c. The credit shall be applied to the TSDC on a permit for development on a lot or parcel within the confines of the property eligible for Assignment as described in subsection 11.03.050(I) of this section.

4. An Assigned credit voucher shall follow all rules regarding redemption of credits.

5. The Department may charge a fee, as set by resolution, for administering the Assignment of credits.

L. Any credit must be redeemed not later than the issuance of the Development Permit. The applicant is responsible for presentation of any credit prior to issuance of the Development Permit. Except as provided in Section 11.03.060, under no circumstances shall any credit redemption be considered after issuance of a Development Permit.

M. Credit vouchers shall expire on the date ten years after the acceptance of the applicable improvement. No extension of this deadline shall be granted.

N. The Department Director can delegate signature authority for credit vouchers to a designee.

### **11.03.060 Refunds**

A. Refunds may be given by the County upon finding that there was a clerical error in the calculation of the TSDC. Refunds shall not be allowed for failure to claim credit, as provided for



in Section 11.03.050, at the time of Development Permit issuance. The refund must be requested within six (6) months of the date the assessment was paid; failure to avail oneself of this grace period forfeits any future right to receive a cash refund and the value of the TSDC paid will remain with the parcel for future development.

- B. A fee (set by Resolution) will be charged on any refund of an assessment paid on development that did not commence. The fee may be paid in cash or the applicant can opt to reduce the amount of the refund to cover the cost of the fee.

### **11.03.070 Dedicated Funds, Project Lists**

- A. All monies derived from the TSDC shall be placed in the County TSDC Fund. TSDC revenue shall be used to fund those projects identified in the TSDC Capital Project List adopted pursuant to Section 11.03.010(E), and costs related to compliance with the provisions of this ordinance, as provided by ORS 223.307.
- B. The TSDC shall not be expended for costs associated with the construction of administrative office facilities that are more than an incidental part of other capital improvements.
- C. The TSDC shall not be expended for costs of the operation or routine maintenance of capital improvements.
- D. The TSDC Capital Project List adopted pursuant to Section 11.03.010(E) may be amended from time to time by Board Resolution. If the Rate Schedule will be increased by a proposed modification of the TSDC Capital Project List to include capacity increasing capital improvement cost(s):
1. The County shall provide, at least 30 days prior to the adoption of the modification, notice of the proposed modification to the persons who have requested written notice under ORS 223.305(6).
  2. If the County receives a written request for a hearing on the proposed modification within seven days of the date the proposed modification is scheduled for adoption, the County shall hold a public hearing.
  3. Notwithstanding ORS 294.160, a public hearing is not required if the County does not receive a written request for a hearing.
  4. The decision of the County to increase the Rate Schedule by modifying the list may be judicially reviewed only as provided in ORS 34.010 to 34.100.

### **11.03.080 Appeal**

- A. A person challenging the expenditure of TSDC revenues may appeal the expenditure to the Board by filing a written request with the Department Director. An appeal of an expenditure must be filed within two years of the date of the alleged improper expenditure.

After providing notice to the appellant, the Board shall determine whether the expenditure is

in accordance with this ordinance and the provisions of ORS 223.297 to 223.314. If the Board determines that there has been an improper expenditure of TSDC revenues, the Board shall direct that a sum equal to the misspent amount shall be deposited within one year to the credit of the account or fund from which it was spent.

B. Appeals of any other decision required or permitted to be made by the Department under this ordinance must be filed with the Hearings Officer by filing a written request and paying the appeals fee with the Department within fourteen (14) days of the Department's decision, or payment of the assessment, whichever comes first. The individual acting as the Hearings Officer will be appointed by the Board.

a. After providing notice to the appellant, the Hearings Officer shall determine whether the Department's decision is in accordance with this ordinance and the provisions of ORS 223.297 to 223.314 and may affirm, modify, or overrule the decisions.

b. The fee for formally appealing a decision to the Hearings Officer will be set by resolution.

C. The decision of the Hearings Officer shall be reviewable solely under ORS 34.010 through 34.100. The person who has appealed a decision shall be notified of this right to review of the decision.

D. A legal action challenging the Methodology adopted by the Board pursuant to Section 11.03.010(E) shall not be filed later than 60 days after adoption. A person shall contest the Methodology used for calculating a TSDC only as provided in ORS 34.010 to ORS 34.100.

### **11.03.090 Annual Review**

Prior to January 1 of each year the County shall provide an annual accounting for the activity occurring in the dedicated funds created by 11.03.070 for the previous fiscal year. The accounting shall show by fund the total amount of system development charges collected, the amount spent on each project that was funded in whole or in part in that fiscal year, and the amount attributed to the costs of complying with the provisions of ORS 223.297 to 223.314.

# Clackamas County – Section 11

## Development Regulation

REDLINE VERSION: TRACKED CHANGES

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**TSDC METHODOLOGY UPDATES**  
Changes were necessary to adopt the new TSDC methodology, project list and rate structure.

**TERMINATION OF THE HAPPY VALLEY JOINT TSDC DISTRICT**  
Changes were necessary to reflect the separation of the Happy Valley Joint TSDC district.

**CLARIFICATIONS**  
During the legal review of our ordinance, we compared our current language with state law and best practices and identified some clarifications and other minor modifications to incorporate into the proposed changes.

# Clackamas County – Section 11

## Development Regulation

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### Chapter 11.03

#### 11.03 TRANSPORTATION SYSTEM DEVELOPMENT CHARGE

##### 11.03.010 Purpose & Applicability

- A. New ddevelopment within Unincorporated Clackamas County ~~(Countywide Area) and within the Happy Valley/Clackamas County Joint Area will use existing, excess traffic capacity and~~ contributes to the need for increased capacity on arterial~~Arterial, boulevard, and collector~~Collector roads, and Multi-Modal facilities and related improvements, and therefore should contribute to the funding for such facilities. ~~These Transportation System Development Charges will reimburse the County, or City, for a portion of the cost of excess capacity and~~ The TSDC will fund a portion of the needed increased capacity for arterial, boulevard, and collector roads associated with such development. ~~The County may develop and enact system development charges jointly with cities, as demonstrated in the Happy Valley/Clackamas County Joint Area~~auto, bicycle and pedestrian system capacity for New Development.
- B. ORS 223.297 through 223.314 grant the County ~~and the City~~ the authority to impose a ~~Transportation System Development Charge~~TSDC to equitably spread the costs of essential capacity increasing capital improvements to ~~a~~New dDevelopment. ~~Future developments will contribute their fair share to the cost of existing, excess capacity facilities and improvements and additions to transportation facilities required to accommodate the capacity needs created by growth. In its discretion, the Board of Commissioners may choose to impose a charge on classes of development types that is less than the maximum allowed by law in the Countywide Area, or in conjunction with the City Council in the Happy Valley Joint Area.~~ The County may enact one or more charges in areas that are smaller than the entire unincorporated County, ~~such as the Happy Valley/Clackamas County Joint Area~~.
- C. The ~~Transportation System Development Charge~~TSDC is incurred upon the issuance of a permit to develop property at a specific use or, density, and/or intensity. ~~The incurred charge is less than the actual cost of providing public facilities commensurate with the needs of the chosen use, density, and/or intensity. Decisions regarding uses, densities, and/or intensities cause direct and proportional changes in the amount of the incurred charge.~~ The ~~Transportation System Development Charge~~TSDC is separate from ~~assessments, or other~~ fees provided by law or imposed as a condition of development. It is a fee for service because it relates a development's fee to receipt of services based upon the nature of that development.
- D. The ~~Transportation System Development Charges imposed by this chapter are~~TSDC is not ~~intended to be~~ a tax on property or on a property owner as a direct consequence of ownership of property within the meaning of Section 11b, Article XI of the Oregon Constitution or the

legislation implementing that section.

E. The TSDC shall be established and may be revised by resolution of the Board. The resolution shall set the amount of the charges (Rate Schedule), the Methodology for calculating the charges, and the list of TSDC Capital Improvement Projects intended to be funded by Improvement Fees (referred to as the TSDC Capital Project List).

~~E. The funding provided by this Chapter TSDC constitutes a mandatory collection method based upon the guidelines set forth in ORS 223.297 – 223.314, and is intended as to assure the construction of increased capacity in arterial, boulevard, and collector roads as shown in the Countywide Area and the Happy Valley Joint Area methodology, respectively.~~

~~F. This Chapter is intended to reimburse Clackamas County, and Clackamas County/City of Happy Valley partnership in the Happy Valley/Clackamas County Joint Area, for the costs of existing, excess capacity and to provide a financing mechanism for the needed increased capacity in Multi-Modal improvements, and arterial Arterial, boulevard, and collector Collector roads associated with New dDevelopment, and does not represent a means to fund not for maintenance of existing roads.~~

~~G. Clackamas County hereby adopts the methodology report entitled “Countywide Transportation System Development Charges Methodology Update Report” (dated November 30, 2006), and Clackamas County and the City of Happy Valley each hereby adopt the methodology report entitled “Happy Valley/Clackamas County Joint Capital Improvement Plan Area, Transportation System Development Charges Methodology Report” (dated November 30, 2006) and the agencies incorporate by reference the assumptions, conclusions, project lists, charges and findings in the reports which refer to the determination of costs of excess capacity, and anticipated costs of capital improvements required to accommodate growth, and the rates for the Transportation System Development Charges to finance these capital improvements in each geographic area. The charges adopted by the Countywide Methodology report do not apply in the geographic area covered by the Happy Valley/Clackamas County Joint Area, and the charges adopted by the Happy Valley Joint Area Methodology report to not apply in the unincorporated geographic area outside the joint district boundaries.~~

### 11.03.020 Definitions

All terms not defined below shall be defined by the permitting jurisdiction in the Clackamas County Zoning and Development Ordinance ~~or City Development Code, respectively.~~

A. ACCESSORY DWELLING UNIT means a unit complying with Clackamas County ZDO ~~301.08(G)839 or City of Happy Valley Planning Code 16.44.050 respectively.~~ Accessory Dwelling Units will be charged the adopted rate for the Institute of Transportation Engineers (ITE) classification of “220 - Apartment.”

B. AFFILIATE is any entity that directly controls, is controlled by or under common control with the applicant. As used herein, the term “control” or “controlled by” means the power to direct the management of such entity through voting rights, ownership or contractual

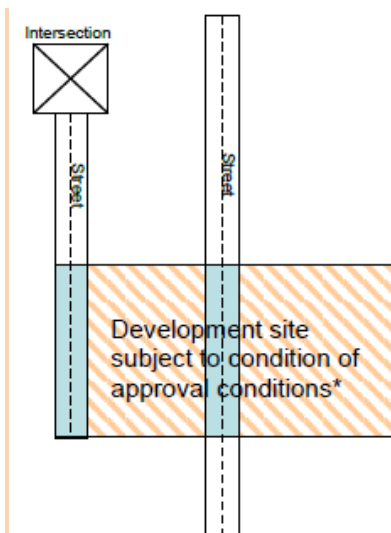
obligations.

- C. ARTERIAL means that term as defined and used in ~~the Chapter 5 - Transportation Element~~System Plan of the County Comprehensive Plan.
- D. AVERAGE WEEKDAY TRIPS means the average 24-hour total of all vehicle trips counted to and from a study site from Monday through Friday. ~~Average weekday trips~~Average Weekday Trips are calculated by using the Institute of Transportation Engineers (ITE) Manual or as otherwise provided by this Chapter.
- ~~E. ASSIGNMENT refers to the transfer of a credit voucher or portion of a credit voucher that is transferred to another party.~~
- E.F. BOARD means the Board of County Commission of Clackamas County, Oregon.
- ~~F. BOULEVARD means that term as defined and used in the Transportation Element of the County Comprehensive Plan.~~
- G. BUILDING OFFICIAL means that person, or his designee, certified by the State and designated as such to administer the State Building Codes for the County ~~or City~~.
- H. BUILDING PERMIT means that permit issued by the ~~County or City~~ Building Official pursuant to the most recently published versions of the State of Oregon Structural Specialty Code ~~Section 105~~, and the Oregon Residential Specialty Code ~~Section R-105~~. In addition, Building Permit shall mean the Manufactured Home Installation Permit issued by the ~~County or City~~ Building Official, relating to the placement of manufactured homes.
- I. BUS TRANSIT CORRIDOR includes current fixed-route public bus service (excludes dial-a-ride shuttles and taxi service).
- ~~J. CAPACITY means the maximum rate of flow at which persons or vehicles can be reasonably expected to traverse a point or uniform segment of a lane or roadway during a specified time period under prevailing roadway, traffic, and control conditions, usually expressed as vehicles per hour or persons per hour. (i.e., capacity is frequently increased by methods such as the addition of travel lanes, right turn or left turn refuges, improved width, hazard elimination, alignment or other geometric characteristics of the roadway, signalization or signalization improvements such as synchronization.)~~
- ~~K. CAPITAL IMPROVEMENT PLAN means a plan and list of capital projects adopted by the Board of County Commissioners and/or City Council identifying the estimated cost and timing for projects needed in a twenty year timeframe.~~
- ~~L. CITY means the City of Happy Valley, Oregon.~~
- ~~M. CITY COUNCIL means the elected City Council of the City of Happy Valley, Oregon.~~
- N.J. COLLECTOR means that term as defined and used in ~~the Chapter 5 - Transportation~~System Plan Element of the County Comprehensive Plan.
- O.K. COMPREHENSIVE PLAN means the County ~~and/or City~~ generalized, coordinated land use map and policy statement that interrelates all functional and natural systems and activities relating to the use of lands, including but not limited to sewer and water systems,

transportation facilities, ~~and~~ recreational and natural resources and air and water quality management programs.

P.L. CONSTRUCTION COST INDEX means that index published by the Engineering News Record (ENR) Northwest (Seattle, Washington) titled “Construction Cost Index.”

M. CONTIGUOUS means that a property and an improvement or portion thereof share a common boundary line. A determination of contiguous includes all property subject to the development approval. The boundary lines and area of an improvement shall be determined by the Right-Of-Way and easement areas for the improvement. In addition, multiple properties under common ownership separated by features such as a common area, non-motorized vehicle or pedestrian way, creek, wetland, park, or similar areas; up to a distance of not more than 100 feet between the properties at the boundary with the improvement, are deemed to include the feature in their combined boundary line. Any portion of an improvement that is located beyond the frontage of a property, as determined by the extension of boundary lines perpendicular to the frontage of the property, is not deemed to be contiguous to that property. An intersection improvement shall be deemed contiguous to all property with frontage on the intersection, or that touches the intersection at a point.



All intersection and street improvements are conditions of development approval. Shaded portion of streets are considered Contiguous to the development site; remainder of streets and intersection are non-contiguous.

\* “Contiguous” is defined based on frontage of site prior to subdivision or partition.

Q. COUNTY means Clackamas County, Oregon.

R.N.

S.O. DEVELOPMENT AGREEMENT means the tool the ~~CITY or COUNTY~~ County will use to secure the developer’s compliance with the commitment to build-out a phased master-plan project, qualifying the initial phases for a reduction under the ~~s~~Station ~~a~~Area and/or ~~m~~Mixed-~~u~~Use reduction provisions.

T.P. DEVELOPMENT PERMIT means a grading, excavation, engineering, building, land use or similar permit issued by the County ~~or City~~ that approves ~~NEW DEVELOPMENT~~New



Development as defined by this ordinance.

~~U.Q.~~ DEPARTMENT means the Clackamas County Department of Transportation and Development ~~or the City of Happy Valley Economic and Community Development Department.~~

~~V.R.~~ DEPARTMENT DIRECTOR means the Director of the Clackamas County Department of Transportation and Development, ~~or his or her designee or the City Manager of Happy Valley.~~

~~W.~~ FINANCE DIRECTOR is that person assigned by the Board of County Commissioners the responsibility of managing the Finance Department for Clackamas County, ~~or his or her designee.~~

S. FLOOR AREA RATIO (FAR) means the ratio of the total amount of enclosed ~~gross floor area~~ Gross Floor Area within a structure to the amount of buildable acreage. For purposes of calculation, both floor area and net site area shall be converted to square feet. (For example, a single-story building constructed on one-quarter of the net developable site would have a floor area ratio of 0.25. If a second story were added, the floor area ratio would increase to 0.50, etc.)

~~X.T.~~ GROSS FLOOR AREA for the purposes of this ordinance will mirror the definition in the most recent ITE manual.

~~Y.U.~~ GUEST HOME means a unit complying with Clackamas County ZDO 833. ~~GUEST HOMES\_ will not be charged a Transportation System Development Charge Assessment because these units share a kitchen and laundry facility with the primary dwelling on the parcel, and as such are not used for boarding, lodging, or rental.~~

~~V.~~ HEARINGS OFFICER is defined as the Hearings Officer for the Department, or other official as appointed by the Board.

~~Z.W.~~ IMPROVEMENT FEE means a fee for costs associated with capital improvements to be constructed.

~~AA. INCREASED CAPACITY FACILITIES include capital improvements to an arterial, collector, or boulevard shown in the project lists in the Reports adopted by Section 11.03.010(G) which increase the level of performance or service provided by existing facilities, or provide new facilities. Such improvements include, but are not limited to, signalization, channelization, widening, drainage facilities, pedestrian improvements, street extensions, railroad crossing protective devices, bridges and bikeways adjacent to the roadway.~~

~~BB.X.~~ INTERNAL CAPTURE RATE is defined as a percent reduction of trip generation for component land uses to account for trips made internally on site. A reduction of trip generation rates can potentially decrease traffic impact and help reduce external congestion. The ~~INTERNAL CAPTURE RATE~~ Internal Capture Rate is the percent reduction of trip generation estimates for land uses to account for trips made internally on a ~~MIXED-USE DEVELOPMENT~~ Mixed-Use Development site.



~~CC.Y.~~ ITE TRIP GENERATION MANUAL means the most recently published edition of the manual entitled Trip Generation, published by the Institute of Transportation Engineers. A copy of the ITE Trip Generation Manual shall be kept on file with the ~~County~~ Department of Transportation and Development. ~~All land uses referenced in this ordinance are those defined in the most recently published edition of the ITE Manual.~~

~~DD.Z.~~ LIGHT RAIL TRANSIT STATION AREA is defined as the passenger station platform along a fixed-route light rail alignment.

~~EE.~~ LOCAL STREET means that term as defined and used in the Transportation Element of the County Comprehensive Plan.

~~AA.~~ LEGAL COUNSEL means the Office of County Counsel for Clackamas County, Oregon.

~~FF.BB.~~ LONG TERM FINANCING Bonds issued by the County to finance a capital improvement in accordance with ORS 223.205 – 223.295.

~~CC.~~ METHODOLOGY means the narrative, formulas and charts that serve as the framework for determining the TSDC.

~~GG.DD.~~ MIXED-USE DEVELOPMENT is generally planned as a single real-estate land development project with a structure, or structures, containing two or more different and interacting land uses. These areas are characteristically higher density, compact walkable areas. Mixing of uses typically includes residential (townhomes, apartments, or detached homes on small lots), retail (mostly specialty and convenience), restaurants, hotels, office buildings, movie theatres, and any other compatible and complimentary uses. for further definition of project requirements to qualify for a Mixed-Use Development reduction, reference Table 2 – Mixed-Use Development TSDC Reduction Requirements, in Section 11.03.030(G).

~~EE.~~ MULTI-MODAL means vehicular, transit, bicycle, pedestrian and wheel chair transportation

~~HH.FF.~~ NEW DEVELOPMENT means site improvements that increase overall trip generation.

~~GG.~~ QUALIFIED PUBLIC IMPROVEMENT means ~~an increased capacity facility larger than a LOCAL~~ a capital improvement that is required as a condition of development approval, identified in a project list included in a Methodology Report adopted by Section ~~11.03.010(G)~~ and is the subject of development approval and required to be built larger or with greater capacity than is necessary for the particular development project to which the ~~improvement fee is related.~~ a capital improvement that is required as a condition of development approval, identified in the TSDC Capital Project List adopted by resolution and is:

- a. Not located on or Contiguous to the New Development site, or
- b. Located on or Contiguous to the New Development site, and as demonstrated in the traffic study for the New Development is required to be built larger or with greater capacity (over-capacity) than is necessary for the New Development to mitigate for transportation system impacts attributable to the New Development.

HH. RATE SCHEDULE means the TSDC associated with New Development types, as adopted by resolution.

~~II. REIMBURSEMENT FEE means a fee for costs associated with capital improvements already constructed or under construction when the fee is established, for which the local government determines that capacity exists.~~

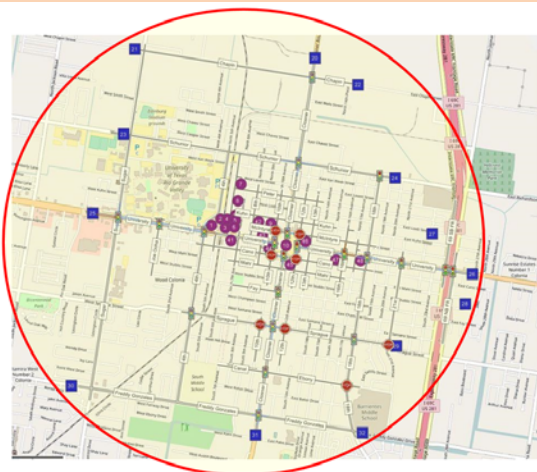
JJ.II. RIGHT-OF-WAY means that portion of land that is dedicated for public use. Public uses may include but are not limited to pedestrian facilities (e.g., sidewalks, plazas), utility placement, signage, etc.

~~KK.~~ STATION AREA includes parcels with some portion of the development site located within a 0.25-(one quarter) mile radius (straight line distance measurement) of a Light Rail Station Platform or a ~~BUS TRANSIT CORRIDOR~~ Bus Transit Corridor, both of which facilitate travel to multiple geographic routes, typically resulting in reduced impact to the transportation system by encouraging ~~multi-modal~~ Multi-Modal transportation and reducing the impact on the surrounding transportation system. For further definition of project requirements to qualify for a Station Area reduction, rReference Table 1 – Station Area Development TSDC Reduction Requirements, in Section 11.03.030(F); ~~for further definition of project requirements to qualify for a station area reduction.~~

LL.JJ. TRANSPORTATION SYSTEM DEVELOPMENT CHARGE (TSDC) means the fee to be paid pursuant to Section 11.03.030 of this Chapter.

KK. TSDC CAPITAL PROJECT LIST means a list of capital projects adopted by the Board identifying the estimated cost, timing, and portion of project costs to be funded by the TSDC.

LL.ZONE OF INFLUENCE shall be identified by drawing a border around the outermost intersections/facilities studied in the Traffic Impact Analysis to develop a boundary. If the improvements that generated the original credits are within the Zone of Influence boundary of the development receiving the credit, the credits may be reassigned because the two developments have similar impacts and traffic patterns.



### 11.03.030 Application

- A. A ~~Transportation System Development Charge~~ TSDC ~~may be is~~ imposed upon all New Development ~~new development~~ within unincorporated Clackamas County ~~and the Happy Valley/Clackamas County Joint Area~~ for which a ~~development~~ Development Permit ~~or building permit~~ is required. ~~Where an intergovernmental agreement imposes a city's System Development Charge for transportation facilities on new development within unincorporated Clackamas County, the County shall not impose its own Transportation System Development Charge.~~
- B. The applicant for a ~~development~~ Development Permit ~~building permit~~ shall, at the time of application, provide the Department with all of the necessary and applicable information, such as the description of use, number of dwelling units or square footage of structures, information about occupancy and size of any existing use on the site, necessary to calculate the ~~Transportation System Development Charge~~ TSDC. The Department shall notify the applicant of the right to appeal the decision on the calculation of the charge pursuant to Section 11.03.080.
- C. The amount of the ~~Transportation System Development Charge~~ TSDC shall be determined as identified in the ~~Methodology~~ Methodology and Rate Schedule Reports adopted pursuant to Section 11.03.010(GE), and amended pursuant to Section 11.03.030(GD), and Section 11.03.090 or adjusted pursuant to Section ~~11.03.030(D)~~ 11.03.030(F) -or 11.03.030(EG).
- D. If the County ~~or City~~ has not assigned a ~~Transportation System Development Charge~~ TSDC category rate for the identified land use listed in the ~~adopted Rate Schedule~~ ITE Manual, ~~or if data is "Not Available" in the ITE Manual~~, the Department shall at its option either:
1. Identify the land use category that ~~has a trip generation rate is~~ most similar to the use in question and apply that rate.
  - 2.1. Consider trip generation data, gathered in a credible manner, preferably by a registered traffic engineer, for the same or similar use. Such a study shall be prepared at the applicant's expense and must be submitted at least two weeks prior to expected issuance of a ~~development or building permit~~ Development Permit. The Department Director ~~or the Director's designee~~ has the right to accept, accept in part, modify, or reject the calculations offered under this option.
  - 3.2. The following guidelines apply to data collection under ~~option 2~~ Section 11.03.030(D)(2) for land uses not in the ITE Manual.
    - a. The applicant shall submit a list of similar uses with similar characteristics in Oregon, Washington, California, or preferably in the Portland region. Uses must have been open for business for at least a year.
    - b. The ~~DEPARTMENT~~ Department will determine the number of sites and locations, ~~and if applicable for consolidated land use categories, the types of uses~~ for which the applicant will be required to submit traffic counts.
    - c. The applicant shall supply the ~~DEPARTMENT~~ Department with the following information for each site:

- i. Monthly adjustment factors to adjust trip generation to the fourth highest business (earnings) month.
  - ii. Standard days and hours of operations.
  - iii. Counts from sites on a weekday (mid-week – two day minimum) from 7:00 to 9:00 a.m. and from 4:00 to 6:00 p.m. Actual counting time and days may vary depending on uses and standard days of operation and shall be approved by the Department. Data collection shall be compliant with the ITE Trip Generation Manual.
  - iv. Quantification of pass by, pedestrian, bicycle and transit trips when applicable.
  - v. A vicinity map for each site.
- d. The applicant shall adjust this data as follows:
- i. Adjust a.m. and p.m. trips to ~~average weekday trips~~ Average Weekday Trips based on the proportion of similar uses in the current edition of the ITE Manual.
  - ii. Adjust daily number to ~~average weekday trips~~ Average Weekday Trips if weekend data are collected.
  - iii. Adjust ~~average weekday trips~~ Average Weekday Trips to the fourth highest month based on monthly adjustment factors supplied by the applicant.
  - iv. Adjust pass by, pedestrian, bicycle, and transit trips for potential trip reduction.
- e.—The Department shall review the applicant’s data collection and adjustments, and the Department Director ~~or the Director’s designee~~ shall issue a final ruling to the applicant regarding which data and adjustments will be used for calculating the Transportation System Development Charges TSDC. .-
- f.e. A fee will be charged for the review of formal alternate trip generation data. The fee will be set by Resolution.
- E. Any developer requiring the execution of a formal ~~DEVELOPMENT AGREEMENT~~ Development Agreement to clarify ~~Transportation System Development Charge TSDC~~ assessments, reductions for Station Area Development (Table 1), or reductions for Mixed-Use Development (Table 2) will be required to pay a deposit (as set by Resolution) prior to staff drafting the agreement.
- F. Station ~~Area area~~ Area developments reduce vehicle trips on the adjacent roadway. Projects meeting the development density requirements that fall within a Station Area ~~station area~~ are eligible to receive a reduction that correlates to the reduced impact of the eligible development. An approved Station Area Development is eligible for a reduction on TSDC assessments as outlined in Table 1 (below) when some portion of the development site is located within a 0.25-(one quarter) mile radius (straight line distance measurement) of a light rail station platform or a ~~bus-transit corridor~~ Bus Transit Corridor route alignment. This reduction may be combined with any

applicable Mixed-Use Development reduction (Table 2).

Table 1 – STATION AREA DEVELOPMENT TSDC REDUCTION REQUIREMENTS			
REDUCTION LEVEL	TSDC REDUCTION (% TRANSPORTATION IMPACT REDUCTION)	TRANSIT ACCESS REQUIREMENT (WITHIN 0.25 MILE RADIUS)	DEVELOPMENT DENSITY REQUIREMENT(S)
Level 1	5% Vehicle Trip Reduction	Bus Transit Corridor <sup>2</sup>	Minimum residential density of 24 units per acre
			Minimum FAR of 2.0 per acre for non-residential development
Level 2	10% Vehicle Trip Reduction	Bus Transit Corridor <sup>2</sup>	Minimum res. density of 24 dwellings per acre <b>AND</b> minimum FAR of 2.0 per acre for non-res. development
Level 3	5% Vehicle Trip Reduction	Light Rail Transit Station <sup>3</sup>	Minimum residential density of 12 dwellings per acre <sup>4</sup>
			Minimum FAR of 1.0 per acre for non-res. development
Level 4	10% Vehicle Trip Reduction	Light Rail Transit Station <sup>3</sup>	Minimum Res. Density of 24 dwellings per gross acre
Level 5	15% Vehicle Trip Reduction	Light Rail Transit Station <sup>3</sup>	Minimum Res. Density of 24 dwellings per acre <b>AND</b> at least 15% of the total gross res. & non-res. floor area devoted to commercial/retail uses
			Minimum FAR of 2.0 per acre for non-res. development
Level 6	20% Vehicle Trip Reduction	Light Rail Transit Station <sup>3</sup>	Minimum res. density of 24 dwellings per acre <b>AND</b> minimum FAR of 2.0 per acre for non-res. development

<sup>1</sup> Some portion of the development site must be located within a 0.25-(one quarter) mile radius (straight line distance measurement) of a Light Rail Station Platform or a Bus Transit Corridor route alignment to qualify for TSDC reduction.

<sup>2</sup> Bus Transit Corridors include current fixed-route public bus service (excludes dial-a-ride shuttles and taxi service).

<sup>3</sup> Light Rail Transit Station **Area** is defined as the passenger station platform along a fixed route alignment.

<sup>4</sup> The stated residential density for this TSDC reduction level has been interpolated based on ITE Trip Generation Handbook results.

Source: ITE, Trip Generation Handbook, 2nd Edition, Appendix B, with noted exception.

G. Mixed-~~use~~Use developments generate internal trip capture, thus reducing external trip generation rates on surrounding roads. In such event, the Department, for purposes of establishing the ~~TSDC~~Transportation System Development Charge for a Mixed-Use Development, shall apply a Mixed-Use Development TSDC reduction to the eligible structure, or structures, which correlate to the internal trip capture of the proposed development as detailed in Table 2 (below). This reduction may be combined with any applicable Station Area Development reduction (Table 1).

Table 2 - MIXED-USE DEVELOPMENT TSDC REDUCTION REQUIREMENTS		
REDUCTION LEVEL	TSDC REDUCTION (% TRANSPORTATION IMPACT REDUCTION)	DEVELOPMENT DENSITY REQUIREMENT(S)
Level 1	7% Vehicle Trip Reduction	Mixed- <del>use</del> <u>Use</u> <del>development</del> <u>Development</u> with at least two different land use types (e.g., retail and office) within the same tax lot or master-planned area
Level 2	10% Vehicle Trip Reduction	Mixed- <del>use</del> <u>Use</u> <del>development</del> <u>Development</u> with a minimum residential density of 12 dwellings per gross acre <b>AND</b> minimum of 0.3 FAR per gross acre for non-residential development
Level 3	14% Vehicle Trip Reduction	Mixed- <del>use</del> <u>Use</u> <del>d</del> <u>Development</u> with a minimum res. density of 24 dwellings per gross acre <b>AND</b> minimum of 0.3 FAR per gross acre for non-residential development
Level 4	16% Vehicle Trip Reduction	Mixed- <del>use</del> <u>Use</u> <del>d</del> <u>Development</u> with a minimum residential density of 32 dwellings per gross acre <b>AND</b> minimum of 0.3 FAR per gross acre for non-residential development
Level 5	18% Vehicle Trip Reduction	Mixed- <del>use</del> <u>Use</u> <del>d</del> <u>Development</u> with a minimum residential density of 40 dwellings per gross acre <b>AND</b> minimum of 0.5 FAR per gross acre for non-residential development

Source: derived using EPA Mixed-Use Trip Generation Model v4.0.



- H. If the proposed development includes more than one parcel of land and/or more than one structure, the Mixed-Use Development and/or Station Area reductions shall be authorized as part of a development approval outlining the final build-out of the master plan development area. The applicable reduction shall be memorialized in a ~~DEVELOPMENT AGREEMENT~~ Development Agreement (the tool the ~~CITY or COUNTY~~ County will use to secure the developer's compliance with the commitment to build-out a phased master-plan project, qualifying the initial phases for a reduction under the Station Area ~~station-area~~ and/or ~~Mixed-u~~ Use reduction provisions) and recorded as a right-to-lien against each parcel included within the approved development area, allowing for renewal on active development projects.
- I. If a development avails itself of the Mixed-Use Development and/or Station Area reductions and does not construct the development within the term of the ~~development agreement~~ Development Agreement, the County ~~and/or City~~ will capture any unwarranted reduction provided by the Department at the time of permitting any built structures based on the original conceptual plan that the final built development does not warrant, by:
1. The Developer ~~paying will have an opportunity to pay~~ the TSDC reductions that were attributed to a built structure within the Mixed-Use Development and/or Station Area; or
  2. The County ~~and/or City can~~ collecting the TSDC reductions that were attributed to a built structure within the Mixed-Use Development and/or Station Area by filing a lien against the benefitting parcels.
- J. Notwithstanding any other provision, the rates adopted pursuant to 11.03.030(C) shall, annually, be adjusted to account for changes in the costs of acquiring and constructing transportation facilities. The adjustment factor shall be based on ~~(1) the change in the average market value of undeveloped land, except resource properties, in Clackamas County according to the records of the County Tax Assessor; (2) the change in construction costs according to the Engineering News Record (ENR) Northwest (Seattle, Washington) Construction Cost Index; and (3) the Washington State Department of Transportation (WSDOT) Construction Cost Index; and shall be determined as follows: Construction Cost Index.~~

~~The Transportation System Development Charge Construction Cost Index Adjustment Factor shall be used to adjust the Transportation System Development Charge TSDC Rate Schedule rates each calendar fiscal year, unless it is otherwise adjusted by the Board and City Council based on adoption of an updated methodology Methodology or TSDC Capital Project List-capital improvement plan, or through an Annual Review as described in 11.03.090. However, if (1) the Transportation System Development Charge Adjustment Factor results in a negative value, no adjustment to the rates will be made that calendar year; or (2) the adjustment factor results in a factor less than 1.0% (0.99% 0), no adjustment to the rates will be made that calendar year. [Codified by Ord. 05-2000, 7/13/00; Amended by Section 6 of Ord. 01-2002, 1/10/02; Amended by Ord. 02-2002, 2/28/02; Amended by Ord. 10-2012, 10/25/12.]~~

### 11.03.040 Collection

- A. The ~~Transportation System Development Charge~~ TSDC is due and payable at the time of issuance of the ~~DEVELOPMENT PERMIT~~ Development Permit. The ~~DEVELOPMENT PERMIT~~ Development Permit shall not be issued, except as provided in ~~Subsection 11.03.040(C)-(3) or 11.03.040(D)~~ of this Section, until payment is made. The ~~Transportation System Development Charge (TSDC)~~ TSDC rate in effect at the time that a complete ~~DEVELOPMENT PERMIT~~ Development Permit or ~~BUILDING PERMIT~~ Building Permit, whichever submittal is received last by the County ~~or City~~ will be applied to that permit.
- B. That TSDC rate is effective for 180-days from the date the land use approval is given or the ~~development permit~~ Development Permit is submitted to the Building Department, whichever comes last. At the expiration of the 180-day period, if the permit is not yet issued, any ~~annual-rate~~ adjustments applied under Section 11.03.030(H) can be applied to the permit.
- C. Notwithstanding Section 11.03.030(A), the following are exempt from the ~~Transportation System Development Charge~~ TSDC:
1. Guest Homes will not be charged a TSDC assessment because these units share a kitchen and laundry facility with the primary dwelling on the parcel, and as such are not used for boarding, lodging, or rental.
  1. ~~Replacement of any existing single family structure (which include manufactured homes not in a manufactured home park, townhomes and condominiums) for residential purposes only, except to the extent such remodeling or replacement creates additional dwelling units.~~
  2. ~~Replacement of any existing multi family (which include duplexes, triplexes and multi-tenant apartments), except to the extent such remodeling or replacement creates additional dwelling units.~~
  2. Alteration permits for tenant improvements, new construction or remodeling where:
    - a. no additional dwelling unit(s) or structure(s) are created; or
    - b. a change of use, building addition, or other modification which does not result in an increase in Average Weekday Trips as determined in the manner set forth in a Methodology adopted pursuant to Section 11.03.010(E), or as provided in Section 11.03.030(D) or 11.03.030(E), whichever is applicable.
  3. ~~Replacement of existing office, business and commercial, industrial or institutional structures (which include manufactured home parks), except to the extent that a change of use, building addition, or other modification generates additional, average weekday trips as determined in the manner set forth in a Methodology Report adopted by Section 11.03.010(G), or as provided in Section 11.03.030(D) or 11.03.030(E), whichever is applicable.~~
  4. Relocation of any structure originally located on property that the County ~~or the City~~ acquires in-fee as a part of a capital transportation project that results in a building encroachment over public ~~Right-of-Way~~ or easements, when the remaining remnant



will not be redevelopable, such that the structure is relocated to another parcel within the same system development charge district. Except to the extent such relocation creates additional dwelling units and/or additional ~~average weekday trips~~Average Weekday Trips as determined in the manner set forth in a Methodology Report adopted by Section 11.03.010(~~GE~~), or as provided in Section 11.03.030(D) or 11.03.030(E), whichever is applicable.

~~5.4.~~ Replacement of any structure located on excess property that the County ~~or the City~~ acquires in-fee as a part of a capital transportation project that can be marketed, or available for occupancy, except to the extent such remodeling or replacement creates additional dwelling units and/or additional ~~average weekday trips~~Average Weekday Trips as determined in the manner set forth in a Methodology Report adopted by Section 11.03.010(~~GE~~), or as provided in Section 11.03.030(D) or 11.03.030(E), whichever is applicable, provided:

- a. The agency has been provided a reasonable period of time to meet public notification requirements for sale or other disposition (i.e., public auction); and
- b. Upon completion of the project, after access has been restored and/or recorded whichever is the later, such that the property has legal ingress/egress for development or occupancy purposes.

D. Payment of the ~~Transportation System Development Charge~~TSDC by a person who is also eligible for a credit voucher for construction of an increased capacity facility may be delayed until a date certain to be set by the Department at the time of development or ~~building permit~~Building Permit issuance.

Payment may only be delayed for the same development which is associated with the construction of the capital improvement for which credit is given, and the permittee shall provide the Department with security to secure payment of the Charge. The security shall be in an amount determined by the Department, and must be in a form outlined in ~~Subsection 11.03.040(D)(1), or (2) or (3)~~ below, or an alternative method approved by ~~County Legal~~ Counsel.

A permittee eligible for delay of payment of the ~~Transportation System Development Charge~~TSDC pursuant to this section shall secure payment of the assessment, prior to issuance of the development or ~~building permit~~Building Permit, by any of the following~~either~~:

1. Placing cash in the amount of the assessment in an escrow account accessible by the County-~~or City, respectively~~. Permittee shall reconcile any remaining balance after applying the credit voucher to the outstanding balance, or revenue in the escrow account shall be withdrawn to cover the balance. Once the balance is reconciled any remaining revenue in the escrow account shall be released, but not later than 180-days after the issuance of the credit voucher against the improvement pursuant to Section 11.03.050.

2. Issuing a letter of credit in the amount of the assessment which is accessible by the County. Permittee shall reconcile any remaining balance after applying the credit voucher to the outstanding balance, or the County shall send a demand to draw down on the letter of credit to cover the balance. Once the balance is reconciled any remaining balance on the letter of credit shall be released, but not later than 180-days after the issuance of the credit voucher

against the improvement pursuant to Section 11.03.050.

3. The permittee can apply for delay of payment of the ~~TSDC~~Transportation System Development Charge pursuant to ordinance Section 11.03.040(D). Once the credit voucher is issued, the permittee can apply all (or a portion of) the credit voucher toward the principal and interest balance on the account, or continue making installment payments in accordance with the payment plan throughout the duration of the loan. If the installment plan is continued, the applicant would pay an administrative fee at a rate adopted by resolution and interest would begin accruing on the principal balance as of the date of credit voucher issuance.

E. When a ~~Transportation System Development Charge~~TSDC is due and payable, the ~~permittee~~parcel owner may apply to the County for payment in twenty (20) semiannual installments, secured by a lien on the property upon which the development is to occur, to include interest on the unpaid balance, if that payment option is required to be made available to the permittee by ORS 223.207.

1. A parcel owner may request installment payments for up to \$500,000 in TSDC assessments; any remaining balance must be paid in full prior to issuance of the Development Permit.

2. The County shall provide forms~~prepare the agreement~~ for installment payments, which shall include a waiver of all rights to contest the validity of the lien, except for the correction of computational errors. The application fee for this option shall be ~~\$500~~set by resolution.

3. The applicable interest rate shall be determined as follows:

Principal	Interest Rate
\$0-24,999	Current prime lending rate plus 3.0 percentage points
\$25,000-\$500,000	Current prime lending rate plus 2.0 percentage points

4. An applicant requesting installment payments shall have the burden of demonstrating the authority to assent to the imposition of a lien on the property and that the interest of the permittee is adequate to secure payment of the lien. The Department Director, ~~or Director's Designee,~~ may order the imposition of the lien as recommended by the Department.

5. Upon the order of the Department Director, ~~or Director's Designee's,~~ order the Department shall cause the lien to be recorded on the lien docket kept by the County Clerk. From that time the County shall have a lien upon the described parcel for the amount of the ~~Transportation System Development Charge~~TSDC, together with interest on the unpaid balance at the rate established by the Department Director, ~~or Director's Designee's~~. The lien shall be enforceable in the manner provided in ORS Chapter 223, and shall be superior to all other liens pursuant to ORS 223.230. Upon satisfaction of the obligation the Department Director, ~~or Director's Designee~~ shall request the County Clerk to release the lien.

F. With the passage of Article XI, Section 11 B of the Oregon Constitution, progressive payment

shall be taken for all unpaid debt. The Department Director, ~~or Director's Designee~~, will be notified immediately by the Department of any account thirty (30) days or more past due. The Department Director, ~~or Director's Designee~~, shall then send a letter to the defaulting party demanding payment no later than thirty (30) days following the date of the demand letter. The demand letter shall require payment of all amounts to bring the account current including any applicable interest or other penalty and shall demand full compliance with a "time is of the essence" clause according to the type of obligation at issue. The time for payment to bring the account current shall be left to the best professional judgment of the Department Director, ~~or Director's Designee~~, depending upon the type of debt and amount owed but in no event shall time for payment exceed the next payment due date or any other requirements imposed by debt instruments executed by the County in favor of any third party or other agreements that may have been executed by the County.

1. If payment has not been made following the first notice, the Department Director, ~~or Director's Designee~~, shall refer the matter to Legal Counsel who send a second notice, ~~with a copy to the Finance Director~~, detailing the prior defaults and notices thereof indicating that further action, including legal action, will be taken.
2. ~~If, following the second notice, time for payment has expired, then the Finance Director~~ Legal Counsel shall include the defaulting person or entity on a list entitled "Collection/Foreclosure" and consult with appropriate staff ~~and legal counsel~~ regarding the most efficient and cost effective method for collection of the debt.
- 3.2.
- 4.3. ~~The Finance Director~~ Legal counsel shall determine if the matter will be ~~referred to~~ retained for pursuit by legal counsel Legal Counsel, ~~or referred to~~ a debt collection agency or other method for collection. If ~~referred to~~ retained by legal counsel Legal Counsel, a demand letter to the debtor shall be sent declaring a default, accelerating the entire balance and requiring full payment within a reasonable period of time not to exceed thirty (30) days. If no satisfactory response is forthcoming, ~~the Finance Director~~ Legal Counsel may extend the time limits for legal action in cases of extraordinary hardship; such determination shall be at the sole discretion of ~~the Finance Director~~ Legal Counsel and not subject to review by the Board.
- 5.4. Upon referral and direction by ~~the Finance Director~~ the Board, counsel may proceed with foreclosure of the assessment lien or take other legal action authorized by law which is deemed most appropriate under the circumstances.
- 6.5. If the ~~Finance Director~~ Legal Counsel determines that it is most effective to use the services of a collection agency, ~~the Finance Director~~ Legal Counsel may solicit proposals and make a recommendation to the Board regarding selection of a firm consistent with the Clackamas County Local Contract Review Board Rules and ORS Chapter 279. ~~The Finance Director~~ Legal counsel shall be authorized to negotiate a contract regarding the amount of compensation, length of term and methods of collection, subject to final review and approval by the Board. However, the contract shall specifically provide that the collection agency shall fully comply with the Fair Debt Collection Practices Act, 15 U.S.C. 1601, et seq., and

shall provide for full indemnification and protection of the County from any and all claims for unfair or unlawful debt collection practices.

### 11.03.050 Credit

An applicant for a Development Permit, shall be entitled to a credit against the TSDC for payment of a fee-in-lieu of construction or for the construction of a Qualified Public Improvement.

Calculation of any TSDC credit value will be based on this Ordinance and the Methodology in place as of the date the County receives a complete TSDC credit application. The applicant shall have the burden of demonstrating in its application for credit that a particular improvement qualifies for credit.

A. The County shall provide credit for the documented, reasonable cost of construction (whether paid via fee-in-lieu of or a constructed improvement) of all or part of a Qualified Public Improvement listed in TSDC Capital Project List, adopted pursuant to 11.03.010(E), based on the following criteria:

1. Transportation improvements located neither on nor contiguous to the property that is the subject of development approval shall be considered for credit at 100% of the cost of the qualified improvements.
2. Transportation improvements located on or contiguous to the property that is the subject of development approval, and required to be built larger, or with greater capacity than is necessary for the particular development project shall be considered for credit. Credit for these improvements may be granted only for the cost of that portion of the improvement that exceeds the capacity needed to serve the particular development project or property.
3. Developers are constructing Qualified Public Improvements in lieu of the County capital projects group. In accordance with County Code Section 7.03.099(B), utility relocations to accommodate these road designs should be performed at no cost to the developer.
4. No more than 13.5 percent of the total qualifying construction cost shall be creditable for survey, engineering, and inspection.
5. No credits shall be granted for Oregon Department of Transportation (ODOT) facilities unless clearly identified as a Qualified Public Improvement listed in the TSDC Capital Project List.
6. Road Right-Of-Way dedicated pursuant to the applicable development conditions shall be considered for credit as follows:
  - a. Road Right-Of-Way located neither on nor contiguous to the property that is the subject of development approval shall receive credit for the dedication.
  - b. Road Right-Of-Way located on or contiguous to the property that is the subject of development approval, and required to be built larger, or with greater capacity than is necessary for the particular development project shall be considered for credit to the extent necessary to construct the facility in excess of the capacity needed to serve the particular development project or property.

c. Credit for right of way shall be allowed based on:

- i. Reasonable market value of land purchased by the applicant from a third party and necessary to complete the improvement; or
- ii. A certified market appraisal, paid for by the applicant, that establishes the land value when the property was donated for the needed right of way; or
- iii. A per square foot value using the then current real market value for the real property shown in the records of the County Tax Assessor.

B. All requests for credit vouchers must be in writing and filed with the Department not more than ninety days after acceptance of the improvement. Improvement acceptance shall be in accordance with the practices, procedures and standards of the Department.

C. The amount of any credit shall be determined by the Department and based upon the actual cost incurred by the applicant to construct the improvement, as supported by contract documents, and other appropriate information, provided by the applicant for the credit. In the request, the applicant must identify the improvement(s) for which credit is sought and explain how the improvement(s) meet the requirements of this section.

A-D. The applicant shall also document, with credible evidence, the value of the improvement(s) for which credit is sought. If, in the Department's opinion, the improvement(s) meets the requirements of this section and the Department concurs with the proposed value of the improvement(s), a credit shall be granted for the eligible amount.

E. The value of the credits under this Section shall be determined by the Department based on the actual cost of construction and Right- Of- Way, as applicable, as verified by receipts and other credible evidence submitted by the applicant. Upon a finding by the Department that the contract amounts, including payments for Right-Of-Way, exceed prevailing market rates for a similar project, the credit shall be based upon market rates.

F. The Department shall respond to the applicant's request in writing within 45 days of receipt of a complete request. The Department shall provide a written explanation of the decision on the credit request.

G. Upon approval, the Department shall provide the applicant with a credit voucher signed by the Department Director, on a form provided by the Department. The credit voucher shall state a dollar amount that may be applied against any TSDC imposed against the subject property. In no event shall a subject property be entitled to redeem credit vouchers in excess of the TSDC imposed on the subject property, except as provided for in Section 11.03.050(J).

H. A credit shall have no cash or monetary value and a remaining balance on a voucher shall not be a basis for any refund. A credit shall only apply against the TSDC and its only value is to be used to reduce the TSDC otherwise due, subject to all conditions, limitations, and requirements of this chapter.

I. When issued by the Department, a credit shall be the personal property of the applicant. Applicant may transfer all or part of any earned credit to one or more Affiliates of the applicant. Credits shall remain the personal property of the applicant, unless transferred by the applicant

or its authorized agent as transferor. Any person claiming the right to redeem a credit shall have the burden of demonstrating ownership of the credit.

J. Prior to permit issuance, upon written application to the Department, a credit shall be applied to the TSDC on a permit for development on a lot or parcel within the confines of the property originally eligible for the credit. In the case of multi-phase development, excess credit generated in one phase may be applied to reduce the TSDC in subsequent phases of the original development project.

K. Credits may be reassigned from the applicant to another individual or entity for use on another property if all the following conditions are met.

1. A request for Assignment of a credit voucher must be made in writing with a notarized letter to the Department signed by the person who owns the credit. The request for Assignment of a credit voucher shall contain all the information necessary to establish that such an Assignment is allowable under this subsection. The burden of proof that an Assignment is allowable is on the applicant. The Department shall respond in writing to the applicant's request for Assignment within 30 days of receipt of the request.

2. Credits may be Assigned if the Department determines that either:

a. The lot or parcel that is to receive the credit is adjacent to and served by the transportation improvements that generated the credits, or

b. The transportation improvements that generated the original credits are located within the Zone of Influence of the Department traffic impact analysis for the development receiving the credit.

3. When a credit voucher or portion of a credit voucher is Assigned, a notarized Assignment of Transportation SDC Credits notice shall be sent from the Department to both parties clarifying the Assignment. The amount Assigned shall be deducted from the transferor's credit voucher balance and Assigned to the transferee.

a. The Assignment shall reference the original credit voucher number, which is associated with the property to which the initial credit was issued.

b. The Assignment shall have the same expiration date as the initial credit voucher.

c. The credit shall be applied to the TSDC on a permit for development on a lot or parcel within the confines of the property eligible for Assignment as described in subsection 11.03.050(I) of this section.

4. An Assigned credit voucher shall follow all rules regarding redemption of credits.

5. The Department may charge a fee, as set by resolution, for administering the Assignment of credits.

L. Any credit must be redeemed not later than the issuance of the Development Permit. The applicant is responsible for presentation of any credit prior to issuance of the Development Permit. Except as provided in Section 11.03.060, under no circumstances shall any credit redemption be considered after issuance of a Development Permit.



M. Credit vouchers shall expire on the date ten years after the acceptance of the applicable improvement. No extension of this deadline shall be granted.

B-N. The Department Director can delegate signature authority for credit vouchers to a designee.

~~A. The person responsible for providing a qualified public improvement shall be entitled to receive a credit voucher that may be used to satisfy a Transportation System Development Charge obligation within the same geographic collection area for which the credit is given (i.e., Countywide Area or Happy Valley/Clackamas County Joint Area). An application for credit must be received no later than 90 days after the date the improvement has been accepted by the responsible government.~~

~~C. The credit amount shall not exceed the portion of the actual cost of the project that is eligible for SDC funding as shown in the methodology reports adopted by 11.03.010.~~

~~D. The "actual cost" of the project or improvement means the cost of materials, land and construction including design and engineering, permits, use of equipment, and labor directly related to capacity increasing capital improvements above the local street level.~~

~~E. Credit will be given for the value of real property donated for right of way needed as a part of the increased capacity facility. The land value shall be calculated~~

~~F. either at a per square foot value using the then current real market value for the real property shown in the records of the County Tax Assessor, or through a certified market appraisal, paid for by the applicant, that establishes the land value when the property was donated for the needed right of way.~~

~~G. Any credit voucher provided for in this Chapter is transferable to any person.~~

~~H. Credits shall apply against only the applicable Transportation System Development Charges. No credit issued after January 11, 2002, may be redeemed for cash. A credit issued prior to that date may be redeemed in the manner available when the credit was issued. The Department Director, or Director's Designee, shall implement a system to insure the authenticity of the credit documents submitted to the Department to satisfy an assessment.~~

~~I. A credit voucher may only be transferred to another party within the first seven years after the date it is issued by the Department, except as outlined in Subsection 1 below, and the transfer must be executed within that same time period.~~

~~J. A credit voucher may be applied against an applicable Transportation System Development Charge, pursuant to the above sections, on a project owned by the final holder of the voucher from year seven (7) to year ten (10).~~

~~K. Between year seven (7) and year ten (10) credit voucher transfers are restricted to inclusion in land sale agreements.~~

~~L. The first six (6) credit voucher transfers per credit voucher holder each fiscal year will be free of charge; subsequent transfers will be charged a fee, as set by Resolution. The fee may be paid in cash, or the owner of the credit voucher can opt to reduce the outstanding voucher to cover~~

~~the cost of the transfer fee.~~

~~M. The Department Director can delegate signature authority for credit vouchers to a designee.~~

### 11.03.060 Refunds

~~A.~~ Refunds may be given by the County upon finding that there was a clerical error in the calculation of the ~~Transportation System Development Charge~~ TSDC. Refunds shall not be allowed for failure to claim credit, as provided for in Section

~~B.A.~~ 11.03.050, at the time of ~~development or building~~ Development Permit ~~permit~~ issuance. The refund must be requested within six (6) months of the date the assessment was paid; failure to avail oneself of this grace period forfeits any future right ~~to receive a cash refund or interest in the assessment paid~~ and the ~~credit value of the TSDC paid~~ will remain with the parcel for future development.

~~C.B.~~ A fee (set by Resolution) will be charged on any refund of an assessment paid on development that did not commence. The fee may be paid in cash or the applicant can opt to reduce the amount of the refund to cover the cost of the fee.

### 11.03.070 Dedicated Funds, Project Lists

~~A. There are created two dedicated funds entitled the County Transportation System Development Charge Fund, and the Happy Valley/Claackamas County Joint SDC Fund, herein "funds," one fund for each of the TSDC charges imposed by this chapter. All monies derived from the Transportation System Development Charges~~ TSDC shall be placed in the County TSDC Fund ~~respective fund. Transportation System Development Charge~~ TSDC revenue shall be used to fund those projects identified in the Methodology Reports TSDC Capital Project List adopted ~~by pursuant to~~ Section 11.03.010(GE), ~~increased capacity facilities, and costs related to the administration~~ compliance with the provisions of this ordinance, of the TSDC program as provided by ORS 223.307.

~~B. The TSDC shall not be expended for costs associated with the construction of administrative office facilities that are more than an incidental part of other capital improvements.~~

~~C. The TSDC shall not be expended for costs of the operation or routine maintenance of capital improvements.~~

~~B.~~ The Project Lists adopted by Section 11.03.010(G) shall be amended from time to time by County staff administrative action. The updated project list shall serve as an amendment to the TSDC Methodology Reports. This change will move completed projects from the list of credit eligible projects, and will not trigger a revision to the TSDC rates until a point in time when a new TSDC methodology is adopted.

~~C.D.~~ The TSDC Capital Project List ~~Project Lists~~ adopted ~~pursuant to~~ by Section 11.03.010(GE) may be amended from time to time by Board Resolution. If ~~a system development charge~~ the Rate Schedule will be increased by a proposed modification of the TSDC Capital Project List ~~of a project list~~ to include capacity increasing capital improvement cost(s):



1. The County shall provide, at least 30 days prior to the adoption of the modification, notice of the proposed modification to the persons who have requested written notice under ORS 223.305(6).
2. If the County receives a written request for a hearing on the proposed modification within seven days of the date the proposed modification is scheduled for adoption, the County shall hold a public hearing.
3. Notwithstanding ORS 294.160, a public hearing is not required if the County does not receive a written request for a hearing.
4. The decision of the County to increase the ~~system development Rate Schedule charge~~ by modifying the list may be judicially reviewed only as provided in ORS 34.010 to 34.100.

### 11.03.080 Appeal

~~A. An applicant may appeal a decision of the Department to the County Hearings Officer by filing a written request and paying the appeals fee with the County within fourteen (14) days of the Department's decision, or payment of the assessment, whichever comes first. The individual acting as the Hearings Officer will be appointed by the Board of County Commissioners.~~

~~A. A person challenging the expenditure of TSDC revenues may appeal the expenditure to the Board by filing a written request with the Department Director. An appeal of an expenditure must be filed within two years of the date of the alleged improper expenditure.~~

~~After providing notice to the appellant, the Board shall determine whether the expenditure is in accordance with this ordinance and the provisions of ORS 223.297 to 223.314. If the Board determines that there has been an improper expenditure of TSDC revenues, the Board shall direct that a sum equal to the misspent amount shall be deposited within one year to the credit of the account or fund from which it was spent.~~

~~B. Appeals of any other decision required or permitted to be made by the Department under this ordinance must be filed with the Hearings Officer by filing a written request and paying the appeals fee with the Department within fourteen (14) days of the Department's decision, or payment of the assessment, whichever comes first. The individual acting as the Hearings Officer will be appointed by the Board.~~

~~a. After providing notice to the appellant, the Hearings Officer shall determine whether the Department's decision is in accordance with this ordinance and the provisions of ORS 223.297 to 223.314 and may affirm, modify, or overrule the decisions.~~

~~a.b.~~ The fee for formally appealing a decision to the Hearings Officer will be set by resolution.

~~B-C.~~ The decision of the Hearings Officer shall be reviewable solely under ORS 34.010 through 34.100. The person who has appealed a decision shall be notified of this right to review of the decision.

~~D. A legal action challenging the Methodology adopted by the Board pursuant to Section~~

11.03.010(E) shall not be filed later than 60 days after adoption. A person shall contest the Methodology used for calculating a TSDC only as provided in ORS 34.010 to ORS 34.100.

### **11.03.090 Annual Review**

~~The County shall prepare an annual review to determine that sufficient funds will be available to help fund the needed increased capacity facilities, to ensure that the adopted Transportation System Development Charge rate keeps pace with inflation, and to ensure that such facilities will not be over funded by the Transportation System Development Charge receipts.~~

~~In the event, upon annual review, it is determined an adjustment to the Transportation System Development Charge is necessary in order to ensure sufficient funding for the construction of increased capacity facilities or to ensure such facilities are not over funded by the Transportation System Development Charge, the Board and/or Council shall propose and adopt appropriately adjusted Transportation System Development Charge rates.~~

Prior to January 1 of each year the County shall provide an annual accounting for the activity occurring in the dedicated funds created by 11.03.070 for the previous fiscal year. The accounting shall show by fund the total amount of system development charges collected, the amount spent on each project that was funded in whole or in part in that fiscal year, and the amount attributed to the costs of complying with the provisions of ORS 223.297 to 223.314.

## RECORDING REQUEST AGREEMENTS/CONTRACTS

ORIGINATING COUNTY            DTD – SDC's  
DEPARTMENT:

OTHER PARTIES TO            CITY OF HAPPY VALLEY  
CONTRACT/AGREEMENT:

BOARD AGENDA ITEM

NUMBER: \_\_\_\_\_

*B1*

DATE: \_\_\_\_\_

*8/17/17*

PURPOSE OF  
CONTRACT/AGREEMENT:

**Approval of Intergovernmental Agreement between Clackamas County  
and the City of Happy Valley  
Regarding Administration of the  
Joint Capital Improvement Plan Area**

Clackamas County Official Records  
Sherry Hall, County Clerk  
Commissioners' Journals  
Agreements & Contracts

**2017-1434**

**09/07/2017 2:31:46 PM**

**After Recording, Please Return to:**

**Lori Phillips  
Clackamas County Development Agency  
150 Beaver Creek Rd.  
Oregon City, OR 97045**

B.1.

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M. BARBARA CARTMILL  
DIRECTOR

DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT

DEVELOPMENT SERVICES BUILDING

150 BEAVERCREEK ROAD OREGON CITY, OR 97045

August 17, 2017

Board of County Commissioner  
Clackamas County

Members of the Board:

**Approval of Intergovernmental Agreement between Clackamas County and the City of Happy Valley regarding administration of the Joint Capital Improvement Plan Area**

<b>Purpose/Outcomes</b>	Terminate joint administration of the TSDC Program related to the Happy Valley Clackamas County Joint Area, such that each jurisdiction will be solely responsible for the administration of its own TSDC program.
<b>Dollar Amount and Fiscal Impact</b>	N/A
<b>Funding Source</b>	Happy Valley Clackamas County Joint TSDC Funds
<b>Duration</b>	Termination of district will be effective 12/31/2017; upon implementation of new plans in each jurisdiction. IGA will be in effect no more than 10-years from the effective date of the new plan areas.
<b>Previous Board Action</b>	8/1/2017 – BCC review of the draft IGA.
<b>Strategic Plan Alignment</b>	Termination of this agreement allows the City to develop a program that aligns with the following County's Performance Clackamas goals: <ul style="list-style-type: none"> <li>• Grow a vibrant economy</li> <li>• Build a strong infrastructure</li> <li>• Build public trust through good government</li> </ul>
<b>Contact Person</b>	Diedre Landon, Administrative Services Manager 503-742-4411

While Clackamas County currently has two Transportation System Development Charge ("TSDC") districts – one county district and one joint district with the City of Happy Valley -- at the end of the TSDC plan update process we will only have one district for the unincorporated areas of the county. As agreed with Happy Valley, the joint district with the city for areas in and around Happy Valley will be dissolved and each jurisdiction will manage its own district with its own rates. The attached intergovernmental agreement (Attachment 1) outlines the terms of separation for the joint district.

This agreement has been reviewed and approved by County Counsel.

**RECOMMENDATION:**

Staff respectfully recommends that the Board of County Commissioners approve the attached Intergovernmental Agreement between Clackamas County and the City of Happy Valley regarding administration of the Joint Capital Improvement Plan Area

Respectfully submitted,

Diedre Landon  
Administrative Services Manager, Snr.

**INTERGOVERNMENTAL AGREEMENT BETWEEN CLACKAMAS COUNTY  
AND THE CITY OF HAPPY VALLEY REGARDING ADMINISTRATION  
OF THE JOINT CAPITAL IMPROVEMENT PLAN AREA**

This agreement (the "Agreement") is made between Clackamas County, a political subdivision of the State of Oregon (the "County"), and the City of Happy Valley, a municipal corporation of the State of Oregon (the "City"), pursuant to ORS Chapter 190 (Cooperation of Governmental Units), collectively referred to as the "Parties" and each a "Party."

**RECITALS:**

- A. ORS 190.010 authorizes units of local government to enter into intergovernmental agreements with other units of local government for the performance of any or all functions and activities that a party to the agreement, its officers, or agents have the authority to perform.
- B. ORS 223.302 authorizes local governments to impose system development charges to be expended in accordance with ORS 223.297 to 223.314.
- C. In 2007, the City and County entered into an agreement (the "2007 IGA"), attached hereto as "Exhibit A," for the joint administration of a Transportation System Development Charge ("TSDC") program covering an area falling within the boundary of the City as well as an unincorporated portion of the County (the "TSDC Program").
- D. The 2007 IGA addressed arterial and collector transportation system needs within the geographic area including the City and the unincorporated portions of the County, generally described as being bordered to the north by the Multnomah County line, to the east by 172<sup>nd</sup> Avenue, to the south by Oregon Highway 212, and to the west by Interstate Highway 205 (the "Joint Area"), as more specifically described in Exhibit A.
- E. The County and the City now wish to terminate joint administration of the TSDC Program related to the Joint Area, and to modify associated agreements and plans, such that each jurisdiction will be solely responsible for the administration of its own TSDC program, with separate programs covering the separate jurisdictional areas currently within the Joint Area.
- F. In light of certain outstanding liabilities arising from the 2007 IGA, the Parties acknowledge that it is not possible to immediately terminate the relationship set forth above, but wish to provide a mechanism to account for the outstanding liabilities as they mature and to provide for the eventual termination of the joint administration of the TSDC Program.

- G. The County currently maintains the fund account associated with the TSDC Program from which revenues are collected and expenses are paid (the "TSDC Fund"). As of June 12, 2017, the TSDC Fund contained a balance of \$5,209,613.47.
- H. ORS 223.207 requires that, in certain circumstances, local jurisdictions provide a means by which property owners may pay TSDC assessments in installments. The Joint Area provides a 10-year amortization schedule for those property owners who wish to take advantage of this deferral program. As of June 12, 2017, there was a total of \$54,457.87 worth of outstanding TSDC installment plan deferrals which are expected to be collected over the course of the next 10 years and credited to the TSDC Fund as revenue.
- I. ORS 223.297-223.314, Clackamas County Code Section 11.03.050 and Happy Valley Municipal Code Section 3.04.120 provide a process for developers to obtain credits for developing capacity-increasing capital improvements. These credits can be used to offset future TSDCs. These credits must be redeemed within 10 years of issuance and are characterized as outstanding liabilities against the TSDC Fund. As of June 15, 2017, there was a total of \$45,123 worth of unredeemed credits.
- J. Clackamas County Code Section 11.03.030 and Happy Valley Municipal Code Section 3.04.050 authorize certain TSDCs reductions for certain mixed-use developments and other station area developments which reduce vehicle trips on the adjacent roadway. These reductions are memorialized in a development agreement which allows the County and the City, among other things, to capture any unwarranted TSDC reduction resulting from a final built development that does not achieve the requirements associated with the reduction.

**NOW, THEREFORE**, the Parties agree as follows:

**TERMS OF AGREEMENT:**

- 1. **Intergovernmental Agreement and TSDC Methodology:**
  - 1.1. The Parties agree to jointly modify the TSDC Program. This process shall involve, but may not necessarily be limited to, changes to each Party's Capital Improvement Plan, modification of the existing methodology and/or adoption of a new methodology supporting the system development charges, adoption of new plans customized for each jurisdiction and changes to the Clackamas County Code and Happy Valley Municipal Code, as needed.
  - 1.2. The Parties shall complete the necessary modifications to the Joint Area TSDC Program Plan no later than December 31, 2017. Failure by either Party to complete the necessary modifications specified in Section 1.1 by December 31, 2017 shall constitute default. If either Party fails to complete the necessary modifications

specified in Section 1.1 by December 31, 2017, the non-defaulting Party shall be entitled to be reimbursed by the defaulting Party for all costs and expenses incurred by the non-defaulting Party in connection with its work to fulfill its commitment under Section 1.1. Reimbursable costs include those incurred in connection with the adoption of a new or modified methodology supporting the system development charges, adoption of new plans and changes to the non-defaulting Party's code. If both Parties fail to complete the necessary modifications specified in Section 1.1 by December 31, 2017, neither may seek reimbursement from the other under this section.

- 1.3. The County and the City hereby terminate the 2007 IGA, effective immediately upon implementation by each Party of an updated methodology supporting the system development charge and any necessary modifications to each Party's ordinance or code. Each Party to this Agreement shall notify the other Party in writing upon the adoption of an updated methodology. Notice shall be provided to the respective Agency Contacts as provided in Section 6.1, below.

**2. Fund Distribution:**

- 2.1. With the exception of those funds set aside to credit outstanding vouchers, as detailed in Section 4 of this Agreement, below, the remaining TSDC Fund balance shall be distributed to each of the Parties on the same percentage basis as the funds were collected by each of the Parties during the term of the 2007 IGA. As of June 12, 2017, the City had collected 72.2% of the funds associated with the Joint Area compared to 27.8% of the funds collected by the County. The Parties acknowledge these percentages could change between the effective date of this Agreement and the date of final termination of the 2007 IGA.
- 2.2. The funds to be allocated under this Section shall be distributed to each Party on or before December 31, 2017, but in no event prior to the date of final termination of the 2007 IGA, as specified in Section 1.3 of this Agreement.

**3. Accounts Payable:**

- 3.1. The County shall continue to collect the installment payments for those accounts which are active on the date of final termination of the 2007 IGA. As funds are received, they shall be divided as provided in Section 2.1, above. The County shall remit the City's share of those funds within 30 days of County's receipt of those funds.
- 3.2. The Parties shall be jointly responsible for any collection efforts to recover funds from delinquent installment accounts executed under the 2007 IGA.



**4. Credit Vouchers:**

- 4.1. The County shall at all times retain an amount in the TSDC Fund equal to the current balance of unredeemed credits for purposes of reimbursing outstanding credit vouchers. In no event shall the amount of available funds in the TSDC Fund be less than the amount of credit vouchers that are eligible to be redeemed.
- 4.2. Outstanding credit vouchers may be used in any area under either City or County jurisdiction for development within the boundaries of the Joint Area as established by the 2007 IGA and corresponding methodology. Upon receiving a request by a developer to apply a credit voucher in the Joint Area, the Party accepting the credit voucher shall contact the Agency Contact for the other Party as specified in Section 6.1, below, to request written acknowledgment that the application of the credit voucher is appropriate given the location of the proposed development and the outstanding credit balance. Within 30 days of receiving the written acknowledgment described herein, funds equal to the amount of the redeemed credit voucher shall be distributed from the TSDC Fund to the Party that has accepted the credit voucher.
- 4.3. If an outstanding credit voucher is not redeemed by the 10<sup>th</sup> anniversary of the issuance date of the voucher, an amount equivalent to the expired credit shall be distributed to the Parties on the same percentage basis as the funds were collected during the term of the 2007 IGA. Funds from expired credits shall be distributed to the Parties on or before December 1 of each calendar year following the fiscal year in which the credit vouchers expired.

**5. Pending Development Agreements:**

- 5.1. The Parties shall have the responsibility to collect any additional payment which becomes due as a result of a default by a property owner under a pending development agreement for those development agreements which are still in effect on the date of final termination of the 2007 IGA. As funds are received, they shall be divided as provided in Section 2.1, above. The collecting Party shall remit to the other Party the share of those funds due to the non-collecting Party within 30 days of receipt of those funds.
- 5.2. Parties shall be jointly responsible for any collection efforts to recover funds which become due as a result of any default by a property owner under a pending development agreement executed under the 2007 IGA.

**6. Proceeds:**

- 6.1. Those proceeds distributed to either Party under Sections 2.1, 3.1, 4.2, 4.3, or 5.1 of this Agreement shall be subject to the restrictions of ORS 223.307 and 223.311.

- 6.2. Pursuant to ORS 223.307(5), the proceeds distributed to either Party under Sections 2.1, 3.1, 4.2, 4.3, or 5.1 of this Agreement may be expended on the costs of developing and administering the system development charge program.

7. **General Provisions:**

7.1. AGENCY CONTACT

All routine correspondence and communication regarding this Agreement, as well as requests for written acknowledgment under Section 4.2 of this Agreement, shall be directed to the following representatives of the Parties ("Agency Contact"):

Clackamas County:           Diedre Landon  
Administrative Services Manager- DTD  
150 Beaver Creek Road  
Oregon City, OR 97045

City of Happy Valley:       Michael D. Walter, AICP  
Economic & Community Development Director  
16000 SE Misty Dr.  
Happy Valley, OR 97086

Either Party may change the foregoing Agency Contact or associated contact information by giving prior written notice thereof to the other Party at its notice address.

7.2. INDEMNIFICATION

Subject to the limitations of liability for public bodies set forth in the Oregon Tort Claims Act, ORS 30.260 to 30.300, and the Oregon Constitution, each Party agrees to hold harmless, defend, and indemnify each other, including its officers, Commissioners, Councilors, agents, and employees, against all claims, demands, actions and suits (including all attorney fees and costs) of any kind or nature for personal injury, death or damage to property arising out of this Agreement where the loss or claim is attributable to the negligent acts or omissions of the indemnitor or the indemnitor's officers, Commissioners, Councilors, employees, agents, subcontractors, or anyone over which the Party has a right to control. Each party additionally agrees to hold harmless, defend, and indemnify each other, including its officers, Commissioners, Councilors, agents, and employees in the event of any lawsuit brought by a third party to enforce ORS 223.297 to 223.314. Each Party shall give the other Party immediate written notice of any action or suit filed or any claim made against that Party that may result in litigation in any way related to this Agreement.

### 7.3. SEVERABILITY

If any provision of this Agreement is found to be unconstitutional, illegal or otherwise unenforceable by a Court or authority of competent jurisdiction, 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 intentions of the Parties to the maximum extent possible.

### 7.4. MODIFICATION OF AGREEMENT

Any waiver, consent, modification, amendment or change to the terms of this Agreement shall be effective only when reduced to writing and approved by governing bodies of both Parties. Any such waiver, consent, modification, amendment or change, including but not limited to any additional agreement providing descriptions of tasks, standards of performance or costs, shall be in writing, shall refer specifically to this Agreement and shall be valid only when approved by the governing bodies of both Parties.

### 7.5. INTEGRATION

This Agreement contains the entire agreement between the Parties and supersedes all prior written or oral discussions or agreements regarding the termination of the 2007 IGA. As of the effective date of this Agreement, there are no other agreements regarding the termination of the 2007 IGA, either oral or written.

### 7.6. RECORDS

Each Party and their duly authorized representatives shall have access to each Party's books, documents, papers, and records which are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts, and transcripts for a period of three years after final payment. Copies of applicable records shall be made available upon request. The cost of such inspection shall be borne by the inspecting Party.

### 7.7. THIRD-PARTY BENEFICIARIES

The City and the County are the only Parties to this Agreement and are the only Parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to any non-parties to this Agreement.

## 7.8. APPLICABLE LAW

This Agreement shall be construed according to the laws of the State of Oregon. Any litigation between the City and the County arising under this Agreement or out of work performed pursuant to this Agreement shall occur, if in the state courts, in the Clackamas County Circuit Court, and if in the federal courts, in the United States District Court for the District of Oregon located in Portland, Oregon.

## 7.9. DISPUTE RESOLUTION

7.9.1. Subject to mutually agreed upon extensions of time in writing, failure or unreasonable delay by any party to substantially perform any material provision of this agreement shall constitute default. In the event of an alleged default or breach of any term or condition of this agreement, the Party alleging such default or breach shall give the other Party not less than 30 days written notice specifying the nature of the alleged default and the manner in which the default may be cured satisfactorily. During this 30-day period, the Party shall not be considered in default for purposes of termination or instituting legal proceedings.

7.9.2 The Parties shall negotiate in good faith to resolve any dispute arising under this Agreement. Should any dispute arise between the Parties concerning this Agreement that cannot be resolved by mutual agreement, it is agreed that the matter may be submitted to mediated negotiation prior to any party commencing litigation. In such an event, the Parties to this Agreement may agree to participate in good faith in a non-binding mediation process. The mediation shall take place in Portland, Oregon. The mediator's fees and costs shall be borne equally by the Parties. In the event mediation is unsuccessful, the Parties are free to pursue any legal remedies that may be available.

## 7.10. EFFECTIVE DATE AND TERMINATION

This Agreement shall become effective immediately upon approval by the governing bodies of Clackamas County and the City of Happy Valley. This Agreement shall automatically terminate upon the occurrence of all of the following events:

7.10.1 Termination of the 2007 IGA;

7.10.2 Fulfillment or termination of all outstanding installment accounts pursuant to Section 3 of this Agreement, above; and

7.10.3 Use or expiration of all outstanding credit vouchers pursuant to Section 4 of this Agreement, above; and 6.9.4- Distribution of all remaining proceeds in the TSDC Fund pursuant to the terms of this Agreement.

CLACKAMAS COUNTY

Chair

Recording Secretary

8-17-17

B.I.

CITY OF HAPPY VALLEY

Mayor

Recording Secretary

9/11/17

DRAFT Methodology Report

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# Transportation System Development Charges

Prepared For  
Clackamas County



September 7, 2017



In Association with DKS Associates and Randy Young

# Executive Summary

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## Background

Oregon Revised Statutes 223.297-223.314 authorize local governments to charge System Development Charge (SDCs) for transportation and other capital improvements. Local governments rely on System Development Charges (SDCs) to collect money for capital improvements on a variety of infrastructure systems, such as roads, water, sewer, storm drains and schools.

Transportation System Development Charges (TSDCs) are one-time fees assessed to new or expanded developments to help cover the cost of adding to the capacity of transportation facilities (for motorists, bicyclists and pedestrians) to accommodate new trips added by the development. The TSDC fees are based on the number of vehicle trips a particular land use generates, and are paid by the developer when a building permit is issued.

Clackamas County (the County) embarked on an effort to update its transportation system development charges (TSDCs) in 2016, in conjunction with the City of Happy Valley (the City). The City and County have a Joint Area TSDC, adopted through an intergovernmental agreement (IGA) in 2007.

The purpose of the Transportation SDC Update Project (the Project) was to review the current methodology in the context of current industry practices, statutory requirements and infrastructure funding needs. In addition to the methodology review, a major component of the Project was to update the transportation system development charge capital project lists to reflect recently completed Transportation System Plans (TSP), and to review service area boundaries.

Over the course of the Project, the City and County agreed to terminate the existing Joint Area TSDC Program, and instead pursue development of TSDCs and TSDC Capital Project Lists specific to each entity. This report presents the methodology, project list, and updated TSDCs for the County.

## Stakeholder Involvement and Outreach

A Work Group made up of stakeholders and technical staff was convened to provide input during the TSDC methodology update. Members represented a wide range of interests and included residential and commercial real estate developers, residential and commercial builders, engineering firms and business associations. County and City staff participated in Working Group meetings to provide technical expertise and information.

## Online Open Houses

County and City staff invited the public to participate in online open houses through emails, press releases, website announcements, newsletter articles, and social media outreach. The online open houses included background information about the TSDC update, a geographic interactive map of potential projects and survey questions. The public was invited to learn about the TSDC update and provide their input on the project list, the rates and the traffic impact being measured. In total, about 230 people visited the online open houses, and 45 people submitted completed comment forms.

Feedback collected through work group meetings and the online open houses helped formulate the Project recommendations.



## Summary of Methodology

The transportation SDC is based on a system-wide cost per trip, where the costs associated with meeting future growth needs are divided by the projected system-wide growth in trips. The updated TSDC methodology is structured as an improvement fee only, as provided under Oregon law. As such, the cost per trip is calculated by dividing the growth-related capacity costs from the TSDC Capital Project List by the 471,812 additional daily trips (from the regional traffic model).

In addition to the fee structure, local governments have flexibility in selecting among other methodological approaches, in order to meet local policy objectives. Components considered during the Project include the growth share bases, measuring the traffic impact, adjustments to traffic impact and the land use categories used to develop the rate table.

## TSDC Capital Project List

Unlike the current methodology, which only considers the added trips by vehicles on the County system; the updated TSDC methodology considers the added trips by all modes of travel (auto, pedestrian, and bicycle). Rather than focusing on building large capacity projects, the new project list also incorporates solutions that provide more efficient travel on existing roads.

The Draft TSDC Capital Project List was developed from two sources:

- Transportation System Plan (TSP); and
- Clackamas Regional Center (CRC) Project List

Combined, these two project lists included over 438 projects with a total cost in excess of \$2.82 billion. The work group selected criteria that focuses on growth created by new development for identifying projects from these two plans to remain on the list and become eligible for TSDC funding.

- Increase traffic connections to daily needs and services.
- Reduce congestion at intersections.
- Located in or near a current or future employment area.
- Improve safety on roads.
- Provide the greatest benefit to the entire community by keeping projects on roads with significant amounts of traffic, such as arterials and collectors.
- Projects planned for construction in the next 10-years.

The resulting prioritization produced a Draft TSDC Capital Project List containing 76 projects with total project costs of \$476 million. Of the total project costs, \$210 million is attributable to growth, and therefore eligible for SDC Funding.

The process used to develop the TSDC Capital Project List is detailed in Section 2-1.

The full project list can be found in Appendix A (Table A-1).

## **Proposed TSDC Schedule**

TSDC rates differ by land use based on the number of trips a new or expanded development is estimated to add to the transportation system. For example, the TSDC fee for a single-family home is lower than the fee for a large grocery store because it generates fewer trips.

Currently, Clackamas County has a long list of rates, one for each specific type of land use. The new plan focuses on streamlining and simplifying the program for our customers by considering a short consolidated rate list in place of our current long rate list.

The proposed rates consolidate similar uses and reduce the number of rates making it easier for developers and the public to identify the correct rate and reducing the likelihood that commercial tenant improvements in an existing structure will trigger a TSDC fee.

The process used to develop the TSDC Rate Schedule is detailed in Section 3-1.

The updated TSDC rate schedule is shown in Appendix B.

# Report Contents

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**Executive Summary .....i**  
*Provides a summary of the SDC methodology and major project findings.*

**Introduction .....1**  
*Provides background on TSDCs in the County, and summarizes the project objectives, and public process.*

    Background..... 1-1  
    Project Objectives ..... 1-1  
    Stakeholder Involvement ..... 1-2

**TSDC Capital Project List Development ..... 2-1**  
*Provides information on the project identification and prioritization process, as well as the summary list.*

    Project Prioritization ..... 2-1  
    Project Cost Estimation..... 2-3  
    TSDC Capital Project List ..... 2-3

**TSDC Methodology ..... 3-1**  
*Presents the approaches used to allocate project costs between existing development and growth, and the system-wide unit costs based on the Project List included in Section 2. Also provides the basis for assessing TSDCs to individual developments.*

    System-Wide Cost per Trip..... 3-1  
    SDC Assessment..... 3-6  
    Land Use Categories ..... 3-7  
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- Appendix A – TSDC Capital Project List**
- Appendix B – Proposed TSDC Rate Schedule**
- Appendix C – County TSP Cost Estimate Assumptions**

## Data Rounding

The data presented in tables of this report are exported from computer spreadsheets. In some tables, there will be very small variations from the results that would be obtained using a calculator. These variations are not material, and result from the fact that the spreadsheet was allowed to calculate figures to more decimal places than the tables shown in this report.

## SECTION 1

# Introduction

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## Background

Oregon Revised Statutes 223.297-223.314 authorize local governments to assess System Development Charge (SDCs) for transportation and other capital improvements. In addition to specifying the infrastructure systems for which SDCs may be assessed, the SDC legislation provides guidelines on the calculation and modification of SDCs, accounting requirements to track SDC revenues, and the adoption of administrative review procedures.

Clackamas County (the County) last updated in transportation system development charges (TSDCs) in 2007, in conjunction with the City of Happy Valley (the City).

## Project Objectives

The purpose of the Transportation SDC Update Project (the Project) was to review the current methodology in the context of current industry practices and statutory requirements and infrastructure funding needs. In addition to the methodology review, a major component of the Project was to update the TSDC capital project list to reflect projects and priorities from the updated Transportation System Plan (TSP) adopted in 2013.

Specific Project objectives included:

- Development of TSDCs that balance the need to fund transportation improvements while taking into account the impact on overall development costs.
- Identify ways to simplify the TSDC rate structure, making it easier for developers and community members to estimate fees.
- Involve key stakeholders in the process to give feedback on project list selection criteria and the updated methodology and ordinance.
- Review the current service area boundaries.

With respect to the latter issue of service area boundaries, as part of the Project, the City and County agreed to terminate the existing Joint Area TSDC Program, and instead pursue development of TSDCs and capital project lists specific to each entity. A new IGA was authorized in August 2017 that outlined the terms of separation for the program. The City and County worked collaboratively on the review and development of the new TSDC methodologies and ordinances that will serve as the framework for the individual TSDC programs going forward. This report presents the methodology, project list, and updated TSDCs for the County. While the general framework is consistent between the two entities, the individual TSDC programs also reflect policies and objectives specific to each.

# Stakeholder Involvement

A Working Group made up of stakeholders and technical staff was convened to provide input to help shape the TSDC methodology update and rates. The group met eight times between December 2015 and August 2017. Members reviewed and provided input on the following topics:

- TSDC project list and selection criteria
- Method used to calculate growth share of projects
- TSDC rate calculation and schedule
- Ordinance for administration of TSDCs, including a review of the language governing

Members represented a wide range of interests and included residential and commercial real estate developers, residential and commercial builders, engineering and planning firms, and business associations. County and City staff participated in Working Group meetings to provide technical expertise and information. Stakeholder members included representatives from the following groups:

- Home Builders Association
- Gramor Development
- Perkins Coie
- AKS Engineering
- Doug Bean & Associates
- Holt Homes
- North Clackamas Chamber of Commerce

## Online Open Houses

The public was invited to learn about the TSDC update and provide their comments on specific elements of the methodology and project list. Comments were primarily gathered through two online open houses for the County and the City between April 18 and May 19, 2017. The online open houses included background information about the TSDC update, a geographic interactive map of potential projects, and survey questions. Participants were asked specific questions about the criteria used to select projects for the TSDC project list; approaches to simplifying the rates used to calculate TSDC fees; and options for calculating traffic impacts of new developments.

County and City staff invited the public to participate in the online open houses through more than 1,600 direct emails to interested parties, press releases, website announcements, newsletter articles and social media (Facebook and Twitter) outreach.

In total, about 230 people visited the online open houses, and 45 people submitted completed comment forms. This feedback helped formulate the Project recommendations.



## SECTION 2

# TSDC Capital Project List Development

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## Introduction

The first step in updating the countywide TSDC was to identify the list of capital projects eligible to receive TSDC revenue, because that sets the foundation for calculating the rates for different kinds of development.

The Draft TSDC Capital Project List was developed from two sources: the Transportation System Plan (TSP) and the Clackamas Regional Center (CRC) Project List. Combined, the two project lists included over 438 projects with a total cost in excess of \$2.82 billion.

## Project Prioritization

TSDC funds can only be used to build projects that accommodate additional traffic generated by new development. The current County TSP built on the foundation of existing county assets with a fiscally responsible approach that protects and improves the existing transportation system and implements a cost-effective system to meet future needs. Rather than focusing on building large capacity projects to improve our existing network, the plan incorporates solutions that provide more efficient travel on existing roads. As a result, there was a need to identify the capacity increasing projects that were eligible for TSDC funding.

The work group chose the following criteria that focuses on growth created by new development for selecting projects from the Transportation System Plan (TSP) and other locally adopted plans that will remain on the list and become eligible for TSDC funding.

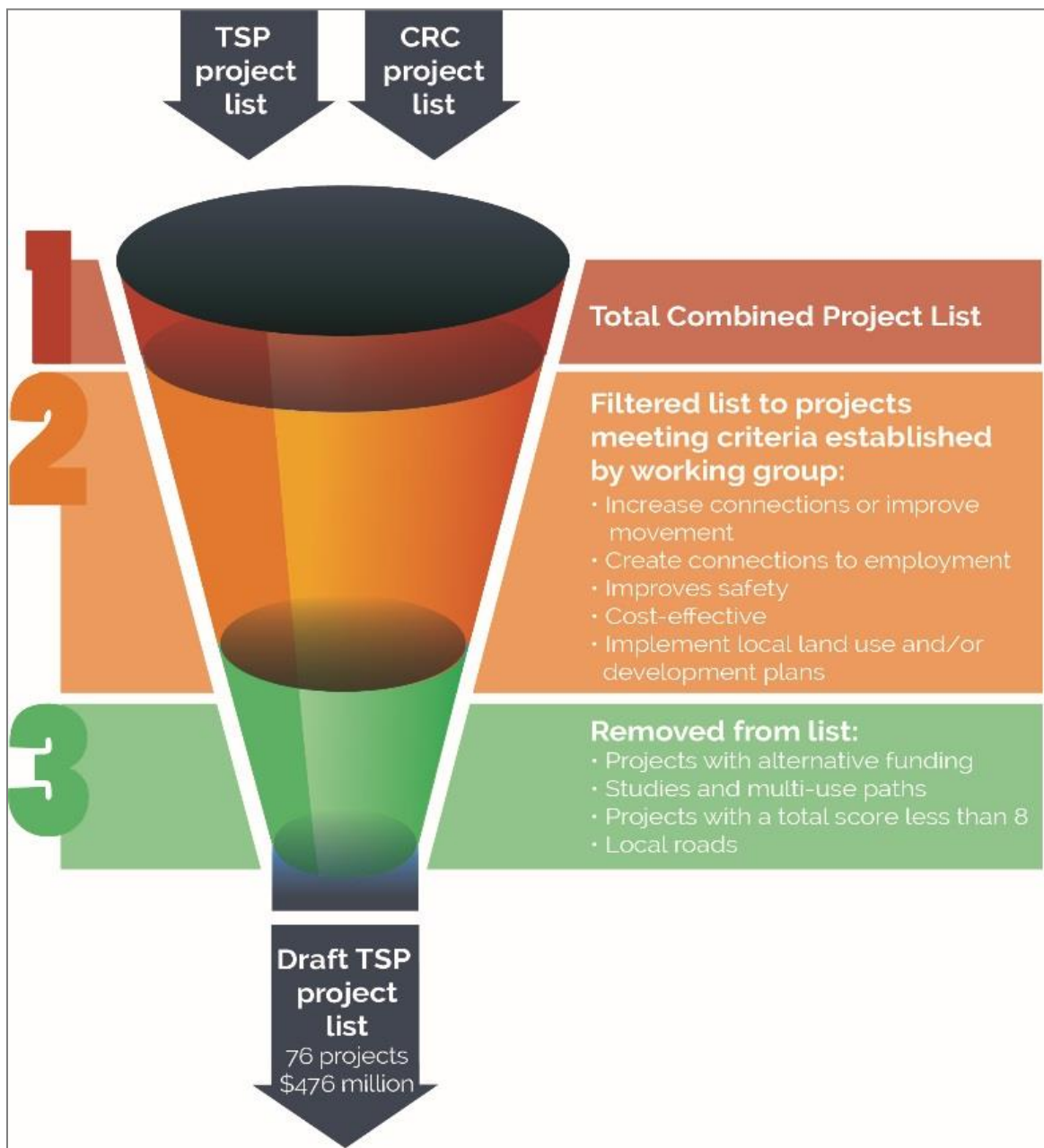
- Increase traffic connections to daily needs and services.
- Reduce congestion at intersections.
- Located in or near a current or future employment area.
- Improve safety on roads.
- Provide the greatest benefit to the entire community; on roads with significant amounts of traffic, such as arterials and collectors.

Only those projects on the CRC Project list with capacity enhancing elements were kept; however, in order to minimize potential increases to the final TSDC rates, the work group needed to reduce the number of projects from the 20-year TSP that would become eligible for TSDC funding. During development of the TSP each project was scored for their achievement of six goals on a scale of (-1) to 2. Using the original scoring, which was vetted during the public outreach for the TSP, work group members chose to keep TSP projects scoring higher than 0 on the following goals for the draft TSDC Capital Project list:

- Goal 2: Local Businesses and Jobs
- Goal 3: Livable and Local
- Goal 4: Safety and Health

In addition to the above prioritization, the following were removed from the draft TSDC Capital Project List:

- Projects with alternative funding
- Studies and multi-use paths
- Projects with less than a total score of 8 (The combined score from all six TSP goals)
- Local Roads



The result of these prioritization efforts is a draft TSDC Capital Project List containing 76 projects with total project costs of \$476 million. Of the total project costs, \$210 million of the total estimated construction cost is eligible for TSDC Funding.



# Project Cost Estimation

The project costs identified in the TSDC Capital Project List are based on the cost estimates developed as part of the TSP or CRC studies. Appendix C –County Transportation System Plan Update Cost Estimate Assumptions documents the assumptions made in preparing cost estimates for the projects on the Master List for the Clackamas County Transportation System Plan (TSP) Update.

All TSP and CRC project costs have been updated to reflect estimated inflation since the original project costs were developed. The total estimated cost of the prioritized list is \$476 million, as shown in Table 2-1 below.

## TSDC Capital Project List

The prioritization outlined above produced a Draft TSDC Capital Project List containing 76 projects with total project costs of \$476 million. Of the total project costs, \$210 million is attributable to growth, and therefore eligible for SDC Funding. The full project list can be found in Appendix A (Table A-1).

A summary of the TSDC improvement project costs by project type is provided in Table 2-1.

**Table 2-1**  
Summary of TSDC Capital Project List Costs

Location	Mode			Total	TSDC-Eligible
	Auto	Ped	Bike		
Urban	\$32,453,596	\$132,363,431	\$61,892,355	\$226,709,382	\$105,388,058
Rural	248,502,038	1,060,062	-	249,562,100	104,920,618
<b>Total</b>	<b>\$280,955,634</b>	<b>\$133,423,493</b>	<b>\$61,892,355</b>	<b>\$476,271,482</b>	<b>\$210,308,676</b>
<i>Percent</i>	59%	28%	13%	100%	44%

The full project list can be found in Appendix A (Table A-1).

# TSDC Methodology

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## Introduction

The transportation SDC is based on a system-wide cost per trip, where the costs associated with meeting future growth needs are divided by the projected system-wide growth in trips. The TSDC for a particular development is then determined by multiplying the cost per trip by the number of trips associated with the development. These calculations are outlined below.

## System-Wide Cost per Trip

The updated TSDC methodology is structured as an improvement fee, as provided under Oregon law. An improvement fee is designed to recover costs of *planned future* capital improvements needed to add system capacity for future users. As such, the cost per trip is calculated by dividing the growth-related capacity costs from the TSDC Capital Project List by the future growth in trips.

## Growth in Trips

To evaluate the roadway capacity needs and the amount of vehicle trips that are generated by growth, the Metro regional travel demand model was utilized. Table 3-1 shows the projected growth in the number of average daily trip ends, broken down by trip ends that have both an origin and destination within the County's SDC collection area (internal-internal), and trip ends that have one end outside of the County's SDC collection area (internal-external & external-internal). The total projected number of average daily trip ends is 471,812.

**Table 3-1**

*Model Vehicle Trip Ends Growth (Average Daily)*<sup>1</sup>

	Internal-Internal	Internal-External & External-Internal	Total
<b>Growth Trip Ends</b>	<b>110,530</b>	<b>361,282</b>	<b>471,812</b>
<sup>1</sup> Based on Metro Regional Travel Model; Daily trips 8.5% of PM Peak Hour trips			

## Growth Share of Project Costs

A key component of the TSDC methodology is determining growth's share of future facility improvement costs from the TSDC Project List. According to statutory requirements:

Improvement fees must be based on a methodology that demonstrates consideration of the projected cost of capital improvements needed to increase system capacity to meet the needs of future users [ORS 223.304]. Furthermore:

*"An increase in system capacity may be established if a capital improvement increases the level of performance or service provided by existing facilities or provides new facilities. The portion of the improvements funded by improvement fees must be related to the need for increased capacity to provide service for future users." [ORS 223.307(2)]*

Table 3-1 presented the system-wide capacity requirements of growth; however, for purposes of determining potential SDC-eligibility, individual projects from the TSDC Capital Project List are analyzed to determine the portion of costs needed for future growth capacity versus costs associated with raising the level of service for existing development.

Two general methods are used for project cost allocations:

1. **"Standards -Based" Approach (used for new facilities and expansion of existing facilities for capacity needs only)** – Existing development paid for existing facilities; new development will pay for its share of system capacity thru funding the next increment of expansion, less costs associated with correcting any existing deficiency. Deficiencies are evaluated based on current performance relative to the appropriate planning/design standard for the particular improvement. For roadways and intersections, the standard is a "volume-capacity ratio (v/c ratio)"<sup>1</sup>. For multimodal improvements, the standard is miles per capita of bikeways and pedestrian ways.
2. **"Capacity Utilization" Approach (used for upgrades to existing facilities to improve level of performance)** – Improvements to existing facilities to address safety, modernization, and other performance considerations provide capacity for growth and enhanced performance for existing development, so the costs are allocated in proportion to the utilization of the facilities (as measured by growth's share of future trips specific to a facility).

Application of the growth share approaches is discussed in more detail below.

### **New Roadway and Intersection Facilities; Existing Facility Expansion (Capacity Only)**

New roadways and expansions driven by future development capacity requirements are allocated 100% to growth, since the capacity is needed entirely for new development.

Similarly, new facilities at intersections (e.g., turn lanes and signals) that are not needed to meet existing mobility standards, but are needed once the growth trips are added to the intersection, are assumed to be 100% funded by growth, since there is no existing deficiency.

Data was compiled from recently completed studies (e.g., the TSP and CRC studies) to determine if facilities were operating with a volume/capacity ratio less than the required standard.

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<sup>1</sup> Volume-to-capacity ratio is defined as the ratio between the PM peak hour motor vehicle trips divided by the hourly capacity of the facility to serve those trips.

### Upgrades to Roadways and Intersections (Improved Level of Performance)

For upgrade of existing facilities (i.e., realignments, modernization of rural roads, and other improvements), trip volume data by roadway link (from the regional travel demand model) were used to quantify growth’s utilization of future roadway and intersection capacity.

Growth capacity utilization is estimated based on the growth in trips over the planning period, as a percentage of total future trips for individual roadway links.

### New Multimodal Facilities

Unlike roadway and intersection projects, trip data for bike and pedestrian improvements is not available. Therefore, growth capacity needs for bike and pedestrian facilities are evaluated based on the planned level of service (LOS). The planned LOS is defined as the quantity of future facilities per capita served.

The following equation shows the calculation of the planned LOS:

$$\frac{\text{Existing } Q + \text{Planned } Q}{\text{Future Population Served}} = \text{Planned LOS}$$

Where:

*Q* = quantity (miles of bike or pedestrian facilities), and  
*Future Population Served* = 183,678 (unincorporated Clackamas County only<sup>2</sup>)

The existing and future miles of bike and pedestrian facilities are shown in Table 3-2.

**Table 3-2**  
*Existing and Future Bike and Pedestrian Facilities (miles)*

	Existing	New (TSDC Capital Project List)	New (Other Funding Sources)	Future  (Total)
Bicycle Lanes	96.1	21.2	12.3	129.6
Bicycle Shoulders	45.9	90.1	0.0	135.9
Pedestrian Facility	114.5	39.5	14.7	168.7

Population data for the estimated base year (2015) and future year (2025) are presented in Table 3-3. Growth during the planning period is estimated to be 17,441.

**Table 3-3**  
*Population Growth (Unincorporated Clackamas County)*

	Base Year (2015)	Future Year (2025)	Population Growth
<b>Population</b>	166,237	183,678	17,441
Source: 2015 population based on Metro 2040 Household Forecast; 2025 estimated based on 2040 forecast (adjusted for 10-year period)			

<sup>2</sup> For purposes of the active mode LOS analysis, a 10-year planning period was assumed per County staff, reflecting the TSDC Capital Project List prioritization period.

Table 3-4 presents the existing and planned LOS for bike and pedestrian facilities, based on the existing and planned future facilities presented in Table 3-2 divided by the estimated existing and projected population presented in Table 3-3. (For purposes of this analysis, population figures are divided by 1,000 in order to show the planned LOS per 1,000 population in Table 3-4.)

**Table 3-4**  
*Existing and Planned LOS (miles per 1,000 population)*

	Existing LOS	Planned LOS
Bike Lanes	0.58	0.71
Bike Shoulders	0.28	0.74
Pedestrian Facility	0.69	0.92

The capacity requirements, or number of miles, needed for the existing population and for the growth population are estimated by multiplying the planned (future) LOS for each facility type (from Table 3-4) by the estimated population (in 1,000's) of each group (from Table 3-3).

These calculations are shown in Table 3-5; each column is then described following the table.

**Table 3-5**  
*Existing and Growth Capacity Needs for Bike and Pedestrian Facilities (Miles)*

	Existing Population Need (1)	Existing Inventory + Other Sources (2)	Existing Need from TSDC Project Improvements (3)	Growth Need from TSDC Project Improvements (4)
Bike Lanes	117.3	108.4	8.9	12.3
Bike Shoulders	123.0	45.9	77.1	12.9
Pedestrian Facility	152.7	129.3	23.4	16.0

**(1) Existing Population Need**

The need for the existing population is equal to the planned LOS multiplied by the estimated base year population in 1,000's (166,237).

**(2) Existing Inventory + Other Sources**

Existing users' needs are assumed to be met first by the existing inventory of facilities, plus facilities funded through other (non TSDC) sources; Table 3-5 (column 2) shows the sum of existing facility and new miles (from other funding sources) from Table 3-2.

**(3) Existing Need from TSDC Project Improvements**

The difference between columns 1 and column 2 is the portion of existing development's need that will be met by the TSDC Capital Project List improvements.

#### (4) Growth Need from TSDC Project Improvements

The total capacity need required by growth is equal to the planned LOS (from Table 3-4) multiplied by the projected increase in population over the planning period in 1,000's (17,441).

Table 3-6 shows the distribution of existing and growth allocation for the total planned improvements by project type. For growth, the allocated improvements are assumed to equal the total growth need (from Table 3-5).

**Table 3-6**  
*Existing and Growth Share of TSDC Project List Improvements*

	<b>Total Planned Improvements</b> (TSDC Project List)	<b>Existing Share</b>	<b>Existing %</b>	<b>Growth Share</b>	<b>Growth %</b>
Bike Lanes	21.2	8.9	42%	12.3	58%
Bike Shoulders	90.1	77.1	86%	12.9	14%
Pedestrian	39.5	23.4	59%	16.0	41%

As shown in Table 3-6, the growth share ranges from 14% for bike shoulders to 58% for additional bike lanes.

### Compliance Charge

Local governments are entitled to include in the TSDCs, a charge to recover costs associated with complying with the SDC statutes. Compliance costs include costs related to developing and administering the SDC methodology, project list (including but not limited to TSP and other studies), and credit system; as well as annual accounting costs.

The compliance charge per trip is estimated to be 3% of the base TSDC cost. Table 3-7 shows the calculation of the compliance charge per trip, which is about \$13.50.

**Table 3-7**  
*Compliance Costs*

<b>Category</b>	<b>Annual \$</b>
County Administration	\$80,000
SDC Methodology (1)	\$66,000
TSP (2)	\$66,000
Total Compliance Costs per Year	\$212,000
Estimated Annual Growth Trips	15,727
<b>Compliance Cost per Trip</b>	<b>\$13.48</b>
(1) Annual costs reflect amortization of total cost over 5 years	
(2) Growth share of TSP costs amortized over 10 years	

## System-wide Unit Cost

The total growth costs reflect the calculated growth share of individual projects from the TSDC Capital Project List; detailed information on the SDC project costs and growth share by mode is provided in Table A-1 of Appendix A. The growth share percentages reflect the approaches described above for each project type and mode.

As shown in Table 3-8, the total growth-related improvement costs are estimated to be \$210.3 million. Dividing the total TSDC-eligible costs by the projected growth in Average Daily Trips (from Table 3-1), the system-wide average cost per trip end is \$446.

Adding the compliance charge calculated in Table 3-7, brings the total cost per trip to \$459, as shown in Table 3-8.

**Table 3-8**  
*System-Wide Cost per Trip*

Item	Amount
Total TSDC Eligible Costs (1)	\$210,308,676
Growth Trip Ends (2)	471,812
<b>SDC per Trip End</b>	<b>\$446</b>
<b>Cost per Trip End with Compliance Charge (3%)</b>	<b>\$459</b>
(1) From Project List (Appendix A)	
(2) Unincorporated Clackamas County (from Table 3-1; based on regional traffic model)	

## TSDC Assessment

The transportation SDC for an individual development is based on the cost per trip and the number of trips attributable to that particular development, where the number of trips is computed as follows:

$$\text{Number of Development Trips} =$$

$$\text{Traffic Impact Measure} \times \text{Adjustment Factor(s)} \times \text{Development Units}$$

Calculating the final TSDC assessment requires the review of multiple components: the traffic impact measure, identifying appropriate traffic impact adjustments, establishing the land use categories and consideration of any discounts available under the program. Each of these components are discussed in more detail below.

The proposed TSDC Rate Schedule is shown in Appendix B in Table B-1.

### Traffic Impact Measure

TSDCs are one-time fees assessed to new or expanded developments to help cover the cost of adding capacity to transportation facilities (for motorists, bicyclists and pedestrians) to accommodate new trips generated by the development. TSDC fees are based on the number of trips a particular land use generates, and are paid by the developer when a building permit is issued.

The updated and current methodology uses “Average Daily Trips” as the basis for the TSDC assessment. Under this approach, TSDCs reflect the total traffic added by the development throughout an average weekday. TSDCs based on average daily trips recognize the overall system capacity use of the different types of land uses.



## Traffic Impact Adjustments

The current methodology adjustments for trip length have been eliminated, as available data to reasonably estimate average trip length for a given land use type in comparison to other uses is extremely limited. Trip length is attributable to location within an area and the availability of other similar uses in the area, not simply the type of use.

The updated methodology includes pass-by and diverted linked trip adjustments only.

The updated methodology adjustments are discussed in more detail below.

### Pass-by Trips

Pass-by trips refer to trips that occur when a motorist is already on the roadway, such as a traveler stopping by a fast-food restaurant on the way home from work. In this case, the motorist making a stop while “passing by” is counted as a trip generated by the restaurant, but it does not represent a new (or primary) trip on the roadway.

Pass-by trip adjustments in the updated methodology are based on published data by land use from the Institute of Transportation Engineers (ITE).

### Diverted Link Trips

Diverted Link trips are another type of non-primary trip. In this case, the motorist will divert from a primary route to access a nearby use (e.g., a vehicle may turn off a major roadway onto an intersecting street to access a land use), and then return to the original route to complete the trip.

As with the pass-by trip adjustments, the diverted link trip adjustments included in the updated methodology are based on reported ITE data.

## Land Use Categories

The current methodology includes 94 separate rate categories based on development (or land use type). The updated methodology is based on consolidated land use categories (e.g., different types of schools in a single education category, different types of industrial in another, etc.).

Table B-1 (in Appendix B) includes the updated TSDC rates and traffic impact assumptions for the new categories, but also indicates which land use codes from the ITE Trip Generation Manual have been consolidated into the general categories. The new methodology reduces the number of specific rates and would eliminate the need to capture fees on a change of use if the proposed use falls within the same use category.

In determining the traffic impact assumptions for consolidated land use categories, data from the ITE Trip Generation Manual (9<sup>th</sup> edition) was evaluated.

In some cases, a straight average of the individual trip rates for land uses that comprise the new category was the basis for the assumptions shown in Table B-1.

Trip rates based on less than three traffic studies were eliminated from the averages.

When average daily trips were not available for a particular category, the traffic impact was estimated from the P.M. Peak trip rates, based on a system-wide average P.M. Peak percent of average weekday trips of 8.5%.

For land uses that are not explicitly identified in Table B-1, County staff will make a determination of the appropriate TSDC rate, based on the specific use.

The updated TSDC ordinance will also specify parameters for individual traffic studies.

## **TSDC Discounts**

The County currently provides a system of TSDC discounts for qualifying developments. Specifically, discounts apply as follows:

- Mixed-use development can receive reductions of 7-18%, depending on floor area ratio (FAR) and residential/retail/commercial mixtures on the site.
- Transit oriented development can receive reductions of 5-20% depending on floor area ratio (FAR), proximity to transit, and type of transit system. This discount applies only to permanent transit routes/lines, such as SAM, CAT, SMART, or TriMet.

No changes to the current discounts are proposed under the new methodology.

## **Annual Inflationary Adjustments**

The fees included in the Proposed TSDC Rate Schedule will be adjusted annually based on an inflationary index as specified in the County TSDC ordinance. The County intends to use the Engineering News Record (ENR) Northwest (Seattle, Washington) Construction Cost Index as the basis for adjusting the TSDCs.

# Appendix A – TSDC Capital Project List

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**Table A-1**  
Clackamas County Draft TSDC Project List 2017

PROJECT DETAILS						SDC ELIGIBLE	
#	Location	Project	Segment/Location	Description	Total Project Cost	Total % Eligible	Total \$ Eligible
1004	Urban	122nd Ave	Sunnyside Rd to Timber Valley Dr	Add bikeways and turn lanes at major intersections	\$3,010,000	62.04%	\$1,867,496
1006	Urban	142nd Ave	Sunnyside Rd to OR 212	Add bikeways and pedways	\$14,060,000	51.53%	\$7,245,291
2017	Rural	362nd Ave	Skogan Rd to OR 211 (excludes state facilities)	Add paved shoulders	\$5,980,000	29.40%	\$1,758,120
AI S1	Urban	82nd Avenue	82nd Ave/Hinkley (excludes state facilities)	Install traffic separator on 82nd Avenue to convert accesses at SE Hinckley at Columbia Bank/Union 76 on east side of 82nd Avenue to right-in/right-out. Create new circulation to route traffic to signal at SE Lindy.	\$4,182	24.00%	\$1,009
AI S2	Urban	82nd Avenue	82nd Ave MP 8.50 (excludes state facilities)	In the vicinity of MP 8.50 put in enhanced pedestrian crossing to connect east side pedestrian ramp with walkway to neighborhood to west.	\$82,000	9.00%	\$7,786
AI S4	Urban	82nd Avenue	82nd Ave North entrance to Clackamas Town Center (excludes state facilities)	North entrance to Clackamas Town Center on 82nd make right in, right out only and remove signal. Perform traffic analysis as needed to evaluate traffic diversion to adjacent roadways and intersections.	\$69,700	24.00%	\$16,503
AI S5	Urban	82nd Avenue	Sunnyside to 82nd Ave (excludes state facilities)	Install double left, westbound Sunnyside to southbound 82nd Ave (east to south). Add median island for pedestrian crossing. Standardize NB right-turn lane 82nd to Sunnyside, including bike lane.	\$734,891	79.00%	\$583,169
AI S7	Urban	82nd Avenue	Sunnyside Rd to Sunnyside Dr	Install traffic separator from Sunnyside Rd to Sunnyside Dr (MP 9.15), advance street names.	\$17,712	24.00%	\$4,185
AI S8	Urban	82nd Avenue	82nd Ave Monterey to Harmony/Sunnyside (excludes state facilities)	Traffic separator Monterey to Harmony/Sunnyside.	\$98,400	24.00%	\$23,299
1008	Urban	82nd Dr	OR 212 to Lawnfield Rd	Fill in bikeways and pedways gaps	\$680,000	40.60%	\$276,106

**Table A-1 (Continued)**  
 Clackamas County Draft TSDC Project List 2017

PROJECT DETAILS						SDC ELIGIBLE	
#	Location	Project	Segment/Location	Description	Total Project Cost	Total % Eligible	Total \$ Eligible
1009	Urban	85th Ave	Causey Ave to Monterey Ave	Add sidewalks and bikeways. Perform Pedestrian Safety Audit to verify lighting, crosswalk striping and signing at Causey Ave.	\$30,000	47.77%	\$14,332
1010	Urban	92nd Ave	Johnson Creek Blvd to Emmert View Ct	Fill gaps in pedways	\$480,000	40.60%	\$194,898
AI S12	Urban	97th Avenue	Sunnybrook Blvd to Mather Rd	Investigate improved striping including outside fog lines, and rumble striping. Verify lighting, drainage, surface friction. From Sunnybrook Blvd to Mather Rd	\$49,200	35.00%	\$17,193
1049	Rural	Amisigger Rd / Kelso Rd	OR 224 to Kelso / Richey Rd (excludes state facilities)	Add paved shoulders, turn lanes at Amisigger/OR 212 and Kelso/Richey; smooth curves.	\$13,010,000	57.05%	\$7,422,839
2029	Rural	Arndt Rd Extension	Barlow to OR 99E (excludes state facilities)	Construct new 2 or 3 lane roadway	\$17,040,000	100.00%	\$17,040,000
2030	Rural	Barlow Rd	Knights Bridge Rd to OR 99E	Add paved shoulders	\$5,400,000	19.97%	\$1,078,492
1097	Rural	Beavercreek Rd	Henrici Rd to Yeoman Rd/Steiner Rd	Add paved shoulders and turn lanes at major intersections	\$11,630,000	16.25%	\$1,890,216
AI S9	Urban	Bob Schumacher Road	Bob Schumacher Road	Investigate improved striping, including centerline rumble stripe.	\$49,200	30.00%	\$14,765
1081	Rural	Borland Rd	Tualatin city limits to Stafford Rd	Add paved shoulders in accordance with the Active Transportation Plan and turn lanes at major intersections	\$5,680,000	30.59%	\$1,737,528
1082	Rural	Borland Rd	Stafford Rd to West Linn city limits	Add paved shoulders	\$10,290,000	43.23%	\$4,448,713
1013	Urban	Boyer Dr / 85th Ave / Spencer	OR 213 to I-205 bike path (excludes state facilities)	Add bikeways	\$40,000	57.96%	\$23,183
1099	Rural	Canby-Marquam Highway	Canby-Marquam Hwy / Lone Elder Rd intersection	Reconstruct intersection; install northbound left-turn lane and southbound right-turn lane	\$3,850,000	30.77%	\$1,184,615
1014	Urban	Causey Ave	Fuller Rd to I-205 (excludes state facilities)	Add bikeways and shared facility markings in accordance with the Active Transportation Plan.	\$50,000	57.96%	\$28,979
AI S6	Urban	Causey Avenue	Causey Ave/85th Ave	Pedestrian Safety Audit - verify lighting, crosswalk striping, signing, at Causey Ave/85th Ave	\$30,750	9.00%	\$2,920
1101	Rural	Clarkes Four Corners Intersecti	Beavercreek Rd / Unger Rd	Reconstruct intersection	\$4,490,000	17.14%	\$769,714

**Table A-1 (Continued)**  
 Clackamas County Draft TSDC Project List 2017

PROJECT DETAILS						SDC ELIGIBLE	
#	Location	Project	Segment/Location	Description	Total Project Cost	Total % Eligible	Total \$ Eligible
2001	Urban	Clatsop St / Luther Rd	72nd Ave to Fuller Rd	Add turn lanes and signals at OR 213 intersection; add bikeways, pedways and traffic calming	\$8,118,000	47.93%	\$3,891,198
1062	Urban	Concord Rd	River Rd to Oatfield Rd	Fill gaps in pedway	\$7,410,800	40.60%	\$3,009,065
1063	Urban	Courtney Ave	OR 99E to Oatfield Rd (excludes state facilities)	Fill gaps in pedestrian facilities and bikeways	\$1,860,000	48.86%	\$908,737
1064	Urban	Courtney Ave	River Rd to OR 99E (McLoughlin Blvd) (excludes state facilities)	Construct pedestrian facilities / complete gaps on the south side; add bikeways	\$5,010,000	42.88%	\$2,148,400
2034	Rural	Dryland Rd	Macksburg Rd S to Macksburg Rd N	Realign to form one intersection at Dryland Rd	\$3,400,000	26.25%	\$892,500
1055	Rural	Eagle Creek Rd	Currin Rd to Duus Rd	Remove horizontal curve, relocate intersection, add paved shoulders and turn lanes at major intersection; investigate speed zone south of Currin Rd	\$10,500,000	53.43%	\$5,610,294
2018	Rural	Eagle Creek Rd	OR 211 to Duus Rd (excludes state facilities)	Add paved shoulders	\$14,780,500	21.67%	\$3,202,442
2002	Urban	Evelyn St	OR 224 to Jennifer St (excludes state facilities)	Add bikeways and pedways	\$1,681,000	40.84%	\$686,599
2019	Rural	Firwood Rd	Wildcat Mountain Dr to US 26	Add paved shoulders and turn lanes at major intersections.	\$16,840,000	17.50%	\$2,947,000
1019	Urban	Flavel Dr	Alberta Ave to County boundary	Add bikeways in accordance with the Active Transportation plan	\$2,410,000	57.96%	\$1,396,796
1085	Urban	French Prairie Bridge	Willamette River near I-5 (excludes state facilities)	Construct a bridge in accordance with the Active Transportation Plan	\$9,790,000	20.78%	\$2,034,242
1020	Urban	Fuller Rd	Otty St to Johnson Creek Blvd	Add pedestrian facilities, turn lanes, on-street parking, central median and landscaping.	\$7,580,000	67.88%	\$5,145,111
1022	Urban	Harmony Rd	OR 213 to OR 224	Construct bikeways and pedways	\$9,760,000	48.40%	\$4,724,074
2035	Rural	Hattan Rd	Fischers Mill Rd to Gronlund Rd	Add paved shoulders and turn lanes at major intersections	\$15,426,300	45.50%	\$7,018,339
1108	Rural	Henrici Rd	Beavercreek Rd to Ferguson Rd	Add paved shoulders and turn lanes at major intersections. Remove horizontal and vertical curves	\$4,900,000	46.15%	\$2,261,538
2036	Rural	Henrici Rd	OR 213 to Beavercreek Rd (excludes state facilities)	Add paved shoulders and turn lanes at major intersections	\$5,196,800	44.67%	\$2,321,284



**Table A-1 (Continued)**  
 Clackamas County Draft TSDC Project List 2017

PROJECT DETAILS						SDC ELIGIBLE	
#	Location	Project	Segment/Location	Description	Total Project Cost	Total % Eligible	Total \$ Eligible
2037	Rural	Henrici Rd	Ferguson Rd to Redland Rd	Add paved shoulders and turn lanes at major intersections. Remove horizontal and vertical curves	\$17,870,000	43.79%	\$7,824,507
1066	Urban	Hull Ave	Willmot St to Tims View Ave	Fill gaps in pedestrian facilities	\$4,130,000	40.60%	\$1,676,936
3013	Urban	I-205 Ped / Bike Overpass	Between Causey Ave and Sunnyside Rd	Construct a bike / ped crossing over I-205 to connect transit services, businesses and residents	\$4,900,000	20.78%	\$1,018,160
2005	Urban	Jennifer St	82nd Dr to 135th Ave (excludes state facilities)	Add pedways	\$16,082,300	40.60%	\$6,530,022
2021	Urban	Jennings Ave	Oatfield Rd to Webster Rd	Widen to 2-lane urban minor arterial standard with bikeway and pedway infill	\$13,659,827	66.19%	\$9,041,080
1030	Urban	Johnson Creek Blvd	Johnson Creek Blvd / OR 213 intersection (excludes state facilities)	Extend westbound left-turn lane and rebuild median; install dual northbound and southbound left-turn lanes	\$890,000	100.00%	\$890,000
AI MV3	Urban	Johnson Creek Boulevard	92nd/Johnson Creek Blvd	Turn lane improvements at 92nd/Johnson Creek Boulevard	\$467,400	14.00%	\$66,545
2022	Urban	Lake Oswego to Milwaukie Bridge	Between Sellwood and Oregon City	Construct bike/pedestrian crossing over the Willamette River in accordance with the Active Transportation Plan	\$10,130,000	20.78%	\$2,104,890
2006	Urban	Lake Rd	Milwaukie City limits east to OR 224 (excludes state facilities)	Fill gaps in pedways	\$5,670,000	40.60%	\$2,302,234
2007	Urban	Linwood Ave	Linwood Ave / Monroe St intersection	Add curbs/sidewalks, improve horizontal alignments	\$7,605,500	31.54%	\$2,398,729
1112	Rural	Lone Elder Rd Bridge	~5,800 feet east of Barlow Rd	Replace bridge (nearing the end of its useful life) and include paved shoulders	\$450,000	15.00%	\$67,500
1115	Rural	Molalla Ave Flooding	Just south of city of Molalla	Construct bridge to resolve flooding issues	\$720,000	44.86%	\$322,971
2010	Urban	Monroe St / 72nd Ave / Thompson	Linwood Ave to Fuller Rd	Add pedestrian facilities	\$3,970,000	40.60%	\$1,611,970
AI MV2	Urban	Monterey Ave	Monterey Ave	North-south roadway between project AI MV1 and Monterey Ave	\$4,258,545	100.00%	\$4,258,545
2039	Rural	Mulino Rd (13th St segment)	Canby city limits to OR 213 (excludes state facilities)	Add paved shoulders and turn lanes at major intersections	\$24,890,000		\$13,498,038
1069	Urban	Oak Grove Blvd	Oatfield Rd to River Rd	Fill gaps in pedways and bikeways	\$2,590,000	44.32%	\$1,147,763

**Table A-1 (Continued)**  
 Clackamas County Draft TSDC Project List 2017

PROJECT DETAILS						SDC ELIGIBLE	
#	Location	Project	Segment/Location	Description	Total Project Cost	Total % Eligible	Total \$ Eligible
1071	Urban	Oatfield Rd	Oatfield Rd / Park Rd intersection	Install traffic signal and add turn lanes	\$1,060,000	32.56%	\$345,116
1072	Urban	Oatfield Rd	Oatfield Rd / McNary Rd intersection	Add southbound and eastbound left-turn lanes	\$570,000	20.16%	\$114,912
1041	Urban	Otty Rd	Fuller Rd to 92nd Ave	Improve consistent with Fuller Road Station Plan; improve curb radius; add turn lanes, on-street parking, central median, landscaping, bikeways and pedestrian facilities. Install pedestrian crossing between Fuller Rd and I-205 and near 91st Ave.	\$1,216,000	50.39%	\$612,765
1073	Urban	Park Ave	River Rd to OR 99E (McLoughlin Blvd)	Add pedestrian facilities	\$1,750,000	40.60%	\$710,566
2042	Rural	Redland Rd	Redland Rd / Fischers Mill Rd / Henrici Rd intersection	Install eastbound left-turn, eastbound right-turn and westbound right-turn lanes at Henrici Rd	\$860,000	39.78%	\$342,141
1058	Rural	Richey Rd	Kelso Rd to OR 212 (excludes state facilities)	Add paved shoulders and left turn lane at Richey Rd and OR 212	\$4,200,000	49.52%	\$2,079,756
1074	Urban	River Rd	Lark St to Courtney Ave	Add pedways	\$4,880,000	40.60%	\$1,981,465
1075	Urban	River Rd	Oak Grove Blvd to Risley Ave	Fill gaps in bikeways and pedways	\$5,710,000	42.14%	\$2,406,226
2023	Urban	Roots Rd	Webster Rd to McKinley Rd	Add pedways	\$4,838,000	40.60%	\$1,964,411
1086	Rural	Rosemont Rd	Stafford Rd to West Linn	Add paved shoulders and turn lanes at major intersections	\$8,790,000	29.28%	\$2,573,402
1125	Rural	Springwater Rd	Hattan Rd to Bakers Ferry Rd	Add paved shoulders and turn lanes at major intersections	\$6,330,000	33.54%	\$2,123,279
1088	Rural	Stafford Rd	Rosemont Rd to I-205 (excludes state facilities)	Add paved shoulders and turn lanes at major intersections	\$8,600,000	35.62%	\$3,062,991
2028	Rural	Stafford Rd / 65th Ave	I-205 to Boeckman Rd / Advance Rd (excludes state facilities)	Add paved shoulders and turn lanes at major intersections	\$22,078,500	46.18%	\$10,196,598
AI MV1	Urban	Stevens Road	Stevens Rd to High Creek Rd	East-west roadway connecting Stevens Road to High Creek Road. Include sidewalk and bike lanes	\$9,414,874	77.00%	\$7,288,420



**Table A-1 (Continued)**  
 Clackamas County Draft TSDC Project List 2017

PROJECT DETAILS						SDC ELIGIBLE	
#	Location	Project	Segment/Location	Description	Total Project Cost	Total % Eligible	Total \$ Eligible
2015	Urban	Sunnyside Rd	OR 213 to 97th Ave	Modified boulevard treatment including lane redesign, medians, beautification, curb extensions, reconstructed sidewalks, landscaping, south side bikeways. Consider flashing yellow arrow for left-turns at signalized intersections.	\$5,330,000	19.92%	\$1,061,986
1077	Urban	Thiessen Rd	Thiessen Rd / Aldercrest Rd intersection	Add turn lanes on Thiessen Rd; consider converting to two-way stop controlled	\$570,000	20.42%	\$116,366
2024	Urban	Thiessen Rd	Oatfield Rd to Webster Rd	Add bikeways and pedways	\$24,425,800	50.85%	\$12,419,625
2025	Urban	Webster Rd	OR 224 to Gladstone (excludes state facilities)	Fill gaps in bikeways and pedways	\$19,485,300	46.47%	\$9,053,989
1059	Rural	Welches Rd	US 26 to Birdie Ln (excludes state facilities)	Add paved shoulders; add pedestrian facilities in Welches rural center; evaluate pedestrian crossing near Stage Stop Rd; add multi-use path	\$6,360,000	19.59%	\$1,245,800
<b>Total Project Count</b>		<b>76</b>			<b>\$476,271,481</b>	<b>44.16%</b>	<b>\$210,308,676</b>

## **Appendix B – Proposed TSDC Rate Schedule**

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**Table B-1**

## Proposed TSDC Rate Schedule

Land Use Category	Units	ITE Codes Included	Traffic Impact <sup>1,2</sup>	Adjustments		Adjusted Traffic Impact	Updated TSDC per Unit <sup>3</sup>
				% Diverted Link Trips	Pass-by %		
Transit Parking	Parking Space	90, 93	4.50	-	-	4.50	\$2,068
Industrial/ Manufacturing/Warehouse	1,000 Gross Square Feet	110, 120, 130,140, 150, 151, 170	4.21	-	-	4.21	\$1,936
Single-Family Detached Housing	Dwelling Unit	210	9.52	-	-	9.52	\$4,374
Apartment	Dwelling Unit	220	6.65	-	-	6.65	\$3,056
Residential Condo/Townhouse	Dwelling Unit	230	5.81	-	-	5.81	\$2,670
Mobile Home in Park	Space	240	4.99	-	-	4.99	\$2,293
Assisted Living	Beds	254, 620	2.70	-	-	2.70	\$1,241
Senior Housing	Dwelling Unit	251, 253, 255	3.06	-	-	3.06	\$1,404
Hotel/Motel	Room	310, 320	8.17	-	-	8.17	\$3,754
Parks	Acre	411, 412	2.09	-	-	2.09	\$958
Campground/RV Park	Site	416	2.30	-	-	2.30	\$1,055
Marina	Berths	420	2.96	-	-	2.96	\$1,360
Golf Course	Holes	430	35.74	-	-	35.74	\$16,422
Golf Driving Range	Tee/ Drive Position	432	10.63	-	-	10.63	\$4,882
Recreation Community Center	1,000 Gross Square Feet	435, 495	33.82	-	-	33.82	\$15,540
Bowling Alley	Bowling Lanes	437	12.84	-	-	12.84	\$5,897
Movie Theater	Movie Screens	443, 444, 445	115.94	-	-	115.94	\$53,272
Casino/Video Lottery Establishment	1,000 Gross Square Feet	473	114.16	-	-	114.16	\$52,452
Soccer Complex	Field	488	71.33	-	-	71.33	\$32,775
Racquet/Tennis Club	Court	491	38.70	-	-	38.70	\$17,782
Health/Fitness Club	1,000 Gross Square Feet	492	30.01	-	-	30.01	\$13,787
Military Base	Employees	501	1.78	-	-	1.78	\$818
Education	Student	520, 522, 530, 536, 540, 550	1.51	-	-	1.51	\$695
Church	1,000 Gross Square Feet	560	9.11	-	-	9.11	\$4,186
Day Care	Student	565	4.38	56	-	1.93	\$886
Library	1,000 Gross Square Feet	590	56.24	-	-	56.24	\$25,841

**Table B-1 (Continued)**

Proposed TSDC Rate Schedule

Land Use Category	Units	ITE Codes Included	Traffic Impact <sup>1,2</sup>	Adjustments		Adjusted Traffic Impact	Updated TSDC per Unit <sup>3</sup>
				% Diverted Link Trips	Pass-by %		
Hospital	Beds	610	12.94	-	-	12.94	\$5,946
Medical-Dental	1,000 Gross Square Feet	720, 630	36.13	-	-	36.13	\$16,601
Office	1,000 Gross Square Feet	710, 714, 715, 730, 750, 760, 770	10.44	-	-	10.44	\$4,796
State Motor Vehicles Department	1,000 Gross Square Feet	731	166.02	-	-	166.02	\$76,283
Post Office	1,000 Gross Square Feet	732	108.19	-	17	89.80	\$41,260
Building & Hardware	1,000 Gross Square Feet	812, 816	48.23	-	37	30.72	\$14,115
Free-Standing Discount Store	1,000 Gross Square Feet	813, 815	54.00	35	22	23.38	\$10,743
Nursery	1,000 Gross Square Feet	817, 818	68.10	-	34	44.95	\$20,652
Factory Outlet Center	1,000 Gross Square Feet	823	26.59	-	34	17.55	\$8,064
Automobile Sales	1,000 Gross Square Feet	841	32.30	-	34	21.32	\$9,795
Automobile Parts Sales	1,000 Gross Square Feet	843	61.91	-	43	35.29	\$16,214
Tire Stores	1,000 Gross Square Feet	848, 849	22.62	-	28	16.28	\$7,482
Supermarket	1,000 Gross Square Feet	850, 854	102.24	38	36	26.58	\$12,214
Convenience Market	1,000 Gross Square Feet	851, 852	612.39	11	51	232.71	\$106,924
Shopping/Retail	1,000 Gross Square Feet Leasable Area	820, 826, 862, 863, 867	43.63	13	34	23.21	\$10,665
Pharmacy	1,000 Gross Square Feet	880, 881	93.49	14	51	33.27	\$15,288
Furniture Store	1,000 Gross Square Feet	890	5.06	-	53	2.38	\$1,093
Bank	1,000 Gross Square Feet	911, 912	148.15	26	35	57.78	\$26,548
Restaurants	1,000 Gross Square Feet	925, 931, 932	108.55	27	44	32.75	\$15,048
Fast Food	1,000 Gross Square Feet	933, 934	496.12	23	50	133.95	\$61,548
Coffee/Donut Shop	1,000 Gross Square Feet	936, 937	818.58	-	89	90.04	\$41,373
Quick Lubrication Veh. Shop	Service Positions	941	44.12	-	42	25.59	\$11,757
Automobile Care Center	1,000 Gross Square Feet	942	26.44	-	42	15.33	\$7,045
Service Stations	Fueling Positions	853, 944, 945, 946	161.39	32	51	27.11	\$12,456

<sup>1</sup> Based on Average Weekday Trips

<sup>2</sup> Italicized daily trip rate calculated as PM Peak Hour multiplied by system avg. daily to PM peak ratio (8.5)

<sup>3</sup> Includes compliance cost

# **Appendix C – County TSP Cost Estimate Assumptions**

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## Cost Estimate Assumptions

Date: January 7, 2013 Project #: 11732

To: Project Management Team

From: Susan L. Wright, P.E.; Marc A. Butorac, P.E., P.T.O.E.; Kelly M. Laustsen; and Erin M. Ferguson, P.E.; Kittelson & Associates, Inc; Gary Alfson, Otak

Project: Clackamas County Transportation System Plan Update

Subject: Cost Estimate Assumptions

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The following list documents the assumptions made in preparing cost estimates for the projects on the Master List for the Clackamas County Transportation System Plan (TSP) Update.

- The unit costs for each roadway classification was computed per lineal foot based on the classification provided in the Functional Classification and Urban or Rural columns in the KAI master spreadsheet and the attached table (Roadway Cost Estimates.xlsx) prepared by Otak.
- The total project costs have been estimated based on the length and roadway classification data provided in the KAI spreadsheet.
- Roadway costs were computed assuming reconstruction of the existing roadway when upgrading to full standards.
- Intersection improvement costs have been estimated using 500 feet per leg of the side street using the Rural Arterial classification section. This length was doubled for state highway intersections.
- Added turn lane costs have been estimated using 500 feet of a left turn lane of Rural Arterial classification, widening only one side of the existing roadway for right turn lanes and both sides for left turn lanes. This length was doubled for state highway intersections.
- For projects that included "turn lanes at major intersections," it was assumed the project will include left turns at all side streets of arterial and collector classifications. The intersections at the beginning and end of the segment were included.
- Driveways and private drives have not been included.

- 
- Projects listed as bikeways have been estimated using the “Bike lane widening, urban” classification, unless otherwise noted. The cost for this item also includes the construction of landscape strips and sidewalks.
  - Projects listed as pedways have been estimated using the “Sidewalk widening, urban” classification, unless otherwise noted.
  - Projects that listed the percentage of bikeway and pedways already completed have a percentage assigned to the overall length of improvements as follows:
    - 1-25% complete: improve 87.5% of project length
    - 26-50% complete: improve 62.5% of project length
    - 51-75% complete: improve 37.5% of project length
    - Not specified : improve 100% of project length.
  - Safety audit costs have been input at \$30,000 per mile in urban areas, \$15,000 per miles in rural areas.
  - Road closure costs have been input at \$30,000 each.
  - The costs for vertical realignment have not been included.
  - The cost for horizontal realignment has not been included beyond the length of the roadway improvements or the 500 foot long leg of intersection improvements.
  - The costs for right-of-way have not been included.
  - Water quality or detention facilities are not included.
  - Wetland impacts or sensitive area mitigation not included.
  - The estimated project costs have been taken from the “cost estimate from existing plans” or have not been provided when there is a lack of adequate information to estimate the project.
  - Estimates do not include traffic signal retrofit work, irrigation, culvert crossings, retaining walls, or sound walls. These could add significant costs to the project.
  - Bridge locations and lengths were estimated from Google Earth images when no other resource was available.
  - The undercrossing projects have been estimated using the bridge unit cost.

- Costs for public or franchise utilities are not included (water, sanitary sewer, power, natural gas, cable, telephone).
- Striping assumes thermoplastic materials.
- Signing frequency set at 200' o.c. in urban areas, 400' o.c. in rural areas.
- Earthwork based on 1.25' excavation/embankment across entire ROW. No rock excavation. Assumes 12" stripping (haul-off)
- Pavement section is assumed and may vary based on geotechnical recommendations and traffic volumes.



## Clackamas County | 2016-17 Process Overview Transportation System Development Charge Plan Update

In early 2016, the County began updating our 10-year-old Transportation System Development Charge (TSDC) plan in order to:

- Update the list of capital projects eligible to receive TSDC revenue;
- Update the TSDC rates charged to different kinds of development, and
- Streamline and simplify the TSDC program for our customers.

Over the past year and a half, staff has been meeting with a work group of commercial and residential developers, the Home Builders Association and engineering firms that represent the site development community to help us develop the new plan, project list and rate schedule.

During the update process, we met with the Board of County Commissioners seven times and brought the work group recommendations back to the Board on four occasions. We published notice of our methodology update in the Daily Journal of Commerce, online, through social media and emails. We also held a virtual open house for a month prior to finalizing our plan.

**On November 8, 2017, the Board will hold a public hearing for adoption of the updated TSDC methodology. There will be two readings of the ordinance amendments, the first at the public hearing November 8 and the second at a Board Business Meeting on November 30, 2017.**

STEP 1	BCC DISCUSSION DATE	DISCUSSION
Identify Eligible Projects	May 24, 2016 June 27, 2017	<p>The list of capital projects eligible to receive TSDC revenue sets the foundation for calculating the rates for different kinds of development.</p> <p>The work group chose criteria for selecting projects from the Transportation System Plan (TSP) and other locally adopted plans that will become eligible for TSDC funding.</p>
<p><b>OPTIONS:</b></p> <ol style="list-style-type: none"> <li>1) Continue the update process with the TSDC work group criteria; or</li> <li>2) Modify the criteria before moving forward with the calculation of the growth share and draft rate schedule.</li> </ol>	<p><b>DECISION:</b></p> <p>Develop the project list using the following criteria:</p> <ul style="list-style-type: none"> <li>• Increases traffic connections to daily needs and services</li> <li>• Reduces congestion at intersections</li> <li>• Located in or near a current or future employment area</li> <li>• Improves safety on roads</li> <li>• Provides the greatest benefit to the entire community by keeping projects on roads with significant amounts of traffic, such as arterials and collectors</li> </ul>	



STEP 2	BCC DISCUSSION DATE	DISCUSSION
Select Traffic Impact Measure	July 28, 2017	Rates differ by land use based on the number of trips a new or expanded development is estimated to add to the transportation system. The TSDC fee for a single-family home is lower than the fee for a large grocery store because it generates fewer trips.
<b>OPTIONS:</b> <ol style="list-style-type: none"> <li>1) Continue measuring the total impact a development has on traffic throughout a day (Average Daily Traffic [ADT]); or</li> <li>2) Change to measuring the amount of traffic a development is estimated to add during the afternoon commute (PM Peak).</li> </ol>		<b>DECISION:</b> Continue to use Average Daily Traffic (ADT).

STEP 3	BCC DISCUSSION DATE	DISCUSSION
Define The Rate Structure	July 28, 2017 August 1, 2017	Currently, Clackamas County has a long list of rates, one for each specific type of land use. However, consolidating similar uses and going with a shorter list will make it easier for developers and the public to identify the correct rate, and will reduce the likelihood that commercial tenant improvements in an existing structure trigger a TSDC fee.
<b>OPTIONS:</b> <ol style="list-style-type: none"> <li>1) Continue to use the long list and adopt rates for 88 land uses; or</li> <li>2) Reduce the complexity by consolidating similar uses and reducing the number of rates to 50.</li> </ol> <b>OPTIONS:</b> <ol style="list-style-type: none"> <li>1) Continue having one rate per detached single-family home dwelling unit, regardless of the size of the home; or</li> <li>2) Consider a rate that fluctuates based on the size of the home.</li> </ol>		<b>DECISION:</b> Consolidate rates for similar land uses.
<b>DECISION:</b> Continue with a single rate per dwelling unit for this update, but watch other jurisdictions and consider a proportional rate with the next TSDC update.		



# Transportation System Development Charges (TSDC)

## 2017 Plan Update

Board of County Commissioners Business Meeting

November 8, 2017



# What is a Transportation System Development Charge (TSDC)?

**TRANSPORTATION  
SYSTEM  
DEVELOPMENT  
CHARGES**

# Why update TSDCs?

- It has been more than 10 years since our last TSDC plan update
  - Project estimates on current list are outdated
  - Current capital project list is developed from the adopted TSP
- 20-year County TSP was recently updated with a new project list
- Separation of the Joint District; need to revise district boundary

# Update Process: Major Steps

- Began early 2016
- Hired a consultant
  - Research other methodologies and rate structures
  - Run models to identify growth share, traffic impact and rate structure
  - Review relevant legal or economic changes and rules
- Outreach & stakeholder involvement
  - TSDC Work Group of stakeholder representatives and staff
  - 7 meetings with BCC to review progress and get feedback
  - Online open house/survey April – May 2017
  - Plan, rates and ordinance published online for 90 days
  - Notice of publication in *Daily Journal of Commerce*

# Update Process: TSDC Work Group

- Role: Help develop new plan, project list, rate schedule
- Members:
  - Commercial and residential developers
  - Home Builders Association
  - Engineering firms that represent site development community
  - County staff
- Met 8 times to review / discuss options
- Results: Recommendations published online to gather feedback

# Update Process: Actions needed

## METHODOLOGY UPDATE

[by resolution]

- Define the plan
- Adopt the project list
- Calculate the rate schedule

## COUNTY CODE UPDATE

[by ordinance]

- Reflect methodology updates
- Eliminate references to the Joint District
- Clarify processes



# METHODOLOGY UPDATE

## Step 1: Identify Eligible Projects

**Purpose:** Set the foundation for calculating rates for different kinds of development. The work group chose project selection criteria from the Transportation System Plan (TSP) and other local plans.

### Options:

- 1) Continue using TSDC work group criteria; or
- 2) Modify criteria before moving forward

### Decision: Option 1

Develop project list using the following criteria:

- **Increase traffic connections** to daily needs and services
- **Reduce congestion** at intersections
- Located in/near current or future **employment area**
- **Improve safety** on roads
- Keep projects on **heavily traveled roads**, such as arterials and collectors

# *METHODOLOGY UPDATE*

## Step 2: Select Traffic Impact Measure

**Purpose:** Rates differ by land use based on the number of trips a new or expanded development is estimated to add to the transportation system.

### Options:

- 1) Continue measuring total average daily impact (ADT) a development has on traffic; or
- 2) Measure amount of traffic development is estimated to add during afternoon commute

### Decision: Option 1

- Continue to use Average Daily Traffic (ADT).

# *METHODOLOGY UPDATE*

## Step 3: Define Rate Structure

**Purpose:** Consolidating similar uses makes it easier to identify the rate, and reduces the likelihood that commercial tenant improvements trigger a TSDC.

### Options:

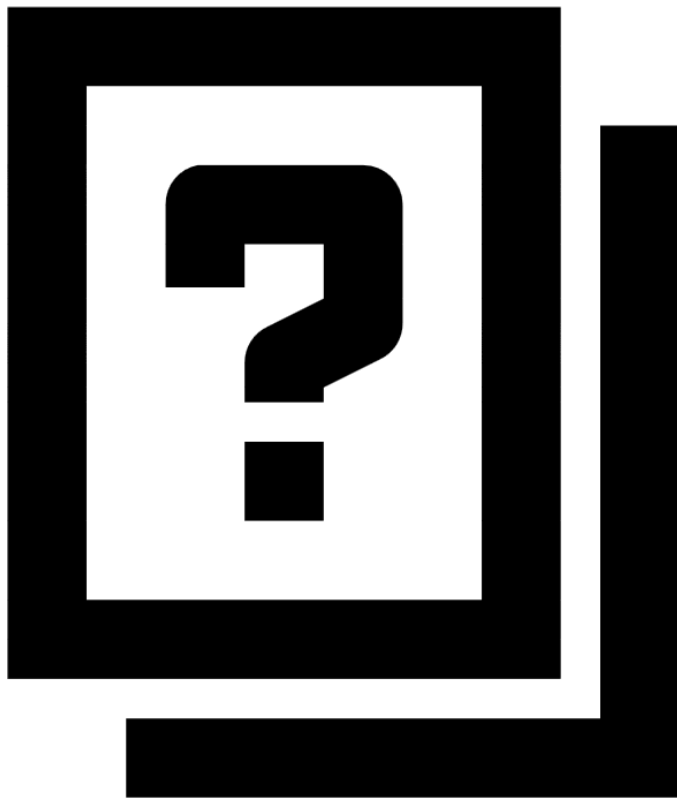
- 1) Continue to use long list and adopt rates for 88 land uses; or
- 2) Consolidate similar uses and reduce number of rates to 50.

### Decision: Option 2

- Consolidate rates for similar land uses.

# *METHODOLOGY UPDATE*

Questions?



1. Plan update?
2. Project list?
3. Rate schedule?
4. Other?

# Proposed Ordinance Amendments

1. Methodology updates
  - a. revise TSDC plan
  - b. update project list
  - c. new rate schedule
2. Terminate Joint District:  
Remove references to Happy Valley Joint TSDC District
3. Clarifications: Clarify and define current program operations

# *ORDINANCE AMENDMENTS*

## 1. Methodology Updates

- Adopt the plan, project list and rate schedule as a resolution to allow for future updates without a full ordinance amendment
- Outline the process for updating the project list between plan updates
- Update criteria for trip rates/traffic studies with consolidated rate schedule
- Transition to person trips to reflect multi-modal project elements

# *ORDINANCE AMENDMENTS*

## 2. Terminate Joint District

- Remove current references to the Joint District to reflect the separation on December 31, 2017

# *ORDINANCE AMENDMENTS*

## 3. Clarifications

- Transition to a single well-known, reliable index for annual adjustments
- Expand application of mixed-use area discounts to allow for a reduction between parcels under different ownership
- Credit the value of the oversize improvement (currently credits restricted to a percentage of oversize improvement value)
- Add a geographic restriction on voucher transfers in unincorporated areas



# *ORDINANCE AMENDMENTS*

## Questions?



1. Changes to reflect new plan?
2. Changes to reflect Joint District separation?
3. Clarifications?
4. Other?



November 8, 2017

Board of County Commissioners  
Clackamas County

Members of the Board:

Declaring a Local State of Emergency and  
Declaring Emergency Measures to Address Housing Crisis

**Stephen L. Madkour**  
County Counsel

**Kathleen Rastetter**  
**Chris Storey**  
**Scott C. Ciecko**  
**Alexander Gordon**  
**Amanda Keller**  
**Nathan K. Boderman**  
**Christina Thacker**  
**Shawn Lillegren**  
**Jeffrey D. Munns**  
Assistants

<b>Purpose/Outcomes</b>	Declaring an Emergency and Imposing Emergency Measures
<b>Dollar Amount and Fiscal Impact</b>	Eventual costs associated with the emergency declaration are not presently known
<b>Funding Source</b>	County General Fund
<b>Duration</b>	6 Months unless extended
<b>Previous Board Action</b>	The Board discussed emergency declarations and housing issues on October 31 and November 7, 2017
<b>Strategic Plan Alignment</b>	<ul style="list-style-type: none"> <li>• Build public trust through good government</li> <li>• Ensure safe, healthy and secure communities</li> </ul>
<b>Contact Person</b>	Stephen L. Madkour, County Counsel
<b>Contract No.</b>	

**BACKGROUND:**

Oregon law and County Code authorize the Board to declare an emergency. Both state law and the County Code define emergency essentially as a man-made or natural event or circumstance causing or threatening loss of life, injury to persons, the environment or property; human suffering or financial loss to the extent that extraordinary measures must be taken to protect the public health, safety and welfare. Although not specifically articulated as qualifying as an emergency, the increasing numbers of county residents, including families and children that are considered homeless, the need for safe, warm and habitable shelter for the homeless population, and the recognized lack of adequate temporary or emergency shelters for the county's homeless population could qualify as an emergency supporting a declaration and emergency measures designated by the Board.

If the Board declares an emergency, it could impose the following emergency measures: Commit to mutual aid agreements; Suspend standard competitive bidding procedures to obtain necessary goods, services and/or equipment, utilizing the procedures in the Clackamas County Local Contract Review Board rules; Redirect funds for emergency use; Order such other measures as are found to be immediately necessary for the protection of life and/or property; Authorize County staff to explore the acquisition, temporarily or permanently, by purchase, lease, or otherwise, sites

suitable for shelter, temporary housing, or installation of temporary housing units for the homeless population, and to enter into arrangements necessary to prepare or equip such sites to support and utilize those housing units; and Waive Clackamas County Code regulations, administrative rules, and fees to the extent necessary and possible to respond to the housing emergency;

**RECOMMENDATION:**

At the Board's direction, staff has prepared an emergency declaration and associated emergency measures for the Board's consideration.

Respectfully submitted,



Stephen L. Madkour  
County Counsel

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

In the Matter of Declaring a  
Local State of Emergency and  
Declaring Emergency Measures  
To Address Housing Crisis



RESOLUTION NO.  
Page 1 of 5

**WHEREAS**, ORS 401.305 provides authority for Clackamas County to act as an emergency management agency, including authority to establish policies and protocols for defining and directing responsibilities during time of emergency; and

**WHEREAS**, Clackamas County has enacted a local ordinance (County Code Chapter 6.03) pursuant to the authority granted by ORS Chapter 401, that provides for executive responsibility in times of emergency and specifically delegates authority to declare a state of emergency to the County Chair, Vice-Chair (if Chair is unavailable), Remaining Board Member (if Vice-Chair is unavailable) and County Administrator or designee (if Remaining Board Member is unavailable); and

**WHEREAS**, both state law and the County Code define emergency as a man-made or natural event or circumstance causing or threatening loss of life, injury to persons, the environment or property; human suffering or financial loss to the extent that extraordinary measures must be taken to protect the public health, safety and welfare; and

**WHEREAS**, although not specifically articulated as qualifying as an emergency, the increasing numbers of county residents, including families and children that are considered homeless, the need for safe, warm and habitable shelter for the homeless population, and the recognized lack of adequate temporary or emergency shelters for the county's homeless population, does indeed constitute an emergency; and

**WHEREAS**, the following conditions have resulted in the need for a state of emergency:

National, state, and local economic and demographic factors contributing to an ever increasing population of individuals and families without adequate, safe, secure, suitable, and healthy shelter; shortage of shelters to safely and securely house those individuals and families lacking such facilities.

**WHEREAS**, the following damage to life and property can be expected from the above conditions:

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

In the Matter of Declaring a  
Local State of Emergency and  
Declaring Emergency Measures  
To Address Housing Crisis



RESOLUTION NO.  
Page 2 of 5

Individuals and families without adequate, safe, secure, suitable and healthy shelter face exposure to the elements and potential for loss of property and life.

**WHEREAS**, the entire County is in a state of emergency and if not the entire County, an emergency is declared for the following area(s):

All unincorporated areas of Clackamas County.

**WHEREAS**, County Code Chapter 6.03 and ORS 401.309 authorizes certain actions to be taken during a state of emergency when necessary for public safety or for the efficient conduct of activities to minimize or mitigate the effects of the emergency; and

**WHEREAS**, ORS 401.055 provides that upon request of Clackamas County, the Governor may declare a state of emergency by proclamation; and

**WHEREAS**, a preliminary assessment of property damage or loss, injuries or death is set forth hereinabove; and

**WHEREAS**, all local resources have, or will likely be, expended, and there is need of the following additional resources from the State:

**NOW, THEREFORE, BE IT RESOLVED THAT:**

1. \_\_\_\_\_ (Chair/Vice-Chair/Remaining Board Member/County Administrator or designee), formally declares a state of emergency for Clackamas County, effective on this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ at \_\_\_\_\_, \_\_\_\_m. for the area described above.

2. Upon this declaration of a state of emergency the undersigned official is empowered to assume centralized control of and have authority over all departments and offices of the County, and further the County Department of Emergency Management is empowered to carry out the appropriate functions and duties identified in County Code Chapter 6.03 during times of emergency and shall implement the Clackamas County Emergency Operations Plan.

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

In the Matter of Declaring a  
Local State of Emergency and  
Declaring Emergency Measures  
To Address Housing Crisis



RESOLUTION NO.  
Page 3 of 5

3. Incident Command shall take all necessary steps authorized by law to coordinate response and recovery from this emergency, including, but not limited to, requesting assistance from the State of Oregon. If this declaration is not ordered by a majority of the Clackamas County Board of Commissioners, it shall be taken before the Board at its next available meeting for ratification.

4. Emergency procurements of goods or services are authorized pursuant to ORS 279B.080, ORS 279C.335(6), ORS 279C.380(4), and Local Contract Review Board Rules C-047-0280 and C-049-0150.

**IT IS FURTHER RESOLVED THAT:**

5. The following measures are necessary, or may become necessary as determined by Incident Command, for public safety or for the efficient conduct of activities to minimize or mitigate the effects of the emergency (indicate selected measures):

\_\_\_\_\_ A. Establish a curfew for the area designated as an emergency area which fixes the hours during which all persons other than officially authorized personnel may be upon the public streets or other public places;

\_\_\_\_\_ B. Prohibit or limit the number of persons who may gather or congregate upon any public street, public place, or any outdoor place within the area designated as an emergency area;

\_\_\_\_\_ C. Barricade streets and roads, as well as access points onto streets and roads. In addition, prohibit vehicular or pedestrian traffic, or restrict or regulate the same in any reasonable manner in the area designated as an emergency area for such distance or degree of regulation as may be deemed necessary under the circumstances.

\_\_\_\_\_ D. Evacuate persons from the area designated as an emergency area;

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

In the Matter of Declaring a  
Local State of Emergency and  
Declaring Emergency Measures  
To Address Housing Crisis



RESOLUTION NO.  
Page 4 of 5

\_\_\_\_\_ E. Close taverns or bars and prohibit the sale of alcoholic beverage throughout Clackamas County or a portion thereof;

\_\_\_\_\_ F. Commit to mutual aid agreements;

\_\_\_\_\_ G. Suspend standard competitive bidding procedures to obtain necessary goods, services and/or equipment, utilizing the procedures in the Clackamas County Local Contract Review Board rules;

\_\_\_\_\_ H. Redirect funds for emergency use;

\_\_\_\_\_ I. Order such other measures as are found to be immediately necessary for the protection of life and/or property;

\_\_\_\_\_ J. Authorize County staff to explore the acquisition, temporarily or permanently, by purchase, lease, or otherwise, sites suitable for shelter, temporary housing, or installation of temporary housing units for the homeless population, and to enter into arrangements necessary to prepare or equip such sites to support and utilize those housing units; and

\_\_\_\_\_ K. Waive Clackamas County Code regulations, administrative rules, and fees to the extent necessary and possible to respond to the housing emergency;

6. Emergency measures that are not selected in section 5 above may be implemented by Incident Command, provided however that such measures shall be taken before the Clackamas County Board of Commissioners at its next available meeting for ratification.

7. This declaration of emergency shall expire on May 7, 2018.

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

In the Matter of Declaring a  
Local State of Emergency and  
Declaring Emergency Measures  
To Address Housing Crisis



RESOLUTION NO.  
Page 5 of 5

**DATED** this \_\_\_\_ day of November 2017.

**BOARD OF COUNTY COMMISSIONERS**

\_\_\_\_\_  
Chair/Vice-Chair/Remaining Board Member/County Administrator or designee

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



November 8, 2107

Board of Commissioners  
Clackamas County

Members of the Board:

Approval of an Intergovernmental Agreement with the Estacada School District for  
Implementation of the Teen Mentor Program

<b>Purpose/Outcomes</b>	Provide funding for the Teen Mentor Program in Estacada, Oregon.
<b>Dollar Amount and Fiscal Impact</b>	\$10,000 No fiscal impact to county
<b>Funding Source</b>	Federal Funds: CFDA Number 93.959 Substance Abuse Prevention and Treatment Block Grant.
<b>Duration</b>	From October 1, 2017 through June 30, 2018
<b>Previous Board Action</b>	N/A
<b>Strategic Plan Alignment</b>	<ul style="list-style-type: none"> <li>• Individuals and families in need are healthy and safe</li> <li>• Ensure safe, healthy and secure communities</li> </ul>
<b>Contact Person</b>	Rodney Cook, 503-650-5677
<b>Contract No.</b>	Contract database # 8524

**BACKGROUND:**

The Children, Youth & Families Division of the Health, Housing & Human Services Department requests the approval of an Intergovernmental Agreement with the Estacada School Districts for Teen Mentor Program, which will match at-risk elementary school aged children to high school student mentors. A total of 25 elementary school students will be matched with high school students, who will provide social, emotional, and academic support during the school year during school hours.

Services are funded with federal funds granted through Oregon Health Authority. It was approved by County Counsel and becomes effective upon signature for services starting October 1, 2017 and terminating June 30, 2018. It has a maximum value of \$10,000.

**RECOMMENDATION:**

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

Respectfully submitted,

Richard Swift, Director  
Health, Housing & Human Services

**CLACKAMAS COUNTY, OREGON  
SUBRECIPIENT GRANT AGREEMENT 18-025**

Project Name: Estacada Teen Mentor Program

Project Number:

This Agreement is between Clackamas County, Oregon, acting by and through its  
Department of Health, Housing & Human Services and  
Estacada School District, a unit of local government.

**Clackamas County Data**

Grant Accountant: **Michael Morasko**

Program Manager: **Brian McCrady**

Clackamas County Finance

Clackamas County Children, Youth and Families  
Division

2051 Kaen Road  
Oregon City, OR 97045  
Phone (503) 742-5435  
mmorasko@co.clackamas.or.us

150 Beaver Creek Road  
Oregon City, OR 97045  
Phone (503) 650-5681  
bmccrady@clackamas.us

**Subrecipient Data**

Finance/Fiscal Representative: **Nick Hogan**

Program Representative: **Bill Blevins**

Estacada School District  
255 NW 6th  
Estacada, Oregon 97023  
(503) 630-6871 extension 2902  
hogann@estacada.k12.or.us

Estacada School District  
255 NE 6<sup>th</sup> Ave.  
Estacada, Oregon 97023  
Phone (503) 630-8515, extension 2801  
blevinsb@estacada.k12.or.us

DUNS: 93-6000284

**RECITALS**

1. Estacada School District ("SUBRECIPIENT") will oversee the implementation of the Teen Mentor Program, which matches high school students from Estacada High School to elementary school students at Clackamas River and River Mill Elementary schools during the 2017-18 school year to improve academic achievement, school attendance, and classroom behavior for elementary school students. High school students will develop leadership skills and civic engagement. At least 25 matches will be made during the 17/18 academic year.
2. This Grant Agreement of Federal financial assistance sets forth the terms and conditions pursuant to which SUBRECIPIENT agrees on delivery of the Program.

NOW THEREFORE, according to the terms of this Subrecipient Grant Agreement ("Agreement") the Clackamas County ("COUNTY") and SUBRECIPIENT agree as follows:

## AGREEMENT

1. **Term and Effective Date.** This Agreement shall become effective on the date it is fully executed and approved as required by applicable law. Funds issued under this Agreement may be used to reimburse subrecipient for expenses approved in writing by County relating to the project incurred no earlier than **October 1, 2017** and not later than **June 30, 2018**, unless this Agreement is sooner terminated or extended pursuant to the terms hereof. No grant funds are available for expenditures after the expiration date of this Agreement.
2. **Program.** The Program is described in Attached Exhibit A: Subrecipient Statement of Program Objectives. SUBRECIPIENT agrees to carry out the program in accordance with the terms and conditions of this Agreement.
3. **Standards of Performance.** SUBRECIPIENT shall perform all activities and programs in accordance with the requirements set forth in this Agreement and all applicable laws and regulations. Furthermore, SUBRECIPIENT shall comply with the requirements of the Substance Abuse Prevention and Treatment Block Grant, **CFDA # 93.959** that is the source of the grant funding, in addition to compliance with requirements of Title 45 of the Code of Federal Regulations ("CFR"), Part 96.
4. **Grant Funds.** The COUNTY's funding for this Agreement is the Substance Abuse Mental Health Services Administration Block Grant (**CFDA #93.959**) issued to the COUNTY by the Oregon Health Authority Public Health Division. The maximum, not to exceed, grant amount that the COUNTY will pay is **\$10,000**. This is a cost reimbursement grant and disbursements will be made in accordance with the schedule and requirements contained in Exhibit D: Required Financial Reporting and Reimbursement Request and Exhibit E: Monthly/Quarterly/Final Performance Reports. Failure to comply with the terms of this Agreement may result in withholding of payment.
5. **Amendments.** The terms of this Agreement shall not be waived, altered, modified, supplemented, or amended, in any manner whatsoever, except by written instrument signed by both parties. **SUBRECIPIENT must submit a written request including a justification for any amendment to the COUNTY in writing at least forty-five (45) calendar days before this Agreement expires.** No payment will be made for any services performed before the beginning date or after the expiration date of this Agreement. If the maximum compensation amount is increased by amendment, the amendment must be fully executed before SUBRECIPIENT performs work subject to the amendment.
6. **Termination.** This Agreement may be terminated by the mutual consent of both parties or by a party upon written notice from one to the other upon thirty (30) business days' notice. This notice may be transmitted in person, by certified mail, facsimile, or by email.
7. **Funds Available and Authorized.** The COUNTY certifies that it has received an award sufficient to fund this Agreement. SUBRECIPIENT understands and agrees that payment of amounts under this Agreement is contingent on the COUNTY receiving appropriations or other expenditure authority sufficient to allow the COUNTY, in the exercise of its sole administrative discretion, to continue to make payments under this Agreement.
8. **Future Support.** COUNTY makes no commitment of future support and assumes no obligation for future support for the activity contracted herein except as set forth in Section 7.
9. **Administrative Requirements.** SUBRECIPIENT agrees to its status as a subrecipient, and accepts among its duties and responsibilities the following:
  - a) **Financial Management.** SUBRECIPIENT shall comply with 2 CFR Part 200, Subpart D—*Post Federal Award Requirements*, and agrees to adhere to the accounting principles and procedures required therein, use adequate internal controls, and maintain necessary sources documentation for all costs incurred.

- b) **Revenue Accounting.** Grant revenue and expenses generated under this Agreement should be recorded in compliance with generally accepted accounting principles and/or governmental accounting standards. This requires that the revenues are treated as unearned income or "deferred" until the compliance requirements and objectives of the grant have been met. Revenue may be recognized throughout the life cycle of the grant as the funds are "earned." All grant revenues not fully earned and expended in compliance with the requirements and objectives at the end of the period of performance must be returned to the County within 15 days.
- c) **Personnel.** If SUBRECIPIENT becomes aware of any likely or actual changes to key systems, or grant-funded program personnel or administration staffing changes, SUBRECIPIENT shall notify COUNTY in writing within 30 days of becoming aware of the likely or actual changes and a statement of whether or not the SUBRECIPIENT will be able to maintain compliance at all times with all requirements of this Agreement.
- d) **Cost Principles.** The SUBRECIPIENT shall administer the award in conformity with 2 CFR 200, Subpart E. These cost principles must be applied for all costs incurred whether charged on a direct or indirect basis. Costs disallowed by the Federal government shall be the liability of the SUBRECIPIENT.
- e) **Period of Availability.** SUBRECIPIENT may charge to the award only allowable costs resulting from obligations incurred during the funding period.
- f) **Match.** Matching funds are not required for this Agreement.
- g) **Budget.** The SUBRECIPIENT use of funds may not exceed the amounts specified in the Exhibit B: Subrecipient Program Budget. SUBRECIPIENT may not transfer grant funds between budget lines without the prior written approval of the COUNTY. At no time may budget modification change the scope of the original grant application or Agreement.
- h) **Indirect Cost Recovery.** SUBRECIPIENT chooses to forego indirect cost recovery on this award.
- i) **Research and Development.** SUBRECIPIENT certifies that this award is not for research and development purposes.
- j) **Payment.** The SUBRECIPIENT must submit a final request for payment no later than fifteen (15) days after the end date of this Agreement. Routine requests for reimbursement should be submitted as specified in Exhibit D: Required Financial Reporting and Reimbursement Request.
- k) **Performance Reporting.** The SUBRECIPIENT must submit Performance Reports as specified in Exhibit E for each month and quarter during the term of this Agreement.
- l) **Financial Reporting.** Methods and procedures for payment shall minimize the time elapsing between the transfer of funds and disbursement by the grantee or SUBRECIPIENT, in accordance with Treasurer regulations at 31 CFR Part 205. Therefore, upon execution of this Agreement, SUBRECIPIENT will submit completed Exhibit D: Required Financial Reporting and Reimbursement Request on a monthly basis.
- m) **Closeout.** COUNTY will closeout this award when COUNTY determines that all applicable administrative actions and all required work have been completed by SUBRECIPIENT, pursuant to 2 CFR 200.343—*Closeout*. SUBRECIPIENT must liquidate all obligations incurred under this award and must submit all financial (Exhibits F & G), performance, and other reports as required by the terms and conditions of the Federal award and/or COUNTY, no later than 30 calendar days after the end date of this agreement. At closeout, SUBRECIPIENT must account for all equipment with remaining value over \$5,000 and residual supplies valued over \$5,000 in the aggregate that were purchased with Federal funds authorized by this

Agreement. Compensation to the Federal Agency may be required for equipment or residual supplies valued over \$5,000 per 2 CFR 200.313 & 314.

- n) **Universal Identifier and Contract Status.** The SUBRECIPIENT shall comply with 2 CFR 25.200-205 and apply for a unique universal identification number using the Data Universal Numbering System ("DUNS") as required for receipt of funding. In addition, the SUBRECIPIENT shall register and maintain an active registration in the Central Contractor Registration database, now located at <http://www.sam.gov>.
- o) **Suspension and Debarment.** The SUBRECIPIENT shall comply with 2 CFR 180.220 and 901. This common rule restricts subawards and contracts with certain parties that are debarred, suspended or otherwise excluded from or ineligible for participation in Federal assistance programs or activities. SUBRECIPIENT is responsible for further requiring the inclusion of a similar term or condition in any subsequent lower tier covered transactions. SUBRECIPIENT may access the Excluded Parties List System at <http://www.sam.gov>. The Excluded Parties List System contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Orders 12549 and 12689. Awards that exceed the simplified acquisition threshold shall provide the required certification regarding their exclusion status and that of their principals prior to award.
- p) **Lobbying.** SUBRECIPIENT certifies (Exhibit C: Lobbying) that no portion of the Federal grant funds will be used to engage in lobbying of the Federal Government or in litigation against the United States unless authorized under existing law and shall abide by 2 CFR 200.450 and the Byrd Anti-Lobbying Amendment 31 U. S. C. 1352.
- q) **Audit.** The SUBRECIPIENT shall comply with the audit requirements prescribed in the Single Audit Act Amendments and the new Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, located in 2 CFR 200.501. SUBRECIPIENT expenditures of \$750,000 or more in Federal funds require an annual Single Audit. SUBRECIPIENT is required to hire an independent auditor qualified to perform a Single Audit. Subrecipients of Federal awards are required under the Uniform Guidance to submit their audits to the Federal Audit Clearinghouse (FAC) within 9 months from the SUBRECIPIENT'S fiscal year end or 30 days after issuance of the reports, whichever is sooner. The website for submissions to the FAC is <https://harvester.census.gov/facweb/>. At the time of submission to the FAC, the SUBRECIPIENT will also submit a copy of the audit to the COUNTY. If requested and if SUBRECIPIENT does not meet the threshold for the Single Audit requirement, SUBRECIPIENT shall submit to COUNTY a financial audit or independent review of financial statements within 9 months from the SUBRECIPIENT'S fiscal year end or 30 days after issuance of the reports, whichever is sooner.
- r) **Monitoring.** The SUBRECIPIENT agrees to allow COUNTY access to conduct site visits and inspections of financial records for the purpose of monitoring in accordance with 2 CFR 200.331. The COUNTY, the Federal government, and their duly authorized representatives shall have access to such financial records and other books, documents, papers, plans, records of shipments and payments and writings of SUBRECIPIENT that are pertinent to this Agreement, whether in paper, electronic or other form, to perform examinations and audits and make excerpts and transcripts. Monitoring may be performed onsite or offsite, at the COUNTY'S discretion. Depending on the outcomes of the financial monitoring processes, this Agreement shall either a) continue pursuant to the original terms, b) continue pursuant to the original terms and any additional conditions or remediation deemed appropriate by COUNTY, or c) be de-obligated and terminated.
- s) **Record Retention.** The SUBRECIPIENT will retain and keep accessible all such financial records, books, documents, papers, plans, records of shipments and payments and writings for a minimum of three (3) years, or such longer period as may be required by the Federal agency or applicable state law, following final payment and termination of this Agreement, or until the conclusion of any audit,

controversy or litigation arising out of or related to this Agreement, whichever date is later, according to 2 CFR 200.333-337.

- t) **Fiduciary Duty.** SUBRECIPIENT acknowledges that it has read the award conditions and certifications for Alcohol/Drug 70 Grant #155011, that it understands and accepts those conditions and certifications, and that it agrees to comply with all the obligations, and be bound by any limitations applicable to the Clackamas County, as grantee, under those grant documents.
- u) **Failure to Comply.** SUBRECIPIENT acknowledges and agrees that this Agreement and the terms and conditions therein are essential terms in allowing the relationship between COUNTY and SUBRECIPIENT to continue, and that failure to comply with such terms and conditions represents a material breach of the original grant and this Agreement. Such material breach shall give rise to the COUNTY's right, but not obligation, to withhold SUBRECIPIENT grant funds until compliance is met or to terminate this relationship including the original Agreement and all associated amendments.

#### 10. Compliance with Applicable Laws

- a) **Public Policy.** The SUBRECIPIENT expressly agrees to comply with all public policy requirements, laws, regulations, and executive orders issued by the Federal government, to the extent they are applicable to the Agreement: (i) Titles VI and VII of the Civil Rights Act of 1964, as amended; (ii) Sections 503 and 504 of the Rehabilitation Act of 1973, as amended; (iii) the Americans with Disabilities Act of 1990, as amended; (iv) Executive Order 11246, "Equal Employment Opportunity" as amended; (v) the Health Insurance Portability and Accountability Act of 1996; (vi) the Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended; (vii) the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended; (viii) all regulations and administrative rules established pursuant to the foregoing laws; and (ix) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations; and 2 CFR Part 200 as applicable to SUBRECIPIENT.
- b) **Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 et seq.).** SUBRECIPIENT agrees that if this Agreement is in excess of \$150,000, the recipient agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, 42 U.S.C. 7401 et seq., and the Federal Water Pollution Control Act, as amended 33 U.S.C. 1251 et seq. Violations shall be reported to the awarding Federal Department and the appropriate Regional Office of the Environmental Protection Agency.
- c) **State Statutes.** SUBRECIPIENT expressly agrees to comply with all statutory requirements, laws, rules, and regulations issued by the State of Oregon, to the extent they are applicable to the Agreement.
- d) **Conflict Resolution.** If potential, actual or perceived conflicts are discovered among federal, state and local statutes, regulations, administrative rules, executive orders, ordinances or other laws applicable to the Services under the Agreement, SUBRECIPIENT may in writing request County to resolve the conflict. SUBRECIPIENT shall specify if the conflict(s) create a problem for the design or other Services required under the Agreement. The County shall undertake reasonable efforts to resolve the issue but is not required to deliver any specific answer or product. The SUBRECIPIENT shall remain obligated to independently comply with all applicable laws and no action by the County shall be deemed a guarantee, waiver, or indemnity for non-compliance with any law.
- e) **Disclosure of Information.** Any confidential or personally identifiable information (2 CFR 200.82) acquired by the SUBRECIPIENT during the execution of the project should not be disclosed during or upon termination or expiration of this Agreement for any reason or purpose without the prior written consent of COUNTY. SUBRECIPIENT further agrees to take reasonable measures to safeguard such information (2 CFR 200.303) and to follow all applicable federal, state and local regulations regarding privacy and obligations of confidentiality.

- f) **Mileage reimbursement.** If mileage reimbursement is authorized in SUBRECIPIENT budget or by the written approval of COUNTY, mileage must be paid at the rate established by SUBRECIPIENT'S written policies covering all organizational mileage reimbursement or at the IRS mileage rate at the time of travel, whichever is lowest.
- g) **Human Trafficking.** In accordance with 2 CFR Part 175, SUBRECIPIENT, its employees, contractors and subrecipients under this Agreement and their respective employees may not:
- Engage in severe forms of trafficking in persons during the period of the time the award is in effect;
  - Procure a commercial sex act during the period of time the award is in effect; or
  - Used forced labor in the performance of the Agreement or subaward under this Agreement.

SUBRECIPIENT must inform COUNTY immediately of any information SUBRECIPIENT receives from any source alleging a violation of any of the above prohibitions in the terms of this Agreement. COUNTY may terminate this Agreement, without penalty, for violation of these provisions. COUNTY's right to terminate this Agreement unilaterally, without penalty, is in addition to all other remedies under this Agreement. SUBRECIPIENT must include these requirements in any subaward made to public or private entities under this Agreement.

#### 11. General Agreement Provisions.

- a) **Non-appropriation Clause.** If payment for activities and programs under this Agreement extends into the COUNTY's next fiscal year, the COUNTY's obligation to pay for such work is subject to approval of future appropriations to fund the Agreement by the Board of County Commissioners.
- b) **Indemnification.** SUBRECIPIENT agrees to indemnify and hold COUNTY and its elected officials, officers, employees, and agents harmless with respect to any claim, cause, damage, action, penalty or other cost (including expert fees) arising from or related to SUBRECIPIENT's negligent or willful acts or those of its employees, agents or those under SUBRECIPIENT's control. SUBRECIPIENT is responsible for the actions of its own agents and employees, and COUNTY assumes no liability or responsibility with respect to SUBRECIPIENT's actions, employees, agents or otherwise with respect to those under its control.
- c) **Insurance.** During the term of this Agreement, SUBRECIPIENT shall maintain in force, at its own expense, each insurance noted below:
- 1) **Commercial General Liability.** SUBRECIPIENT shall obtain, at SUBRECIPIENT's expense, and keep in effect during the term of this Agreement, Commercial General Liability Insurance covering bodily injury and property damage on an "occurrence" form in the amount of not less than \$1,000,000 per occurrence/ \$2,000,000 general aggregate for the protection of COUNTY, its officers, elected officials, and employees. This coverage shall include Contractual Liability insurance for the indemnity provided under this Agreement. This policy(s) shall be primary insurance as respects to the COUNTY. Any insurance or self-insurance maintained by COUNTY shall be excess and shall not contribute to it.
  - 2) **Commercial Automobile Liability.** If the Agreement involves the use of vehicles, SUBRECIPIENT shall obtain at SUBRECIPIENT expense, and keep in effect during the term of this Agreement, Commercial Automobile Liability coverage including coverage for all owned, hired, and non-owned vehicles. The combined single limit per occurrence shall not be less than \$1,000,000, or SUBRECIPIENT shall obtain at SUBRECIPIENT expense, and keep in effect during the term of the agreement, Personal auto coverage. The limits shall be no less than \$250,000/occurrence, \$500,000/aggregate, and \$100,000 property damage.



- 3) **Professional Liability.** If the Agreement involves the provision of professional services, SUBRECIPIENT shall obtain and furnish the COUNTY evidence of Professional Liability Insurance in the amount of not less than \$1,000,000 combined single limit per occurrence/\$2,000,000 general annual aggregate for malpractice or errors and omissions coverage for the protection of the COUNTY, its officers, elected officials and employees against liability for damages because of personal injury, bodily injury, death, or damage to property, including loss of use thereof, and damages because of negligent acts, errors and omissions in any way related to this Agreement. COUNTY, at its option, may require a complete copy of the above policy.
  - 4) **Workers' Compensation.** Insurance in compliance with ORS 656.017, which requires all employers that employ subject workers, as defined in ORS 656.027, to provide workers' compensation coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). If contractor is a subject employer, as defined in ORS 656.023, contractor shall obtain employers' liability insurance coverage limits of not less than \$1,000,000.
  - 5) **Additional Insured Provisions.** All required insurance, other than Professional Liability, Workers' Compensation, and Personal Automobile Liability and Pollution Liability Insurance, shall include "Clackamas County, its agents, elected officials, officers, and employees" as an additional insured.
  - 6) **Notice of Cancellation.** There shall be no cancellation, material change, exhaustion of aggregate limits or intent not to renew insurance coverage without 60 days written notice to the COUNTY. Any failure to comply with this provision will not affect the insurance coverage provided to COUNTY. The 60 days' notice of cancellation provision shall be physically endorsed on to the policy.
  - 7) **Insurance Carrier Rating.** Coverage provided by SUBRECIPIENT must be underwritten by an insurance company deemed acceptable by COUNTY. Insurance coverage shall be provided by companies admitted to do business in Oregon or, in the alternative, rated A- or better by Best's Insurance Rating. COUNTY reserves the right to reject all or any insurance carrier(s) with an unacceptable financial rating.
  - 8) **Certificates of Insurance.** As evidence of the insurance coverage required by this Agreement, SUBRECIPIENT shall furnish a Certificate of Insurance to COUNTY. The COUNTY and its, elected officials, employees and officers must be named as an additional insured on the Certificate of Insurance. No Agreement shall be in effect until the required certificates have been received, approved, and accepted by COUNTY. A renewal certificate will be sent to COUNTY 10 days prior to coverage expiration.
  - 9) **Primary Coverage Clarification.** SUBRECIPIENT coverage will be primary in the event of a loss and will not seek contribution from any insurance or self-insurance maintained by, or provided to, the additional insureds listed above.
  - 10) **Cross-Liability Clause.** A cross-liability clause or separation of insured's condition will be included in all general liability, professional liability, and errors and omissions policies required by the Agreement.
  - 11) **Waiver of Subrogation.** SUBRECIPIENT agrees to waive their rights of subrogation arising from the work performed under this Agreement.
- d) **Assignment.** This Agreement may not be assigned in whole or in part without the prior express written approval of the COUNTY.



- e) **Independent Status.** SUBRECIPIENT is independent of the COUNTY and will be responsible for any federal, state, or local taxes and fees applicable to payments hereunder. SUBRECIPIENT is not an agent of the COUNTY and undertakes this work independent from the control and direction of the COUNTY excepting as set forth herein. SUBRECIPIENT shall not seek or have the power to bind the COUNTY in any transaction or activity.
- f) **Notices.** Any notice provided for under this Agreement shall be effective if in writing and (1) delivered personally to the addressee or deposited in the United States mail, postage paid, certified mail, return receipt requested, (2) sent by overnight or commercial air courier (such as Federal Express), (3) sent by facsimile transmission, with the original to follow by regular mail; or, (4) sent by electronic mail with confirming record of delivery confirmation through electronic mail return-receipt, or by confirmation that the electronic mail was accessed, downloaded, or printed. Notice will be deemed to have been adequately given three days following the date of mailing, or immediately if personally served. For service by facsimile or by electronic mail, service will be deemed effective at the beginning of the next working day.
- g) **Governing Law.** This Agreement is made in the State of Oregon, and shall be governed by and construed in accordance with the laws of that state without giving effect to the conflict of law provisions thereof. Any litigation between the COUNTY and SUBRECIPIENT 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 State of Oregon.
- h) **Severability.** If any provision of this Agreement is found to be illegal or unenforceable, this Agreement nevertheless shall remain in full force and effect and the provision shall be stricken.
- i) **Counterparts.** This Agreement may be executed in any number of counterparts, all of which together will constitute one and the same Agreement. Facsimile copy or electronic signatures shall be valid as original signatures.
- j) **Third Party Beneficiaries.** Except as expressly provided in this Agreement, there are no third party beneficiaries to this Agreement. The terms and conditions of this Agreement may only be enforced by the parties.
- k) **Binding Effect.** This Agreement shall be binding on all parties hereto, their heirs, administrators, executors, successors and assigns.
- l) **Integration.** This Agreement contains the entire Agreement between COUNTY and SUBRECIPIENT and supersedes all prior written or oral discussions or Agreements.

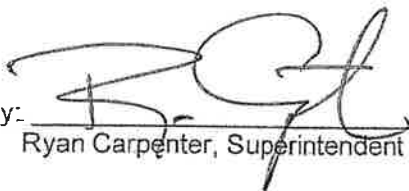
*(Signature Page Follows)*

SIGNATURE PAGE TO SUBRECIPIENT GRANT AGREEMENT

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

**SUBRECIPIENT**

Estacada School District  
255 NW 6th  
Estacada, OR 97023

By:   
Ryan Carpenter, Superintendent

Dated: 10/23/2017

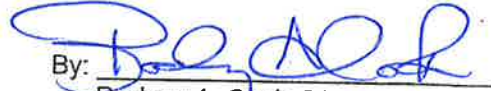
**CLACKAMAS COUNTY**

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

**Signing on behalf of the Board:**

By: \_\_\_\_\_  
Richard Swift, Director  
Health, Housing & Human Services

Dated: \_\_\_\_\_

By:   
Rodney A. Cook, Director  
Children, Youth & Families Division

Dated: 10/30/17

Approved to Form:

By:   
County Counsel Date 18 OCT 2017

- Exhibit A-1: Statement of Program Objectives
- Exhibit A-2: Work Plan Quarterly Report
- Exhibit A-3: Client Feedback Survey and Report
- Exhibit A-4: Quarterly Demographic Report
- Exhibit B: Program Budget
- Exhibit C: Congressional Lobbying Certificate
- Exhibit D-1: Request for Reimbursement
- Exhibit D-2: Monthly Activity Report
- Exhibit E-1: Quarterly Performance Reporting Schedule
- Exhibit F: Final Financial Report
- Exhibit G: Residual Supplies Inventory

November 8, 2017

Board of County Commissioner  
Clackamas County

Members of the Board:

Approval of an Agency Services Contract with  
Youth M.O.V.E. Oregon for a Youth/Young Adult Peer Support

<b>Purpose/Outcomes</b>	Contractor provides youth/young adult peer support services to individuals 14 through 25 years of age within Clackamas County.
<b>Dollar Amount and Fiscal Impact</b>	The contract maximum is \$222,504 for 20 months.
<b>Funding Source</b>	Oregon Health Authority 2017-2019 Community Mental Health Program (CMHP) Intergovernmental Agreement. No County general funds are involved.
<b>Duration</b>	Effective November 1, 2017 and terminates June 30, 2019
<b>Previous Board Action</b>	This is a new contract. The previous action.
<b>Strategic Plan Alignment</b>	1. Provide coordination, assessment, outreach, and recovery services to Clackamas County residents experiencing mental health and addiction distress so they can achieve their own recovery goals. 2. Ensure safe, healthy and secure communities.
<b>Contact Person</b>	Mary Rumbaugh, Director – Behavioral Health Division (503) 742-5305
<b>Contract No.</b>	8356

**BACKGROUND:**

The Behavioral Health Division of the Health, Housing and Human Services Department requests the approval of an Agency Services Agreement with Youth M.O.V.E. Oregon to provide youth/young adult peer support services to individuals 14 through 25 years within Clackamas County. Youth M.O.V.E. Oregon will provide 2 FTE Young Adult Peer Support Specialists and a variety of services including, but not limited to, developing referral sources through outreach to system partners (such as Child Welfare, Juvenile Justice, and schools), and providing peer supports to individuals during transition periods from high levels of care back into community settings. Youth M.O.V.E. Oregon provides services that support individuals working toward addiction recovery and/or mental wellness.

This contract begins November 1, 2017 and terminates June 30, 2019 with a value not to exceed \$222,504. County Counsel reviewed and approved this agreement on October 19, 2017.

**RECOMMENDATION:**

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

Respectfully submitted,

Richard Swift, Director  
Health, Housing and Human Services Department

## AGENCY SERVICES CONTRACT Contract # 8356

This Agency Service Contract, herein called "Contract," is between Clackamas County acting by and through its Health, Housing and Human Services Department, Behavioral Health Division, hereinafter called "COUNTY," and Youth M.O.V.E. Oregon, LLC, hereinafter called "AGENCY."

### CONTRACT

#### 1.0 Engagement

COUNTY hereby engages AGENCY to provide **young adult peer support** as more fully described in **Exhibit B**, Scope of Work, attached hereto and incorporated herein. This contract sets forth the terms under which AGENCY will contract with COUNTY to provide contracted services to clients.

#### 2.0 Term

Services provided under the terms of this Contract shall commence **November 1, 2017 and shall terminate June 30, 2019** unless terminated by one or both parties as provided for in paragraph 6.0 below.

#### 3.0 Compensation and Fiscal Records

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

Maximum Contract payment shall not exceed **\$222,504**.

AGENCY shall **submit an itemized invoice by the 10<sup>th</sup> of the month** following the month services were performed. The invoice shall include the contract # **8356**, list the dates of service, the costs, and the total amount due for all service provided during the month. Invoices shall be submitted electronically to:

BHAP@clackamas.us and  
ainfoot@clackamas.us

When submitting electronically, designate AGENCY name and contract # **8356** in the subject of the e-mail.

Within thirty (30) days after receipt of the bill, provided the Program Manager has approved the service specified on the invoice, COUNTY shall pay the amount requested to AGENCY.

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

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

3.4 Access to Records and Facilities. COUNTY, the Secretary of State's Office of the State of Oregon, the Federal Government, and their duly authorized representatives shall have access to the books, documents,

papers and records of AGENCY that are directly related to this Contract, the funds paid to AGENCY hereunder, or any services delivered hereunder for the purpose of making audits, examinations, excerpts, and transcripts. In addition, AGENCY shall permit authorized representatives of COUNTY and State of Oregon to perform site reviews of all services delivered by AGENCY hereunder.

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

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

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

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

#### **4.0 Manner of Performance**

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

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

- i. Termination of this Contract, in whole or in part;
- ii. Exercise of the right of setoff, and withholding of amounts otherwise due and owing to AGENCY, in an amount equal to COUNTY'S setoff right, without penalty; and
- iii. Initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief. COUNTY shall be entitled to recover any and all damages suffered as the result of AGENCY'S breach of this Contract, including but not limited to direct, indirect, incidental and consequential damages, costs of cure, and costs incurred in securing replacement performance.

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

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

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

4.4 Independent Contractor. AGENCY certifies that it is an independent contractor and not an employee or agent of COUNTY, State, or Federal Government as those terms are used in ORS 30.265. Responsibility for all taxes, assessments, and any other charges imposed upon employers shall be the sole responsibility of AGENCY.

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

- i. All tax laws of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318;
- ii. Any tax provisions imposed by a political subdivision of this state that applied to AGENCY, to AGENCY'S property, operations, receipts, or income, or to AGENCY'S performance of or compensation for any work performed by AGENCY;
- iii. Any tax provisions imposed by a political subdivision of this state that applied to AGENCY, or to goods, services, or property, whether tangible or intangible, provided by AGENCY; and
- iv. Any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions.

## 5.0 General Conditions

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

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

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

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

### 5.2.1 Commercial General Liability.

Required by COUNTY       Not required by COUNTY

AGENCY shall obtain, at AGENCY's expense, and keep in effect during the term of this Contract, Commercial General Liability Insurance covering bodily injury, death and property damage on an "occurrence" form in the

amount of **not less than \$1,000,000 per occurrence/ \$2,000,000 general aggregate** for the protection of COUNTY, its officers, elected officials, and employees. This coverage shall include Contractual Liability insurance for the indemnity provided under this Contract and personal injury liability, products and completed operations. This policy(s) shall be primary insurance as respects to the COUNTY. Any insurance or self-insurance maintained by COUNTY shall be excess and shall not contribute to it.

5.2.2 Automobile Liability.

Required by COUNTY       Not required by COUNTY

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

5.2.3 Professional Liability.

Required by COUNTY       Not required by COUNTY

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

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

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

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

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

Certificate holder should be:

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

Certificates of Insurance should be submitted electronically to:

**BHContracts@clackamas.us**

Or by mail to:

**Clackamas County**  
**Attention: Contracts**  
**2051 Kaen Road, Suite 154**  
**Oregon City, OR 97045**

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

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

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

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

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

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

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

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

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

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



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

5.9.1 AGENCY shall:

- i. Make payments promptly, as due, to all persons supplying to AGENCY labor or materials for the performance of the work provided for in this Contract.
- ii. Pay all contributions or amounts due the Industrial Accident Fund from such agency or subcontractor incurred in performance of this Contract.
- iii. Not permit any lien or claim to be filed or prosecuted against COUNTY on account of any labor or material furnished.
- iv. Pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.

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

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

- i. for all overtime in excess of eight (8) hours a day or forty (40) hours in any one week when the work week is five consecutive days, Monday through Friday;
- ii. for all overtime in excess of ten (10) hours in any one day or forty (40) hours in any one week when the work week is four consecutive days, Monday through Friday; and
- iii. for all work performed on Saturday and on any legal holiday specified in ORS 279B.020.

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

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

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

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

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

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

## 6.0 Termination

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

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

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

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

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

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

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

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

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

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

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

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

## 7.0 Notices

IF TO AGENCY:  
Youth M.O.V.E Oregon  
72A Centennial Loop, Suite 150  
Eugene, OR 97401

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

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

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


(signature page follows)

**SIGNATURE PAGE**

By their signatures below, the parties to this Contract agree to the terms, conditions, and content expressed herein.

**YOUTH M.O.V.E. OREGON, LLC**

**CLACKAMAS COUNTY**

  
\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Jill Smith

\_\_\_\_\_  
Date

Health, Housing, and Human Services

Martin Rafferty Executive Dir.  
Name / Title (Printed)

Approved as to Form:

774966-86

Oregon Business Registry #

Kathleen J. Rockett 10/19/17  
County Counsel Date

Non Profit

Entity Type / State of Formation

November 8, 2017

Board of County Commissioners  
Clackamas County

Members of the Board:

Approval of a Professional Services Agreement  
with CompHealth Locum Tenens for temporary physician staff

<b>Purpose/Outcomes</b>	This Agreement is to provide physician staffing for Clackamas County Health Centers Division (CCHCD) clinics that serve community members.
<b>Dollar Amount and Fiscal Impact</b>	The Agreement has a maximum value \$200,000.
<b>Funding Source</b>	Health Centers fee for services. No County General Funds are involved.
<b>Duration</b>	Effective upon signature and terminates on 10/31/18.
<b>Strategic Plan Alignment</b>	1. Efficient and Effective Services. 2. Ensure safe, healthy and secure communities
<b>Previous Board Action</b>	Previous Board Action on May 11, 2017. Agenda item 051117 – A5.
<b>Contact Person</b>	Deborah Cockrell, FQHC Director – 503-742-5495
<b>Contract No.</b>	8561

**BACKGROUND:**

The Clackamas County Health Centers Division (CCHCD) of the Health, Housing & Human Services Department requests the approval of the Professional Service Agreement with CompHealth Locum Tenens for temporary physician staff.

The physician position remains vacant. These services are used to supplement coverage at the CCHCD clinics while vacancies are filled and for vacation coverage. An RFP is being developed, and this Agreement allows no disruption in services. This Agreement is effective upon signature and continues through October 31, 2018. County Counsel approved this Agreement on October 31, 2017.

**RECOMMENDATION:**

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

Respectfully submitted,

Richard Swift, Director  
Health, Housing, and Human Services

# CompHealth

Clackamas County Agreement #8561

## AGREEMENT FOR PHYSICIAN LOCUM TENENS COVERAGE FEES IN SIGNED CONFIRMATION

This Agreement for Physician Locum Tenens Coverage, Fees in Signed Confirmation ("Agreement") by and between Clackamas County acting by and through its Health, Housing and Human Services Department, Health Centers Division ("Client"), with its principal place of business located at 2051 Kaen Road #367, Oregon City, OR 97045, and CompHealth ("CompHealth"), with its principal place of business located at 7259 South Bingham Junction Blvd., Midvale, UT 84047 (collectively the "Parties" and each individually a "Party") is hereby entered into, made and effective as of upon signature ("Effective Date").

### 1. INTENT OF AGREEMENT

Client is in need of physician locum tenens staffing services. CompHealth is a locum tenens staffing company. By this Agreement, the Parties intend that CompHealth will present physicians ("Physician(s)") to provide clinical services to Client on a temporary basis ("Physician Coverage") for the time periods requested by Client ("Assignment(s)"). This Agreement describes the relationship between the Parties with respect to Physician Coverage.

### 2. DUTIES OF COMPHEALTH

**2.A Arrangement of Assignments.** In response to Client's request for Physician Coverage and subject to availability, CompHealth will present Physicians to Client for consideration. Client has the right to reject any Physician so presented. Client may request an unlimited number of Assignments hereunder.

**2.B Confirmations.** After arrangements have been made for a Physician to furnish Physician Coverage in response to a requested Assignment CompHealth will confirm the requested Assignment in writing via an acknowledgment sent to Client ("Confirmation"). Each Confirmation shall include the name and specialty of Physician furnishing services hereunder, the dates and location of the Assignment, the Fees for the Assignment (as defined below), the applicable Contract Buyout Fee (as defined below) and deviations to this Agreement for that Assignment, if any. All Assignments are binding and subject to the cancellation provisions below once Client has signed the Confirmation. Client agrees to return signed Confirmations within two (2) business days of receipt or promptly object to incorrect Confirmations.

**2.C Physicians as Independent Contractors of CompHealth.** Each Physician is an independent contractor of CompHealth. CompHealth shall be responsible for compensating Physicians directly. As independent contractors, CompHealth does not withhold or pay employment taxes for Physicians or furnish Worker's Compensation, unemployment insurance, retirement benefits or health and accident insurance. CompHealth's interest is in facilitating Physician Coverage. CompHealth does not make clinical decisions for Physicians and does not otherwise direct or control the clinical services furnished by Physicians. CompHealth makes no guarantee regarding any Physician and specifically disclaims the same.

**2.D Licensure.** CompHealth shall require each Physician furnishing Physician Coverage hereunder to be appropriately licensed. Physician shall be responsible for maintaining his or her license in good standing, if applicable.

**2.E Assignment of Billing Rights, Chart Documentation.** Fees due from patients as a result of Physician Coverage belong to Client. CompHealth agrees to direct Physicians to promptly execute such documents as are reasonably required to assign billing rights to Client. CompHealth directs Physicians to promptly complete chart documentation. Client shall furnish Physician with orientation to Client's charting processes at the start of an Assignment and furnish Physician adequate time to complete charting during the Assignment. Client shall take all reasonable measures to complete transcription prior to Physician's departure from an Assignment.

**2.F Insurance and Indemnification.** Insurance and indemnification will be provided as outlined in Exhibit A attached hereto and incorporated by reference.

**2.G Certification Statement and Worker's Compensation Exempt Form.** Each Physician shall be directed to complete the Certification Statement and Worker's Compensation Exempt Form attached as Exhibit B prior to the start date of any Assignment.

### 3. DUTIES OF CLIENT

**3.A Client to Furnish Practice Description, Establish Work Schedule.** For each Assignment, Client shall provide a practice description ("Practice Description"). Client agrees to not request Physician to perform work which materially deviates from the Practice Description. Client shall provide each Physician with a reasonable work schedule, the details of which shall be outlined in the Practice Description for each Assignment. Client shall assist Physician and CompHealth, as applicable, with completion of Physician's work records as may be required.

**3.B Client to Furnish Equipment and Supplies, Privileges.** Client acknowledges and agrees that it is responsible for its facilities, equipment, practice methods and environment, protocols, staffing levels, privileging and related matters and that CompHealth does not direct, control nor have any responsibility for such matters. Client shall be responsible to provide each Physician with reasonably maintained and usual and customary equipment and supplies, and a suitable practice environment in compliance with acceptable ethical, medical and legal standards. Client will use all commercially reasonable efforts to complete Physician's privileges at Client's worksite prior to the Assignment start date. Client is responsible for the costs associated with obtaining privileges for each Physician that furnishes Physician Coverage hereunder.

**3.C Housing & Travel Arrangements.** Unless otherwise specified in the Confirmation, for each Assignment CompHealth shall make arrangements for and provide: a) reasonable living accommodations, not to exceed GSA rate applicable to Client as listed at the time such arrangements are made; b) reasonable round trip transportation to and from the Assignment, including applicable baggage fees as outlined in the Confirmation for each Assignment; and c) local transportation ("Travel and Housing", which definition shall include a pro rata allocation for automobile insurance). Client agrees to reimburse CompHealth for the cost of Travel and Housing. The Parties may agree on a per Assignment basis that Client shall make arrangements for and provide Travel and Housing at its cost (except that in all cases Client shall reimburse CompHealth for mileage at the current standard IRS mileage rate when Physician uses his or her own personal automobile). Agreements for Client to provide Travel and Housing shall be stated in the Confirmation for the related Assignment. Notwithstanding the foregoing, Client shall not be responsible for daily mileage costs associated with traveling to and from the Assignment.

**3.D Practice Standards.** Client shall comply with all applicable Joint Commission standards (if so accredited, Client need not comply with Joint Commission standards if not so accredited), OSHA, federal, state, local and other professional standards, laws, rules and regulations relating to patient care and work environment. CompHealth will direct Physicians to comply with Client's policies and procedures and all applicable professional standards, laws, rules, regulations and Joint Commission standards if Client is so accredited. Client is responsible to inform Physicians of Client policies and procedures, including Joint Commission standards, if so accredited.

**3.E Risk Management and Incident Reporting Cooperation.** Client agrees to cooperate with CompHealth's reasonable risk management and quality assurance activities. Should Client become aware of an incident or claim which may give rise to a claim under CompHealth's professional liability policy of insurance, Client agrees to promptly notify CompHealth of the nature of the claim and report all necessary information related to the claim. If Client is itself a staffing company or group that provides medical coverage to facilities, Client agrees to require its clients to agree to promptly notify Client and CompHealth of any incidents or claims which may give rise to a claim under CompHealth's professional liability policy of insurance. Client understands and agrees that failure to report an incident may result in loss of coverage. The obligations of this Paragraph 3.E shall survive any termination of this Agreement.

**3.F Change in Worksite Location.** Should Client wish to change the location of the worksite during any Assignment, it agrees to secure CompHealth's advance permission. In the event that Client wishes to change the location of the worksite, and such change results in the Physician having to commute more than thirty (30) minutes or thirty (30) miles from Physician's housing accommodations, then the Parties shall mutually agree upon a resolution that fairly compensates CompHealth and Physician for the change, which may include but is not necessarily limited to charges for Costs (as defined in Paragraph 5.A below) incurred in securing housing accommodations closer to the new worksite.

#### **4. FEES**

**4.A Fees.** Client shall pay CompHealth fees ("Fee(s)" or "Fee Schedule") for Physician Coverage for each Assignment as specified in the Confirmation for that Assignment.

**4.B Prepayment.** CompHealth reserves the right to require pre-payment during the Term of this Agreement if, in its sole discretion, Client's credit and payment history warrant doing so. CompHealth will bill actual charges and reconcile those charges against any pre-payments made by Client. Upon reconciliation should a credit balance result, CompHealth will, at its discretion, either refund the difference or apply the credit towards Fees and/or Travel and Housing costs related to Assignment(s) scheduled hereunder.

**4.C Invoicing.** Fees are invoiced bi-weekly. Fees are determined based upon Physician's work record. Invoices will include Housing and Travel charges incurred, which shall be evidenced by a receipt to be included with such invoice, if applicable, and other charges agreed upon in the Confirmation, if any. It is understood that Travel and Housing charges may not appear on invoices immediately after the charges have been incurred and will instead appear when CompHealth is billed for these charges by its vendors. Client agrees to pay all applicable sales tax and/or reimburse CompHealth for all applicable excise and gross receipts type taxes. Payment for each two-week period is due within thirty (30) days from the invoice date.

**4.D Holiday Premium.** Intentionally omitted.

## **5. TERM, CANCELLATION AND REMOVAL OF PHYSICIAN**

**5.A Cancellation of an Assignment.** For all confirmed Assignments (as evidenced by Client's signature on the Confirmation for the related Assignment), Client must provide to CompHealth written and verbal notice of cancellation of an Assignment at least thirty (30) days in advance. Written notice shall be deemed to be received three (3) days after Client sends such notice to CompHealth. In the event that Client provides less than thirty (30) days' notice of cancellation Client shall be responsible as liquidated damages but not as a penalty for payment of the total Fee due for the period covered by the Assignment up to a maximum of thirty (30) calendar days ("Damages"). Client shall also be responsible for payment of other actual fees and charges that may result from cancellation of an Assignment, including but not limited to Travel and Housing costs ("Costs") in addition to any Fees for Physician Coverage actually performed. In the event that an Assignment is scheduled less than thirty (30) days in advance and Client cancels, Client shall be responsible for payment of the total Fee due for the period covered by the Assignment up to a maximum of thirty (30) calendar days (also "Damages") as well as Costs that may result from cancellation as described in this Paragraph 5.A. Notwithstanding the foregoing, and provided that Client communicated its minimum credentialing and/or privileging requirements in writing at the time it requested an Assignment, in the event that a Physician is not granted privileges required for any Assignment or does not meet Client's minimum credentialing requirements, then Client shall not be liable for any Damages or Costs associated with cancellation. Client may be requested to provide documentation evidencing that Physician does not meet Client credentialing requirements or was not granted privileges.

**5.B Removal of Physician for Reasons Relating to Competence.** Should Client determine that a Physician must be removed from an Assignment for reasons related to demonstrated professional incompetence or professional misconduct at any time during the Assignment, Client shall communicate to CompHealth the reason for the removal request in advance of removal and cooperate with CompHealth in providing necessary risk management information. CompHealth shall verify and assess the reason for the requested removal and promptly notify Physician of the removal. CompHealth reserves the right to first counsel Physician and provide an opportunity for Physician to correct any deficiencies prior to any such removal if, in Client's reasonable discretion, there is no risk of patient endangerment. CompHealth will not remove a Physician from an Assignment for discriminatory reasons.

**5.C Inability to Fill Requests for Physician Coverage.** CompHealth does not guarantee the ability to fill Assignments requested hereunder. In the event a Physician for a binding Assignment cancels, CompHealth shall exercise best efforts to present a replacement Physician but shall have no other liability.

**5.D Termination of Agreement.** Either Party may terminate this Agreement or any Assignment with thirty (30) days' notice, subject to Paragraph 5.A above. Termination by Client must be in writing. In the event of Client's failure to pay monies due hereunder or other material breach, CompHealth may immediately terminate this Agreement. The obligation to pay monies due under this Agreement shall survive termination.

**5.E Term.** The term of this Agreement ("Term") shall begin on the Effective Date and continue for a period of one (1) year. The Parties agree that the maximum Agreement value shall not exceed \$200,000.00.

## **6. CONTRACT BUYOUT**

**6.A Client Offer of Position to Physician.** Client agrees that should it, or any third party introduced to Physician by Client (when the introduction has been made for the purpose of enabling the third party to recruit Physician for Work or when the third party is a facility to whom Client has furnished Physician's services), offer Work (as defined below) to any Physician introduced to Client by CompHealth for a period of twenty-four (24) months after the first date of introduction to Client or, if Physician has furnished Physician Coverage for Client, for a period of twenty-four (24) months after the last day of Physician's last Assignment with Client under this Agreement, and said offer is accepted, then Client shall pay to CompHealth as consideration for the introduction a contract buyout fee in the amount as listed in the related Confirmation ("Contract Buyout Fee") per Physician so hired or engaged, regardless of whether or not that Physician actually performed work for Client through CompHealth. This Paragraph 6.A shall survive termination of this Agreement. Client's decision to offer a Physician Work hereunder shall exclusively be Client's and CompHealth shall bear no liability for Client's hiring decision. Should CompHealth fail to issue a Confirmation or fail to list a Contract Buyout Fee in a Confirmation, the Contract Buyout Fee shall be the current market rate as determined by CompHealth.

**6.B Client Notification of Previous Knowledge of Physician.** Client must inform CompHealth in writing within two (2) business days if any Physician presented by CompHealth is already known to Client through means other than CompHealth. If Client fails to so notify CompHealth, CompHealth shall be deemed to have made the introduction.

**6.C Contract Buyout Fee Payment Terms.** If a Physician accepts Work, the Contract Buyout Fee must be paid in full prior to the first day the Physician performs services in the new position. Fees shall be assessed for Physician Coverage up to the date the Contract Buyout Fee is paid. Once the Contract Buyout Fee is paid for any Physician under this Agreement, CompHealth shall not assess further Fees for that Physician except for Client's obligation to reimburse CompHealth for outstanding Travel and Housing costs, if any.

**6.D Definition of Work.** For purposes of this Agreement, "Work" shall mean an offer to work, said offer being either verbal or written, on a part or full time basis, temporary or permanent, directly as an employee or independent contractor or indirectly when arranged through another staffing company, medical group or other entity.



## 7. STANDARDS OF SERVICE

**7.A Medicare and Medicaid Fraud Representation.** Each Party represents that it is not currently under investigation or debarred by any state or federal governmental agency for Medicare or Medicaid fraud. Further, each Party represents that to the best of its reasonable knowledge its currently practicing staff (to include for CompHealth the Physicians and for Client its physicians and staff, hereinafter collectively "Staff") are not under sanction by a state or federal governmental agency, that its Staff are not currently excluded from participating in the Medicare or Medicaid programs, and that no such proceeding is pending. In the event an investigation of a Party is initiated by any state or federal governmental agency, or it is discovered that the representations contained herein are false, the non-breaching Party reserves the right to immediately terminate this Agreement. It is understood and agreed to by the Parties that the ability to verify if any Staff are currently debarred is dependent upon the accuracy of the information contained on the OIG list of excluded persons and the representations of each individual Staff.

**7.B Health Insurance Portability and Accountability Act of 1996 (HIPAA).** In order to carry out its insurance obligations hereunder and for risk management purposes, CompHealth occasionally may receive or request patient information. CompHealth may be deemed to be a business associate as that term is defined under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"). As a business associate, CompHealth agrees to: a) implement appropriate safeguards and maintain individually identifiable patient health information ("Protected Health Information" or "PHI", including electronic PHI) as required by HIPAA; b) use and disclose only the minimum necessary PHI; c) use and disclose PHI only as permitted under HIPAA for legal, management and administrative purposes in connection with treatment, payment and healthcare operations or as required by law; d) promptly notify Client of disclosures of PHI in violation of HIPAA; e) promptly make PHI available to Client and patients upon request. CompHealth acknowledges that PHI received from Client shall remain Client's property and that within ten (10) business days of Client's request or upon termination of this Agreement, said PHI shall be returned to Client or be destroyed, if Client so directs. If such return or destruction is infeasible, CompHealth shall use such PHI only for purposes that make such return or destruction infeasible and the provisions of this Agreement shall survive with respect to such PHI.

**7.C Availability of Books and Records.** To assist Client in verification of Medicare and Medicaid reimbursable costs, and in order to fulfill HIPAA requirements, CompHealth agrees for the time period required by law after furnishing services hereunder to make available to Client and appropriate governmental authorities at CompHealth corporate offices such agreements, books, documents, and records as are required by law.

## 8. GENERAL

**8.A Interest and Attorney's Fees.** *Intentionally omitted.*

**8.B Patient Compensation Funds.** *Intentionally omitted.*

**8.C Entire Agreement.** This Agreement contains the entire agreement between CompHealth and Client relating to Physician Coverage as herein arranged. This Agreement supersedes all previous contracts and all prior agreements between the Parties relating to Physician Coverage. This Agreement may be limited to a particular department or division of Client, if so indicated, in which case this is the entire agreement between the Parties relating to Physician Coverage for that particular department or division only and supersedes all prior agreements relating to that particular department or division only. Confirmations hereunder, which shall be in writing and shall only require Client's signature, may function to amend this Agreement on a per Assignment basis only. All other amendments to this Agreement must be in writing and signed by both Parties. In the event of a conflict between this Agreement and any Confirmation, the Confirmation shall control with respect to the Assignment covered by the Confirmation only.

**8.D Notices.** For all notices required hereunder, including Confirmations, acceptable forms of communication include facsimile, electronic mail or letter sent via U.S. mail or express delivery. Notices communicated via U.S. mail or express delivery shall be effective if sent to the physical address listed in the introductory paragraph of this Agreement or such other address as may be designated in writing. Notices communicated via facsimile and electronic mail shall be effective if sent to the facsimile number and electronic mail address used by the Parties in the regular course of dealing hereunder.

**8.E Severability, Successors, Discrimination, Governing Law.** If any provision of this Agreement is deemed to be invalid by a court of competent jurisdiction, all other provisions will remain effective. Failure to exercise or enforce any right under this Agreement shall not be construed to be a waiver. This Agreement shall inure to the benefit of and bind each Party's successors in interest. Neither Party shall discriminate against any Physician on the basis of race, age, gender, disability, religion, national origin, military/veteran status, pregnancy, sexual orientation, or any other classification protected by law. This Agreement shall be governed by the laws of the State of Oregon.

**8.F Client as Staffing Company or Medical Group Furnishing Clinical Services to Facilities.** In the event that Client is itself a staffing company or medical group using CompHealth Physicians to furnish clinical services to facilities, Client agrees to require its clients to agree to the provisions of Paragraphs 3.A, 3.B, 3.D, 3.E and 7.A of this Agreement. The fact that Client is itself a staffing company or medical group using CompHealth Physicians to provide clinical services to facilities shall not limit, modify or reduce any of Client's obligations hereunder.

**8.G Facsimile Signature Deemed Original.** A facsimile signature hereon shall have the same effect as an original.

**8.H Limitation of Liability.** In no event shall either Party be liable for any indirect, exemplary, incidental, special, punitive or consequential damages (including damages to business reputation, lost business or lost profits) however caused, arising from or relating to the Agreement or any breach hereof, even if that Party has been advised of the

possibility or likelihood of such damages. The foregoing exclusions and limitations of liability shall not apply with regard to Client's liability for breach of any obligations outlined in Sections 3 and 5.

**8.1 Handwritten Revisions, Additional Terms or Purchase Orders.** Handwritten revisions made to this Agreement which are not initialed and dated by CompHealth and Client will be deemed to have been rejected. The terms and conditions of any purchase order or other document issued by Client in connection with this Agreement and which are in addition to or inconsistent with the terms and conditions of this Agreement shall not be binding upon CompHealth and shall not be deemed to modify this Agreement unless the same is executed by CompHealth and Client by a duly authorized representative.

The Parties acknowledge by their signatures below that they have read, understand and agree to the foregoing Agreement for Physician Locum Tenens Coverage, Fees in Signed Confirmation. By signature below, the undersigned represents that he or she has authority to bind his or her respective Party to the foregoing.

CLACKAMAS COUNTY ACTING BY AND THROUGH ITS  
HEALTH, HOUSING AND HUMAN SERVICES  
DEPARTMENT, HEALTH CENTERS DIVISION

COMPHEALTH

By: \_\_\_\_\_

By:  \_\_\_\_\_

Title: \_\_\_\_\_

Title: Manager

Date: \_\_\_\_\_

Date: 10.31.17

Printed Name: \_\_\_\_\_

Printed Name: Mark Austen

\_\_\_\_\_

JDE# 1773109

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MARC GONZALES  
DIRECTOR

DEPARTMENT OF FINANCE

PUBLIC SERVICES BUILDING

2051 KAEN ROAD | OREGON CITY, OR 97045

November 8, 2017

Board of County Commissioners  
Clackamas County

Members of the Board:

Approval of a Resolution for Clackamas County for  
Transfer of Appropriations for Fiscal Year 2017-2018

Purpose/Outcome	Budget change FY 2017-2018
Dollar Amount and Fiscal Impact	No fiscal impact. Transfer of existing appropriations.
Funding Source	Includes Interfund Transfers
Duration	July 1, 2017-June 30, 2018
Previous Board Action/Review	Budget Adopted June 29, 2017 and amended on August 10 and October 12, 2017
Strategic Plan Alignment	Build public trust through good government
Contact Person	Diane Padilla, 503-742-5425

**BACKGROUND:** Periodically during the fiscal year it is necessary to transfer appropriations to more accurately reflect the changing requirements of the operating departments.

Transfers are a method of moving budgeted appropriations during the fiscal year as required by state budget law per ORS 294.463. There is no financial impact incurred as a result of transfers as appropriations for these amounts have been accomplished through the initial budget process.

The attached resolution accomplishes the above mentioned changes as requested by the following operating departments in keeping with a legally accurate budget.

The Building Code Fund is transferring from contingency and budgeting for code compliance services costs.

The Social Services Fund is re-aligning revenues and program costs to better reflect actuals.

**RECOMMENDATION:**

Staff respectfully recommends adoption of the attached Resolution Order and Exhibit A in keeping with a legally accurate budget.

Sincerely,

Diane Padilla  
Budget Manager

In the Matter of Providing Authorization  
To Transfer Appropriations Within  
the Fiscal Year 2017-18

Resolution No.

WHEREAS, during the fiscal year changes in appropriated expenditures may become necessary and appropriations may need to be increased, decreased or transferred from appropriation category to another;

WHEREAS, transfer of appropriations for the period of July 1, 2017 through June 30, 2018, inclusive is necessary to continue to prudently manage the distribution of those expenditures for the needs of Clackamas County residents;

WHEREAS; the funds being adjusted are:

- . Building Codes Fund
- . Social Services Fund;

It further appearing that it is in the best interest of the County to approve this transfer of appropriations for the period of July 1, 2017 through June 30, 2018.

BE RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS THAT:

Pursuant to its authority under OR 294.463, transfer of appropriation within the fiscal year budget is authorized as shown in the attached Exhibit A which by this reference is made a part of this Resolution.

Dated this \_\_\_\_ day of \_\_\_\_\_, 2017

**CLACKAMAS COUNTY BOARD OF COMMISSIONERS**

\_\_\_\_\_  
Chair

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

**TRANSFER REQUEST**  
**Exhibit A**  
**November 8, 2017**

**BUILDING CODES FUND**

Expenses:	
General Government	\$ 91,177
Not Allocated to Organizational Unit	
Contingency	(91,177)
Total Expenditures	<u>\$ -</u>

Building Code Fund is transferring from contingency and budgeting for code compliance services costs.

**SOCIAL SERVICES FUND**

Expenses:	
Health and Human Services	\$ 10,770
Not Allocated to Organizational Unit	
Special Payments	(10,770)
Total Expenditures	<u>\$ -</u>

Social Services Fund is re-aligning revenues and program costs to better reflect actuals.



MARC GONZALES  
DIRECTOR

DEPARTMENT OF FINANCE

PUBLIC SERVICES BUILDING

2051 KAEN ROAD | OREGON CITY, OR 97045

November 8, 2017

Board of County Commissioners  
Clackamas County

Members of the Board:

Approval of a Resolution for Clackamas County for Budgeting of  
New Specific Purpose Revenue for Fiscal Year 2017-2018

Purpose/Outcome	Budget change for Clackamas County FY 2017-2018
Dollar Amount and Fiscal Impact	The effect is an increase in appropriations of \$662,748.
Funding Source	Includes State Operating Revenue and Charge for Services
Duration	July 1, 2017-June 30, 2018
Previous Board Action/Review	Budget Adopted June 29, 2017 and amended August 10 and October 12, 2017
Strategic Plan Alignment	Build public trust through good government
Contact Person	Diane Padilla, 503-742-5425

**BACKGROUND:**

Each fiscal year it is necessary to appropriate additional expenditures and allocate additional sources of revenue to more accurately meet the changing requirements of the operating departments of the County. The attached resolution reflects those changes that departments have requested which pursuant to O.R.S. 294.338, qualify as grants in trust for specific purposes in keeping with legally accurate budget.

The Social Services Fund is recognizing additional state revenue for veterans and budgeting to add a full-time veterans services officer position.

The Clackamas Health Centers Fund is recognizing revenue from Medicaid Wrap and Fee for Services and budgeting to add a full-time dentist, 3 full-time dental assistants and a part-time dental hygienist to increase staffing at the Oregon City Dental Clinic.

The effect of this Board Order is an increase in appropriations of \$662,748 including new revenues as detailed below:

State Operating Grant Revenue	\$ 85,894.
Charge for Services	<u>576,854.</u>
Total Recommended	<u>\$ 662,748.</u>

**RECOMMENDATION:**

Staff respectfully recommends adoption of the attached Resolution Order and Exhibit A in keeping with a legally accurate budget.

Sincerely,

Diane Padilla  
Budget Manager



In the Matter of Providing  
Authorization to Appropriate Grants  
For Specific Purposes within the Fiscal  
Year 2017-18

Resolution No.

WHEREAS, during the fiscal year changes in appropriated expenditures may become necessary and appropriations may need to be increased, decreased or transferred from one appropriation category to another;

WHEREAS, appropriation of grants entrusted for specific purposes within Clackamas County budget for the period of July 1, 2017 through June 30, 2018, inclusive is necessary to authorize the expenditure of funds, for the needs of Clackamas County residents;

WHEREAS; the fund being adjusted is:

- . Social Services Fund
- . Clackamas Health Centers Fund;

It further appearing that it is in the best interest of the County to approve these grants entrusted for specific purpose of appropriations for the period of July 1, 2017 through June 30, 2018.

BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS THAT:

Pursuant to its authority under OR 294.338, appropriation of specific purpose grants is authorized as shown in the attached Exhibit A which by this reference is made a part of this Resolution.

Dated this \_\_\_\_ day of \_\_\_\_\_, 2017

**CLACKAMAS COUNTY BOARD OF COMMISSIONERS**

\_\_\_\_\_  
Chair

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

**NEW SPECIFIC PURPOSE REVENUE REQUESTS**

**Exhibit A**

**November 8, 2017**

Recommended items by revenue source:

State Operating Grants	\$ 85,894
Charge for Services	576,854
Total Recommended	<u>\$ 662,748</u>

**SOCIAL SERVICES FUND**

Revenues:

State Operating Grants	\$ 85,894
Total Revenue	<u>\$ 85,894</u>

Expenses:

Health and Human Services	\$ 85,894
Total Expenditures	<u>\$ 85,894</u>

Social Services Fund is recognizing additional state revenue for veterans and budgeting to add a full-time veterans services officer position.

**CLACKAMAS HEALTH CENTERS FUND**

Revenues:

Charge for Services	\$ 576,854
Total Revenue	<u>\$ 576,854</u>

Expenses:

Health and Human Services	\$ 576,854
Total Expenditures	<u>\$ 576,854</u>

Clackamas Health Centers Fund is recognizing revenue from Medicaid Wrap and Fee for Services and budgeting to add a full-time dentist, 3 full-time dental assistants and a part-time dental hygienist to increase staffing at the Oregon City Dental Clinic.



**GEORGE MARLTON, JD**  
PROCUREMENT DIVISION DIRECTOR

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

Board of County Commissioners  
Clackamas County

Members of the Board:

**Approval of Contracts with: Carlson Testing, Inc., Columbia West Engineering, Inc.,  
KPF, Inc., Materials Testing and Inspection, Inc., and Professional Service Industries, Inc., for  
Materials Testing and Special Inspection Services**

<b>Purpose/Outcomes</b>	Establish County-wide contracts for use by County departments and special districts for as-needed services.
<b>Dollar Amount and Fiscal Impact</b>	\$150,000.00 annually for two years With a \$300,000.00 total contract value
<b>Funding Source</b>	Will vary based on project and department
<b>Duration</b>	From execution through June 30, 2019
<b>Previous Board Action</b>	None
<b>Strategic Plan Alignment</b>	Procurement is to provide purchasing, solicitation, contracting consulting services to County departments, agencies and districts so they can obtain goods and services through an effective and compliant process.
<b>Contact Person</b>	George Marlton, Director Procurement Division 503-742-5444
<b>Contract No.</b>	N/A

**BACKGROUND:**

Multiple departments and special districts of the County frequently require the services from professional service firms to conduct material testing and inspection services related to public improvement projects. In the past, each department researched available firms, conducted a procurement, and then requested a contract from Procurement. In an effort to streamline the procurement and contracting process, Procurement conducted a County-wide procurement with the intent to establish optional price agreements with multiple firms to provide services on an as-needed basis for departments and special districts.

On August 17, 2017, Procurement issued a Request for Quotes #2017-68 for Materials Testing and Special Inspection Services. Procurement received six (6) quotes from the following firms: Carlson Testing, Columbia West Engineering, KPF, Materials Testing and Inspection, Mayes Testing Engineers, and Professional Service Industries. After review of the quotes, Procurement determined that all quoters except Mayes Testing Engineers, were responsive and responsible vendors, however. The proposed contracts will have an effective date from the date of approval by the Board through June 30, 2019. Each contract has an annual maximum compensation cap of \$150,000. Departments and special districts will be able to utilize the optional price agreements by issuance of an official County purchase order for specific projects. The costs of the services for the specific projects will be encumbered at the time the purchase order is issued.

County Counsel has reviewed and approved the contracts.

**RECOMMENDATION:**

Staff respectfully recommends approval of the contracts with Carlson Testing, Inc., Columbia West Engineering, Inc., KPFF, Inc., Materials Testing and Inspection, Inc., and Professional Service Industries, Inc., for the purposes of Materials Testing and Special Inspections. Staff further recommends that Board Delegate authority to the Clackamas County Procurement Director to sign agreements necessary in the ongoing performance of this agreement for a two (2) year period.

Sincerely,

George Marlton  
Director, Clackamas County Procurement Division

Placed on the \_\_\_\_\_ agenda by Procurement



CLACKAMAS COUNTY
PERSONAL/PROFESSIONAL SERVICES CONTRACT

This Personal/Professional Services Contract (this "Contract") is entered into between Carlson Testing, Inc. ("Contractor"), and Clackamas County, a political subdivision of the State of Oregon ("County").

ARTICLE I.

1. Effective Date and Duration. This Contract shall become effective upon signature of both parties. Unless earlier terminated or extended, this Contract shall expire on June 30, 2019. However, such expiration shall not extinguish or prejudice the County's right to enforce this Contract with respect to: (a) any breach of a Contractor warranty; or (b) any default or defect in Contractor performance that has not been cured.

2. Scope of Work. Contractor will provide the following personal/professional services: Materials Testing and Special Inspection Services. ("Work"), further described in Exhibit A.

3. Consideration. The County agrees to pay Contractor, from available and authorized funds, a sum not to exceed \$150,000.00 annually with a maximum contract compensation of \$300,000.00, for accomplishing the Work required by this Contract. If any interim payments to Contractor are made, such payments shall be made only in accordance with the schedule and requirements in Exhibit A.

4. Travel and Other Expense. Authorized: [ ] Yes [x] No
If travel expense reimbursement is authorized in this Contract, such expense shall only be reimbursed at the rates in the County Contractor Travel Reimbursement Policy, hereby incorporated by reference and found at: http://www.clackamas.us/bids/terms.html. Travel expense reimbursement is not in excess of the not to exceed consideration.

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

6. Contractor Data.

Carlson Testing Inc.
Address: 8430 SW Hunziker
Tigard, OR 97223
Contractor Contract Administrator: Steve Leach
Phone No.: 503-684-0953
Email: sleach@carlsonesting.com
MWESB Certification: [ ] DBE # [ ] MBE # [ ] WBE # [ ] ESB #

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

## ARTICLE II.

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

suit may be brought in a federal forum, it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon.

7. **HAZARD COMMUNICATION.** Contractor shall notify County prior to using products containing hazardous chemicals to which County employees may be exposed. Products containing hazardous chemicals are those products defined by Oregon Administrative Rules, Chapter 437. Upon County's request, Contractor shall immediately provide Material Safety Data Sheets for the products subject to this provision.
8. **INDEMNITY, RESPONSIBILITY FOR DAMAGES.** Contractor shall be responsible for all damage to property, injury to persons, and loss, expense, inconvenience, and delay which may be caused by, or result from, the conduct of Work, or from any act, omission, or neglect of Contractor, its subcontractors, agents, or employees. The Contractor agrees to indemnify, hold harmless and defend the County, and its officers, elected officials, agents and employees from and against all claims and actions, and all expenses incidental to the investigation and defense thereof, arising out of or based upon damage or injuries to persons or property caused by the errors, omissions, fault or negligence of the Contractor or the Contractor's employees, subcontractors, or agents.
9. **INDEPENDENT CONTRACTOR STATUS.** The service(s) to be rendered under this Contract are those of an independent contractor. Although the County reserves the right to determine (and modify) the delivery schedule for the Work to be performed and to evaluate the quality of the completed performance, County cannot and will not control the means or manner of Contractor's performance. Contractor is responsible for determining the appropriate means and manner of performing the Work. Contractor is not to be considered an agent or employee of County for any purpose, including, but not limited to: (A) The Contractor will be solely responsible for payment of any Federal or State taxes required as a result of this Contract; (B) This Contract is not intended to entitle the Contractor to any benefits generally granted to County employees, including, but not limited to, vacation, holiday and sick leave, other leaves with pay, tenure, medical and dental coverage, life and disability insurance, overtime, Social Security, Workers' Compensation, unemployment compensation, or retirement benefits (except insofar as benefits are otherwise required by law if the Contractor is presently a member of the Oregon Public Employees Retirement System); and (C) If the Contractor has the assistance of other persons in the performance of this Contract, and the Contractor is a subject employer, the Contractor shall qualify and remain qualified for the term of this Contract as an insured employer under ORS Chapter 656. (Also see Exhibit C)

At present, the Contractor certifies that he or she, if an individual is not a program, County or Federal employee. The Contractor, if an individual, certifies that he or she is not a member of the Oregon Public Employees Retirement System.

10. **INSURANCE.** Contractor shall provide insurance as indicated on **Exhibit B**, attached hereto and by this reference made a part hereof. Insurance policies, which cannot be excess to a self-insurance program, are to be issued by an insurance company authorized to do business in the State of Oregon.
11. **LIMITATION OF LIABILITIES.** Except for liability arising under or related to Section 14 or 21(B), neither party shall be liable for (i) any indirect, incidental, consequential or special damages under this Contract or (ii) any damages of any sort arising solely from the termination of this Contract in accordance with its terms. This Contract is expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10, of the Oregon Constitution, and is contingent upon funds being appropriated therefore. Any provisions herein which would conflict

with law are deemed inoperative to that extent.

- 12. NOTICES.** Except as otherwise expressly provided in this Contract, any communications between the parties hereto or notices to be given hereunder shall be given in writing by personal delivery, email, or mailing the same, postage prepaid, to the County at: Clackamas County Procurement, 2051 Kaen Road, Oregon City, OR 97045, or [procurement@clackamas.us](mailto:procurement@clackamas.us), or to Contractor or at the address or number set forth in Section 1 of this Contract, or to such other addresses or numbers as either party may hereafter indicate. Any communication or notice so addressed and mailed shall be deemed to be given five (5) days after mailing. Any communication or notice by personal delivery shall be deemed to be given when actually delivered.
- 13. OWNERSHIP OF WORK PRODUCT.** All work product of Contractor that results from this Contract (the "Work Product") is the exclusive property of County. County and Contractor intend that such Work Product be deemed "work made for hire" of which County shall be deemed the author. If for any reason the Work Product is not deemed "work made for hire," Contractor hereby irrevocably assigns to County all of its right, title, and interest in and to any and all of the Work Product, whether arising from copyright, patent, trademark or trade secret, or any other state or federal intellectual property law or doctrine. Contractor shall execute such further documents and instruments as County may reasonably request in order to fully vest such rights in County. Contractor forever waives any and all rights relating to the Work Product, including without limitation, any and all rights arising under 17 USC § 106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use or subsequent modifications.
- 14. REPRESENTATIONS AND WARRANTIES.** Contractor represents and warrants to County that (A) Contractor has the power and authority to enter into and perform this Contract; (B) this Contract, when executed and delivered, shall be a valid and binding obligation of Contractor enforceable in accordance with its terms; (C) the Work under this Contract shall be performed in a good and workmanlike manner and in accordance with the highest professional standards; and (D) Contractor shall at all times during the term of this Contract, be qualified, professionally competent, and duly licensed to perform the Work. The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.
- 15. SURVIVAL.** All rights and obligations shall cease upon termination or expiration of this Contract, except for the rights and obligations set forth in Article II, Paragraphs 1, 6, 8, 11, 13, 14, 15, and 21.
- 16. SEVERABILITY** If any term or provision of this Contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Contract did not contain the particular term or provision held to be invalid.
- 17. SUBCONTRACTS AND ASSIGNMENTS.** Contractor shall not enter into any subcontracts for any of the Work required by this Contract, or assign or transfer any of its interest in this Contract by operation of law or otherwise, without obtaining prior written approval from the County. In addition to any provisions the County may require, Contractor shall include in any permitted subcontract under this Contract a requirement that the subcontractor be bound by this Article II, Paragraphs 1, 8, 13, 15, and 27 as if the subcontractor were the Contractor. County's consent to any subcontract shall not relieve Contractor of any of its duties or obligations under this Contract.
- 18. SUCCESSORS IN INTEREST.** The provisions of this Contract shall be binding upon and shall inure to the benefit of the parties hereto, and their respective authorized successors and assigns.



**19. TAX COMPLIANCE CERTIFICATION.** Contractor must, throughout the duration of this Contract and any extensions, comply with all tax laws of this state and all applicable tax laws of any political subdivision of this state. Any violation of this section shall constitute a material breach of this Contract. Further, any violation of Contractor's warranty in this Contract that Contractor has complied with the tax laws of this state and the applicable tax laws of any political subdivision of this state also shall constitute a material breach of this Contract. Any violation shall entitle County to terminate this Contract, to pursue and recover any and all damages that arise from the breach and the termination of this Contract, and to pursue any or all of the remedies available under this Contract, at law, or in equity, including but not limited to: (A) Termination of this Contract, in whole or in part; (B) Exercise of the right of setoff, and withholding of amounts otherwise due and owing to Contractor, in an amount equal to County's setoff right, without penalty; and (C) Initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief. County shall be entitled to recover any and all damages suffered as the result of Contractor's breach of this Contract, including but not limited to direct, indirect, incidental and consequential damages, costs of cure, and costs incurred in securing replacement performance. These remedies are cumulative to the extent the remedies are not inconsistent, and County may pursue any remedy or remedies singly, collectively, successively, or in any order whatsoever.

The Contractor represents and warrants that, for a period of no fewer than six calendar years preceding the effective date of this Contract, Contractor has faithfully complied with: (A) All tax laws of this state, including but not limited to ORS 305.620 and ORS Chapters 316, 317, and 318; (B) Any tax provisions imposed by a political subdivision of this state that applied to Contractor, to Contractor's property, operations, receipts, or income, or to Contractor's performance of or compensation for any Work performed by Contractor; (C) Any tax provisions imposed by a political subdivision of this state that applied to Contractor, or to goods, services, or property, whether tangible or intangible, provided by Contractor; and (D) Any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions.

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

**21. REMEDIES.** (A) In the event of termination pursuant to Article II Section 20(A), (B)(i), or (D), Contractor's sole remedy shall be a claim for the sum designated for accomplishing the Work

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

- 22. NO THIRD PARTY BENEFICIARIES.** County and Contractor are the only parties to this Contract and are the only parties entitled to enforce its terms. Nothing in this Contract gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Contract.
- 23. TIME IS OF THE ESSENCE.** Contractor agrees that time is of the essence in the performance this Contract.
- 24. FOREIGN CONTRACTOR.** If the Contractor is not domiciled in or registered to do business in the State of Oregon, Contractor shall promptly provide to the Oregon Department of Revenue and the Secretary of State, Corporate Division, all information required by those agencies relative to this Contract. The Contractor shall demonstrate its legal capacity to perform these services in the State of Oregon prior to entering into this Contract.
- 25. FORCE MAJEURE.** Neither County nor Contractor shall be held responsible for delay or default caused by fire, terrorism, riot, acts of God, or war where such cause was beyond, respectively, County's or Contractor's reasonable control. Contractor shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall upon the cessation of the cause, diligently pursue performance of its obligations under this Contract.
- 26. WAIVER.** The failure of County to enforce any provision of this Contract shall not constitute a waiver by County of that or any other provision.
- 27. COMPLIANCE.** Pursuant to the requirements of ORS 279B.020 and 279B.220 through 279B.235 and Article XI, Section 10, of the Oregon Constitution, the following terms and conditions are made a part of this Contract:
- (A) Contractor shall: (i) Make payments promptly, as due, to all persons supplying to the Contractor labor or materials for the prosecution of the Work provided for in this Contract; (ii) Pay all contributions or amounts due the Industrial Accident Fund from such Contractor or subcontractor incurred in the performance of this Contract; (iii) Not permit any lien or claim to be filed or prosecuted against the County on account of any labor or material furnished.
- (B) If the Contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to the Contractor or a subcontractor by any person in connection with this Contract as such claim becomes due, the proper officer representing the County may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due to the Contractor by reason of this Contract.



**EXHIBIT A**  
**PERSONAL/PROFESSIONAL SERVICES CONTRACT**

**SCOPE OF WORK**

Contractor shall provide Materials Testing and Special Inspection Services on an as-needed basis described in RFQ 2017-68, hereby attached as exhibit D.

The services under this Contract are on an “on-call” or “as-needed basis,” no Work may be performed until a detailed task scope of work is developed and agreed to by the parties for a specific project. Each task scope of work must minimally include: a detailed description of services to be provided, a schedule of key milestones for completion of the task, the maximum fee for completion of the task, and any obligations of the County to complete the task. No task scope of work may commence until an amendment is made to this Contract or an official County Purchase Order is issued and that specifically incorporates by reference this Contract and the agreed upon task scope of work. No task scope of work may modify this Contract and its terms and conditions unless an amendment is made to this Contract.

**CONSIDERATION**

- a. Consideration Rates – Time and Material (rates are described in exhibit E)
- b. Payment for all Work performed under this Contract shall be subject to the provisions of ORS 293.462 and shall not exceed \$150,000.00 annually with a maximum contract compensation of \$300,000.00. Invoices shall be submitted to the project manager requesting the services.
- c. Unless otherwise specified, Contractor shall submit monthly invoices for Work performed. Payments shall be made to Contractor following the County’s review and approval of invoices submitted by Contractor. Contractor shall not submit invoices for, and the County will not pay, any amount in excess of the maximum compensation amount set forth above. If this maximum compensation amount is increased by amendment of this Contract, the amendment must be fully effective before Contractor performs Work subject to the amendment. The billings shall also include the total amount billed to date by Contractor prior to the current invoice.
- d. Invoices shall be submitted to the project manager requesting the services as described in the on-call detailed task scope of work.

**EXHIBIT B  
INSURANCE**

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

**1. Required by County of Contractor with one or more workers, as defined by ORS 656.027.**

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

**2.  Required by County     Not required by County**

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

**3.  Required by County     Not required by County**

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

**4.  Required by County     Not required by County**

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

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

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

**EXHIBIT C**  
**CERTIFICATION STATEMENT FOR INDEPENDENT CONTRACTOR**

(Contractor completes if Contractor is not a corporation or is a Professional Corporation)

Contractor certifies he/she is independent as defined in Oregon Revised Statutes 670.600 and meets the following standards that the Contractor is:

1. Free from direction and control, beyond the right of the County to specify the desired result; **AND**
2. Are licensed if licensure is required for the services; **AND**
3. Are responsible for other licenses or certificates necessary to provide the services **AND**
4. Are customarily engaged in an “independently established business.”

To qualify under the law, an “independently established business” must meet three (3) out of the following five (5) criteria. **Check as applicable:**

- \_\_\_\_\_ A. Maintains a business location that is: (a) Separate from the business or work of the County; or (b) that is in a portion of their own residence that is used primarily for business.
- \_\_\_\_\_ B. Bears the risk of loss, shown by factors such as: (a) Entering into fixed price contracts; (b) Being required to correct defective work; (c) Warranting the services provided; or (d) Negotiating indemnification agreements or purchasing liability insurance, performance bonds, or errors and omissions insurance.
- \_\_\_\_\_ C. Provides contracted services for two or more different persons within a 12-month period, or routinely engages in business advertising, solicitation or other marketing efforts reasonably calculated to obtain new contracts to provide similar services.
- \_\_\_\_\_ D. Makes significant investment in the business through means such as: (a) Purchasing tools or equipment necessary to provide the services; (b) Paying for the premises or facilities where the services are provided; or (c) Paying for licenses, certificates or specialized training required to provide the services.
- \_\_\_\_\_ E. Has the authority to hire and fire other persons to provide assistance in performing the services.

Additional provisions:

1. A person who files tax returns with a Schedule F and also performs agricultural services reportable on a Schedule C is not required to meet the independently established business requirements.
2. Establishing a business entity such as a corporation or limited liability company, does not, by itself, establish that the individual providing services will be considered an independent contractor.

Contractor Signature \_\_\_\_\_ Date \_\_\_\_\_

## **EXHIBIT D**

## **EXHIBIT E**





CLACKAMAS COUNTY
PERSONAL/PROFESSIONAL SERVICES CONTRACT

This Personal/Professional Services Contract (this "Contract") is entered into between Columbia West Engineering, Inc. ("Contractor"), and Clackamas County, a political subdivision of the State of Oregon ("County").

ARTICLE I.

1. Effective Date and Duration. This Contract shall become effective upon signature of both parties. Unless earlier terminated or extended, this Contract shall expire on June 30, 2019. However, such expiration shall not extinguish or prejudice the County's right to enforce this Contract with respect to: (a) any breach of a Contractor warranty; or (b) any default or defect in Contractor performance that has not been cured.

2. Scope of Work. Contractor will provide the following personal/professional services: Materials Testing and Special Inspection Services. ("Work"), further described in Exhibit A.

3. Consideration. The County agrees to pay Contractor, from available and authorized funds, a sum not to exceed \$150,000.00 annually with a maximum contract compensation of \$300,000.00, for accomplishing the Work required by this Contract. If any interim payments to Contractor are made, such payments shall be made only in accordance with the schedule and requirements in Exhibit A.

4. Travel and Other Expense. Authorized: [ ] Yes [X] No
If travel expense reimbursement is authorized in this Contract, such expense shall only be reimbursed at the rates in the County Contractor Travel Reimbursement Policy, hereby incorporated by reference and found at: http://www.clackamas.us/bids/terms.html. Travel expense reimbursement is not in excess of the not to exceed consideration.

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

6. Contractor Data.

Columbia West Engineering, Inc.
Address: 11917 NE 95th Street
Vancouver, WA 98682
Contractor Contract Administrator: Lance Lehto
Phone No.: 360-823-2900
Email: lance@columbiawestengineering.com
MWESB Certification: [ ] DBE # [ ] MBE # [ ] WBE # [ ] ESB #

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

## ARTICLE II.

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

suit may be brought in a federal forum, it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon.

7. **HAZARD COMMUNICATION.** Contractor shall notify County prior to using products containing hazardous chemicals to which County employees may be exposed. Products containing hazardous chemicals are those products defined by Oregon Administrative Rules, Chapter 437. Upon County's request, Contractor shall immediately provide Material Safety Data Sheets for the products subject to this provision.
8. **INDEMNITY, RESPONSIBILITY FOR DAMAGES.** Contractor shall be responsible for all damage to property, injury to persons, and loss, expense, inconvenience, and delay which may be caused by, or result from, the conduct of Work, or from any act, omission, or neglect of Contractor, its subcontractors, agents, or employees. The Contractor agrees to indemnify, hold harmless and defend the County, and its officers, elected officials, agents and employees from and against all claims and actions, and all expenses incidental to the investigation and defense thereof, arising out of or based upon damage or injuries to persons or property caused by the errors, omissions, fault or negligence of the Contractor or the Contractor's employees, subcontractors, or agents.
9. **INDEPENDENT CONTRACTOR STATUS.** The service(s) to be rendered under this Contract are those of an independent contractor. Although the County reserves the right to determine (and modify) the delivery schedule for the Work to be performed and to evaluate the quality of the completed performance, County cannot and will not control the means or manner of Contractor's performance. Contractor is responsible for determining the appropriate means and manner of performing the Work. Contractor is not to be considered an agent or employee of County for any purpose, including, but not limited to: (A) The Contractor will be solely responsible for payment of any Federal or State taxes required as a result of this Contract; (B) This Contract is not intended to entitle the Contractor to any benefits generally granted to County employees, including, but not limited to, vacation, holiday and sick leave, other leaves with pay, tenure, medical and dental coverage, life and disability insurance, overtime, Social Security, Workers' Compensation, unemployment compensation, or retirement benefits (except insofar as benefits are otherwise required by law if the Contractor is presently a member of the Oregon Public Employees Retirement System); and (C) If the Contractor has the assistance of other persons in the performance of this Contract, and the Contractor is a subject employer, the Contractor shall qualify and remain qualified for the term of this Contract as an insured employer under ORS Chapter 656. (Also see Exhibit C)

At present, the Contractor certifies that he or she, if an individual is not a program, County or Federal employee. The Contractor, if an individual, certifies that he or she is not a member of the Oregon Public Employees Retirement System.

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

with law are deemed inoperative to that extent.

- 12. NOTICES.** Except as otherwise expressly provided in this Contract, any communications between the parties hereto or notices to be given hereunder shall be given in writing by personal delivery, email, or mailing the same, postage prepaid, to the County at: Clackamas County Procurement, 2051 Kaen Road, Oregon City, OR 97045, or [procurement@clackamas.us](mailto:procurement@clackamas.us), or to Contractor or at the address or number set forth in Section 1 of this Contract, or to such other addresses or numbers as either party may hereafter indicate. Any communication or notice so addressed and mailed shall be deemed to be given five (5) days after mailing. Any communication or notice by personal delivery shall be deemed to be given when actually delivered.
- 13. OWNERSHIP OF WORK PRODUCT.** All work product of Contractor that results from this Contract (the "Work Product") is the exclusive property of County. County and Contractor intend that such Work Product be deemed "work made for hire" of which County shall be deemed the author. If for any reason the Work Product is not deemed "work made for hire," Contractor hereby irrevocably assigns to County all of its right, title, and interest in and to any and all of the Work Product, whether arising from copyright, patent, trademark or trade secret, or any other state or federal intellectual property law or doctrine. Contractor shall execute such further documents and instruments as County may reasonably request in order to fully vest such rights in County. Contractor forever waives any and all rights relating to the Work Product, including without limitation, any and all rights arising under 17 USC § 106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use or subsequent modifications.
- 14. REPRESENTATIONS AND WARRANTIES.** Contractor represents and warrants to County that (A) Contractor has the power and authority to enter into and perform this Contract; (B) this Contract, when executed and delivered, shall be a valid and binding obligation of Contractor enforceable in accordance with its terms; (C) the Work under this Contract shall be performed in a good and workmanlike manner and in accordance with the highest professional standards; and (D) Contractor shall at all times during the term of this Contract, be qualified, professionally competent, and duly licensed to perform the Work. The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.
- 15. SURVIVAL.** All rights and obligations shall cease upon termination or expiration of this Contract, except for the rights and obligations set forth in Article II, Paragraphs 1, 6, 8, 11, 13, 14, 15, and 21.
- 16. SEVERABILITY** If any term or provision of this Contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Contract did not contain the particular term or provision held to be invalid.
- 17. SUBCONTRACTS AND ASSIGNMENTS.** Contractor shall not enter into any subcontracts for any of the Work required by this Contract, or assign or transfer any of its interest in this Contract by operation of law or otherwise, without obtaining prior written approval from the County. In addition to any provisions the County may require, Contractor shall include in any permitted subcontract under this Contract a requirement that the subcontractor be bound by this Article II, Paragraphs 1, 8, 13, 15, and 27 as if the subcontractor were the Contractor. County's consent to any subcontract shall not relieve Contractor of any of its duties or obligations under this Contract.
- 18. SUCCESSORS IN INTEREST.** The provisions of this Contract shall be binding upon and shall inure to the benefit of the parties hereto, and their respective authorized successors and assigns.

**19. TAX COMPLIANCE CERTIFICATION.** Contractor must, throughout the duration of this Contract and any extensions, comply with all tax laws of this state and all applicable tax laws of any political subdivision of this state. Any violation of this section shall constitute a material breach of this Contract. Further, any violation of Contractor's warranty in this Contract that Contractor has complied with the tax laws of this state and the applicable tax laws of any political subdivision of this state also shall constitute a material breach of this Contract. Any violation shall entitle County to terminate this Contract, to pursue and recover any and all damages that arise from the breach and the termination of this Contract, and to pursue any or all of the remedies available under this Contract, at law, or in equity, including but not limited to: (A) Termination of this Contract, in whole or in part; (B) Exercise of the right of setoff, and withholding of amounts otherwise due and owing to Contractor, in an amount equal to County's setoff right, without penalty; and (C) Initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief. County shall be entitled to recover any and all damages suffered as the result of Contractor's breach of this Contract, including but not limited to direct, indirect, incidental and consequential damages, costs of cure, and costs incurred in securing replacement performance. These remedies are cumulative to the extent the remedies are not inconsistent, and County may pursue any remedy or remedies singly, collectively, successively, or in any order whatsoever.

The Contractor represents and warrants that, for a period of no fewer than six calendar years preceding the effective date of this Contract, Contractor has faithfully complied with: (A) All tax laws of this state, including but not limited to ORS 305.620 and ORS Chapters 316, 317, and 318; (B) Any tax provisions imposed by a political subdivision of this state that applied to Contractor, to Contractor's property, operations, receipts, or income, or to Contractor's performance of or compensation for any Work performed by Contractor; (C) Any tax provisions imposed by a political subdivision of this state that applied to Contractor, or to goods, services, or property, whether tangible or intangible, provided by Contractor; and (D) Any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions.

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

**21. REMEDIES.** (A) In the event of termination pursuant to Article II Section 20(A), (B)(i), or (D), Contractor's sole remedy shall be a claim for the sum designated for accomplishing the Work

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

- 22. NO THIRD PARTY BENEFICIARIES.** County and Contractor are the only parties to this Contract and are the only parties entitled to enforce its terms. Nothing in this Contract gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Contract.
- 23. TIME IS OF THE ESSENCE.** Contractor agrees that time is of the essence in the performance this Contract.
- 24. FOREIGN CONTRACTOR.** If the Contractor is not domiciled in or registered to do business in the State of Oregon, Contractor shall promptly provide to the Oregon Department of Revenue and the Secretary of State, Corporate Division, all information required by those agencies relative to this Contract. The Contractor shall demonstrate its legal capacity to perform these services in the State of Oregon prior to entering into this Contract.
- 25. FORCE MAJEURE.** Neither County nor Contractor shall be held responsible for delay or default caused by fire, terrorism, riot, acts of God, or war where such cause was beyond, respectively, County's or Contractor's reasonable control. Contractor shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall upon the cessation of the cause, diligently pursue performance of its obligations under this Contract.
- 26. WAIVER.** The failure of County to enforce any provision of this Contract shall not constitute a waiver by County of that or any other provision.
- 27. COMPLIANCE.** Pursuant to the requirements of ORS 279B.020 and 279B.220 through 279B.235 and Article XI, Section 10, of the Oregon Constitution, the following terms and conditions are made a part of this Contract:
- (A) Contractor shall: (i) Make payments promptly, as due, to all persons supplying to the Contractor labor or materials for the prosecution of the Work provided for in this Contract; (ii) Pay all contributions or amounts due the Industrial Accident Fund from such Contractor or subcontractor incurred in the performance of this Contract; (iii) Not permit any lien or claim to be filed or prosecuted against the County on account of any labor or material furnished.
- (B) If the Contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to the Contractor or a subcontractor by any person in connection with this Contract as such claim becomes due, the proper officer representing the County may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due to the Contractor by reason of this Contract.



**EXHIBIT A**  
**PERSONAL/PROFESSIONAL SERVICES CONTRACT**

**SCOPE OF WORK**

Contractor shall provide Materials Testing and Special Inspection Services on an as-needed basis described in RFQ 2017-68, hereby attached as exhibit D.

The services under this Contract are on an “on-call” or “as-needed basis,” no Work may be performed until a detailed task scope of work is developed and agreed to by the parties for a specific project. Each task scope of work must minimally include: a detailed description of services to be provided, a schedule of key milestones for completion of the task, the maximum fee for completion of the task, and any obligations of the County to complete the task. No task scope of work may commence until an amendment is made to this Contract or an official County Purchase Order is issued and that specifically incorporates by reference this Contract and the agreed upon task scope of work. No task scope of work may modify this Contract and its terms and conditions unless an amendment is made to this Contract.

**CONSIDERATION**

- a. Consideration Rates – Time and Material (rates are described in exhibit E)
- b. Payment for all Work performed under this Contract shall be subject to the provisions of ORS 293.462 and shall not exceed \$150,000.00 annually with a maximum contract compensation of \$300,000.00. Invoices shall be submitted to the project manager requesting the services.
- c. Unless otherwise specified, Contractor shall submit monthly invoices for Work performed. Payments shall be made to Contractor following the County’s review and approval of invoices submitted by Contractor. Contractor shall not submit invoices for, and the County will not pay, any amount in excess of the maximum compensation amount set forth above. If this maximum compensation amount is increased by amendment of this Contract, the amendment must be fully effective before Contractor performs Work subject to the amendment. The billings shall also include the total amount billed to date by Contractor prior to the current invoice.
- d. Invoices shall be submitted to the project manager requesting the services as described in the on-call detailed task scope of work.



**EXHIBIT B  
INSURANCE**

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

**1. Required by County of Contractor with one or more workers, as defined by ORS 656.027.**

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

**2.  Required by County    Not required by County**

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

**3.  Required by County    Not required by County**

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

**4.  Required by County    Not required by County**

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

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

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

**EXHIBIT C**  
**CERTIFICATION STATEMENT FOR INDEPENDENT CONTRACTOR**

(Contractor completes if Contractor is not a corporation or is a Professional Corporation)

Contractor certifies he/she is independent as defined in Oregon Revised Statutes 670.600 and meets the following standards that the Contractor is:

1. Free from direction and control, beyond the right of the County to specify the desired result; **AND**
2. Are licensed if licensure is required for the services; **AND**
3. Are responsible for other licenses or certificates necessary to provide the services **AND**
4. Are customarily engaged in an “independently established business.”

To qualify under the law, an “independently established business” must meet three (3) out of the following five (5) criteria. **Check as applicable:**

- \_\_\_\_\_ A. Maintains a business location that is: (a) Separate from the business or work of the County; or (b) that is in a portion of their own residence that is used primarily for business.
- \_\_\_\_\_ B. Bears the risk of loss, shown by factors such as: (a) Entering into fixed price contracts; (b) Being required to correct defective work; (c) Warranting the services provided; or (d) Negotiating indemnification agreements or purchasing liability insurance, performance bonds, or errors and omissions insurance.
- \_\_\_\_\_ C. Provides contracted services for two or more different persons within a 12-month period, or routinely engages in business advertising, solicitation or other marketing efforts reasonably calculated to obtain new contracts to provide similar services.
- \_\_\_\_\_ D. Makes significant investment in the business through means such as: (a) Purchasing tools or equipment necessary to provide the services; (b) Paying for the premises or facilities where the services are provided; or (c) Paying for licenses, certificates or specialized training required to provide the services.
- \_\_\_\_\_ E. Has the authority to hire and fire other persons to provide assistance in performing the services.

Additional provisions:

1. A person who files tax returns with a Schedule F and also performs agricultural services reportable on a Schedule C is not required to meet the independently established business requirements.
2. Establishing a business entity such as a corporation or limited liability company, does not, by itself, establish that the individual providing services will be considered an independent contractor.

Contractor Signature \_\_\_\_\_ Date \_\_\_\_\_



CLACKAMAS COUNTY
PERSONAL/PROFESSIONAL SERVICES CONTRACT

This Personal/Professional Services Contract (this "Contract") is entered into between KPFF, Inc. ("Contractor"), and Clackamas County, a political subdivision of the State of Oregon ("County").

ARTICLE I.

1. Effective Date and Duration. This Contract shall become effective upon signature of both parties. Unless earlier terminated or extended, this Contract shall expire on June 30, 2019. However, such expiration shall not extinguish or prejudice the County's right to enforce this Contract with respect to: (a) any breach of a Contractor warranty; or (b) any default or defect in Contractor performance that has not been cured.

2. Scope of Work. Contractor will provide the following personal/professional services: Materials Testing and Special Inspection Services. ("Work"), further described in Exhibit A.

3. Consideration. The County agrees to pay Contractor, from available and authorized funds, a sum not to exceed \$150,000.00 annually with a maximum contract compensation of \$300,000.00, for accomplishing the Work required by this Contract. If any interim payments to Contractor are made, such payments shall be made only in accordance with the schedule and requirements in Exhibit A.

4. Travel and Other Expense. Authorized: [ ] Yes [X] No
If travel expense reimbursement is authorized in this Contract, such expense shall only be reimbursed at the rates in the County Contractor Travel Reimbursement Policy, hereby incorporated by reference and found at: http://www.clackamas.us/bids/terms.html. Travel expense reimbursement is not in excess of the not to exceed consideration.

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

6. Contractor Data.

KPFF, Inc.

Address: 111 SW Fifth Ave.
Portland, OR 97204

Contractor Contract Administrator: Tommi Rutherford

Phone No.: 503-227-3251

Email: tommi.rutherford@kpff.com

MWESB Certification: [ ] DBE # [ ] MBE # [ ] WBE # [ ] ESB #

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

## ARTICLE II.

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

suit may be brought in a federal forum, it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon.

7. **HAZARD COMMUNICATION.** Contractor shall notify County prior to using products containing hazardous chemicals to which County employees may be exposed. Products containing hazardous chemicals are those products defined by Oregon Administrative Rules, Chapter 437. Upon County's request, Contractor shall immediately provide Material Safety Data Sheets for the products subject to this provision.
8. **INDEMNITY, RESPONSIBILITY FOR DAMAGES.** Contractor shall be responsible for all damage to property, injury to persons, and loss, expense, inconvenience, and delay which may be caused by, or result from, the conduct of Work, or from any act, omission, or neglect of Contractor, its subcontractors, agents, or employees. The Contractor agrees to indemnify, hold harmless and defend the County, and its officers, elected officials, agents and employees from and against all claims and actions, and all expenses incidental to the investigation and defense thereof, arising out of or based upon damage or injuries to persons or property caused by the errors, omissions, fault or negligence of the Contractor or the Contractor's employees, subcontractors, or agents.
9. **INDEPENDENT CONTRACTOR STATUS.** The service(s) to be rendered under this Contract are those of an independent contractor. Although the County reserves the right to determine (and modify) the delivery schedule for the Work to be performed and to evaluate the quality of the completed performance, County cannot and will not control the means or manner of Contractor's performance. Contractor is responsible for determining the appropriate means and manner of performing the Work. Contractor is not to be considered an agent or employee of County for any purpose, including, but not limited to: (A) The Contractor will be solely responsible for payment of any Federal or State taxes required as a result of this Contract; (B) This Contract is not intended to entitle the Contractor to any benefits generally granted to County employees, including, but not limited to, vacation, holiday and sick leave, other leaves with pay, tenure, medical and dental coverage, life and disability insurance, overtime, Social Security, Workers' Compensation, unemployment compensation, or retirement benefits (except insofar as benefits are otherwise required by law if the Contractor is presently a member of the Oregon Public Employees Retirement System); and (C) If the Contractor has the assistance of other persons in the performance of this Contract, and the Contractor is a subject employer, the Contractor shall qualify and remain qualified for the term of this Contract as an insured employer under ORS Chapter 656. (Also see Exhibit C)

At present, the Contractor certifies that he or she, if an individual is not a program, County or Federal employee. The Contractor, if an individual, certifies that he or she is not a member of the Oregon Public Employees Retirement System.

10. **INSURANCE.** Contractor shall provide insurance as indicated on **Exhibit B**, attached hereto and by this reference made a part hereof. Insurance policies, which cannot be excess to a self-insurance program, are to be issued by an insurance company authorized to do business in the State of Oregon.
11. **LIMITATION OF LIABILITIES.** Except for liability arising under or related to Section 14 or 21(B), neither party shall be liable for (i) any indirect, incidental, consequential or special damages under this Contract or (ii) any damages of any sort arising solely from the termination of this Contract in accordance with its terms. This Contract is expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10, of the Oregon Constitution, and is contingent upon funds being appropriated therefore. Any provisions herein which would conflict

with law are deemed inoperative to that extent.

- 12. NOTICES.** Except as otherwise expressly provided in this Contract, any communications between the parties hereto or notices to be given hereunder shall be given in writing by personal delivery, email, or mailing the same, postage prepaid, to the County at: Clackamas County Procurement, 2051 Kaen Road, Oregon City, OR 97045, or [procurement@clackamas.us](mailto:procurement@clackamas.us), or to Contractor or at the address or number set forth in Section 1 of this Contract, or to such other addresses or numbers as either party may hereafter indicate. Any communication or notice so addressed and mailed shall be deemed to be given five (5) days after mailing. Any communication or notice by personal delivery shall be deemed to be given when actually delivered.
- 13. OWNERSHIP OF WORK PRODUCT.** All work product of Contractor that results from this Contract (the "Work Product") is the exclusive property of County. County and Contractor intend that such Work Product be deemed "work made for hire" of which County shall be deemed the author. If for any reason the Work Product is not deemed "work made for hire," Contractor hereby irrevocably assigns to County all of its right, title, and interest in and to any and all of the Work Product, whether arising from copyright, patent, trademark or trade secret, or any other state or federal intellectual property law or doctrine. Contractor shall execute such further documents and instruments as County may reasonably request in order to fully vest such rights in County. Contractor forever waives any and all rights relating to the Work Product, including without limitation, any and all rights arising under 17 USC § 106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use or subsequent modifications.
- 14. REPRESENTATIONS AND WARRANTIES.** Contractor represents and warrants to County that (A) Contractor has the power and authority to enter into and perform this Contract; (B) this Contract, when executed and delivered, shall be a valid and binding obligation of Contractor enforceable in accordance with its terms; (C) the Work under this Contract shall be performed in a good and workmanlike manner and in accordance with the highest professional standards; and (D) Contractor shall at all times during the term of this Contract, be qualified, professionally competent, and duly licensed to perform the Work. The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.
- 15. SURVIVAL.** All rights and obligations shall cease upon termination or expiration of this Contract, except for the rights and obligations set forth in Article II, Paragraphs 1, 6, 8, 11, 13, 14, 15, and 21.
- 16. SEVERABILITY** If any term or provision of this Contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Contract did not contain the particular term or provision held to be invalid.
- 17. SUBCONTRACTS AND ASSIGNMENTS.** Contractor shall not enter into any subcontracts for any of the Work required by this Contract, or assign or transfer any of its interest in this Contract by operation of law or otherwise, without obtaining prior written approval from the County. In addition to any provisions the County may require, Contractor shall include in any permitted subcontract under this Contract a requirement that the subcontractor be bound by this Article II, Paragraphs 1, 8, 13, 15, and 27 as if the subcontractor were the Contractor. County's consent to any subcontract shall not relieve Contractor of any of its duties or obligations under this Contract.
- 18. SUCCESSORS IN INTEREST.** The provisions of this Contract shall be binding upon and shall inure to the benefit of the parties hereto, and their respective authorized successors and assigns.

**19. TAX COMPLIANCE CERTIFICATION.** Contractor must, throughout the duration of this Contract and any extensions, comply with all tax laws of this state and all applicable tax laws of any political subdivision of this state. Any violation of this section shall constitute a material breach of this Contract. Further, any violation of Contractor's warranty in this Contract that Contractor has complied with the tax laws of this state and the applicable tax laws of any political subdivision of this state also shall constitute a material breach of this Contract. Any violation shall entitle County to terminate this Contract, to pursue and recover any and all damages that arise from the breach and the termination of this Contract, and to pursue any or all of the remedies available under this Contract, at law, or in equity, including but not limited to: (A) Termination of this Contract, in whole or in part; (B) Exercise of the right of setoff, and withholding of amounts otherwise due and owing to Contractor, in an amount equal to County's setoff right, without penalty; and (C) Initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief. County shall be entitled to recover any and all damages suffered as the result of Contractor's breach of this Contract, including but not limited to direct, indirect, incidental and consequential damages, costs of cure, and costs incurred in securing replacement performance. These remedies are cumulative to the extent the remedies are not inconsistent, and County may pursue any remedy or remedies singly, collectively, successively, or in any order whatsoever.

The Contractor represents and warrants that, for a period of no fewer than six calendar years preceding the effective date of this Contract, Contractor has faithfully complied with: (A) All tax laws of this state, including but not limited to ORS 305.620 and ORS Chapters 316, 317, and 318; (B) Any tax provisions imposed by a political subdivision of this state that applied to Contractor, to Contractor's property, operations, receipts, or income, or to Contractor's performance of or compensation for any Work performed by Contractor; (C) Any tax provisions imposed by a political subdivision of this state that applied to Contractor, or to goods, services, or property, whether tangible or intangible, provided by Contractor; and (D) Any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions.

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

**21. REMEDIES.** (A) In the event of termination pursuant to Article II Section 20(A), (B)(i), or (D), Contractor's sole remedy shall be a claim for the sum designated for accomplishing the Work

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

- 22. NO THIRD PARTY BENEFICIARIES.** County and Contractor are the only parties to this Contract and are the only parties entitled to enforce its terms. Nothing in this Contract gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Contract.
- 23. TIME IS OF THE ESSENCE.** Contractor agrees that time is of the essence in the performance this Contract.
- 24. FOREIGN CONTRACTOR.** If the Contractor is not domiciled in or registered to do business in the State of Oregon, Contractor shall promptly provide to the Oregon Department of Revenue and the Secretary of State, Corporate Division, all information required by those agencies relative to this Contract. The Contractor shall demonstrate its legal capacity to perform these services in the State of Oregon prior to entering into this Contract.
- 25. FORCE MAJEURE.** Neither County nor Contractor shall be held responsible for delay or default caused by fire, terrorism, riot, acts of God, or war where such cause was beyond, respectively, County's or Contractor's reasonable control. Contractor shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall upon the cessation of the cause, diligently pursue performance of its obligations under this Contract.
- 26. WAIVER.** The failure of County to enforce any provision of this Contract shall not constitute a waiver by County of that or any other provision.
- 27. COMPLIANCE.** Pursuant to the requirements of ORS 279B.020 and 279B.220 through 279B.235 and Article XI, Section 10, of the Oregon Constitution, the following terms and conditions are made a part of this Contract:
- (A) Contractor shall: (i) Make payments promptly, as due, to all persons supplying to the Contractor labor or materials for the prosecution of the Work provided for in this Contract; (ii) Pay all contributions or amounts due the Industrial Accident Fund from such Contractor or subcontractor incurred in the performance of this Contract; (iii) Not permit any lien or claim to be filed or prosecuted against the County on account of any labor or material furnished.
- (B) If the Contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to the Contractor or a subcontractor by any person in connection with this Contract as such claim becomes due, the proper officer representing the County may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due to the Contractor by reason of this Contract.





**EXHIBIT A**  
**PERSONAL/PROFESSIONAL SERVICES CONTRACT**

**SCOPE OF WORK**

Contractor shall provide Materials Testing and Special Inspection Services on an as-needed basis described in RFQ 2017-68, hereby attached as exhibit D.

The services under this Contract are on an “on-call” or “as-needed basis,” no Work may be performed until a detailed task scope of work is developed and agreed to by the parties for a specific project. Each task scope of work must minimally include: a detailed description of services to be provided, a schedule of key milestones for completion of the task, the maximum fee for completion of the task, and any obligations of the County to complete the task. No task scope of work may commence until an amendment is made to this Contract or an official County Purchase Order is issued and that specifically incorporates by reference this Contract and the agreed upon task scope of work. No task scope of work may modify this Contract and its terms and conditions unless an amendment is made to this Contract.

**CONSIDERATION**

- a. Consideration Rates – Time and Material (rates are described in exhibit E)
- b. Payment for all Work performed under this Contract shall be subject to the provisions of ORS 293.462 and shall not exceed \$150,000.00 annually with a maximum contract compensation of \$300,000.00. Invoices shall be submitted to the project manager requesting the services.
- c. Unless otherwise specified, Contractor shall submit monthly invoices for Work performed. Payments shall be made to Contractor following the County’s review and approval of invoices submitted by Contractor. Contractor shall not submit invoices for, and the County will not pay, any amount in excess of the maximum compensation amount set forth above. If this maximum compensation amount is increased by amendment of this Contract, the amendment must be fully effective before Contractor performs Work subject to the amendment. The billings shall also include the total amount billed to date by Contractor prior to the current invoice.
- d. Invoices shall be submitted to the project manager requesting the services as described in the on-call detailed task scope of work.

**EXHIBIT B  
INSURANCE**

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

**1. Required by County of Contractor with one or more workers, as defined by ORS 656.027.**

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

**2.  Required by County     Not required by County**

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

**3.  Required by County     Not required by County**

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

**4.  Required by County     Not required by County**

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

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

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

**EXHIBIT C**  
**CERTIFICATION STATEMENT FOR INDEPENDENT CONTRACTOR**

(Contractor completes if Contractor is not a corporation or is a Professional Corporation)

Contractor certifies he/she is independent as defined in Oregon Revised Statutes 670.600 and meets the following standards that the Contractor is:

1. Free from direction and control, beyond the right of the County to specify the desired result; **AND**
2. Are licensed if licensure is required for the services; **AND**
3. Are responsible for other licenses or certificates necessary to provide the services **AND**
4. Are customarily engaged in an “independently established business.”

To qualify under the law, an “independently established business” must meet three (3) out of the following five (5) criteria. **Check as applicable:**

- \_\_\_\_\_ A. Maintains a business location that is: (a) Separate from the business or work of the County; or (b) that is in a portion of their own residence that is used primarily for business.
- \_\_\_\_\_ B. Bears the risk of loss, shown by factors such as: (a) Entering into fixed price contracts; (b) Being required to correct defective work; (c) Warranting the services provided; or (d) Negotiating indemnification agreements or purchasing liability insurance, performance bonds, or errors and omissions insurance.
- \_\_\_\_\_ C. Provides contracted services for two or more different persons within a 12-month period, or routinely engages in business advertising, solicitation or other marketing efforts reasonably calculated to obtain new contracts to provide similar services.
- \_\_\_\_\_ D. Makes significant investment in the business through means such as: (a) Purchasing tools or equipment necessary to provide the services; (b) Paying for the premises or facilities where the services are provided; or (c) Paying for licenses, certificates or specialized training required to provide the services.
- \_\_\_\_\_ E. Has the authority to hire and fire other persons to provide assistance in performing the services.

Additional provisions:

1. A person who files tax returns with a Schedule F and also performs agricultural services reportable on a Schedule C is not required to meet the independently established business requirements.
2. Establishing a business entity such as a corporation or limited liability company, does not, by itself, establish that the individual providing services will be considered an independent contractor.

Contractor Signature \_\_\_\_\_ Date \_\_\_\_\_



CLACKAMAS COUNTY
PERSONAL/PROFESSIONAL SERVICES CONTRACT

This Personal/Professional Services Contract (this "Contract") is entered into between Materials Testing and Inspection, Inc. ("Contractor"), and Clackamas County, a political subdivision of the State of Oregon ("County").

ARTICLE I.

1. Effective Date and Duration. This Contract shall become effective upon signature of both parties. Unless earlier terminated or extended, this Contract shall expire on June 30, 2019. However, such expiration shall not extinguish or prejudice the County's right to enforce this Contract with respect to: (a) any breach of a Contractor warranty; or (b) any default or defect in Contractor performance that has not been cured.

2. Scope of Work. Contractor will provide the following personal/professional services: Materials Testing and Special Inspection Services. ("Work"), further described in Exhibit A.

3. Consideration. The County agrees to pay Contractor, from available and authorized funds, a sum not to exceed \$150,000.00 annually with a maximum contract compensation of \$300,000.00, for accomplishing the Work required by this Contract. If any interim payments to Contractor are made, such payments shall be made only in accordance with the schedule and requirements in Exhibit A.

4. Travel and Other Expense. Authorized: [ ] Yes [X] No
If travel expense reimbursement is authorized in this Contract, such expense shall only be reimbursed at the rates in the County Contractor Travel Reimbursement Policy, hereby incorporated by reference and found at: http://www.clackamas.us/bids/terms.html. Travel expense reimbursement is not in excess of the not to exceed consideration.

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

6. Contractor Data.

Materials Testing and Inspection Inc.

Address: 15695 SW 74th Avenue, Suite 300

Tigard, OR 97224

Contractor Contract Administrator: M. Bradley Tanberg

Phone No.: 208-376-4748

Email: tanbergb@mti-id.com

MWESB Certification: [ ] DBE # [ ] MBE # [ ] WBE # [ ] ESB #

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

## ARTICLE II.

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

suit may be brought in a federal forum, it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon.

7. **HAZARD COMMUNICATION.** Contractor shall notify County prior to using products containing hazardous chemicals to which County employees may be exposed. Products containing hazardous chemicals are those products defined by Oregon Administrative Rules, Chapter 437. Upon County's request, Contractor shall immediately provide Material Safety Data Sheets for the products subject to this provision.
8. **INDEMNITY, RESPONSIBILITY FOR DAMAGES.** Contractor shall be responsible for all damage to property, injury to persons, and loss, expense, inconvenience, and delay which may be caused by, or result from, the conduct of Work, or from any act, omission, or neglect of Contractor, its subcontractors, agents, or employees. The Contractor agrees to indemnify, hold harmless and defend the County, and its officers, elected officials, agents and employees from and against all claims and actions, and all expenses incidental to the investigation and defense thereof, arising out of or based upon damage or injuries to persons or property caused by the errors, omissions, fault or negligence of the Contractor or the Contractor's employees, subcontractors, or agents.
9. **INDEPENDENT CONTRACTOR STATUS.** The service(s) to be rendered under this Contract are those of an independent contractor. Although the County reserves the right to determine (and modify) the delivery schedule for the Work to be performed and to evaluate the quality of the completed performance, County cannot and will not control the means or manner of Contractor's performance. Contractor is responsible for determining the appropriate means and manner of performing the Work. Contractor is not to be considered an agent or employee of County for any purpose, including, but not limited to: (A) The Contractor will be solely responsible for payment of any Federal or State taxes required as a result of this Contract; (B) This Contract is not intended to entitle the Contractor to any benefits generally granted to County employees, including, but not limited to, vacation, holiday and sick leave, other leaves with pay, tenure, medical and dental coverage, life and disability insurance, overtime, Social Security, Workers' Compensation, unemployment compensation, or retirement benefits (except insofar as benefits are otherwise required by law if the Contractor is presently a member of the Oregon Public Employees Retirement System); and (C) If the Contractor has the assistance of other persons in the performance of this Contract, and the Contractor is a subject employer, the Contractor shall qualify and remain qualified for the term of this Contract as an insured employer under ORS Chapter 656. (Also see Exhibit C)

At present, the Contractor certifies that he or she, if an individual is not a program, County or Federal employee. The Contractor, if an individual, certifies that he or she is not a member of the Oregon Public Employees Retirement System.

10. **INSURANCE.** Contractor shall provide insurance as indicated on **Exhibit B**, attached hereto and by this reference made a part hereof. Insurance policies, which cannot be excess to a self-insurance program, are to be issued by an insurance company authorized to do business in the State of Oregon.
11. **LIMITATION OF LIABILITIES.** Except for liability arising under or related to Section 14 or 21(B), neither party shall be liable for (i) any indirect, incidental, consequential or special damages under this Contract or (ii) any damages of any sort arising solely from the termination of this Contract in accordance with its terms. This Contract is expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10, of the Oregon Constitution, and is contingent upon funds being appropriated therefore. Any provisions herein which would conflict

with law are deemed inoperative to that extent.

- 12. NOTICES.** Except as otherwise expressly provided in this Contract, any communications between the parties hereto or notices to be given hereunder shall be given in writing by personal delivery, email, or mailing the same, postage prepaid, to the County at: Clackamas County Procurement, 2051 Kaen Road, Oregon City, OR 97045, or [procurement@clackamas.us](mailto:procurement@clackamas.us), or to Contractor or at the address or number set forth in Section 1 of this Contract, or to such other addresses or numbers as either party may hereafter indicate. Any communication or notice so addressed and mailed shall be deemed to be given five (5) days after mailing. Any communication or notice by personal delivery shall be deemed to be given when actually delivered.
- 13. OWNERSHIP OF WORK PRODUCT.** All work product of Contractor that results from this Contract (the "Work Product") is the exclusive property of County. County and Contractor intend that such Work Product be deemed "work made for hire" of which County shall be deemed the author. If for any reason the Work Product is not deemed "work made for hire," Contractor hereby irrevocably assigns to County all of its right, title, and interest in and to any and all of the Work Product, whether arising from copyright, patent, trademark or trade secret, or any other state or federal intellectual property law or doctrine. Contractor shall execute such further documents and instruments as County may reasonably request in order to fully vest such rights in County. Contractor forever waives any and all rights relating to the Work Product, including without limitation, any and all rights arising under 17 USC § 106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use or subsequent modifications.
- 14. REPRESENTATIONS AND WARRANTIES.** Contractor represents and warrants to County that (A) Contractor has the power and authority to enter into and perform this Contract; (B) this Contract, when executed and delivered, shall be a valid and binding obligation of Contractor enforceable in accordance with its terms; (C) the Work under this Contract shall be performed in a good and workmanlike manner and in accordance with the highest professional standards; and (D) Contractor shall at all times during the term of this Contract, be qualified, professionally competent, and duly licensed to perform the Work. The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.
- 15. SURVIVAL.** All rights and obligations shall cease upon termination or expiration of this Contract, except for the rights and obligations set forth in Article II, Paragraphs 1, 6, 8, 11, 13, 14, 15, and 21.
- 16. SEVERABILITY** If any term or provision of this Contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Contract did not contain the particular term or provision held to be invalid.
- 17. SUBCONTRACTS AND ASSIGNMENTS.** Contractor shall not enter into any subcontracts for any of the Work required by this Contract, or assign or transfer any of its interest in this Contract by operation of law or otherwise, without obtaining prior written approval from the County. In addition to any provisions the County may require, Contractor shall include in any permitted subcontract under this Contract a requirement that the subcontractor be bound by this Article II, Paragraphs 1, 8, 13, 15, and 27 as if the subcontractor were the Contractor. County's consent to any subcontract shall not relieve Contractor of any of its duties or obligations under this Contract.
- 18. SUCCESSORS IN INTEREST.** The provisions of this Contract shall be binding upon and shall inure to the benefit of the parties hereto, and their respective authorized successors and assigns.



**19. TAX COMPLIANCE CERTIFICATION.** Contractor must, throughout the duration of this Contract and any extensions, comply with all tax laws of this state and all applicable tax laws of any political subdivision of this state. Any violation of this section shall constitute a material breach of this Contract. Further, any violation of Contractor's warranty in this Contract that Contractor has complied with the tax laws of this state and the applicable tax laws of any political subdivision of this state also shall constitute a material breach of this Contract. Any violation shall entitle County to terminate this Contract, to pursue and recover any and all damages that arise from the breach and the termination of this Contract, and to pursue any or all of the remedies available under this Contract, at law, or in equity, including but not limited to: (A) Termination of this Contract, in whole or in part; (B) Exercise of the right of setoff, and withholding of amounts otherwise due and owing to Contractor, in an amount equal to County's setoff right, without penalty; and (C) Initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief. County shall be entitled to recover any and all damages suffered as the result of Contractor's breach of this Contract, including but not limited to direct, indirect, incidental and consequential damages, costs of cure, and costs incurred in securing replacement performance. These remedies are cumulative to the extent the remedies are not inconsistent, and County may pursue any remedy or remedies singly, collectively, successively, or in any order whatsoever.

The Contractor represents and warrants that, for a period of no fewer than six calendar years preceding the effective date of this Contract, Contractor has faithfully complied with: (A) All tax laws of this state, including but not limited to ORS 305.620 and ORS Chapters 316, 317, and 318; (B) Any tax provisions imposed by a political subdivision of this state that applied to Contractor, to Contractor's property, operations, receipts, or income, or to Contractor's performance of or compensation for any Work performed by Contractor; (C) Any tax provisions imposed by a political subdivision of this state that applied to Contractor, or to goods, services, or property, whether tangible or intangible, provided by Contractor; and (D) Any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions.

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

**21. REMEDIES.** (A) In the event of termination pursuant to Article II Section 20(A), (B)(i), or (D), Contractor's sole remedy shall be a claim for the sum designated for accomplishing the Work

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

- 22. NO THIRD PARTY BENEFICIARIES.** County and Contractor are the only parties to this Contract and are the only parties entitled to enforce its terms. Nothing in this Contract gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Contract.
- 23. TIME IS OF THE ESSENCE.** Contractor agrees that time is of the essence in the performance this Contract.
- 24. FOREIGN CONTRACTOR.** If the Contractor is not domiciled in or registered to do business in the State of Oregon, Contractor shall promptly provide to the Oregon Department of Revenue and the Secretary of State, Corporate Division, all information required by those agencies relative to this Contract. The Contractor shall demonstrate its legal capacity to perform these services in the State of Oregon prior to entering into this Contract.
- 25. FORCE MAJEURE.** Neither County nor Contractor shall be held responsible for delay or default caused by fire, terrorism, riot, acts of God, or war where such cause was beyond, respectively, County's or Contractor's reasonable control. Contractor shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall upon the cessation of the cause, diligently pursue performance of its obligations under this Contract.
- 26. WAIVER.** The failure of County to enforce any provision of this Contract shall not constitute a waiver by County of that or any other provision.
- 27. COMPLIANCE.** Pursuant to the requirements of ORS 279B.020 and 279B.220 through 279B.235 and Article XI, Section 10, of the Oregon Constitution, the following terms and conditions are made a part of this Contract:
- (A) Contractor shall: (i) Make payments promptly, as due, to all persons supplying to the Contractor labor or materials for the prosecution of the Work provided for in this Contract; (ii) Pay all contributions or amounts due the Industrial Accident Fund from such Contractor or subcontractor incurred in the performance of this Contract; (iii) Not permit any lien or claim to be filed or prosecuted against the County on account of any labor or material furnished.
- (B) If the Contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to the Contractor or a subcontractor by any person in connection with this Contract as such claim becomes due, the proper officer representing the County may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due to the Contractor by reason of this Contract.

(C) The Contractor shall pay employees for Work in accordance with ORS 279B.020 and ORS 279B.235, which is incorporated herein by this reference. All subject employers working under the contract are either employers that will comply with ORS 656.017 or employers that are exempt under ORS 656.126.

(D) The Contractor shall promptly, as due, make payment to any person or co-partnership, association or corporation furnishing medical, surgical and hospital care, or other needed care and attention incident to sickness and injury to the employees of the Contractor, of all sums which the Contractor agrees to pay for such services and all moneys and sums which the Contractor collected or deducted from the wages of the Contractor's employees pursuant to any law, contract or agreement for the purpose of providing or paying for such services.

**28. MERGER. THIS CONTRACT CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PARTIES WITH RESPECT TO THE SUBJECT MATTER REFERENCED THEREIN. THERE ARE NO UNDERSTANDINGS, AGREEMENTS, OR REPRESENTATIONS, ORAL OR WRITTEN, NOT SPECIFIED HEREIN REGARDING THIS CONTRACT. NO AMENDMENT, CONSENT, OR WAIVER OF TERMS OF THIS CONTRACT SHALL BIND EITHER PARTY UNLESS IN WRITING AND SIGNED BY ALL PARTIES. ANY SUCH AMENDMENT, CONSENT, OR WAIVER SHALL BE EFFECTIVE ONLY IN THE SPECIFIC INSTANCE AND FOR THE SPECIFIC PURPOSE GIVEN. CONTRACTOR, BY THE SIGNATURE HERETO OF ITS AUTHORIZED REPRESENTATIVE, IS AN INDEPENDENT CONTRACTOR, ACKNOWLEDGES HAVING READ AND UNDERSTOOD THIS CONTRACT, AND CONTRACTOR AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.**

By their signatures below, the parties to this Contract agree to the terms, conditions, and content expressed herein.

Materials Testing and Inspection, Inc.  
15695 SW 74th Avenue, Suite 300  
Tigard, OR 97224

Clackamas County Board of Commissioners

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Chair

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name / Title (Printed)

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

544219-88  
Oregon Business Registry #

Approved as to Form:

FBC / ID  
Entity Type / State of Formation

\_\_\_\_\_  
County Counsel

\_\_\_\_\_  
Date

**EXHIBIT A**  
**PERSONAL/PROFESSIONAL SERVICES CONTRACT**

**SCOPE OF WORK**

Contractor shall provide Materials Testing and Special Inspection Services on an as-needed basis described in RFQ 2017-68, hereby attached as exhibit D.

The services under this Contract are on an “on-call” or “as-needed basis,” no Work may be performed until a detailed task scope of work is developed and agreed to by the parties for a specific project. Each task scope of work must minimally include: a detailed description of services to be provided, a schedule of key milestones for completion of the task, the maximum fee for completion of the task, and any obligations of the County to complete the task. No task scope of work may commence until an amendment is made to this Contract or an official County Purchase Order is issued and that specifically incorporates by reference this Contract and the agreed upon task scope of work. No task scope of work may modify this Contract and its terms and conditions unless an amendment is made to this Contract.

**CONSIDERATION**

- a. Consideration Rates – Time and Material (rates are described in exhibit E)
- b. Payment for all Work performed under this Contract shall be subject to the provisions of ORS 293.462 and shall not exceed \$150,000.00 annually with a maximum contract compensation of \$300,000.00. Invoices shall be submitted to the project manager requesting the services.
- c. Unless otherwise specified, Contractor shall submit monthly invoices for Work performed. Payments shall be made to Contractor following the County’s review and approval of invoices submitted by Contractor. Contractor shall not submit invoices for, and the County will not pay, any amount in excess of the maximum compensation amount set forth above. If this maximum compensation amount is increased by amendment of this Contract, the amendment must be fully effective before Contractor performs Work subject to the amendment. The billings shall also include the total amount billed to date by Contractor prior to the current invoice.
- d. Invoices shall be submitted to the project manager requesting the services as described in the on-call detailed task scope of work.

**EXHIBIT B  
INSURANCE**

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

**1. Required by County of Contractor with one or more workers, as defined by ORS 656.027.**

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

**2.  Required by County     Not required by County**

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

**3.  Required by County     Not required by County**

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

**4.  Required by County     Not required by County**

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

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

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

**EXHIBIT C**  
**CERTIFICATION STATEMENT FOR INDEPENDENT CONTRACTOR**

(Contractor completes if Contractor is not a corporation or is a Professional Corporation)

Contractor certifies he/she is independent as defined in Oregon Revised Statutes 670.600 and meets the following standards that the Contractor is:

1. Free from direction and control, beyond the right of the County to specify the desired result; **AND**
2. Are licensed if licensure is required for the services; **AND**
3. Are responsible for other licenses or certificates necessary to provide the services **AND**
4. Are customarily engaged in an “independently established business.”

To qualify under the law, an “independently established business” must meet three (3) out of the following five (5) criteria. **Check as applicable:**

- \_\_\_\_\_ A. Maintains a business location that is: (a) Separate from the business or work of the County; or (b) that is in a portion of their own residence that is used primarily for business.
- \_\_\_\_\_ B. Bears the risk of loss, shown by factors such as: (a) Entering into fixed price contracts; (b) Being required to correct defective work; (c) Warranting the services provided; or (d) Negotiating indemnification agreements or purchasing liability insurance, performance bonds, or errors and omissions insurance.
- \_\_\_\_\_ C. Provides contracted services for two or more different persons within a 12-month period, or routinely engages in business advertising, solicitation or other marketing efforts reasonably calculated to obtain new contracts to provide similar services.
- \_\_\_\_\_ D. Makes significant investment in the business through means such as: (a) Purchasing tools or equipment necessary to provide the services; (b) Paying for the premises or facilities where the services are provided; or (c) Paying for licenses, certificates or specialized training required to provide the services.
- \_\_\_\_\_ E. Has the authority to hire and fire other persons to provide assistance in performing the services.

Additional provisions:

1. A person who files tax returns with a Schedule F and also performs agricultural services reportable on a Schedule C is not required to meet the independently established business requirements.
2. Establishing a business entity such as a corporation or limited liability company, does not, by itself, establish that the individual providing services will be considered an independent contractor.

Contractor Signature \_\_\_\_\_ Date \_\_\_\_\_



CLACKAMAS COUNTY
PERSONAL/PROFESSIONAL SERVICES CONTRACT

This Personal/Professional Services Contract (this "Contract") is entered into between Professional Service Industries, Inc. ("Contractor"), and Clackamas County, a political subdivision of the State of Oregon ("County").

ARTICLE I.

1. Effective Date and Duration. This Contract shall become effective upon signature of both parties. Unless earlier terminated or extended, this Contract shall expire on June 30, 2019. However, such expiration shall not extinguish or prejudice the County's right to enforce this Contract with respect to: (a) any breach of a Contractor warranty; or (b) any default or defect in Contractor performance that has not been cured.

2. Scope of Work. Contractor will provide the following personal/professional services: Materials Testing and Special Inspection Services. ("Work"), further described in Exhibit A.

3. Consideration. The County agrees to pay Contractor, from available and authorized funds, a sum not to exceed \$150,000.00 annually with a maximum contract compensation of \$300,000.00, for accomplishing the Work required by this Contract. If any interim payments to Contractor are made, such payments shall be made only in accordance with the schedule and requirements in Exhibit A.

4. Travel and Other Expense. Authorized: [ ] Yes [X] No
If travel expense reimbursement is authorized in this Contract, such expense shall only be reimbursed at the rates in the County Contractor Travel Reimbursement Policy, hereby incorporated by reference and found at: http://www.clackamas.us/bids/terms.html. Travel expense reimbursement is not in excess of the not to exceed consideration.

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

6. Contractor Data.

Professional Service Industries, Inc.
Address: 6032 North Cutter Circle, Suite 480
Portland, OR 97217
Contractor Contract Administrator: Joe Morrissey
Phone No.: 503-289-1778 x 4716
Email: \_ joe.morrissey@psiusa.com
MWESB Certification: [ ] DBE # [ ] MBE # [ ] WBE # [ ] ESB #

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

## ARTICLE II.

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



suit may be brought in a federal forum, it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon.

7. **HAZARD COMMUNICATION.** Contractor shall notify County prior to using products containing hazardous chemicals to which County employees may be exposed. Products containing hazardous chemicals are those products defined by Oregon Administrative Rules, Chapter 437. Upon County's request, Contractor shall immediately provide Material Safety Data Sheets for the products subject to this provision.
8. **INDEMNITY, RESPONSIBILITY FOR DAMAGES.** Contractor shall be responsible for all damage to property, injury to persons, and loss, expense, inconvenience, and delay which may be caused by, or result from, the conduct of Work, or from any act, omission, or neglect of Contractor, its subcontractors, agents, or employees. The Contractor agrees to indemnify, hold harmless and defend the County, and its officers, elected officials, agents and employees from and against all claims and actions, and all expenses incidental to the investigation and defense thereof, arising out of or based upon damage or injuries to persons or property caused by the errors, omissions, fault or negligence of the Contractor or the Contractor's employees, subcontractors, or agents.
9. **INDEPENDENT CONTRACTOR STATUS.** The service(s) to be rendered under this Contract are those of an independent contractor. Although the County reserves the right to determine (and modify) the delivery schedule for the Work to be performed and to evaluate the quality of the completed performance, County cannot and will not control the means or manner of Contractor's performance. Contractor is responsible for determining the appropriate means and manner of performing the Work. Contractor is not to be considered an agent or employee of County for any purpose, including, but not limited to: (A) The Contractor will be solely responsible for payment of any Federal or State taxes required as a result of this Contract; (B) This Contract is not intended to entitle the Contractor to any benefits generally granted to County employees, including, but not limited to, vacation, holiday and sick leave, other leaves with pay, tenure, medical and dental coverage, life and disability insurance, overtime, Social Security, Workers' Compensation, unemployment compensation, or retirement benefits (except insofar as benefits are otherwise required by law if the Contractor is presently a member of the Oregon Public Employees Retirement System); and (C) If the Contractor has the assistance of other persons in the performance of this Contract, and the Contractor is a subject employer, the Contractor shall qualify and remain qualified for the term of this Contract as an insured employer under ORS Chapter 656. (Also see Exhibit C)

At present, the Contractor certifies that he or she, if an individual is not a program, County or Federal employee. The Contractor, if an individual, certifies that he or she is not a member of the Oregon Public Employees Retirement System.

10. **INSURANCE.** Contractor shall provide insurance as indicated on **Exhibit B**, attached hereto and by this reference made a part hereof. Insurance policies, which cannot be excess to a self-insurance program, are to be issued by an insurance company authorized to do business in the State of Oregon.
11. **LIMITATION OF LIABILITIES.** Except for liability arising under or related to Section 14 or 21(B), neither party shall be liable for (i) any indirect, incidental, consequential or special damages under this Contract or (ii) any damages of any sort arising solely from the termination of this Contract in accordance with its terms. This Contract is expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10, of the Oregon Constitution, and is contingent upon funds being appropriated therefore. Any provisions herein which would conflict

with law are deemed inoperative to that extent.

- 12. NOTICES.** Except as otherwise expressly provided in this Contract, any communications between the parties hereto or notices to be given hereunder shall be given in writing by personal delivery, email, or mailing the same, postage prepaid, to the County at: Clackamas County Procurement, 2051 Kaen Road, Oregon City, OR 97045, or [procurement@clackamas.us](mailto:procurement@clackamas.us), or to Contractor or at the address or number set forth in Section 1 of this Contract, or to such other addresses or numbers as either party may hereafter indicate. Any communication or notice so addressed and mailed shall be deemed to be given five (5) days after mailing. Any communication or notice by personal delivery shall be deemed to be given when actually delivered.
- 13. OWNERSHIP OF WORK PRODUCT.** All work product of Contractor that results from this Contract (the "Work Product") is the exclusive property of County. County and Contractor intend that such Work Product be deemed "work made for hire" of which County shall be deemed the author. If for any reason the Work Product is not deemed "work made for hire," Contractor hereby irrevocably assigns to County all of its right, title, and interest in and to any and all of the Work Product, whether arising from copyright, patent, trademark or trade secret, or any other state or federal intellectual property law or doctrine. Contractor shall execute such further documents and instruments as County may reasonably request in order to fully vest such rights in County. Contractor forever waives any and all rights relating to the Work Product, including without limitation, any and all rights arising under 17 USC § 106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use or subsequent modifications.
- 14. REPRESENTATIONS AND WARRANTIES.** Contractor represents and warrants to County that (A) Contractor has the power and authority to enter into and perform this Contract; (B) this Contract, when executed and delivered, shall be a valid and binding obligation of Contractor enforceable in accordance with its terms; (C) the Work under this Contract shall be performed in a good and workmanlike manner and in accordance with the highest professional standards; and (D) Contractor shall at all times during the term of this Contract, be qualified, professionally competent, and duly licensed to perform the Work. The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.
- 15. SURVIVAL.** All rights and obligations shall cease upon termination or expiration of this Contract, except for the rights and obligations set forth in Article II, Paragraphs 1, 6, 8, 11, 13, 14, 15, and 21.
- 16. SEVERABILITY** If any term or provision of this Contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Contract did not contain the particular term or provision held to be invalid.
- 17. SUBCONTRACTS AND ASSIGNMENTS.** Contractor shall not enter into any subcontracts for any of the Work required by this Contract, or assign or transfer any of its interest in this Contract by operation of law or otherwise, without obtaining prior written approval from the County. In addition to any provisions the County may require, Contractor shall include in any permitted subcontract under this Contract a requirement that the subcontractor be bound by this Article II, Paragraphs 1, 8, 13, 15, and 27 as if the subcontractor were the Contractor. County's consent to any subcontract shall not relieve Contractor of any of its duties or obligations under this Contract.
- 18. SUCCESSORS IN INTEREST.** The provisions of this Contract shall be binding upon and shall inure to the benefit of the parties hereto, and their respective authorized successors and assigns.

**19. TAX COMPLIANCE CERTIFICATION.** Contractor must, throughout the duration of this Contract and any extensions, comply with all tax laws of this state and all applicable tax laws of any political subdivision of this state. Any violation of this section shall constitute a material breach of this Contract. Further, any violation of Contractor's warranty in this Contract that Contractor has complied with the tax laws of this state and the applicable tax laws of any political subdivision of this state also shall constitute a material breach of this Contract. Any violation shall entitle County to terminate this Contract, to pursue and recover any and all damages that arise from the breach and the termination of this Contract, and to pursue any or all of the remedies available under this Contract, at law, or in equity, including but not limited to: (A) Termination of this Contract, in whole or in part; (B) Exercise of the right of setoff, and withholding of amounts otherwise due and owing to Contractor, in an amount equal to County's setoff right, without penalty; and (C) Initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief. County shall be entitled to recover any and all damages suffered as the result of Contractor's breach of this Contract, including but not limited to direct, indirect, incidental and consequential damages, costs of cure, and costs incurred in securing replacement performance. These remedies are cumulative to the extent the remedies are not inconsistent, and County may pursue any remedy or remedies singly, collectively, successively, or in any order whatsoever.

The Contractor represents and warrants that, for a period of no fewer than six calendar years preceding the effective date of this Contract, Contractor has faithfully complied with: (A) All tax laws of this state, including but not limited to ORS 305.620 and ORS Chapters 316, 317, and 318; (B) Any tax provisions imposed by a political subdivision of this state that applied to Contractor, to Contractor's property, operations, receipts, or income, or to Contractor's performance of or compensation for any Work performed by Contractor; (C) Any tax provisions imposed by a political subdivision of this state that applied to Contractor, or to goods, services, or property, whether tangible or intangible, provided by Contractor; and (D) Any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions.

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

**21. REMEDIES.** (A) In the event of termination pursuant to Article II Section 20(A), (B)(i), or (D), Contractor's sole remedy shall be a claim for the sum designated for accomplishing the Work

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

- 22. NO THIRD PARTY BENEFICIARIES.** County and Contractor are the only parties to this Contract and are the only parties entitled to enforce its terms. Nothing in this Contract gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Contract.
- 23. TIME IS OF THE ESSENCE.** Contractor agrees that time is of the essence in the performance this Contract.
- 24. FOREIGN CONTRACTOR.** If the Contractor is not domiciled in or registered to do business in the State of Oregon, Contractor shall promptly provide to the Oregon Department of Revenue and the Secretary of State, Corporate Division, all information required by those agencies relative to this Contract. The Contractor shall demonstrate its legal capacity to perform these services in the State of Oregon prior to entering into this Contract.
- 25. FORCE MAJEURE.** Neither County nor Contractor shall be held responsible for delay or default caused by fire, terrorism, riot, acts of God, or war where such cause was beyond, respectively, County's or Contractor's reasonable control. Contractor shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall upon the cessation of the cause, diligently pursue performance of its obligations under this Contract.
- 26. WAIVER.** The failure of County to enforce any provision of this Contract shall not constitute a waiver by County of that or any other provision.
- 27. COMPLIANCE.** Pursuant to the requirements of ORS 279B.020 and 279B.220 through 279B.235 and Article XI, Section 10, of the Oregon Constitution, the following terms and conditions are made a part of this Contract:
- (A) Contractor shall: (i) Make payments promptly, as due, to all persons supplying to the Contractor labor or materials for the prosecution of the Work provided for in this Contract; (ii) Pay all contributions or amounts due the Industrial Accident Fund from such Contractor or subcontractor incurred in the performance of this Contract; (iii) Not permit any lien or claim to be filed or prosecuted against the County on account of any labor or material furnished.
- (B) If the Contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to the Contractor or a subcontractor by any person in connection with this Contract as such claim becomes due, the proper officer representing the County may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due to the Contractor by reason of this Contract.

(C) The Contractor shall pay employees for Work in accordance with ORS 279B.020 and ORS 279B.235, which is incorporated herein by this reference. All subject employers working under the contract are either employers that will comply with ORS 656.017 or employers that are exempt under ORS 656.126.

(D) The Contractor shall promptly, as due, make payment to any person or co-partnership, association or corporation furnishing medical, surgical and hospital care, or other needed care and attention incident to sickness and injury to the employees of the Contractor, of all sums which the Contractor agrees to pay for such services and all moneys and sums which the Contractor collected or deducted from the wages of the Contractor's employees pursuant to any law, contract or agreement for the purpose of providing or paying for such services.

**28. MERGER. THIS CONTRACT CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PARTIES WITH RESPECT TO THE SUBJECT MATTER REFERENCED THEREIN. THERE ARE NO UNDERSTANDINGS, AGREEMENTS, OR REPRESENTATIONS, ORAL OR WRITTEN, NOT SPECIFIED HEREIN REGARDING THIS CONTRACT. NO AMENDMENT, CONSENT, OR WAIVER OF TERMS OF THIS CONTRACT SHALL BIND EITHER PARTY UNLESS IN WRITING AND SIGNED BY ALL PARTIES. ANY SUCH AMENDMENT, CONSENT, OR WAIVER SHALL BE EFFECTIVE ONLY IN THE SPECIFIC INSTANCE AND FOR THE SPECIFIC PURPOSE GIVEN. CONTRACTOR, BY THE SIGNATURE HERETO OF ITS AUTHORIZED REPRESENTATIVE, IS AN INDEPENDENT CONTRACTOR, ACKNOWLEDGES HAVING READ AND UNDERSTOOD THIS CONTRACT, AND CONTRACTOR AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.**

By their signatures below, the parties to this Contract agree to the terms, conditions, and content expressed herein.

Professional Service Industries, Inc.  
6032 North Cutter Circle, Suite 480  
Portland, OR 97217

Clackamas County Board of Commissioners

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Chair

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name / Title (Printed)

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

080965-88  
Oregon Business Registry #

Approved as to Form:

FBC / DE  
Entity Type / State of Formation

\_\_\_\_\_  
County Counsel

\_\_\_\_\_  
Date

**EXHIBIT A**  
**PERSONAL/PROFESSIONAL SERVICES CONTRACT**

**SCOPE OF WORK**

Contractor shall provide Materials Testing and Special Inspection Services on an as-needed basis described in RFQ 2017-68, hereby attached as exhibit D.

The services under this Contract are on an “on-call” or “as-needed basis,” no Work may be performed until a detailed task scope of work is developed and agreed to by the parties for a specific project. Each task scope of work must minimally include: a detailed description of services to be provided, a schedule of key milestones for completion of the task, the maximum fee for completion of the task, and any obligations of the County to complete the task. No task scope of work may commence until an amendment is made to this Contract or an official County Purchase Order is issued and that specifically incorporates by reference this Contract and the agreed upon task scope of work. No task scope of work may modify this Contract and its terms and conditions unless an amendment is made to this Contract.

**CONSIDERATION**

- a. Consideration Rates – Time and Material (rates are described in exhibit E)
- b. Payment for all Work performed under this Contract shall be subject to the provisions of ORS 293.462 and shall not exceed \$150,000.00 annually with a maximum contract compensation of \$300,000.00. Invoices shall be submitted to the project manager requesting the services.
- c. Unless otherwise specified, Contractor shall submit monthly invoices for Work performed. Payments shall be made to Contractor following the County’s review and approval of invoices submitted by Contractor. Contractor shall not submit invoices for, and the County will not pay, any amount in excess of the maximum compensation amount set forth above. If this maximum compensation amount is increased by amendment of this Contract, the amendment must be fully effective before Contractor performs Work subject to the amendment. The billings shall also include the total amount billed to date by Contractor prior to the current invoice.
- d. Invoices shall be submitted to the project manager requesting the services as described in the on-call detailed task scope of work.

**EXHIBIT B  
INSURANCE**

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

**1. Required by County of Contractor with one or more workers, as defined by ORS 656.027.**

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

**2.  Required by County     Not required by County**

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

**3.  Required by County     Not required by County**

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

**4.  Required by County     Not required by County**

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

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

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

**EXHIBIT C**  
**CERTIFICATION STATEMENT FOR INDEPENDENT CONTRACTOR**

(Contractor completes if Contractor is not a corporation or is a Professional Corporation)

Contractor certifies he/she is independent as defined in Oregon Revised Statutes 670.600 and meets the following standards that the Contractor is:

1. Free from direction and control, beyond the right of the County to specify the desired result; **AND**
2. Are licensed if licensure is required for the services; **AND**
3. Are responsible for other licenses or certificates necessary to provide the services **AND**
4. Are customarily engaged in an “independently established business.”

To qualify under the law, an “independently established business” must meet three (3) out of the following five (5) criteria. **Check as applicable:**

- \_\_\_\_\_ A. Maintains a business location that is: (a) Separate from the business or work of the County; or (b) that is in a portion of their own residence that is used primarily for business.
- \_\_\_\_\_ B. Bears the risk of loss, shown by factors such as: (a) Entering into fixed price contracts; (b) Being required to correct defective work; (c) Warranting the services provided; or (d) Negotiating indemnification agreements or purchasing liability insurance, performance bonds, or errors and omissions insurance.
- \_\_\_\_\_ C. Provides contracted services for two or more different persons within a 12-month period, or routinely engages in business advertising, solicitation or other marketing efforts reasonably calculated to obtain new contracts to provide similar services.
- \_\_\_\_\_ D. Makes significant investment in the business through means such as: (a) Purchasing tools or equipment necessary to provide the services; (b) Paying for the premises or facilities where the services are provided; or (c) Paying for licenses, certificates or specialized training required to provide the services.
- \_\_\_\_\_ E. Has the authority to hire and fire other persons to provide assistance in performing the services.

Additional provisions:

1. A person who files tax returns with a Schedule F and also performs agricultural services reportable on a Schedule C is not required to meet the independently established business requirements.
2. Establishing a business entity such as a corporation or limited liability company, does not, by itself, establish that the individual providing services will be considered an independent contractor.

Contractor Signature \_\_\_\_\_ Date \_\_\_\_\_



DRAFT

Approval of Previous Business Meeting Minutes:  
October 19, 2017

## BOARD OF COUNTY COMMISSIONERS BUSINESS MEETING MINUTES

A complete video copy and packet including staff reports of this meeting can be viewed at

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

**Thursday, October 19, 2017 – 9:45 AM**

**Public Services Building**

**2051 Kaen Rd., Oregon City, OR 97045**

**PRESENT:** Commissioner Jim Bernard, Chair  
Commissioner Sonya Fischer (arrived during Citizen Communication)  
Commissioner Ken Humberston  
Commissioner Paul Savas  
Commissioner Martha Schrader (arrived during Citizen Communication)

### CALL TO ORDER

- Roll Call
- Pledge of Allegiance

Chair Bernard stated that Commissioner Schrader and Fischer have been delayed in traffic and will be here soon.

He also announced today is **the Great Shakeout** – earthquake drill. At approximately 10:19 AM, we will take part in **the Great Shakeout** by practicing the **Drop, Cover and Hold On** technique for 30 seconds. This proven technique saves lives. I encourage everyone attending our meeting to join in. After we finish with Drop, Cover and Hold On, I will adjourn the meeting, and we will join county staff in evacuating this building.

Due to the earthquake drill, three agenda items were presented in the following order:

1. Consent Agenda
2. Citizen Communication
3. Housing Authority Consent Agenda

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Chair Bernard recess as the Board of County Commissioners and convened as the Housing Authority Board for the next two items. He introduced Housing Authority Commissioner Paul Reynolds.

### I. HOUSING AUTHORITY CONSENT AGENDA

1. Approval to Enter into a Housing Assistance Payment (HAP) Contract with Pedcor Investments-2016-CLV, Limited Partnership for the Rosewood Terrace Project
2. Approval to Submit two Applications to the US Department of Housing and Urban Development's Rental Assistance Demonstration Program

#### **MOTION:**

Commissioner Reynolds: I move we approve the Housing Authority consent agenda.

Commissioner Savas: Second.

*~Board Discussion~*

all those in favor/opposed:

Commissioner Reynolds: Aye.

Commissioner Fischer: Aye.

Commissioner Humberston: Aye.

Commissioner Schrader: Aye.

Commissioner Savas: Aye.

Chair Bernard: Aye – the Ayes have it, the motion passes 6-0.

Chair Bernard adjourned as the Housing Authority Board and re-convened as the Board of County Commissioners for the remainder of the meeting.

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

1. Presentation Regarding Earthquake Preparedness and the Clackamas County Shake Out Drill

Nancy Bush and Jamie Hays, Department of Disaster Management presented the staff report. This presentation include a short video regarding the Great Shake Out drill.

**III. CITIZEN COMMUNICATION**

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

1. Connie Emmons, Clackamas – concerns regarding a new reservoir that Clackamas River Water and Sunrise Water District are proposing near her home.

**IV. CONSENT AGENDA**

Chair Bernard asked the Clerk to read the consent agenda by title, Chair Bernard then asked for a motion.

**MOTION:**

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

**A. Health, Housing & Human Services**

1. Approval of an Intergovernmental Agreement with the Housing Authority of Clackamas County for the Mentor Athletics Program – *Housing & Community Development*
2. Approval of an Agency Services Contract with Lifeworks NW for Early Assessment and Support Alliance (EASA) Services – *Behavioral Health*
3. Approval of Amendment No. 2 of the Intergovernmental Revenue Agreement with the Oregon Department of Education – Early Learning Division for Healthy Families Program – *Children, Youth & Families*
4. Approval of a Renewal Revenue Health Care Services Agreement with Northwest Permanente, to Provide Chemical Dependency Treatment Services to Referred Members – *Health Centers*
5. Approval of a Service Agreement with Geneva Woods Partnering and Clackamas County Health Centers Division in Participation with 340B Pharmacy Services Agreement – *Health Centers*

**B. Elected Officials**

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

**V. DEVELOPMENT AGENCY**

1. Approval of a Disposition Agreement with Shanti Investments, LLC
2. Approval of a Cooperative Improvement Agreement with ODOT for the Boyer Drive Extension Project

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

**VI. WATER ENVIRONMENT SERVICES**

*(Service District No. 1, Tri-City Service District & Surface Water Management Agency of Clackamas County)*

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

**VII. COUNTY ADMINISTRATOR UPDATE**

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

**VIII. COMMISSIONERS COMMUNICATION**

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

**MEETING ADJOURNED – 10:30 AM**

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



NANCY S. BUSH  
DIRECTOR

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

November 09, 2017

Board of County Commissioners  
Clackamas County

Members of the Board:

Approval of FY 16 Flood Mitigation Assistance (FMA) Repetitive Loss Home Acquisition Intergovernmental Grant Agreement with the Oregon Emergency Management (OEM)

<b>Purpose/Outcomes</b>	Approving the FY16 Intergovernmental Grant Agreement (IGA) between Clackamas County and OEM allows us to acquire or “buyout” a Repetitive Loss residential property from the Mt. Scott Creek floodplain.
<b>Dollar Amount and Fiscal Impact</b>	The FMA grant is a 90% federal share grant. Clackamas County acts as the sub-recipients, receiving full reimbursement for any expenses incurred, with the 10% local match being covered by the property owner. Upon approval of the IGA, the County will be eligible to administer up to \$334,132.20 in grant funds to acquire a Repetitive Flood Loss property.
<b>Funding Source</b>	The United States Department of Homeland Security, Federal Emergency Management Agency (FEMA) - no County General Funds are involved.
<b>Duration</b>	The FY16 FMA grant award period is effective from the date of signature by both parties through August 30, 2019.
<b>Previous Board Action</b>	Originally approved during the Policy Session on Oct. 11, 2016 and restated during the Policy Session on Oct. 10, 2017
<b>Strategic Plan Alignment</b>	<ul style="list-style-type: none"> <li>• Build public trust through good government</li> <li>• Ensure safe, healthy and secure communities</li> <li>• Honor, utilize, promote and invest in our natural resources</li> </ul>
<b>Contact Person</b>	Nancy Bush, Director, 503-655-8665
<b>Contract No.</b>	Flood Mitigation Assistance IGA FMA-PJ-10-OR-2016-603

**BACKGROUND:**

Clackamas County participates in the National Flood Insurance Program (NFIP) and administers the NFIP requirements through the County’s Floodplain management ordinance. The County pursues hazard mitigation opportunities by maintaining a FEMA-approved Natural Hazard Mitigation Plan that prioritizes reducing risk to flood prone properties and utilizing acquisition as a strategy.

The agreement has been reviewed and approved by County Counsel.

**RECOMMENDATION:**

Staff respectfully recommends the Board approve the IGA between Clackamas County and Oregon Emergency Management and delegate administrative authority to Nancy Bush for signature.

Respectfully submitted,  
Nancy Bush, Director

**OREGON MILITARY DEPARTMENT  
OFFICE OF EMERGENCY MANAGEMENT  
FLOOD MITIGATION ASSISTANCE PROGRAM**

**CFDA # 97.029**

**Clackamas County**

**Repetitive Loss Home Acquisition**

**Not to Exceed \$334,132.20**

**Grant No: FMA-PJ-10-OR-2016-003**

This Agreement is made and entered into by and between the **State of Oregon**, acting by and through the Oregon Military Department, Office of Emergency Management, hereinafter referred to as "OEM", and **Clackamas County**, hereinafter referred to as "Subrecipient", and collectively referred to as the "Parties".

1. **Effective Date.** This Agreement shall become effective on the date this Agreement is fully executed and approved as required by applicable law. Reimbursements will be made for Project Costs incurred (described in Section 6.a) beginning on **March 15, 2016**, and shall terminate upon completion and approval of the Project by federal and state officials, including the completion of close-out and audit. This period shall be known as the Grant Award Period. The Project shall be completed no later than **August 30, 2019**, (the "Expiration Date"), unless otherwise extended as provided in this Agreement. OEM's obligation to disburse Grant Funds under this Agreement shall end as provided in Section 6.b.iv of this Agreement.
2. **Agreement Documents.** This Agreement consists of this document and the following documents, all of which are attached hereto and incorporated herein by reference:

Exhibit A: **FEMA Project Description and Budget**

Exhibit B1: **Federal Requirements and Certifications**

Exhibit B2: **Federal Department of Homeland Security Standard Terms & Conditions**

Exhibit B3: **Federal Standard Conditions for Acquisition of Open Space**

Exhibit C: **Subcontractor Insurance**

Exhibit D: **Information required by 2 CFR 200.331(a)**

In the event of a conflict between two or more of the documents comprising this Agreement, the language in the document with the highest precedence shall control. The precedence of each of the documents comprising this Agreement is as follows, listed from highest precedence to lowest precedence: Exhibits B1-3; this Agreement without Exhibits; Exhibit A; Exhibit C; Exhibit D.

3. **Project Cost, Grant Funds.** The total estimated cost of the Project for the purpose of this Grant Agreement is **\$371,258.00**. In accordance with the terms and conditions of this Agreement, OEM shall provide Subrecipient an amount not to exceed 90 percent of the Project Costs or **\$334,132.20**, whichever is less, in Grant Funds for eligible costs described in Section 6 hereof. Grant Funds for this Program are provided by the Federal Emergency Management Agency (FEMA) and are administered by OEM. Subrecipient will commit at least ten percent (10%) non-Federal match to the Project. The non-Federal match can be cash, in-kind or a combination of both. For this subgrant, the non-Federal share contribution shall be 10 percent of the Project Costs, up to **\$37,125.80**. Subrecipient shall apply any savings, rebates and reductions in cost to reduce the overall cost of the Project. Subrecipient is responsible for any costs in excess of the total Project Cost.

4. **Project.** The Grant Funds shall be used solely for the Project described in Exhibit A and shall not be used for any other purpose. No Grant Funds will be disbursed for any changes to the Project unless such changes are approved by OEM by amendment pursuant to Section 11.d hereof.
5. **Reports.** Failure of Subrecipient to submit the required program, financial, or audit reports, or to resolve program, financial, or audit issues may result in the suspension of grant payments, termination of this Agreement, or both.

**a. Performance and Close-Out Reports.**

- i. Subrecipient agrees to submit performance reports, using a form provided by OEM, on its progress in meeting each of its agreed upon milestones.
- ii. Reports are due to OEM on or before 15 days following the end of each calendar quarter (March 31, June 30, September 30, and December 31).
- iii. Subrecipient may request from OEM prior written approval to extend a performance report requirement past its due date. OEM, in its sole discretion, may approve or reject the request.
- iv. Subrecipient shall submit final close-out report to OEM for review which must include a financial performance report, construction reports (if applicable), invention disclosure (if applicable), Federally-owned property report (if applicable), and final request for reimbursement (if applicable).

**b. Financial Reimbursement Requests.**

- i. To receive reimbursement, Subrecipient must submit a Flood Mitigation Assistance Request for Reimbursement of Funds form (the "RfR form") to OEM which references the appropriate Flood Mitigation Assistance Project Number, FEMA Project Number, FEMA FIPS Number and DUNS Number, and appropriate documentation as required. Partial payments of funds for costs already incurred may be requested at any time during the Project. Each request must include appropriate supporting documentation of the incurred costs. A final Request must be submitted no later than 30 days following completion of the Project or the Expiration Date, whichever occurs first.
- ii. Reimbursements for expenses will be withheld if performance reports are not submitted by the specified dates or are incomplete.
- iii. Reimbursement rates for travel expenses shall not exceed those allowed by the State of Oregon. Requests for reimbursement for travel must be supported with a detailed statement identifying the person who traveled, the purpose of the travel, the dates, times, and places of travel, and the actual expenses or authorized rates incurred.
- iv. Reimbursements will only be made for actual expenses incurred during the Grant Award Period provided in Section 1. Subrecipient agrees that no grant or, if applicable, match funds may be used for expenses incurred before or after the Grant Award Period.

**6. Disbursement and Recovery of Grant Funds.**

- a. **Disbursement Generally.** OEM shall reimburse eligible costs incurred in carrying out the Project, up to the Grant Fund amount provided in Section 3. Reimbursements shall be made by OEM upon approval by OEM of the RfR form. Eligible Project Costs are the reasonable and necessary costs incurred by Subrecipient for the Project that are not excluded from reimbursement

by OEM or FEMA either by this Agreement or by exclusion as a result of financial review or audit.

- b. Conditions Precedent to Disbursement.** OEM's obligation to disburse Grant Funds to Subrecipient is subject to satisfaction, with respect to each disbursement, of each of the following conditions precedent:
- i. OEM has received funding, appropriations, limitations, allotments or other expenditure authority sufficient to allow OEM, in the exercise of its reasonable administrative discretion, to make the disbursement.
  - ii. Subrecipient is in compliance with the terms of this Agreement including, without limitation, Exhibit B and the requirements incorporated by reference in Exhibit B.
  - iii. Subrecipient's representations and warranties set forth in Section 7 hereof are true and correct on the date of disbursement with the same effect as though made on the date of disbursement.
  - iv. Subrecipient has provided to OEM the RfR form in accordance with Section 5.b of this Agreement.
- c. Recovery of Grant Funds.** Any funds disbursed to Subrecipient under this Agreement that are expended in violation or contravention of one or more of the provisions of this Agreement ("Misexpended Funds") or that remain unexpended on the earlier of termination or expiration of this Agreement ("Unexpended Funds") must be returned to OEM. Subrecipient shall return all Misexpended Funds to OEM promptly after OEM's written demand and no later than 15 days after OEM's written demand. Subrecipient shall return all Unexpended Funds to OEM within 14 days after the earlier of expiration or termination of this Agreement.

The Subrecipient shall be responsible for pursuing recovery of monies paid under this Agreement in providing disaster assistance against any party that might be liable, and further, the Subrecipient shall cooperate in a reasonable manner with the State and the United States in efforts to recover expenditures under this Agreement.

In the event the Subrecipient obtains recovery from a responsible party, the Subrecipient shall first be reimbursed its reasonable costs of litigation from such recovered funds. The Subrecipient shall pay to the state the proportionate Federal share of all project funds recovered in excess of costs of litigation.

**7. Representations and Warranties of Subrecipient.** Subrecipient represents and warrants to OEM as follows:

- a. Organization and Authority.** Subrecipient is a county and political subdivision of the State of Oregon duly formed under the laws of the State of Oregon and is eligible to receive the Grant Funds. Subrecipient has full power, authority, and legal right to make this Agreement and to incur and perform its obligations hereunder, and the making and performance by Subrecipient of this Agreement (1) have been duly authorized by all necessary action of Subrecipient and (2) do not and will not violate any provision of any applicable law, rule, regulation, or order of any court, regulatory commission, board, or other administrative agency, (3) do not and will not result in the breach of, or constitute a default or require any consent under any other agreement or instrument to which Subrecipient is a party or by which Subrecipient or any of its properties may be bound or affected. No further authorization, consent, license, approval of, filing or registration with or



notification to any governmental body or regulatory or supervisory authority is required for the execution, delivery or performance by Subrecipient of this Agreement.

- b. Binding Obligation.** This Agreement has been duly executed and delivered by Subrecipient and constitutes a legal, valid and binding obligation of Subrecipient, enforceable in accordance with its terms subject to the laws of bankruptcy, insolvency, or other similar laws affecting the enforcement of creditors' rights generally.
- c. No Solicitation.** Subrecipient's officers, employees, and agents shall neither solicit nor accept gratuities, favors, or any item of monetary value from contractors, potential contractors, or parties to subagreements. No member or delegate to the Congress of the United States shall be admitted to any share or part of this Agreement or any benefit arising therefrom.

The warranties set forth in this section are in addition to, and not in lieu of, any other warranties set forth in this Agreement or implied by law.

## **8. Records Maintenance and Access; Audit.**

- a. Records, Access to Records and Facilities.** Subrecipient shall make and retain proper and complete books of record and account and maintain all fiscal records related to this Agreement and the Project in accordance with all applicable generally accepted accounting principles, generally accepted governmental auditing standards and state minimum standards for audits of municipal corporations. Subrecipient acknowledges and agrees, and Subrecipient will require its contractors, subcontractors, subrecipients (collectively hereafter "contractors"), successors, transferees, and assignees to acknowledge and agree, to provide OEM, Oregon Secretary of State (the "Secretary"), Office of the U.S. Inspector General ("OIG"), Department of Homeland Security ("DHS"), Federal Emergency Management Agency ("FEMA"), or any of their authorized representatives, access to records, accounts, documents, information, facilities, and staff. Subrecipient and its contractors must cooperate with any compliance review or complaint investigation by any of the above listed agencies, providing them access to and the right to examine and copy records, accounts, and other documents and sources of information related to the grant and permit access to facilities, personnel, and other individuals and information as may be necessary. The right of access is not limited to the required retention period but shall last as long as the records are retained.

Subrecipient must prepare a Schedule of Expenditures of Federal Awards ("SEFA") that includes: Federal grantor name, pass-through entity name, program name, Federal catalog number, identifying number assigned by the pass-through entity and current year expenditures.

- b. Retention of Records.** Subrecipient shall retain and keep accessible all books, documents, papers, and records that are directly related to this Agreement, the Grant Funds or the Project until the latest of (a) six years following termination, completion or expiration of this Agreement, (b) upon resolution of any litigation or other disputes related to this Agreement, or (c) as required by 2 CFR 200.333. It is the responsibility of Subrecipient to obtain a copy of 2 CFR Part 200 and to apprise itself of all rules and regulations set forth.
- c. Audits.**
  - i.** If Subrecipient expends \$750,000 or more in Federal funds (from all sources) in its fiscal year, Subrecipient shall have a single organization-wide audit conducted in accordance with the

provisions of 2 CFR 200 Subpart F. Copies of all audits must be submitted to OEM within 30 days of completion. If Subrecipient expends less than \$ 750,000 in its fiscal year in Federal funds, Subrecipient is exempt from Federal audit requirements for that year. Records must be available for review or audit by appropriate officials as provided in Section 8.a. herein.

- ii. Audit costs for audits not required in accordance with 2 CFR Part 200, Subpart F are unallowable. If Subrecipient did not expend \$750,000 or more in Federal funds in its fiscal year, but contracted with a certified public accountant to perform an audit, costs for performance of that audit shall not be charged to the grant.
- iii. Subrecipient shall save, protect and hold harmless OEM from the cost of any audits or special investigations performed by the Secretary or any federal agency with respect to the funds expended under this Agreement. Subrecipient acknowledges and agrees that any audit costs incurred by Subrecipient as a result of allegations of fraud, waste or abuse are ineligible for reimbursement under this or any other agreement between Subrecipient and the State of Oregon.

**9. Subrecipient Procurements; Property and Equipment Management and Records; Subcontractor Indemnity and Insurance**

- a. **Subagreements.** Subrecipient may enter into agreements (hereafter “subagreements”) for performance of the Project. Subrecipient shall use its own procurement procedures and regulations, provided that the procurement conforms to applicable Federal and State law (including without limitation ORS chapters 279A, 279B, 279C, and that for contracts for more than \$150,000, the contract shall address administrative, contractual or legal remedies for violation or breach of contract terms and provide for sanctions and penalties as appropriate, and for contracts for more than \$10,000 address termination for cause or for convenience including the manner in which termination will be effected and the basis for settlement).
  - i. Subrecipient shall provide to OEM copies of all Requests for Proposals (RFPs) or other solicitations for procurements anticipated to be for \$100,000 or more and provide to OEM, upon request by OEM, such documents for procurements for less than \$100,000. Subrecipient shall include with its RfR form a list of all procurements issued during the period covered by the report.
  - ii. All subagreements, whether negotiated or competitively bid and without regard to dollar value, shall be conducted in a manner that encourages fair and open competition to the maximum practical extent possible. All sole-source procurements in excess of \$100,000 must receive prior written approval from OEM in addition to any other approvals required by law applicable to Subrecipient. Justification for sole-source procurement in excess of \$100,000 should include a description of the program and what is being contracted for, an explanation of why it is necessary to contract noncompetitively, time constraints and any other pertinent information. Interagency agreements between units of government are excluded from this provision.
  - iii. Subrecipient shall be alert to organizational conflicts of interest or non-competitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade. Contractors that develop or draft specifications, requirements, statements of work, or RFPs for a proposed procurement shall be excluded from bidding or submitting a proposal to compete for the award of such procurement. Any request for exemption must be submitted in writing to OEM.

- iv. Subrecipient agrees that, to the extent it uses contractors, such contractors shall use small, minority, women-owned or disadvantaged business concerns and contractors or subcontractors to the extent practicable.
- v. In the event that Subrecipient subcontracts for engineering services, Subrecipient shall require that the engineering firm be covered by errors and omissions insurance in an amount not less than the amount of the firm's contract. If the firm is unable to obtain errors and omissions insurance, the firm shall post a bond with Subrecipient for the benefit of Subrecipient of not less than the amount of its subcontract. Such insurance or bond shall remain in effect for the entire term of the subcontract. The subcontract shall provide that the subcontract shall terminate immediately upon cancellation or lapse of the bond or insurance and shall require the subcontractor to notify Subrecipient immediately upon any change in insurance coverage or cancellation or lapse of the bond.

**b. Purchases and Management of Property and Equipment; Records.** Subrecipient agrees to comply with all applicable federal requirements referenced in Exhibit B, Section II.C.1 to this Agreement and procedures for managing and maintaining records of all purchases of property and equipment will, at a minimum, meet the following requirements:

- i. All property and equipment purchased under this Agreement, whether by Subrecipient or a contractor, will be conducted in a manner providing full and open competition and in accordance with all applicable procurement requirements, including without limitation ORS chapters 279A, 279B, 279C, and purchases shall be recorded and maintained in Subrecipient's property or equipment inventory system.
- ii. Subrecipient's property and equipment records shall include: a description of the property or equipment; the manufacturer's serial number, model number, or other identification number; the source of the property or equipment, including the Catalog of Federal Domestic Assistance (CFDA) number; name of person or entity holding title to the property or equipment; the acquisition date; cost and percentage of Federal participation in the cost; the location, use and condition of the property or equipment; and any ultimate disposition data including the date of disposal and sale price of the property or equipment.

For acquisition projects, Subrecipient shall retain real estate transaction and property tracking records indefinitely to enable FEMA to track the use of real property acquired with grant funds and ensure that the property is maintained for open space in perpetuity under 44 CFR Part 80.

- iii. A physical inventory of the property and equipment must be taken and the results reconciled with the property and equipment records at least once every two years.
- iv. Subrecipient must develop a control system to ensure adequate safeguards to prevent loss, damage, or theft of the property and equipment. Subrecipient shall investigate any loss, damage, or theft and shall provide the results of the investigation to OEM upon request.
- v. Subrecipient must develop, or require its contractors to develop, adequate maintenance procedures to keep the property and equipment in good condition.
- vi. If Subrecipient is authorized to sell the property or equipment, proper sales procedures must be established to ensure the highest possible return.
- vii. Subrecipient agrees to comply with 2 CFR 200.313 when original or replacement equipment acquired with Grant Funds is no longer needed for the original project or program or for other activities currently or previously supported by a Federal agency.

- viii. Subrecipient shall require its contractors to use property and equipment management requirements that meet or exceed the requirements provided herein applicable to all property and equipment purchased with Grant Funds.
  - ix. Subrecipient shall, and shall require its contractors to, retain, the records described in this Section 9.b. for a period of six years from the date of the disposition or replacement or transfer at the discretion of OEM. Title to all property and equipment purchased with Grant Funds shall vest in Subrecipient if Subrecipient provides written certification to OEM that it will use the property and equipment for purposes consistent with this Agreement.
- c. Subagreement indemnity; insurance.** Subrecipient's subagreement(s) shall require the other party to such subagreements(s) that is not a unit of local government as defined in ORS 190.003, if any, to indemnify, defend, save and hold harmless OEM and its officers, employees and agents from and against any and all claims, actions, liabilities, damages, losses, or expenses, including attorneys' fees, arising from a tort, as now or hereafter defined in ORS 30.260, caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of the other party to Subrecipient's subagreement or any of such party's officers, agents, employees or subcontractors ("Claims"). It is the specific intention of the Parties that OEM shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of OEM, be indemnified by the other party to Subrecipient's subagreement(s) from and against any and all Claims.

Any such indemnification shall also provide that neither Subrecipient's contractor(s) nor any attorney engaged by Subrecipient's contractor(s) shall defend any claim in the name of OEM or any agency of the State of Oregon (collectively "State"), nor purport to act as legal representative of the State or any of its agencies, without the prior written consent of the Oregon Attorney General. The State may, at any time at its election, assume its own defense and settlement in the event that it determines that Subrecipient's contractor is prohibited from defending State or that Subrecipient's contractor is not adequately defending State's interests, or that an important governmental principle is at issue or that it is in the best interests of State to do so. State reserves all rights to pursue claims it may have against Subrecipient's contractor if State elects to assume its own defense.

Subrecipient shall require the other party, or parties, to each of its subagreements that are not units of local government as defined in ORS 190.003 to obtain and maintain insurance of the types and in the amounts provided in Exhibit C to this Agreement.

## 10. Termination

- a. Termination by OEM.** OEM may terminate this Agreement effective upon delivery of written notice of termination to Subrecipient, or at such later date as may be established by OEM in such written notice, if:
- i. Subrecipient fails to perform the Project within the time specified herein or any extension thereof or commencement, continuation or timely completion of the Project by Subrecipient is, for any reason, rendered improbable, impossible, or illegal; or
  - ii. OEM fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow OEM, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement; or
  - iii. Federal or state laws, rules, regulations or guidelines are modified or interpreted in such a way that the Project is no longer allowable or no longer eligible for funding under this Agreement;

- iv. The Project would not produce results commensurate with the further expenditure of funds; or
  - v. Subrecipient takes any action pertaining to this Agreement without the approval of OEM and which under the provisions of this Agreement would have required the approval of OEM.
  - vi. OEM determines there is a material misrepresentation, error or inaccuracy in Subrecipient's application.
- b. Termination by Subrecipient.** Subrecipient may terminate this Agreement effective upon delivery of written notice of termination to OEM, or at such later date as may be established by Subrecipient in such written notice, if:
- i. The requisite local funding to continue the Project becomes unavailable to Subrecipient; or
  - ii. Federal or state laws, rules, regulations or guidelines are modified or interpreted in such a way that the Project is no longer allowable or no longer eligible for funding under this Agreement.
- c. Termination by Either Party.** Either Party may terminate this Agreement upon at least thirty days' notice to the other Party.
- d. Effect of Termination.** In the event of termination of this Agreement, each party shall be liable only for project costs and allowable expenses incurred by the other party, prior to the effective date of termination, and Subrecipient will return all Federal funds paid to Subrecipient for the Project which have not been expended or irrevocably committed to eligible activities.

## 11. General Provisions

- a. Indemnity.** Subject to the limitations of Article XI, § 7 of the Oregon Constitution and the Oregon Tort Claims Act (ORS 30.260 through 30.300), Subrecipient shall, indemnify, defend, save, and hold harmless the United States and its agencies, officers, employees, agents, and members, and the State of Oregon and its agencies, officers, employees, agents, and members, from and against all claims, damages, losses, expenses, suits, or actions of any nature arising out of or resulting from the negligent acts or misconduct of Subrecipient, its agencies, officers, employees, agents, members, contractors, or subcontractors in the performance of this Agreement. In addition, when applicable, Subrecipient shall comply fully with the provisions of ORS 401.178 (2). If legal limitations apply to the indemnification ability of Subrecipient, this indemnification shall be for the maximum amount of funds available for expenditure, including without limitation: all tuition, charges, rents and other operating revenue of Subrecipient, any available contingency funds, funds available under ORS 30.260 to 30.300 or other available non-appropriated funds.
- b. Dispute Resolution.** The Parties shall attempt in good faith to resolve any dispute arising out of this Agreement. In addition, the Parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation. Each party shall bear its own costs incurred under this Section 11.b.
- c. Responsibility for Grant Funds.** Subrecipient shall assume sole liability for Subrecipient's breach of the conditions of this Agreement, and shall, upon Subrecipient's breach of conditions that requires OEM to return funds to the FEMA, hold harmless and indemnify OEM for an amount equal to the funds received under this Agreement; or if legal limitations apply to the indemnification ability of the Subrecipient, the indemnification amount shall be the maximum

amount of funds available for expenditure, including any available contingency funds or other available non-appropriated funds, up to the amount received under this Agreement.

- d. **Amendments.** This Agreement may be amended or extended only by a written instrument signed by both Parties and approved as required by applicable law.
- e. **Duplicate Payment.** Subrecipient is not entitled to compensation or any other form of duplicate, overlapping or multiple payments for the same work performed under this Agreement from any agency of the State of Oregon or the United States of America or any other party, organization or individual.
- f. **No Third Party Beneficiaries.** OEM and Subrecipient are the only Parties to this Agreement and are the only Parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly or indirectly, to a third person unless such a third person is individually identified by name herein and expressly described as an intended beneficiary of the terms of this Agreement.

Subrecipient acknowledges and agrees that the Federal Government, absent express written consent by the Federal Government, is not a party to this Agreement and shall not be subject to any obligations or liabilities to Subrecipient, contractor or any other party (whether or not a party to the Agreement) pertaining to any matter resulting from this Agreement.

- g. **Notices.** Except as otherwise expressly provided in this Section, any communications between the parties hereto or notice to be given hereunder shall be given in writing by personal delivery, facsimile, email or mailing the same by registered or certified mail, postage prepaid to the persons identified in the signature blocks or to such other persons, addresses or numbers as either party may hereafter indicate pursuant to this Section. Any communication or notice so addressed and sent by registered or certified mail shall be deemed delivered upon receipt or refusal of receipt. Any communication or notice delivered by facsimile shall be deemed to be given when receipt of the transmission is generated by the transmitting machine. Any communication or notice by personal delivery shall be deemed to be given when actually delivered. Any communication by email shall be deemed to be given when the recipient of the email acknowledges receipt of the email. The parties also may communicate by telephone, regular mail or other means, but such communications shall not be deemed Notices under this Section unless receipt by the other party is expressly acknowledged in writing by the receiving party.
- h. **Governing Law, Consent to Jurisdiction.** This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively, "Claim") between OEM (or any other agency or department of the State of Oregon) and Subrecipient that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Marion County in the State of Oregon. In no event shall this section be construed as a waiver by the State of Oregon of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the eleventh amendment to the Constitution of the United States or otherwise, from any Claim or from the jurisdiction of any court. Each party hereby consents to the exclusive jurisdiction of such court, waives any objection to venue, and waives any claim that such forum is an inconvenient forum.
- i. **Compliance with Law.** Subrecipient shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to the Agreement or to the implementation

of the Project, including without limitation as described in Exhibits B1, B2 and B3. Without limiting the generality of the foregoing, Subrecipient expressly agrees to comply with (i) Title VI of Civil Rights Act of 1964; (ii) Title V and Section 504 of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 and ORS 659A.142; (iv) all regulations and administrative rules established pursuant to the foregoing laws; and (v) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations. In addition, without limitation, the Subrecipient shall comply (i) with the Robert T. Stafford Disaster Relief and Emergency Assistance Act, P.L. 93-288, as amended, 42 U.S.C. 5121 et seq., and all related authorities; and (ii) with the Unified Hazard Mitigation Assistance Guidance document.

- j. Insurance; Workers' Compensation.** All employers, including Subrecipient, that employ subject workers who provide services in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. Employer's liability insurance with coverage limits of not less than \$500,000 must be included. Subrecipient shall ensure that each of its subrecipient(s), contractor(s), and subcontractor(s) complies with these requirements.

The Subrecipient will comply with the insurance requirements of the Stafford Act, as amended, and obtain and maintain any other insurance as may be reasonable, adequate, and necessary to protect against further loss to any property which was replaced, restored, repaired or constructed with this assistance.

- k. Independent Contractor.** Subrecipient shall perform the Project as an independent contractor and not as an agent or employee of OEM. Subrecipient has no right or authority to incur or create any obligation for or legally bind OEM in any way. OEM cannot and will not control the means or manner by which Subrecipient performs the Project, except as specifically set forth in this Agreement. Subrecipient is responsible for determining the appropriate means and manner of performing the Project. Subrecipient acknowledges and agrees that Subrecipient is not an "officer", "employee", or "agent" of OEM, as those terms are used in ORS 30.265, and shall not make representations to third parties to the contrary.

- l. Headings.** The section headings in this Agreement are included for convenience only, do not give full notice of the terms of any portion of this Agreement, and are not relevant to the interpretation of any provision of this Agreement.

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

- n. Counterparts.** This Agreement may be executed in two or more counterparts (by facsimile or otherwise), each of which is an original and all of which together are deemed one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart.

- o. Integration and Waiver.** This Agreement, including all Exhibits and referenced documents, constitutes the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. The delay or failure of either Party to enforce any provision of this Agreement shall not constitute a waiver by that Party of that or any other provision. Subrecipient, by the signature below of its authorized representative, hereby acknowledges that it has read this Agreement,

understands it, and agrees to be bound by its terms and conditions.

**THE PARTIES**, by execution of this Agreement, hereby acknowledge that each Party has read this Agreement, understands it, and agrees to be bound by its terms and conditions.

SIGNATURE PAGE TO FOLLOW



**Clackamas County**

By \_\_\_\_\_

Name \_\_\_\_\_  
(printed)

Date \_\_\_\_\_

**APPROVED AS TO LEGAL SUFFICIENCY**  
(If required for Subrecipient)

By  \_\_\_\_\_  
Subrecipient's Legal Counsel

Date 10/30/17 \_\_\_\_\_

**Subrecipient Program Contact:**  
Jay Wilson, Resilience Coordinator  
Clackamas County Emergency Management  
2200 Kaen Road  
Oregon City, OR 97045-4048  
503-723-4848  
jaywilson@clackamas.us

**Subrecipient Fiscal Contact:**  
Michael Morasko  
Clackamas County Finance  
2051 Kaen Road  
Oregon City, OR 97045-4048  
503-742-5435  
mmorasko@clackamas.us

**OEM**

By \_\_\_\_\_

Clint Fella  
Mitigation and Recovery Services Section Manager, OEM

Date \_\_\_\_\_

**APPROVED AS TO FORM**

By Marvin Fjordbeck via email  
Assistant Attorney General

Date October 13, 2017

**OEM Program Contact:**  
Angie Lane  
State Hazard Mitigation Officer  
Oregon Military Department  
Office of Emergency Management  
PO Box 14370  
Salem, OR 97309-5062  
503-378-4660  
Angie.lane@state.or.us

**OEM Fiscal Contact:**  
Carrie Froelich  
Grants Program Accountant  
Oregon Military Department  
Office of Emergency Management  
PO Box 14370  
Salem, OR 97309-5062  
503-378-2999  
carrie.froelich@state.or.us

**EXHIBIT A**

Please refer to FEMA obligation documents

## EXHIBIT B1

### Federal Requirements and Certifications

**I. General.** Subrecipient agrees to comply with all federal requirements applicable to this Agreement, including without limitation financial management and procurement requirements and maintain accounting and financial records in accordance with Generally Accepted Accounting Principles (GAAP) and financial, administrative, and audit requirements as set forth in the most recent versions of the Code of Federal Regulations (CFR), Department of Homeland Security (DHS) program legislation, and DHS/Federal Emergency Management Agency (FEMA) regulations.

### II. Specific Requirements and Certifications

- A. Debarment, Suspension, Ineligibility and Voluntary Exclusion.** Subrecipient certifies by accepting funds under this Agreement that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, nor voluntarily excluded from participation in this transaction by any Federal department or agency (2 CFR 200.213).
- B. Standard Assurances and Certifications Regarding Lobbying.** Subrecipient is required to comply with 2 CFR 200.450 and the authorities cited therein, including 31 USC § 1352 and *New Restrictions on Lobbying* 44 CFR Part 18
- C. Compliance with Applicable Law.** Subrecipient agrees to comply with all applicable laws, regulations, program guidance, and guidelines of the State of Oregon, the Federal Government and OEM in the performance of this Agreement, including but not limited to:
1. Administrative Requirements set forth in 2 CFR Part 200, including without limitation:
    - a. Using Grant Funds only in accordance with applicable cost principles described in 2 CFR Subpart E, including that costs allocable to this Grant may not be charged to other Federal awards to overcome fund deficiencies, to avoid restrictions imposed by federal statutes, regulations or the terms of federal awards or other reasons;
    - b. Subrecipient must establish a Conflict of Interest policy applicable to any procurement contract or subawards made under this Agreement in accordance with 2 CFR 200.112. Conflicts of Interest must be disclosed in writing to the OEM within 5 calendar days of discovery including any information regarding measures to eliminate, neutralize, mitigate or otherwise resolve the conflict of interest.
  2. USA Patriot Act of 2001, which amends 18 USC §§ 175-175c.
  3. Section 6 of the Hotel and Motel Fire Safety Act of 1990, 15 USC 2225(a).
  4. 31 USC 3729, prohibiting recipients of federal payments from submitting a false claim for payment. *See* 38 USC 3801-3812 detailing administrative remedies for false claims and statements made.
  5. 10 USC §§ 2409 and 2324 and 41 USC §§ 4712, 4304 and 4310 requiring compliance with whistleblower protections, as applicable.
  6. No supplanting. Grant Funds under this Agreement shall not replace funds that have been budgeted for the same purposes through non-Federal sources. Subrecipient may be required to

demonstrate and document that a reduction in non-Federal resources occurred for reasons other than receipt or expected receipt of Federal funds.

**D. Non-discrimination and Civil Rights Compliance, Equal Employment Opportunity Program, and Services to Limited English Proficient (LEP) Persons.**

1. **Non-discrimination and Civil Rights Compliance.** Subrecipient, and all its contractors and subcontractors, assures compliance with all applicable nondiscrimination laws, including but not limited to:
  - a. Title VI of the Civil Rights Act of 1964, 42 USC § 2000d et seq., as amended, and related nondiscrimination regulations in 6 CFR Part 21 and 44 CFR Part 7.
  - b. Title VIII of the Civil Rights Act of 1968, 42 USC § 3601, as amended, and implementing regulations at 6 CFR Part 21 and 44 CFR Part 7.
  - c. Titles I, II, and III of the Americans with Disabilities Act of 1990, as amended, 42 USC §§ 12101 – 12213.
  - d. Age Discrimination Act of 1975, 42 USC § 6101 et seq.
  - e. Title IX of the Education Amendments of 1972, as amended, 20 USC § 1681 et seq.
  - f. Section 504 of the Rehabilitation Act of 1973, as amended, 29 USC § 794, as amended.
  - g. If, during the past three years, Subrecipient has been accused of discrimination on the grounds of race, color, national origin (including limited English proficiency), sex, age, disability, religion, or familial status, Subrecipient must provide a letter certifying that all documentation of such proceedings, pending or completed, including outcome and copies of settlement agreements will be made available to OEM upon request. In the event any court or administrative agency makes a finding of discrimination on grounds of race, color, national origin (including limited English proficiency), sex, age, disability, religion, or familial status against Subrecipient, or Subrecipient settles a case or matter alleging such discrimination, Subrecipient must forward a letter to OEM summarizing the finding and making a copy of the complaint and findings available to OEM. Nothing in this paragraph shall be construed to require Subrecipient to provide information that Subrecipient is precluded from providing by controlling state or federal law.
2. **Equal Employment Opportunity Program.** Subrecipient, and any of its contractors and subcontractors, certifies that an equal employment opportunity program will be in effect on or before the effective date of this Agreement. Subrecipient must maintain a current copy on file.
3. **Services to Limited English Proficient (LEP) Persons.** Subrecipient, and any of its contractors and subcontractors agrees to comply with the requirements Title VI of the Civil Rights Act of 1964 and Executive Order 13166, improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin and resulting agency guidance, national origin discrimination includes discrimination on the basis of LEP. To ensure compliance with Title VI, Subrecipient must take reasonable steps to ensure that LEP persons have meaningful access to your programs. Meaningful access may entail providing language assistance services, including oral and written translation, where necessary. Subrecipient is encouraged to consider the need for language services for LEP persons served or encountered both in developing budgets and in conducting programs and

activities. For assistance additional information regarding LEP obligations, please see <http://www.lep.gov>.

**E. Environmental and Historic Preservation.**

1. Subrecipient shall comply with all applicable Federal, State, and local environmental and historic preservation (EHP) requirements and shall provide any information requested by FEMA to ensure compliance with applicable environmental and historic preservation laws including but not limited to:
  - a. National Environmental Policy Act of 1969, as amended, 42 USC § 4321, and related FEMA regulations, 44 CFR Part 10.
  - b. National Historic Preservation Act, 16 USC § 470 et seq.
  - c. Endangered Species Act, 16 USC § 1531 et seq.
  - d. Executive Orders on Floodplains (11988), Wetlands (11990) and Environmental Justice (12898).

Failure of Subrecipient to meet Federal, State, and local EHP requirements and obtain applicable permits may jeopardize Federal funding.

2. Subrecipient shall not undertake any project without prior EHP approval by FEMA, including but not limited to communications towers, physical security enhancements, new construction, and modifications to buildings, structures, and objects that are 50 years old or greater. Subrecipient must comply with all conditions placed on the project as the result of the EHP review. Any change to the approved project scope of work will require re-evaluation for compliance with these EHP requirements. If ground disturbing activities occur during project implementation, Subrecipient must ensure monitoring of ground disturbance and if any potential archeological resources are discovered, Subrecipient will immediately cease construction in that area and notify FEMA and the appropriate State Historic Preservation Office. Any construction activities that have been initiated without the necessary EHP review and approval will result in a non-compliance finding and will not be eligible for FEMA funding.
3. For any of Subrecipient's or its contractors' or subcontractors' existing programs or activities that will be funded by these grant funds, Subrecipient, upon specific request from the U.S. DHS, agrees to cooperate with the U.S. DHS in any preparation by the U.S. DHS of a national or program environmental assessment of that funded program or activity.

**F. Procurement of recovered materials.** Subrecipient must comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Recovery and Conservation Act and in accordance with Environmental Protection Agency guidelines at 40 CFR Part 247.

**G. SAFECOM.** If the Grant Funds are for emergency communication equipment and related activities, Subrecipient must comply with SAFECOM Guidance for Emergency Communication Grants, including provisions on technical standards that ensure and enhance interoperable communications.

**H. Drug Free Workplace Requirements.** Subrecipient agrees to comply with the requirements of the Drug-Free Workplace Act of 1988, 41 USC § 701 et seq., as amended. In addition

Subrecipient certifies that it maintains a Drug-Free Workplace under 44 CFR Part 17, Subpart F, and that it has implemented and will continue to implement the regulations at 2 CFR Part 3001 which require that all organizations receiving grants (or subgrants) from any Federal agency agree to maintain a drug-free workplace. Subrecipient must notify this office if an employee of Subrecipient is convicted of violating a criminal drug statute. Failure to comply with these requirements may be cause for debarment.

- I. Human Trafficking (2 CFR Part 175).** Subrecipient must comply with requirements of Section 106(g) of the Trafficking Victims Protection Act of 2000, 22 USC § 7104, as amended and 2 CFR § 175.15.
- J. Fly America Act of 1974.** Subrecipient agrees to comply with the requirements of the Preference for U.S. Flag Air Carriers: (air carriers holding certificates under 49 USC § 41102) for international air transportation of people and property to the extent that such service is available, in accordance with the International Air Transportation Fair Competitive Practices Act of 1974, as amended, (49 USC § 40118) and the interpretative guidelines issued by the Comptroller General of the United States in the March 31, 1981, amendment to the Comptroller General Decision B138942.
- K. Activities Conducted Abroad.** Subrecipient agrees to comply with the requirements that project activities carried on outside the United States are coordinated as necessary with appropriate government authorities and that appropriate licenses, permits, or approvals are obtained.
- L. Acknowledgement of Federal Funding from DHS.** Subrecipient agrees to comply with requirements to acknowledge Federal funding when issuing statements, press releases, requests for proposals, bid invitations, and other documents describing projects or programs funded in whole or in part with Federal funds.
- M. Copyright.** Subrecipient shall affix the applicable copyright notices of 17 USC § 401 or 402 and an acknowledgement of Government sponsorship (including Subgrant number) to any work first produced under an award unless the work includes any information that is otherwise controlled by the Government (e.g., classified information or other information subject to national security or export control laws or regulations). For any scientific, technical, or other copyright work based on or containing data first produced under this Agreement, including those works published in academic, technical or professional journals, symposia proceedings, or similar works, Subrecipient grants the Government a royalty-free, nonexclusive and irrevocable license to reproduce, display, distribute copies, perform, disseminate, or prepare derivative works, and to authorize others to do so, for Government purposes in all such copyrighted works.
- N. Patents and Intellectual Property Rights.** Unless otherwise provided by law, Subrecipient is subject to the Bayh-Dole Act, 35 USC § 200 et seq., as amended, including requirements governing the development, reporting and disposition of rights to inventions and patents resulting from financial assistance awards, 37 CFR Part 401, and the standard patent rights clause in 37 CFR § 401.14.
- O. Use of DHS Seal, Logo and Flags.** Subrecipient agrees to obtain DHS's approval prior to using the DHS seal(s), logos, crests or reproductions of flags or likenesses of DHS agency officials, including use of the United States Coast Guard seal, logo, crests or reproductions of flags or likenesses of Coast Guard officials.

**P. Personally Identifiable Information (PII).** Subrecipient, if it collects PII, is required to have a publically available privacy policy that described what PII they collect, how they use it, whether they share it with third parties and how individuals may have their PII corrected where appropriate.

**Q. Federal Debt Status.** Subrecipient shall be non-delinquent in its repayment of any federal debt. Examples of relevant debt include delinquent payroll and other taxes, audit disallowances, benefit overpayments and any amounts due under Section 11.c of this Agreement. See OMB Circular A-129 for additional information and guidance.

**R. Construction Contracts.**

1. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part 60–1.3 must include the equal opportunity clause provided under 41 CFR 60–1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 CFR Part, 1964–1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”

2. When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141–3144, and 3146–3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”).

3. Contracts awarded by Subrecipient in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5).

**S. Clean Air, Water.** Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401–7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251–1387).

**T. Funding Agreements.** If the Federal award meets the definition of “funding agreement” under 37 CFR § 401.2 (a) and Subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” Subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

**U. Executive Compensation.** Within thirty (30) days of the Effective Date of this Agreement, Subrecipient agrees to report to OEM the names and compensation of each of the Subrecipient’s five most highly compensated executives for the completed fiscal year preceding this Agreement if in the preceding fiscal year Subrecipient received: (i) 80 percent or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance

subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards) and (ii) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal financial assistance subject to the Transparency Act (and subawards) and (iii) the public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986.

- V. **Animal Welfare Act.** All recipients of financial assistance will comply with the requirements of the *Animal Welfare Act*, as amended (7 U.S.C. § 2131 *et seq.*), which requires that minimum standards of care and treatment be provided for vertebrate animals bred for commercial sale, used in research, transported commercially, or exhibited to the public. Recipients must establish appropriate policies and procedures for the humane care and use of animals based on the *Guide for the Care and Use of Laboratory Animals* and comply with the *Public Health Service Policy and Government Principles Regarding the Care and Use of Animals*.
- W. **Clean Air Act of 1970 and Clean Water Act of 1977.** All recipients of financial assistance will comply with the requirements of 42 U.S.C. § 7401 *et seq.* and Executive Order 11738, which provides for the protection and enhancement of the quality of the nation's air resources to promote public health and welfare and for restoring and maintaining the chemical, physical, and biological integrity of the nation's waters is considered research for other purposes.
- X. **Protection of Human Subjects.** All recipients of financial assistance will comply with the requirements of the Federal regulations at 45 CFR Part 46, which requires that recipients comply with applicable provisions/law for the protection of human subjects for purposes of research. Recipients must also comply with the requirements in DHS Management Directive 026-04, *Protection of Human Subjects*, prior to implementing any work with human subjects. For purposes of 45 CFR Part 46, research means a systematic investigation, including research, development, testing, and evaluation, designed to develop or contribute to general knowledge. Activities that meet this definition constitute research for purposes of this policy, whether or not they are conducted or supported under a program that is considered research for other purposes. The regulations specify additional protections for research involving human fetuses, pregnant women, and neonates (Subpart B); prisoners (Subpart C); and children (Subpart D). The use of autopsy materials is governed by applicable State and local law.
- Y. **Environmental Policy Act (NEPA) of 1969.** All recipients of financial assistance will comply with the requirements of the *National Environmental Policy Act (NEPA)*, as amended, 42 U.S.C. § 4331 *et seq.*, which establishes national policy goals and procedures to protect and enhance the environment, including protection against natural disasters. To comply with NEPA for its grant-supported activities, DHS requires the environmental aspects of construction grants (and certain non-construction projects as specified by the Component and awarding office) to be reviewed and evaluated before final action on the application.
- Z. **National Flood Insurance Act of 1968.** All recipients of financial assistance will comply with the requirements of Section 1366, 42 U.S.C. 4104c of the *National Flood Insurance Act of 1968*, as amended by the National Flood Insurance Reform Act of 1994, P.L 103-325; the Bunning-Bereuter-Blumenauer Flood Insurance Report act of 2004, P.L 108-264; and the Biggert-Waters Flood Insurance Reform Act, P.L. 112-141,



- AA. Flood Disaster Protection Act of 1973.** All recipients of financial assistance will comply with the requirements of the *Flood Disaster Protection Act of 1973*, as amended (42 U.S.C. § 4001 et seq.), which provides that no Federal financial assistance to acquire, modernize, or construct property may be provided in identified flood-prone communities in the United States, unless the community participates in the National Flood Insurance Program and flood insurance is purchased within one year of the identification. The flood insurance purchase requirement applies to both public and private applicants for DHS support. Lists of flood-prone areas that are eligible for flood insurance are published in the *Federal Register* by FEMA. 45 CFR Part 46.
- BB. Coastal Wetlands Planning, Protection, and Restoration Act of 1990.** All recipients of financial assistance will comply with the requirements of Executive Order 11990, which provides that federally funded construction and improvements minimize the destruction, loss, or degradation of wetlands. The Executive Order provides that, in furtherance of Section 101(b)(3) of NEPA (42 U.S.C. § 4331(b)(3)), Federal agencies, to the extent permitted by law, must avoid undertaking or assisting with new construction located in wetlands unless the head of the agency finds that there is no practicable alternative to such construction, and that the proposed action includes all practicable measures to minimize harm to wetlands that may result from such use. In making this finding, the head of the agency may take into account economic, environmental, and other pertinent factors. The public disclosure requirement described above also pertains to early public review of any plans or proposals for new construction in wetlands. This is codified at 44 CFR Part 9.
- CC. USA Patriot Act of 2001.** All recipients of financial assistance will comply with the requirements of the *Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act* (USA PATRIOT Act), which amends 18 U.S.C. §§ 175-175c. Among other things, it prescribes criminal penalties for possession of any biological agent, toxin, or delivery system of a type or in a quantity that is not reasonably justified by a prophylactic, protective, bona fide research, or other peaceful purpose. The act also establishes restrictions on access to specified materials. "Restricted persons," as defined by the act, may not possess, ship, transport, or receive any biological agent or toxin that is listed as a select agent.

## EXHIBIT B2

### Federal Department of Homeland Security Standard Terms and Certifications

Subrecipient and any of its successors, transferees and assignees agrees to comply with all applicable provisions governing DHS access to record, accounts, documents, information, facilities, and staff members. In addition, Recipients shall comply with the following provisions:

#### **DEPARTMENT OF HOMELAND SECURITY (DHS)**

#### **STANDARD TERMS AND CONDITIONS 2016**

The FY 2016 DHS Standard Terms and Conditions apply to all new Federal financial assistance awards funded in FY 2016. The terms and conditions of DHS financial assistance awards flow down to subrecipients, unless a particular award term or condition specifically indicates otherwise.

#### **Assurances, Administrative Requirements, Cost Principles, and Audit Requirements**

DHS financial assistance recipients must complete either the OMB Standard Form 424B Assurances – Non-Construction Programs, or OMB Standard Form 424D Assurances – Construction Programs as applicable. Certain assurances in these documents may not be applicable to your program, and the DHS financial assistance office may require applicants to certify additional assurances. Applicants are required to fill out the assurances applicable to their program as instructed by the awarding agency. Please contact the financial assistance office if you have any questions.

DHS financial assistance recipients are required to follow the applicable provisions of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards located at 2 C.F.R. Part 200, and adopted by DHS at 2 C.F.R. Part 3002.

#### **DHS Specific Acknowledgements and Assurances**

All recipients, subrecipients, successors, transferees, and assignees must acknowledge and agree to comply with applicable provisions governing DHS access to records, accounts, documents, information, facilities, and staff.

1. Recipients must cooperate with any compliance reviews or compliance investigations conducted by DHS.
2. Recipients must give DHS access to, and the right to examine and copy, records, accounts, and other documents and sources of information related to the award and permit access to facilities, personnel, and other individuals and information as may be necessary, as required by DHS regulations and other applicable laws or program guidance.
3. Recipients must submit timely, complete, and accurate reports to the appropriate DHS officials and maintain appropriate backup documentation to support the reports.
4. Recipients must comply with all other special reporting, data collection, and evaluation requirements, as prescribed by law or detailed in program guidance.
5. If, during the past three years, the recipient has been accused of discrimination on the grounds of race, color, national origin(including limited English proficiency), sex, age, disability, religion, or familial status, the recipient must provide a list of all such proceedings, pending or completed, including outcome and copies of settlement agreements to the DHS financial assistance office and the DHS Office of Civil Rights and Civil Liberties (CRCL) by e-mail at [crcl@hq.dhs.gov](mailto:crcl@hq.dhs.gov) or by mail at U.S. Department of Homeland Security Office for Civil Rights and Civil Liberties Building 410, Mail Stop #0190 Washington, D.C. 20528.

6. In the event any court or administrative agency makes a finding of discrimination on grounds of race, color, national origin (including limited English proficiency), sex, age, disability, religion, or familial status against the recipient, or the recipient settles a case or matter alleging such discrimination, recipients must forward a copy of the complaint and findings to the DHS financial assistance office and the CRCL office by e-mail or mail at the addresses listed above.

The United States has the right to seek judicial enforcement of these obligations.

<b>Acknowledgment of Federal Funding from DHS</b>	All recipients must acknowledge their use of federal funding when issuing statements, press releases, requests for proposals, bid invitations, and other documents describing projects or programs funded in whole or in part with Federal funds.
<b>Activities Conducted Abroad</b>	All recipients must ensure that project activities carried on outside the United States are coordinated as necessary with appropriate government authorities and that appropriate licenses, permits, or approvals are obtained.
<i>Age Discrimination Act of 1975</i>	All recipients must comply with the requirements of the Age Discrimination Act of 1975 (Title 42 U.S. Code, § 6101 et seq.), which prohibits discrimination on the basis of age in any program or activity receiving Federal financial assistance.
<i>Americans with Disabilities Act of 1990</i>	All recipients must comply with the requirements of Titles I, II, and III of the Americans with Disabilities Act, which prohibits recipients from discriminating on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities. (42 U.S.C. §§ 12101–12213).
<b>Best Practices for Collection and Use of Personally Identifiable Information (PII)</b>	DHS defines personally identifiable information (PII) as any information that permits the identity of an individual to be directly or indirectly inferred, including any information that is linked or linkable to that individual. All recipients who collect PII are required to have a publically-available privacy policy that describes standards on the usage and maintenance of PII they collect. Award recipients may also find as a useful resource the DHS Privacy Impact Assessments: Privacy Guidance and Privacy template respectively.
<i>Civil Rights Act of 1964 – Title VI</i>	All recipients must comply with the requirements of Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq.), which provides that no person in the United States will, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. DHS implementing regulations for the Act are found at 6 C.F. R., Part 21 and 44 C.F.R. Part 7.

<i>Civil Rights Act of 1968</i>	All recipients must comply with Title VIII of the Civil Rights Act of 1968, which prohibits recipients from discriminating in the sale, rental, financing, and advertising of dwellings, or in the provision of services in connection therewith, on the basis of race, color, national origin, religion, disability, familial status, and sex (42 U.S.C. § 3601 et seq.), as implemented by the Department of Housing and Urban Development at 24 C.F.R. Part 100. The prohibition on disability discrimination includes the requirement that new multifamily housing with four or more dwelling units—i.e., the public and common use areas and individual apartment units (all units in buildings with elevators and ground-floor units in buildings without elevators)—be designed and constructed with certain accessible features (See 24 C.F.R. § 100.201).
<b>Copyright</b>	All recipients must affix the applicable copyright notices of 17 U.S.C. §§ 401 or 402 and an acknowledgement of Government sponsorship (including award number) to any work first produced under Federal financial assistance awards.
<b>Debarment and Suspension</b>	All recipients are subject to the non-procurement debarment and suspension regulations implementing Executive Orders 12549 and 12689, and 2 C.F.R. Part 180. These regulations restrict awards, subawards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in federal assistance programs or activities.
<b>Drug-Free Workplace Regulations</b>	All recipients must comply with the Drug-Free Workplace Act of 1988 (41 U.S.C. § 701 et seq.), which requires all organizations receiving grants from any Federal agency agree to maintain a drug-free workplace. DHS has adopted the Act's implementing regulations at 2 C.F.R Part 3001.
<b>Duplication of Benefits</b>	Any cost allocable to a particular Federal award provided for in 2 C.F.R. Part 200, Subpart E may not be charged to other Federal awards to overcome fund deficiencies, to avoid restrictions imposed by Federal statutes, regulations, or terms and conditions of the Federal awards, or for other reasons. However, this prohibition would not preclude a recipient from shifting costs that are allowable under two or more Federal awards in accordance with existing Federal statutes, regulations, or the terms and conditions of the Federal award.

<p><b>Education Amendments of 1972 (<i>Equal Opportunity in Education Act</i>) – Title IX</b></p>	<p>All recipients must comply with the requirements of Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681 et seq.), which provide that no person in the United States will, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any educational program or activity receiving Federal financial assistance. DHS implementing regulations are codified at 6 C.F.R. Part 17 and 44 C.F.R. Part 19.</p>
<p><b><i>Energy Policy and Conservation Act</i></b></p>	<p>All recipients must comply with the requirements of 42 U.S.C. § 6201 which contain policies relating to energy efficiency that are defined in the state energy conservation plan issued in compliance with this Act.</p>
<p><b><i>False Claims Act and Program Fraud Civil Remedies</i></b></p>	<p>All recipients must comply with the requirements of 31 U.S.C. § 3729- 3733 which prohibits the submission of false or fraudulent claims for payment to the Federal Government. See 31 U.S.C. § 3801-3812 which details the administrative remedies for false claims and statements made.</p>
<p><b>Federal Debt Status</b></p>	<p>All recipients are required to be non-delinquent in their repayment of any Federal debt. Examples of relevant debt include delinquent payroll and other taxes, audit disallowances, and benefit overpayments. See OMB Circular A-129.</p>
<p><b>Federal Leadership on Reducing Text Messaging while Driving</b></p>	<p>All recipients are encouraged to adopt and enforce policies that ban text messaging while driving as described in E.O. 13513, including conducting initiatives described in Section 3(a) of the Order when on official Government business or when performing any work for or on behalf of the federal government.</p>
<p><b><i>Fly America Act of 1974</i></b></p>	<p>All recipients must comply with Preference for U.S. Flag Air Carriers: (air carriers holding certificates under 49 U.S.C. § 41102) for international air transportation of people and property to the extent that such service is available, in accordance with the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. § 40118) and the interpretative guidelines issued by the Comptroller General of the United States in the March 31, 1981, amendment to Comptroller General Decision B-138942.</p>
<p><b><i>Hotel and Motel Fire Safety Act of 1990</i></b></p>	<p>In accordance with Section 6 of the Hotel and Motel Fire Safety Act of 1990, 15 U.S.C. § 2225a, all recipients must ensure that all conference, meeting, convention, or training space funded in whole or in part with Federal funds complies with the fire prevention and control guidelines of the Federal Fire Prevention and Control Act of 1974, as amended, 15 U.S.C. § 2225.</p>

<p><b>Limited English Proficiency (<i>Civil Rights Act of 1964, Title VI</i>)</b></p>	<p>All recipients must comply with the Title VI of the Civil Rights Act of 1964 (Title VI) prohibition against discrimination on the basis of national origin, which requires that recipients of federal financial assistance take reasonable steps to provide meaningful access to persons with limited English proficiency (LEP) to their programs and services. For additional assistance and information regarding language access obligations, please refer to the DHS Recipient Guidance at <a href="https://www.dhs.gov/guidance-published-help-department-supported-organizations-provide-meaningful-access-people-limited">https://www.dhs.gov/guidance-published-help-department-supported-organizations-provide-meaningful-access-people-limited</a>, and additional resources on <a href="http://www.lep.gov">http://www.lep.gov</a>.</p>
<p><b>Lobbying Prohibitions</b></p>	<p>All recipients must comply with 31 U.S.C. § 1352, which provides that none of the funds provided under an award may be expended by the recipient to pay any person to influence, or attempt to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any Federal action concerning the award or renewal.</p>
<p><b><i>National Environmental Policy Act</i></b></p>	<p>All recipients must comply with the requirements of the National Environmental Policy Act (NEPA) and the Council on Environmental Quality (CEQ) Regulations for Implementing the Procedural Provisions of NEPA, which requires recipients to use all practicable means within their authority, and consistent with other essential considerations of national policy, to create and maintain conditions under which people and nature can exist in productive harmony and fulfill the social, economic, and other needs of present and future generations of Americans.</p>
<p><b>Nondiscrimination in Matters Pertaining to Faith-Based Organizations</b></p>	<p>It is DHS policy to ensure the equal treatment of faith-based organizations in social service programs administered or supported by DHS or its component agencies, enabling those organizations to participate in providing important social services to beneficiaries. All recipients must comply with the equal treatment policies and requirements contained in 6 C.F.R. Part 19 and other applicable statutes, regulations, and guidance governing the participations of faith-based organizations in individual DHS programs.</p>
<p><b>Non-supplanting Requirement</b></p>	<p>All recipients who receive awards made under programs that prohibit supplanting by law must ensure that Federal funds do not replace (supplant) funds that have been budgeted for the same purpose through non-Federal sources.</p>

<b>Notice of Funding Opportunity Requirements</b>	All of the instructions, guidance, limitations, and other conditions set forth in the Notice of Funding Opportunity (NOFO) for this program are incorporated here by reference in the terms and conditions of your award. All recipients must comply with any such requirements set forth in the program NOFO.
<b>Patents and Intellectual Property Rights</b>	Unless otherwise provided by law, recipients are subject to the Bayh-Dole Act, Pub. L. No. 96-517, as amended, and codified in 35 U.S.C. § 200 et seq. All recipients are subject to the specific requirements governing the development, reporting, and disposition of rights to inventions and patents resulting from financial assistance awards located at 37 C.F.R. Part 401 and the standard patent rights clause located at 37 C.F.R. § 401.14.
<b>Procurement of Recovered Materials</b>	All recipients must comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 C.F.R. Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition.
<b>Reporting Subawards and Executive Compensation</b>	All recipients are required to comply with the requirements set forth in the government-wide Award Term on Reporting Subawards and Executive Compensation located at 2 C.F.R. Part 170, Appendix A, the full text of which is incorporated here by reference in the terms and conditions of your award.
<b>SAFECOM</b>	All recipients who receive awards made under programs that provide emergency communication equipment and its related activities must comply with the SAFECOM Guidance for Emergency Communication Grants, including provisions on technical standards that ensure and enhance interoperable communications.
<b>Terrorist Financing</b>	All recipients must comply with E.O. 13224 and U.S. law that prohibit transactions with, and the provisions of resources and support to, individuals and organizations associated with terrorism. It is the legal responsibility of recipients to ensure compliance with the Order and laws.

<i>Trafficking Victims Protection Act of 2000</i>	All recipients must comply with the requirements of the government-wide award term which implements Section 106(g) of the Trafficking Victims Protection Act of 2000, (TVPA) as amended (22 U.S.C. § 7104). The award term is located at 2 CFR § 175.15, the full text of which is incorporated here by reference in the terms and conditions of your award.
<i>Rehabilitation Act of 1973</i>	All recipients must comply with the requirements of Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, as amended, which provides that no otherwise qualified handicapped individual in the United States will, solely by reason of the handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.
<b>Reporting of Matters Related to Recipient Integrity and Performance</b>	If the total value of your currently active grants, cooperative agreements, and procurement contracts from all Federal assistance office exceeds \$10,000,000 for any period of time during the period of performance of this Federal award, you must comply with the requirements set forth in the government-wide Award Term and Condition for Recipient Integrity and Performance Matters located at 2 C.F.R. Part 200, Appendix XII, the full text of which is incorporated here by reference in the terms and conditions of your award.
<b>Universal Identifier and System of Award Management (SAM)</b>	All recipients are required to comply with the requirements set forth in the government-wide Award Term regarding the System for Award Management and Universal Identifier Requirements located at 2 C.F.R. Part 25, Appendix A, the full text of which is incorporated here by reference in the terms and conditions of your award.
<i>USA Patriot Act of 2001</i>	All recipients must comply with requirements of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (USA PATRIOT Act), which amends 18 U.S.C. §§ 175–175c.
<b>Use of DHS Seal, Logo and Flags</b>	All recipients must obtain permission from their financial assistance office, prior to using the DHS seal(s), logos, crests or reproductions of flags or likenesses of DHS agency officials, including use of the United States Coast Guard seal, logo, crests or reproductions of flags or likenesses of Coast Guard officials.



***Whistleblower Protection Act***

All recipients must comply with the statutory requirements for whistleblower protections (if applicable) at 10 U.S.C § 2409, 41 U.S.C. 4712, and 10 U.S.C. §2324, 41 U.S.C. §§ 4304 and 4310.

## EXHIBIT B3

### Standard Federal Conditions for Acquisition for Open Space

Subrecipient agrees to the following Standard Conditions for Acquisition of Open Space, as applied to all HMA Grant Programs, per 44 CFR 80, effective January 1, 2015:

1. Participation by property owners is voluntary. The prospective participants were informed in writing that participation in the program is voluntary and that the Applicant/Sub-applicant will not use its eminent domain authority to acquire their property for the project purposes should negotiations fail.
2. The Sub-applicant agrees that land acquired for open space purposes under a FEMA mitigation grant program will be restricted in perpetuity to open space uses and will be unavailable for the construction of flood damage reduction levees, transportation facilities, and other incompatible purposes.
3. The Sub-applicant agrees to record Deed Restrictions for each affected property utilizing the Model provided on the FEMA website at: [https://www.fema.gov/media-library-data/20130726-1848-25045-1210/fema\\_model\\_deed\\_restriction.pdf](https://www.fema.gov/media-library-data/20130726-1848-25045-1210/fema_model_deed_restriction.pdf).
4. The Sub-applicant accepts all of the requirements of the deed restrictions governing the use of the land.
5. Prior to acquisition of the property, in consultation with the U.S. Army Corps of Engineers, the Sub-applicant has addressed and considered the potential future use of these lands for the construction of flood damage reduction levees, has rejected consideration of such measures in the future in the project area, and instead has chosen to proceed with acquisition of permanent open space. Documentation to this affect will be provided at close-out.
6. Prior to acquisition of the property, the Sub-applicant has coordinated with its State Department of Transportation to ensure that no future, planned improvements or enhancements are under consideration that will affect the proposed project area. Documentation to this affect will be provided at close-out.
7. Existing buildings will be removed within 90 days of settlement, unless such cannot be accomplished due to environmental conditions placed on project approval. The State will provide confirmation as to the date of demolition of each structure included in the final project, as well as confirmation from a site inspection that the property has been returned to "natural" or park/open space condition.
8. The State and the subapplicant/Subgrantee agree to comply with the requirements of Section 80.19 *Land Use and Oversight*, of 44 CFR 80, *Property Acquisition and Relocation for Open Space*, which are incorporated into these conditions by reference. These requirements include, but are not limited to the following. Further explanation and guidance with regard to implementation of Section 80.19 is found in Section 2.3.13.3.2 (Pages 55-59) of the Unified Hazard Mitigation Guidance of June 19, 2008, located on the FEMA website at: [https://www.fema.gov/media-library-data/20130726-1629-20490-4905/hma\\_guide\\_6.18\\_final.pdf](https://www.fema.gov/media-library-data/20130726-1629-20490-4905/hma_guide_6.18_final.pdf)
  - a. Restriction on future disaster assistance for damages to the property.

- b. Lists of allowable open space uses as well as uses generally not allowed on acquired open space land.
  - c. Provision for salvage of pre-existing structures and paved areas.
  - d. Requirements pertaining to future transfer of property interest.
  - e. Requirement for joint State/Subgrantee monitoring and inspection of the acquired property at least every 3 years.
  - f. Provisions for enforcement of violation of open space requirements.
9. The following documentation will be provided at closeout of the project:
- a. A report of the State's final on-site inspection of the project, including the date of demolition of each structure and confirmation that the property has been returned to "natural" or park/open space condition.
  - b. Confirmation that Environmental Conditions were complied with.
  - c. Documentation in support of the consultation processes required in conditions 6 and 6 above.
  - d. A digital photograph of the property site after project implementation.
  - e. A copy of the recorded deed and attached deed restrictions for each property.
  - f. Latitude and longitude coordinates of the property.
  - g. Signed Statements of voluntary Participation from the owner of each property identified in the subgrant Scope of Work. The Statement of Voluntary Participation documents more formally the Notice of Voluntary Interest provided in the subapplication, as well as documenting required property valuation notices. A Model Statement of voluntary Participation is available on FEMA's Web site at: [https://www.fema.gov/media-library-data/20130726-1630-20490-9770/voluntaray participation form for acquisition of open space.pdf](https://www.fema.gov/media-library-data/20130726-1630-20490-9770/voluntaray%20participation%20form%20for%20acquisition%20of%20open%20space.pdf)
10. For each property identified on FEMA's Repetitive Loss list, a completed FEMA form AW-501, documenting the completion of mitigation on the repetitive loss property. The form is available on FEMA's Web site at: <https://www.fema.gov/media-library/assets/documents/13146>

## EXHIBIT C

### Subagreement Insurance Requirements

#### GENERAL.

Subrecipient shall require in its first tier subagreements with entities that are not units of local government as defined in ORS 190.003, if any, to: i) obtain insurance specified under TYPES AND AMOUNTS and meeting the requirements under ADDITIONAL INSURED, "TAIL" COVERAGE, NOTICE OF CANCELLATION OR CHANGE, and CERTIFICATES OF INSURANCE before performance under the subagreement commences, and ii) maintain the insurance in full force throughout the duration of the subagreement. The insurance must be provided by insurance companies or entities that are authorized to transact the business of insurance and issue coverage in the State of Oregon and that are acceptable to State. Subrecipient shall not authorize work to begin under subagreements until the insurance is in full force. Thereafter, Subrecipient shall monitor continued compliance with the insurance requirements on an annual or more frequent basis. Subrecipient shall incorporate appropriate provisions in the subagreement permitting it to enforce compliance with the insurance requirements and shall take all reasonable steps to enforce such compliance. In no event shall Subrecipient permit work under a subagreement when Subrecipient is aware that the contractor is not in compliance with the insurance requirements. As used in this section, "first tier" means a subagreement in which Subrecipient is a Party.

#### TYPES AND AMOUNTS.

i. **WORKERS COMPENSATION.** Insurance in compliance with ORS 656.017, which requires all employers that employ subject workers, as defined in ORS 656.027, to provide workers' compensation coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). Employers liability insurance with coverage limits of not less than \$500,000 must be included.

ii. **COMMERCIAL GENERAL LIABILITY.**

Commercial General Liability Insurance covering bodily injury, death, and property damage in a form and with coverages that are satisfactory to State. This insurance shall include personal injury liability, products and completed operations. Coverage shall be written on an occurrence form basis, with not less than the following amounts as determined by OEM:

Bodily Injury, Death and Property Damage:

\$500,000 per occurrence (for all claimants for claims arising out of a single accident or occurrence).

iii. **AUTOMOBILE Liability Insurance:** Automobile Liability.

Automobile Liability Insurance covering all owned, non-owned and hired vehicles. This coverage may be written in combination with the Commercial General Liability Insurance (with separate limits for “Commercial General Liability” and “Automobile Liability”). Automobile Liability Insurance must be in not less than the following amounts as determined by OEM:

Bodily Injury, Death and Property Damage:

\$500,000 per occurrence (for all claimants for claims arising out of a single accident or occurrence).

ADDITIONAL INSURED. The Commercial General Liability Insurance and Automobile Liability insurance must include OEM, its officers, employees and agents as Additional Insureds but only with respect to the contractor’s activities to be performed under the Subcontract. Coverage must be primary and non-contributory with any other insurance and self-insurance.

“TAIL” COVERAGE. If any of the required insurance policies is on a “claims made” basis, such as professional liability insurance, the contractor shall maintain either “tail” coverage or continuous “claims made” liability coverage, provided the effective date of the continuous “claims made” coverage is on or before the effective date of the Subcontract, for a minimum of 24 months following the later of : (i) the contractor’s completion and Subrecipient’s acceptance of all Services required under the Subcontract or, (ii) the expiration of all warranty periods provided under the Subcontract. Notwithstanding the foregoing 24-month requirement, if the contractor elects to maintain “tail” coverage and if the maximum time period “tail” coverage reasonably available in the marketplace is less than the 24-month period described above, then the contractor may request and OEM may grant approval of the maximum “tail “ coverage period reasonably available in the marketplace. If OEM approval is granted, the contractor shall maintain “tail” coverage for the maximum time period that “tail” coverage is reasonably available in the marketplace.

NOTICE OF CANCELLATION OR CHANGE. The contractor or its insurer must provide 30 days’ written notice to Subrecipient before cancellation of, material change to, potential exhaustion of aggregate limits of, or non-renewal of the required insurance coverage(s).

CERTIFICATE(S) OF INSURANCE. Subrecipient shall obtain from the contractor a certificate(s) of insurance for all required insurance before the contractor performs under the Subcontract. The certificate(s) or an attached endorsement must specify: i) all entities and individuals who are endorsed on the policy as Additional Insured and ii) for insurance on a “claims made” basis, the extended reporting period applicable to “tail” or continuous “claims made” coverage.

## EXHIBIT D

### Information required by 2 CFR 200.331(a)

1. Federal Award Identification: FMA-PJ-10-OR-2016-003
  - (i) Subrecipient name (which must match registered name in DUNS): Clackamas County
  - (ii) Subrecipient's DUNS number: 096992656
  - (iii) Federal Award Identification Number (FAIN): EMS-2017-FM-E001
  - (iv) Federal Award Date: May 8, 2017
  - (v) Subaward Period of Performance: 3/15/2016 through 8/30/19
  - (vi) Total Amount of Federal Funds Obligated by this Agreement: \$334,132.20
  - (vii) Total Amount of Federal Funds Obligated to the Subrecipient by the pass-through entity including this agreement: \$334,132.20
  - (viii) Total Amount of Federal Award committed to the Subrecipient by the pass-through entity: \$334,132.20
  - (ix) Federal award project description: Clackamas County, OR-Repetitive Loss Home Acquisition
  - (x) Name of Federal awarding agency: U.S. Department of Homeland Security, Federal Emergency Management Agency (FEMA)
    - (a) Name of Pass-through entity: Oregon Military Department, Office of Emergency Management
    - (b) Contact information for awarding official of the pass-through entity: Andrew Phelps, Director, P O Box 14370, Salem, OR 97309-5062
  - (xi) CFDA Number and Name: 97.029 Pre-Disaster Mitigation Grant  
Amount: \$334,132.20
  - (xii) Is Award R&D? No
  - (xiii) Indirect cost rate for the Federal award: 0%
2. Subrecipient's indirect cost rate: 0%



Gregory L. Geist  
Director

Board of County Commissioners  
Clackamas County

Members of the Board:

Approval of the Goods and Services Contract between  
Clackamas County Service District #1 and Waste Management Disposal of Oregon  
for Biosolids and Grit Disposal

<b>Purpose/Outcomes</b>	Grit must be removed from the wastewater treatment plants on a regular basis and landfilled. When biosolids cannot be applied to agricultural fields it also must be landfilled. Removal of these materials is critical to the operation of the plants.
<b>Dollar Amount and Fiscal Impact</b>	Clackamas County Service District #1 FY2017-18 budget. The total as needed amount per Contractor is \$400,000 per year for 3 years with a cumulative not to exceed total contract value of \$1,200,000.
<b>Funding Source</b>	Clackamas County Service District #1 FY 2017-18 annual budget. No General Funds impacted.
<b>Duration</b>	From execution of the Contract to June 30, 2020
<b>Previous Board Action</b>	N/A
<b>Strategic Plan Assignment</b>	1. This service supports the WES Strategic Plan to provide wastewater treatment services to members of the community. 2. This service supports the County Strategic Priority to ensure safe, healthy and secure communities.
<b>Contact Person</b>	Chanin Bays, WES, Resource Recovery Programs Supervisor, 503-557-2820

**BACKGROUND:**

Grit is the settled solid material that is removed from the waste stream during primary treatment. Unlike biosolids, this material is not stabilized and has no resource value so it is landfilled. The contracts will allow the Tri-City WWTP, Kellogg Creek WWTP and the Hoodland WWTP to dispose of their grit.

Biosolids are typically applied to agricultural fields in Sherman County, Oregon as a soil amendment. Occasionally there are circumstances when biosolids quality does not meet Department of Environmental Quality (DEQ) criteria for land application, or District trucks cannot get to/from Sherman County due to winter weather, accidents or fire closing Interstate 84. The contracts will allow the Tri-City WWTP and the Kellogg Creek WWTP to dispose of their dewatered biosolids if needed.

District is contracting with all landfills in the area to maximize options and pricing for landfill disposal.

**PROCUREMENT PROCESS:**

A formal Invitation to Bid was published on August 2, 2017 for the above mentioned bid request. The project was advertised in accordance with ORS and LCRB Rules. Four (4) bids were received: Hillsboro Landfill, Inc. - \$40 per ton + Metro and DEQ fees; Valley Landfills, Inc. dba Republic Services - \$35 per ton + Metro and DEQ fees; Wasco County Landfill - \$19.58 per ton + Metro fees; and Waste Management Disposal of Oregon, Inc. - \$27 per ton + Metro fees.

After review of all bids, it was determined to contract with all four landfills on an as needed basis. The total as needed amount per Contractor is \$400,000 per year for three (3) years with a total not to exceed contract value of \$1,200,000. The Contract will expire on June 30, 2020.

This contract has been reviewed and approved by County Counsel.

**RECOMMENDATION:**

District staff recommends that the Board of County Commissioners of Clackamas County, acting as the governing body of Clackamas County Service District #1, approve the Goods and Services Contract with Waste Management Disposal of Oregon for an annual contract value of \$400,000 with a total cumulative contract total of not to exceed \$1,200,000 and authorize the Director of Water Environment Services to sign on behalf of Clackamas County Service District #1.

Respectfully submitted,

Greg Geist, Director  
Water Environment Services

Placed on the \_\_\_\_\_ agenda by Procurement.



## OREGON GOVERNMENTAL CONTRACTING ADDENDUM

This Oregon Governmental Contracting Addendum (“Addendum”) is entered into by Clackamas County Service District #1 and Water Environment Services (“collectively referred to as “District”), and **Waste Management Services of Oregon, Inc.** (“Contractor”). As used below, "Contract" or “Contract Documents” or similar term shall include this Addendum and the Industrial Waste & Disposal Services Agreement. To the extent there is any conflict between the Contract Documents, the terms of this Addendum shall control.

- A. The Contract shall become effective upon signature of both parties and unless earlier terminated shall expire **June 30, 2020**. Upon agreement of the parties, the Contract may be extended for one (1) additional three (3) year period.
- B. The services under this Contract are not exclusive and are on an “as needed” basis. The District agrees to pay Contractor, from available and authorized funds, a sum not to exceed **\$400,000** per fiscal year of the Contract (July 1 to June 30) with a Contract maximum not to exceed of \$1,200,000. This contract covers Grit and BioSolids (inclusive by Service Agreements) disposal from the District’s.
- C. All employers, including Contractor, which employ workers who work under this Contract in the State of Oregon shall comply with Oregon Revised Statutes ("ORS") Chapter 656.017 and provide required workers' compensation coverage, unless such employers are exempt under ORS 656.126. Contractor shall ensure that each of its subcontractors complies with these requirements. Contractors shall maintain employer’s liability insurance with limits of \$500,000 each accident, \$500,000 per disease for each employee, and \$500,000 minimum policy limit.
- D. The Contract Documents are 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. The following terms and conditions are made a part of this Contract:
  - 1. Contractor shall:
    - a) Make payments promptly, as due, to all persons supplying to Contractor labor or materials for the prosecution of the work provided for in the Contract Documents.
    - b) Pay all contributions or amounts due the Industrial Accident Fund from such Contractor or subcontractor incurred in the performance of the Contract Documents.
    - c) Not permit any lien or claim to be filed or prosecuted against District on account of any labor or material furnished.
    - d) Pay the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.
  - 2. If Contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to Contractor or a subcontractor by any person in connection with the Contract Documents as such claim becomes due, the proper officer 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 Contractor by reason of the Contract Documents.
  - 3. The Contractor shall pay employees for work in accordance with ORS 279B.020 and ORS 279B.235, which is incorporated herein by this reference.
  - 4. 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 Contractor, of all sums which Contractor

agrees to pay for such services and all moneys and sums which Contractor collected or deducted from the wages of Contractor's employees pursuant to any law, contract or agreement for the purpose of providing or paying for such services.

5. Payment and late fees shall only be in accordance with ORS 293.462.
- E.** The insurance described in this section shall provide sixty (60) days written notice to the District in the event of a cancellation or material change. This policy(s) shall be primary insurance as respects to the District. Any insurance or self-insurance maintained by the District shall be excess and shall not contribute to it.
1. The Contractor agrees to furnish the District evidence of commercial general liability insurance in the amount of not less than \$1,000,000 combined single limit per occurrence, \$2,000,000 general annual aggregate 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 Contract Documents. The general aggregate shall apply separately to this project / location. The District, at its option, may require a complete copy of the above policy.
  2. If any other required liability insurance is arranged on a "claims made" basis, "tail" coverage will be required at the completion of the Contract Documents for a duration of thirty-six (36) months or the maximum time period the Contractor's, whichever is greater, insurer will provide "tail" coverage as subscribed, or continuous "claims made" liability coverage for thirty-six (36) months following the contract completion. Continuous "claims made" coverage will be acceptable in lieu of "tail" coverage, provided the coverage's retroactive date is on or before the effective date of the Contract Documents.
  3. The Contractor agrees to furnish the District evidence of business automobile liability insurance in the amount of not less than \$500,000 combined single limit for bodily injury and property damage for the protection of the District, its officers, commissioners, and employees against liability for damages because of bodily injury, death or damage to property, including loss of use thereof in any way related to this Addendum. The District, at its option, may require a complete copy of the above policy.
  4. The insurance, other than the Workers' Compensation, Professional liability and Pollution liability insurance, shall include the District as an additional insured. Proof of insurance must include a copy of the endorsement showing the District as a scheduled insured. There shall be no cancellation, material change, exhaustion of aggregate limits or intent not to renew insurance coverage without 60 days written notice by the Contractor to the District. This policy(s) shall be primary insurance as respects to the District. Any insurance or self-insurance maintained by the District shall be excess and shall not contribute to it,
  5. The Contractor will provide written notice to the District within sixty (60) days after any reduction in the general aggregate limit.
  6. Any obligation that District agree to a waiver of subrogation is hereby stricken.
- F.** The laws of the State of Oregon shall govern as to the interpretation, validity, and effect of this Contract without giving effect to conflict of law provisions thereof.
- G.** This Contract may be terminated by either party upon at least ten (10) days written notice to the other.

**H.** The Contractor shall comply with all federal, state and local laws, regulation, executive orders and ordinances applicable to the Work under this Contract. 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:

1. Termination of this Contract, in whole or in part;
2. 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
3. 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.

**I.** The Contractor represents and warrants that, for a period of no fewer than six calendar years preceding the effective date of this Contract, has faithfully complied with:

1. All tax laws of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318;
2. 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;
3. 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
4. Any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions.

**J.** Indemnification

1. The Contractor agrees to indemnify, hold harmless and defend the District, its officers, elected officials, agents and employees from and against all claims and actions, and all expenses incidental to the investigation and defense thereof, arising out of or based upon damage or injuries to persons or property caused by the errors, omissions, fault or negligence of the Contractor or the Contractor's employees or agents.
2. Any obligation of the District to indemnify, hold harmless and defend the Contractor, its officers, agents and employees, or any other indemnitee, shall only be to the extent provided by Article XI, Section 10 of the Oregon Constitution and the Oregon Tort Claims Act (ORS 30.260 through

30.300) from and against all claims and actions, and all expenses incidental to the investigation and defense thereof, arising out of or based on damage or injuries to persons or property caused by the errors, omissions, fault or negligence of the District or the District's employee or agents.

- K.** No attorney fees shall be paid for or awarded to either party in the course of any dispute, indemnification, or other recovery. It is the intent of the parties that each shall bear the costs of its own legal counsel.
- L.** Any documents that are requested to be maintained as confidential by either party shall only be maintained as confidential to the extent permitted by the Oregon Public Records Law (ORS 192.410-505).
- M.** This Addendum may be executed in several counterparts, each of which shall be an original, all of which shall constitute but one and the same instrument.

By their signatures below, the parties to this Addendum agree to the terms, conditions, and content expressed herein. The Contractor agrees to perform the scope of work as described in the contract documents and meet the performance standards set forth therein.

**Waste Management Services of Oregon, Inc.**  
18177 Cedar Springs Lane  
Arlington, OR 97812

**Water Environment Services**

\_\_\_\_\_  
Authorized Signature                      Date

\_\_\_\_\_  
Gregory Geist, Director                      Date

\_\_\_\_\_  
Name/Title (Printed)

**Clackamas County Service District No. 1**

142274-17  
Oregon Business Registry #

\_\_\_\_\_  
Gregory Geist, Director                      Date

DBC / Oregon  
Entity Type / State of Formation

Approved As To Form:

\_\_\_\_\_  
Clackamas County Counsel                      Date



Gregory L. Geist  
Director

Board of County Commissioners  
Clackamas County

Members of the Board:

Approval of the Goods and Services Contract between  
Water Environment Services and Waste Management Disposal of Oregon  
for Biosolids and Grit Disposal

<b>Purpose/Outcomes</b>	Grit must be removed from the wastewater treatment plants on a regular basis and landfilled. When biosolids cannot be applied to agricultural fields it must also be landfilled. Removal of these materials is critical to the operation of the plants.
<b>Dollar Amount and Fiscal Impact</b>	Water Environment Services FY2017-18 budget. The total as needed amount per Contractor is \$400,000 per year for 3 years with a cumulative not to exceed total contract value of \$1,200,000.
<b>Funding Source</b>	Water Environment Services FY 2017-18 annual budget. No General Funds impacted.
<b>Duration</b>	From execution of the Contract to June 30, 2020
<b>Previous Board Action</b>	N/A
<b>Strategic Plan Assignment</b>	1. This service supports the WES Strategic Plan to provide wastewater treatment services to members of the community. 2. This service supports the County Strategic Priority to ensure safe, healthy and secure communities.
<b>Contact Person</b>	Chanin Bays, WES, Resource Recovery Programs Supervisor, 503-557-2820

**BACKGROUND:**

Grit is the settled solid material that is removed from the waste stream during primary treatment. Unlike biosolids, this material is not stabilized and has no resource value so it is landfilled. The contracts will allow the Tri-City WWTP, Kellogg Creek WWTP and the Hoodland WWTP to dispose of their grit.

Biosolids are typically applied to agricultural fields in Sherman County, Oregon as a soil amendment. Occasionally there are circumstances when biosolids quality does not meet Department of Environmental Quality (DEQ) criteria for land application, or District trucks cannot get to/from Sherman County due to winter weather, accidents or fire closing Interstate 84. The contracts will allow the Tri-City WWTP and the Kellogg Creek WWTP to dispose of their dewatered biosolids if needed.

District is contracting with all landfills in the area to maximize options and pricing for landfill disposal.

**PROCUREMENT PROCESS:**

A formal Invitation to Bid was published on August 2, 2017 for the above mentioned bid request. The project was advertised in accordance with ORS and LCRB Rules. Four (4) bids were received: Hillsboro Landfill, Inc. - \$40 per ton + Metro and DEQ fees; Valley Landfills, Inc. dba Republic Services - \$35 per ton + Metro and DEQ fees; Wasco County Landfill - \$19.58 per ton + Metro fees; and Waste Management Disposal of Oregon, Inc. - \$27 per ton + Metro fees.

After review of all bids, it was determined to contract with all four landfills on an as needed basis. The total as needed amount per Contractor is \$400,000 per year for three (3) years with a total not to exceed contract value of \$1,200,000. The Contract will expire on June 30, 2020.

This contract has been reviewed and approved by County Counsel.

**RECOMMENDATION:**

District staff recommends that the Board of County Commissioners of Clackamas County, acting as the governing body of Water Environment Services, approve the Goods and Services Contract with Waste Management Disposal of Oregon for an annual contract value of \$400,000 with a total cumulative contract total of not to exceed \$1,200,000 and authorize the Director of Water Environment Services to sign on behalf of Water Environment Services.

Respectfully submitted,

Greg Geist, Director  
Water Environment Services

Placed on the \_\_\_\_\_ agenda by Procurement.

## OREGON GOVERNMENTAL CONTRACTING ADDENDUM

This Oregon Governmental Contracting Addendum (“Addendum”) is entered into by Clackamas County Service District #1 and Water Environment Services (“collectively referred to as “District”), and **Waste Management Services of Oregon, Inc.** (“Contractor”). As used below, "Contract" or “Contract Documents” or similar term shall include this Addendum and the Industrial Waste & Disposal Services Agreement. To the extent there is any conflict between the Contract Documents, the terms of this Addendum shall control.

- A. The Contract shall become effective upon signature of both parties and unless earlier terminated shall expire **June 30, 2020**. Upon agreement of the parties, the Contract may be extended for one (1) additional three (3) year period.
- B. The services under this Contract are not exclusive and are on an “as needed” basis. The District agrees to pay Contractor, from available and authorized funds, a sum not to exceed **\$400,000** per fiscal year of the Contract (July 1 to June 30) with a Contract maximum not to exceed of \$1,200,000. This contract covers Grit and BioSolids (inclusive by Service Agreements) disposal from the District’s.
- C. All employers, including Contractor, which employ workers who work under this Contract in the State of Oregon shall comply with Oregon Revised Statutes ("ORS") Chapter 656.017 and provide required workers' compensation coverage, unless such employers are exempt under ORS 656.126. Contractor shall ensure that each of its subcontractors complies with these requirements. Contractors shall maintain employer’s liability insurance with limits of \$500,000 each accident, \$500,000 per disease for each employee, and \$500,000 minimum policy limit.
- D. The Contract Documents are 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. The following terms and conditions are made a part of this Contract:
  - 1. Contractor shall:
    - a) Make payments promptly, as due, to all persons supplying to Contractor labor or materials for the prosecution of the work provided for in the Contract Documents.
    - b) Pay all contributions or amounts due the Industrial Accident Fund from such Contractor or subcontractor incurred in the performance of the Contract Documents.
    - c) Not permit any lien or claim to be filed or prosecuted against District on account of any labor or material furnished.
    - d) Pay the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.
  - 2. If Contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to Contractor or a subcontractor by any person in connection with the Contract Documents as such claim becomes due, the proper officer 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 Contractor by reason of the Contract Documents.
  - 3. The Contractor shall pay employees for work in accordance with ORS 279B.020 and ORS 279B.235, which is incorporated herein by this reference.
  - 4. 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 Contractor, of all sums which Contractor

agrees to pay for such services and all moneys and sums which Contractor collected or deducted from the wages of Contractor's employees pursuant to any law, contract or agreement for the purpose of providing or paying for such services.

5. Payment and late fees shall only be in accordance with ORS 293.462.
- E.** The insurance described in this section shall provide sixty (60) days written notice to the District in the event of a cancellation or material change. This policy(s) shall be primary insurance as respects to the District. Any insurance or self-insurance maintained by the District shall be excess and shall not contribute to it.
1. The Contractor agrees to furnish the District evidence of commercial general liability insurance in the amount of not less than \$1,000,000 combined single limit per occurrence, \$2,000,000 general annual aggregate 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 Contract Documents. The general aggregate shall apply separately to this project / location. The District, at its option, may require a complete copy of the above policy.
  2. If any other required liability insurance is arranged on a "claims made" basis, "tail" coverage will be required at the completion of the Contract Documents for a duration of thirty-six (36) months or the maximum time period the Contractor's, whichever is greater, insurer will provide "tail" coverage as subscribed, or continuous "claims made" liability coverage for thirty-six (36) months following the contract completion. Continuous "claims made" coverage will be acceptable in lieu of "tail" coverage, provided the coverage's retroactive date is on or before the effective date of the Contract Documents.
  3. The Contractor agrees to furnish the District evidence of business automobile liability insurance in the amount of not less than \$500,000 combined single limit for bodily injury and property damage for the protection of the District, its officers, commissioners, and employees against liability for damages because of bodily injury, death or damage to property, including loss of use thereof in any way related to this Addendum. The District, at its option, may require a complete copy of the above policy.
  4. The insurance, other than the Workers' Compensation, Professional liability and Pollution liability insurance, shall include the District as an additional insured. Proof of insurance must include a copy of the endorsement showing the District as a scheduled insured. There shall be no cancellation, material change, exhaustion of aggregate limits or intent not to renew insurance coverage without 60 days written notice by the Contractor to the District. This policy(s) shall be primary insurance as respects to the District. Any insurance or self-insurance maintained by the District shall be excess and shall not contribute to it,
  5. The Contractor will provide written notice to the District within sixty (60) days after any reduction in the general aggregate limit.
  6. Any obligation that District agree to a waiver of subrogation is hereby stricken.
- F.** The laws of the State of Oregon shall govern as to the interpretation, validity, and effect of this Contract without giving effect to conflict of law provisions thereof.
- G.** This Contract may be terminated by either party upon at least ten (10) days written notice to the other.



**H.** The Contractor shall comply with all federal, state and local laws, regulation, executive orders and ordinances applicable to the Work under this Contract. 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:

1. Termination of this Contract, in whole or in part;
2. 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
3. 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.

**I.** The Contractor represents and warrants that, for a period of no fewer than six calendar years preceding the effective date of this Contract, has faithfully complied with:

1. All tax laws of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318;
2. 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;
3. 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
4. Any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions.

**J.** Indemnification

1. The Contractor agrees to indemnify, hold harmless and defend the District, its officers, elected officials, agents and employees from and against all claims and actions, and all expenses incidental to the investigation and defense thereof, arising out of or based upon damage or injuries to persons or property caused by the errors, omissions, fault or negligence of the Contractor or the Contractor's employees or agents.
2. Any obligation of the District to indemnify, hold harmless and defend the Contractor, its officers, agents and employees, or any other indemnitee, shall only be to the extent provided by Article XI, Section 10 of the Oregon Constitution and the Oregon Tort Claims Act (ORS 30.260 through

30.300) from and against all claims and actions, and all expenses incidental to the investigation and defense thereof, arising out of or based on damage or injuries to persons or property caused by the errors, omissions, fault or negligence of the District or the District's employee or agents.

- K.** No attorney fees shall be paid for or awarded to either party in the course of any dispute, indemnification, or other recovery. It is the intent of the parties that each shall bear the costs of its own legal counsel.
- L.** Any documents that are requested to be maintained as confidential by either party shall only be maintained as confidential to the extent permitted by the Oregon Public Records Law (ORS 192.410-505).
- M.** This Addendum may be executed in several counterparts, each of which shall be an original, all of which shall constitute but one and the same instrument.

By their signatures below, the parties to this Addendum agree to the terms, conditions, and content expressed herein. The Contractor agrees to perform the scope of work as described in the contract documents and meet the performance standards set forth therein.

**Waste Management Services of Oregon, Inc.**  
18177 Cedar Springs Lane  
Arlington, OR 97812

**Water Environment Services**

\_\_\_\_\_  
Authorized Signature                      Date

\_\_\_\_\_  
Gregory Geist, Director                      Date

\_\_\_\_\_  
Name/Title (Printed)

**Clackamas County Service District No. 1**

142274-17  
Oregon Business Registry #

\_\_\_\_\_  
Gregory Geist, Director                      Date

DBC / Oregon  
Entity Type / State of Formation

Approved As To Form:

\_\_\_\_\_  
Clackamas County Counsel                      Date



Gregory L. Geist  
Director

Board of County Commissioners  
Clackamas County

Members of the Board:

Approval of the Goods and Services Contract between  
Clackamas County Service District #1 and Hillsboro Landfill, Inc.  
for Biosolids and Grit Disposal

<b>Purpose/Outcomes</b>	Grit must be removed from the wastewater treatment plants on a regular basis and landfilled. When biosolids cannot be applied to agricultural fields it also must be landfilled. Removal of these materials is critical to the operation of the plants.
<b>Dollar Amount and Fiscal Impact</b>	Clackamas County Service District #1 FY2017-18 budget. The total as needed amount per Contractor is \$400,000 per year for 3 years with a cumulative not to exceed total contract value of \$1,200,000.
<b>Funding Source</b>	Clackamas County Service District #1 FY 2017-18 annual budget. No General Funds impacted.
<b>Duration</b>	From execution of the Contract to June 30, 2020
<b>Previous Board Action</b>	N/A
<b>Strategic Plan Assignment</b>	1. This service supports the WES Strategic Plan to provide wastewater treatment services to members of the community. 2. This service supports the County Strategic Priority to ensure safe, healthy and secure communities.
<b>Contact Person</b>	Chanin Bays, WES, Resource Recovery Programs Supervisor, 503-557-2820

**BACKGROUND:**

Grit is the settled solid material that is removed from the waste stream during primary treatment. Unlike biosolids, this material is not stabilized and has no resource value so it is landfilled. The contracts will allow the Tri-City WWTP, Kellogg Creek WWTP and the Hoodland WWTP to dispose of their grit.

Biosolids are typically applied to agricultural fields in Sherman County, Oregon as a soil amendment. Occasionally there are circumstances when biosolids quality does not meet Department of Environmental Quality (DEQ) criteria for land application, or District trucks cannot get to/from Sherman County due to winter weather, accidents or fire closing Interstate 84. The contracts will allow the Tri-City WWTP and the Kellogg Creek WWTP to dispose of their dewatered biosolids if needed.

District is contracting with all landfills in the area to maximize options and pricing for landfill disposal.

**PROCUREMENT PROCESS:**

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After review of all bids, it was determined to contract with all four landfills on an as needed basis. The total as needed amount per Contractor is \$400,000 per year for three (3) years with a total not to exceed contract value of \$1,200,000. The Contract will expire on June 30, 2020.

This contract has been reviewed and approved by County Counsel.

**RECOMMENDATION:**

District staff recommends that the Board of County Commissioners of Clackamas County, acting as the governing body of Clackamas County Service District #1, approve the Goods and Services Contract with Hillsboro Landfill, Inc. for an annual contract value of \$400,000 with a total cumulative contract total of not to exceed \$1,200,000 and authorize the Director of Water Environment Services to sign on behalf of Clackamas County Service District #1.

Respectfully submitted,

Greg Geist, Director  
Water Environment Services

Placed on the \_\_\_\_\_ agenda by Procurement.

## OREGON GOVERNMENTAL CONTRACTING ADDENDUM

This Oregon Governmental Contracting Addendum (“Addendum”) is entered into by Clackamas County Service District #1 and Water Environment Services (“collectively referred to as “District”), and **Hillsboro Landfill, Inc.** (“Contractor”). As used below, "Contract" or “Contract Documents” or similar term shall include this Addendum and the Industrial Waste & Disposal Services Agreement. To the extent there is any conflict between the Contract Documents, the terms of this Addendum shall control.

- A. The Contract shall become effective upon signature of both parties and unless earlier terminated shall expire **June 30, 2020**. Upon agreement of the parties, the Contract may be extended for one (1) additional three (3) year period.
- B. The services under this Contract are not exclusive and are on an “as needed” basis. The District agrees to pay Contractor, from available and authorized funds, a sum not to exceed **\$400,000** per fiscal year of the Contract (July 1 to June 30) with a Contract maximum not to exceed of \$1,200,000. This contract covers Grit and BioSolids (inclusive by Service Agreements) disposal from the District’s.
- C. All employers, including Contractor, which employ workers who work under this Contract in the State of Oregon shall comply with Oregon Revised Statutes ("ORS") Chapter 656.017 and provide required workers' compensation coverage, unless such employers are exempt under ORS 656.126. Contractor shall ensure that each of its subcontractors complies with these requirements. Contractors shall maintain employer’s liability insurance with limits of \$500,000 each accident, \$500,000 per disease for each employee, and \$500,000 minimum policy limit.
- D. The Contract Documents are 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. The following terms and conditions are made a part of this Contract:
  1. Contractor shall:
    - a) Make payments promptly, as due, to all persons supplying to Contractor labor or materials for the prosecution of the work provided for in the Contract Documents.
    - b) Pay all contributions or amounts due the Industrial Accident Fund from such Contractor or subcontractor incurred in the performance of the Contract Documents.
    - c) Not permit any lien or claim to be filed or prosecuted against District on account of any labor or material furnished.
    - d) Pay the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.
  2. If Contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to Contractor or a subcontractor by any person in connection with the Contract Documents as such claim becomes due, the proper officer 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 Contractor by reason of the Contract Documents.
  3. The Contractor shall pay employees for work in accordance with ORS 279B.020 and ORS 279B.235, which is incorporated herein by this reference.
  4. 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 Contractor, of all sums which Contractor agrees to pay for such services and all moneys and sums which Contractor collected or deducted

from the wages of Contractor's employees pursuant to any law, contract or agreement for the purpose of providing or paying for such services.

5. Payment and late fees shall only be in accordance with ORS 293.462.
- E.** The insurance described in this section shall provide sixty (60) days written notice to the District in the event of a cancellation or material change. This policy(s) shall be primary insurance as respects to the District. Any insurance or self-insurance maintained by the District shall be excess and shall not contribute to it.
1. The Contractor agrees to furnish the District evidence of commercial general liability insurance in the amount of not less than \$1,000,000 combined single limit per occurrence, \$2,000,000 general annual aggregate 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 Contract Documents. The general aggregate shall apply separately to this project / location. The District, at its option, may require a complete copy of the above policy.
  2. If any other required liability insurance is arranged on a "claims made" basis, "tail" coverage will be required at the completion of the Contract Documents for a duration of thirty-six (36) months or the maximum time period the Contractor's, whichever is greater, insurer will provide "tail" coverage as subscribed, or continuous "claims made" liability coverage for thirty-six (36) months following the contract completion. Continuous "claims made" coverage will be acceptable in lieu of "tail" coverage, provided the coverage's retroactive date is on or before the effective date of the Contract Documents.
  3. The Contractor agrees to furnish the District evidence of business automobile liability insurance in the amount of not less than \$500,000 combined single limit for bodily injury and property damage for the protection of the District, its officers, commissioners, and employees against liability for damages because of bodily injury, death or damage to property, including loss of use thereof in any way related to this Addendum. The District, at its option, may require a complete copy of the above policy.
  4. The insurance, other than the Workers' Compensation, Professional liability and Pollution liability insurance, shall include the District as an additional insured. Proof of insurance must include a copy of the endorsement showing the District as a scheduled insured. There shall be no cancellation, material change, exhaustion of aggregate limits or intent not to renew insurance coverage without 60 days written notice by the Contractor to the District. This policy(s) shall be primary insurance as respects to the District. Any insurance or self-insurance maintained by the District shall be excess and shall not contribute to it,
  5. The Contractor will provide written notice to the District within sixty (60) days after any reduction in the general aggregate limit.
  6. Any obligation that District agree to a waiver of subrogation is hereby stricken.
- F.** The laws of the State of Oregon shall govern as to the interpretation, validity, and effect of this Contract without giving effect to conflict of law provisions thereof.
- G.** This Contract may be terminated by either party upon at least ten (10) days written notice to the other.

**H.** The Contractor shall comply with all federal, state and local laws, regulation, executive orders and ordinances applicable to the Work under this Contract. 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:

1. Termination of this Contract, in whole or in part;
2. 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
3. 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.

**I.** The Contractor represents and warrants that, for a period of no fewer than six calendar years preceding the effective date of this Contract, has faithfully complied with:

1. All tax laws of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318;
2. 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;
3. 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
4. Any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions.

**J.** Indemnification

1. The Contractor agrees to indemnify, hold harmless and defend the District, its officers, elected officials, agents and employees from and against all claims and actions, and all expenses incidental to the investigation and defense thereof, arising out of or based upon damage or injuries to persons or property caused by the errors, omissions, fault or negligence of the Contractor or the Contractor's employees or agents.
2. Any obligation of the District to indemnify, hold harmless and defend the Contractor, its officers, agents and employees, or any other indemnitee, shall only be to the extent provided by Article XI, Section 10 of the Oregon Constitution and the Oregon Tort Claims Act (ORS 30.260 through 30.300) from and against all claims and actions, and all expenses incidental to the investigation

and defense thereof, arising out of or based on damage or injuries to persons or property caused by the errors, omissions, fault or negligence of the District or the District's employee or agents.

- K.** No attorney fees shall be paid for or awarded to either party in the course of any dispute, indemnification, or other recovery. It is the intent of the parties that each shall bear the costs of its own legal counsel.
- L.** Any documents that are requested to be maintained as confidential by either party shall only be maintained as confidential to the extent permitted by the Oregon Public Records Law (ORS 192.410-505).
- M.** This Addendum may be executed in several counterparts, each of which shall be an original, all of which shall constitute but one and the same instrument.

By their signatures below, the parties to this Addendum agree to the terms, conditions, and content expressed herein. The Contractor agrees to perform the scope of work as described in the contract documents and meet the performance standards set forth therein.

**Hillsboro Landfill Inc**  
3205 SE Minter Bridge Road  
Hillsboro OR 97123

**Water Environment Services**

\_\_\_\_\_  
Authorized Signature                      Date

\_\_\_\_\_  
Gregory Geist, Director                      Date

\_\_\_\_\_  
Name/Title (Printed)

**Clackamas County Service District No. 1**

142274-17  
Oregon Business Registry #

\_\_\_\_\_  
Gregory Geist, Director                      Date

DBC / Oregon  
Entity Type / State of Formation

Approved As To Form:

\_\_\_\_\_  
Clackamas County Counsel                      Date





Gregory L. Geist  
Director

Board of County Commissioners  
Clackamas County

Members of the Board:

Approval of the Goods and Services Contract between  
Water Environment Services and Hillsboro Landfill, Inc.  
for Biosolids and Grit Disposal

<b>Purpose/Outcomes</b>	Grit must be removed from the wastewater treatment plants on a regular basis and landfilled. When biosolids cannot be applied to agricultural fields it must also be landfilled. Removal of these materials is critical to the operation of the plants.
<b>Dollar Amount and Fiscal Impact</b>	Water Environment Services FY2017-18 budget. The total as needed amount per Contractor is \$400,000 per year for 3 years with a cumulative not to exceed total contract value of \$1,200,000.
<b>Funding Source</b>	Water Environment Services FY 2017-18 annual budget. No General Funds impacted.
<b>Duration</b>	From execution of the Contract to June 30, 2020
<b>Previous Board Action</b>	N/A
<b>Strategic Plan Assignment</b>	1. This service supports the WES Strategic Plan to provide wastewater treatment services to members of the community. 2. This service supports the County Strategic Priority to ensure safe, healthy and secure communities.
<b>Contact Person</b>	Chanin Bays, WES, Resource Recovery Programs Supervisor, 503-557-2820

**BACKGROUND:**

Grit is the settled solid material that is removed from the waste stream during primary treatment. Unlike biosolids, this material is not stabilized and has no resource value so it is landfilled. The contracts will allow the Tri-City WWTP, Kellogg Creek WWTP and the Hoodland WWTP to dispose of their grit.

Biosolids are typically applied to agricultural fields in Sherman County, Oregon as a soil amendment. Occasionally there are circumstances when biosolids quality does not meet Department of Environmental Quality (DEQ) criteria for land application, or District trucks cannot get to/from Sherman County due to winter weather, accidents or fire closing Interstate 84. The contracts will allow the Tri-City WWTP and the Kellogg Creek WWTP to dispose of their dewatered biosolids if needed.

District is contracting with all landfills in the area to maximize options and pricing for landfill disposal.

**PROCUREMENT PROCESS:**

A formal Invitation to Bid was published on August 2, 2017 for the above mentioned bid request. The project was advertised in accordance with ORS and LCRB Rules. Four (4) bids were received: Hillsboro Landfill, Inc. - \$40 per ton + Metro and DEQ fees; Valley Landfills, Inc. dba Republic Services - \$35 per ton + Metro and DEQ fees; Wasco County Landfill - \$19.58 per ton + Metro fees; and Waste Management Disposal of Oregon, Inc. - \$27 per ton + Metro fees.

After review of all bids, it was determined to contract with all four landfills on an as needed basis. The total as needed amount per Contractor is \$400,000 per year for three (3) years with a total not to exceed contract value of \$1,200,000. The Contract will expire on June 30, 2020.

This contract has been reviewed and approved by County Counsel.

**RECOMMENDATION:**

District staff recommends that the Board of County Commissioners of Clackamas County, acting as the governing body of Water Environment Services, approve the Goods and Services Contract with Hillsboro Landfill, Inc. for an annual contract value of \$400,000 with a total cumulative contract total of not to exceed \$1,200,000 and authorize the Director of Water Environment Services to sign on behalf of Water Environment Services.

Respectfully submitted,

Greg Geist, Director  
Water Environment Services

Placed on the \_\_\_\_\_ agenda by Procurement.

## OREGON GOVERNMENTAL CONTRACTING ADDENDUM

This Oregon Governmental Contracting Addendum (“Addendum”) is entered into by Clackamas County Service District #1 and Water Environment Services (“collectively referred to as “District”), and **Hillsboro Landfill, Inc.** (“Contractor”). As used below, "Contract" or “Contract Documents” or similar term shall include this Addendum and the Industrial Waste & Disposal Services Agreement. To the extent there is any conflict between the Contract Documents, the terms of this Addendum shall control.

- A. The Contract shall become effective upon signature of both parties and unless earlier terminated shall expire **June 30, 2020**. Upon agreement of the parties, the Contract may be extended for one (1) additional three (3) year period.
- B. The services under this Contract are not exclusive and are on an “as needed” basis. The District agrees to pay Contractor, from available and authorized funds, a sum not to exceed **\$400,000** per fiscal year of the Contract (July 1 to June 30) with a Contract maximum not to exceed of \$1,200,000. This contract covers Grit and BioSolids (inclusive by Service Agreements) disposal from the District’s.
- C. All employers, including Contractor, which employ workers who work under this Contract in the State of Oregon shall comply with Oregon Revised Statutes ("ORS") Chapter 656.017 and provide required workers' compensation coverage, unless such employers are exempt under ORS 656.126. Contractor shall ensure that each of its subcontractors complies with these requirements. Contractors shall maintain employer’s liability insurance with limits of \$500,000 each accident, \$500,000 per disease for each employee, and \$500,000 minimum policy limit.
- D. The Contract Documents are 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. The following terms and conditions are made a part of this Contract:
  - 1. Contractor shall:
    - a) Make payments promptly, as due, to all persons supplying to Contractor labor or materials for the prosecution of the work provided for in the Contract Documents.
    - b) Pay all contributions or amounts due the Industrial Accident Fund from such Contractor or subcontractor incurred in the performance of the Contract Documents.
    - c) Not permit any lien or claim to be filed or prosecuted against District on account of any labor or material furnished.
    - d) Pay the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.
  - 2. If Contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to Contractor or a subcontractor by any person in connection with the Contract Documents as such claim becomes due, the proper officer 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 Contractor by reason of the Contract Documents.
  - 3. The Contractor shall pay employees for work in accordance with ORS 279B.020 and ORS 279B.235, which is incorporated herein by this reference.
  - 4. 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 Contractor, of all sums which Contractor agrees to pay for such services and all moneys and sums which Contractor collected or deducted

from the wages of Contractor's employees pursuant to any law, contract or agreement for the purpose of providing or paying for such services.

5. Payment and late fees shall only be in accordance with ORS 293.462.
- E.** The insurance described in this section shall provide sixty (60) days written notice to the District in the event of a cancellation or material change. This policy(s) shall be primary insurance as respects to the District. Any insurance or self-insurance maintained by the District shall be excess and shall not contribute to it.
1. The Contractor agrees to furnish the District evidence of commercial general liability insurance in the amount of not less than \$1,000,000 combined single limit per occurrence, \$2,000,000 general annual aggregate 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 Contract Documents. The general aggregate shall apply separately to this project / location. The District, at its option, may require a complete copy of the above policy.
  2. If any other required liability insurance is arranged on a "claims made" basis, "tail" coverage will be required at the completion of the Contract Documents for a duration of thirty-six (36) months or the maximum time period the Contractor's, whichever is greater, insurer will provide "tail" coverage as subscribed, or continuous "claims made" liability coverage for thirty-six (36) months following the contract completion. Continuous "claims made" coverage will be acceptable in lieu of "tail" coverage, provided the coverage's retroactive date is on or before the effective date of the Contract Documents.
  3. The Contractor agrees to furnish the District evidence of business automobile liability insurance in the amount of not less than \$500,000 combined single limit for bodily injury and property damage for the protection of the District, its officers, commissioners, and employees against liability for damages because of bodily injury, death or damage to property, including loss of use thereof in any way related to this Addendum. The District, at its option, may require a complete copy of the above policy.
  4. The insurance, other than the Workers' Compensation, Professional liability and Pollution liability insurance, shall include the District as an additional insured. Proof of insurance must include a copy of the endorsement showing the District as a scheduled insured. There shall be no cancellation, material change, exhaustion of aggregate limits or intent not to renew insurance coverage without 60 days written notice by the Contractor to the District. This policy(s) shall be primary insurance as respects to the District. Any insurance or self-insurance maintained by the District shall be excess and shall not contribute to it,
  5. The Contractor will provide written notice to the District within sixty (60) days after any reduction in the general aggregate limit.
  6. Any obligation that District agree to a waiver of subrogation is hereby stricken.
- F.** The laws of the State of Oregon shall govern as to the interpretation, validity, and effect of this Contract without giving effect to conflict of law provisions thereof.
- G.** This Contract may be terminated by either party upon at least ten (10) days written notice to the other.

**H.** The Contractor shall comply with all federal, state and local laws, regulation, executive orders and ordinances applicable to the Work under this Contract. 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:

1. Termination of this Contract, in whole or in part;
2. 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
3. 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.

**I.** The Contractor represents and warrants that, for a period of no fewer than six calendar years preceding the effective date of this Contract, has faithfully complied with:

1. All tax laws of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318;
2. 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;
3. 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
4. Any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions.

**J.** Indemnification

1. The Contractor agrees to indemnify, hold harmless and defend the District, its officers, elected officials, agents and employees from and against all claims and actions, and all expenses incidental to the investigation and defense thereof, arising out of or based upon damage or injuries to persons or property caused by the errors, omissions, fault or negligence of the Contractor or the Contractor's employees or agents.
2. Any obligation of the District to indemnify, hold harmless and defend the Contractor, its officers, agents and employees, or any other indemnitee, shall only be to the extent provided by Article XI, Section 10 of the Oregon Constitution and the Oregon Tort Claims Act (ORS 30.260 through 30.300) from and against all claims and actions, and all expenses incidental to the investigation

and defense thereof, arising out of or based on damage or injuries to persons or property caused by the errors, omissions, fault or negligence of the District or the District's employee or agents.

- K.** No attorney fees shall be paid for or awarded to either party in the course of any dispute, indemnification, or other recovery. It is the intent of the parties that each shall bear the costs of its own legal counsel.
- L.** Any documents that are requested to be maintained as confidential by either party shall only be maintained as confidential to the extent permitted by the Oregon Public Records Law (ORS 192.410-505).
- M.** This Addendum may be executed in several counterparts, each of which shall be an original, all of which shall constitute but one and the same instrument.

By their signatures below, the parties to this Addendum agree to the terms, conditions, and content expressed herein. The Contractor agrees to perform the scope of work as described in the contract documents and meet the performance standards set forth therein.

**Hillsboro Landfill Inc**  
3205 SE Minter Bridge Road  
Hillsboro OR 97123

**Water Environment Services**

\_\_\_\_\_  
Authorized Signature                      Date

\_\_\_\_\_  
Gregory Geist, Director                      Date

\_\_\_\_\_  
Name/Title (Printed)

**Clackamas County Service District No. 1**

142274-17  
Oregon Business Registry #

\_\_\_\_\_  
Gregory Geist, Director                      Date

DBC / Oregon  
Entity Type / State of Formation

Approved As To Form:

\_\_\_\_\_  
Clackamas County Counsel                      Date



Gregory L. Geist  
Director

Board of County Commissioners  
Clackamas County

Members of the Board:

Approval of the Goods and Services Contract between  
Clackamas County Service District #1 and Wasco County Landfill  
for Biosolids and Grit Disposal

<b>Purpose/Outcomes</b>	Grit must be removed from the wastewater treatment plants on a regular basis and landfilled. When biosolids cannot be applied to agricultural fields it must also be landfilled. Removal of these materials is critical to the operation of the plants.
<b>Dollar Amount and Fiscal Impact</b>	Clackamas County Service District #1 FY2017-18 budget. The total as needed amount per Contractor is \$400,000 per year for 3 years with a cumulative not to exceed total contract value of \$1,200,000.
<b>Funding Source</b>	Clackamas County Service District #1 FY 2017-18 annual budget. No General Funds impacted.
<b>Duration</b>	From execution of the Contract to June 30, 2020
<b>Previous Board Action</b>	N/A
<b>Strategic Plan Assignment</b>	1. This service supports the WES Strategic Plan to provide wastewater treatment services to members of the community. 2. This service supports the County Strategic Priority to ensure safe, healthy and secure communities.
<b>Contact Person</b>	Chanin Bays, WES, Resource Recovery Programs Supervisor, 503-557-2820

**BACKGROUND:**

Grit is the settled solid material that is removed from the waste stream during primary treatment. Unlike biosolids, this material is not stabilized and has no resource value so it is landfilled. The contracts will allow the Tri-City WWTP, Kellogg Creek WWTP and the Hoodland WWTP to dispose of their grit.

Biosolids are typically applied to agricultural fields in Sherman County, Oregon as a soil amendment. Occasionally there are circumstances when biosolids quality does not meet Department of Environmental Quality (DEQ) criteria for land application, or District trucks cannot get to/from Sherman County due to winter weather, accidents or fire closing Interstate 84. The contracts will allow the Tri-City WWTP and the Kellogg Creek WWTP to dispose of their dewatered biosolids if needed.

District is contracting with all landfills in the area to maximize options and pricing for landfill disposal.

**PROCUREMENT PROCESS:**

A formal Invitation to Bid was published on August 2, 2017 for the above mentioned bid request. The project was advertised in accordance with ORS and LCRB Rules. Four (4) bids were received: Hillsboro Landfill, Inc. - \$40 per ton + Metro and DEQ fees; Valley Landfills, Inc. dba Republic Services - \$35 per ton + Metro and DEQ fees; Wasco County Landfill - \$19.58 per ton + Metro fees; and Waste Management Disposal of Oregon, Inc. - \$27 per ton + Metro fees.

After review of all bids, it was determined to contract with all four landfills on an as needed basis. The total as needed amount per Contractor is \$400,000 per year for three (3) years with a total not to exceed contract value of \$1,200,000. The Contract will expire on June 30, 2020.

This contract has been reviewed and approved by County Counsel.

**RECOMMENDATION:**

District staff recommends that the Board of County Commissioners of Clackamas County, acting as the governing body of Clackamas County Service District #1, approve the Goods and Services Contract with Wasco County Landfill for an annual contract value of \$400,000 with a total cumulative contract total of not to exceed \$1,200,000 and authorize the Director of Water Environment Services to sign on behalf of Clackamas County Service District #1.

Respectfully submitted,

Greg Geist, Director  
Water Environment Services

Placed on the \_\_\_\_\_ agenda by Procurement.



## OREGON GOVERNMENTAL CONTRACTING ADDENDUM

This Oregon Governmental Contracting Addendum (“Addendum”) is entered into by Clackamas County Service District #1 and Water Environment Services (“collectively referred to as “District”), and **WASCO County Landfill, Inc.** (“Contractor”). As used below, "Contract" or “Contract Documents” or similar term shall include this Addendum and the Industrial Waste & Disposal Services Agreement. To the extent there is any conflict between the Contract Documents, the terms of this Addendum shall control.

- A.** The Contract shall become effective upon signature of both parties and unless earlier terminated shall expire **June 30, 2020**. Upon agreement of the parties, the Contract may be extended for an additional three (3) year period.
- B.** The services under this Contract are not exclusive and are on an “as needed” basis. The District agrees to pay Contractor, from available and authorized funds, a sum not to exceed **\$400,000** per fiscal year of the Contract (July 1 to June 30) with a Contract maximum not to exceed of \$1,200,000. This contract covers Grit and BioSolids (inclusive by Service Agreements) disposal from the District’s.
- C.** All employers, including Contractor, which employ workers who work under this Contract in the State of Oregon shall comply with Oregon Revised Statutes ("ORS") Chapter 656.017 and provide required workers' compensation coverage, unless such employers are exempt under ORS 656.126. Contractor shall ensure that each of its subcontractors complies with these requirements. Contractors shall maintain employer’s liability insurance with limits of \$500,000 each accident, \$500,000 per disease for each employee, and \$500,000 minimum policy limit.
- D.** The Contract Documents are 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. The following terms and conditions are made a part of this Contract:
  - 1.** Contractor shall:
    - a)** Make payments promptly, as due, to all persons supplying to Contractor labor or materials for the prosecution of the work provided for in the Contract Documents.
    - b)** Pay all contributions or amounts due the Industrial Accident Fund from such Contractor or subcontractor incurred in the performance of the Contract Documents.
    - c)** Not permit any lien or claim to be filed or prosecuted against District on account of any labor or material furnished.
    - d)** Pay the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.
  - 2.** If Contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to Contractor or a subcontractor by any person in connection with the Contract Documents as such claim becomes due, the proper officer 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 Contractor by reason of the Contract Documents.
  - 3.** The Contractor shall pay employees for work in accordance with ORS 279B.020 and ORS 279B.235, which is incorporated herein by this reference.
  - 4.** 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 Contractor, of all sums which Contractor

agrees to pay for such services and all moneys and sums which Contractor collected or deducted from the wages of Contractor's employees pursuant to any law, contract or agreement for the purpose of providing or paying for such services.

5. Payment and late fees shall only be in accordance with ORS 293.462.
- E.** The insurance described in this section shall provide sixty (60) days written notice to the District in the event of a cancellation or material change. This policy(s) shall be primary insurance as respects to the District. Any insurance or self-insurance maintained by the District shall be excess and shall not contribute to it.
1. The Contractor agrees to furnish the District evidence of commercial general liability insurance in the amount of not less than \$1,000,000 combined single limit per occurrence, \$2,000,000 general annual aggregate 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 Contract Documents. The general aggregate shall apply separately to this project / location. The District, at its option, may require a complete copy of the above policy.
  2. If any other required liability insurance is arranged on a "claims made" basis, "tail" coverage will be required at the completion of the Contract Documents for a duration of thirty-six (36) months or the maximum time period the Contractor's, whichever is greater, insurer will provide "tail" coverage as subscribed, or continuous "claims made" liability coverage for thirty-six (36) months following the contract completion. Continuous "claims made" coverage will be acceptable in lieu of "tail" coverage, provided the coverage's retroactive date is on or before the effective date of the Contract Documents.
  3. The Contractor agrees to furnish the District evidence of business automobile liability insurance in the amount of not less than \$500,000 combined single limit for bodily injury and property damage for the protection of the District, its officers, commissioners, and employees against liability for damages because of bodily injury, death or damage to property, including loss of use thereof in any way related to this Addendum. The District, at its option, may require a complete copy of the above policy.
  4. The insurance, other than the Workers' Compensation, Professional liability and Pollution liability insurance, shall include the District as an additional insured. Proof of insurance must include a copy of the endorsement showing the District as a scheduled insured. There shall be no cancellation, material change, exhaustion of aggregate limits or intent not to renew insurance coverage without 60 days written notice by the Contractor to the District. This policy(s) shall be primary insurance as respects to the District. Any insurance or self-insurance maintained by the District shall be excess and shall not contribute to it,
  5. The Contractor will provide written notice to the District within sixty (60) days after any reduction in the general aggregate limit.
  6. Any obligation that District agree to a waiver of subrogation is hereby stricken.
- F.** The laws of the State of Oregon shall govern as to the interpretation, validity, and effect of this Contract without giving effect to conflict of law provisions thereof.
- G.** This Contract may be terminated by either party upon at least ten (10) days written notice to the other.

**H.** The Contractor shall comply with all federal, state and local laws, regulation, executive orders and ordinances applicable to the Work under this Contract. 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:

1. Termination of this Contract, in whole or in part;
2. 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
3. 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.

**I.** The Contractor represents and warrants that, for a period of no fewer than six calendar years preceding the effective date of this Contract, has faithfully complied with:

1. All tax laws of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318;
2. 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;
3. 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
4. Any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions.

**J.** Indemnification

1. The Contractor agrees to indemnify, hold harmless and defend the District, its officers, elected officials, agents and employees from and against all claims and actions, and all expenses incidental to the investigation and defense thereof, arising out of or based upon damage or injuries to persons or property caused by the errors, omissions, fault or negligence of the Contractor or the Contractor's employees or agents.
2. Any obligation of the District to indemnify, hold harmless and defend the Contractor, its officers, agents and employees, or any other indemnitee, shall only be to the extent provided by Article XI, Section 10 of the Oregon Constitution and the Oregon Tort Claims Act (ORS 30.260 through

30.300) from and against all claims and actions, and all expenses incidental to the investigation and defense thereof, arising out of or based on damage or injuries to persons or property caused by the errors, omissions, fault or negligence of the District or the District's employee or agents.

- K.** No attorney fees shall be paid for or awarded to either party in the course of any dispute, indemnification, or other recovery. It is the intent of the parties that each shall bear the costs of its own legal counsel.
- L.** Any documents that are requested to be maintained as confidential by either party shall only be maintained as confidential to the extent permitted by the Oregon Public Records Law (ORS 192.410-505).
- M.** This Addendum may be executed in several counterparts, each of which shall be an original, all of which shall constitute but one and the same instrument.

By their signatures below, the parties to this Addendum agree to the terms, conditions, and content expressed herein. The Contractor agrees to perform the scope of work as described in the contract documents and meet the performance standards set forth therein.

**WASCO County Landfill, Inc.**  
2550 Steele Road  
The Dalles, OR 97058

**Water Environment Services**

\_\_\_\_\_  
Authorized Signature                      Date

\_\_\_\_\_  
Gregory Geist, Director                      Date

\_\_\_\_\_  
Name/Title (Printed)

**Clackamas County Service District No. 1**

\_\_\_\_\_  
761935-81  
Oregon Business Registry #

\_\_\_\_\_  
Gregory Geist, Director                      Date

\_\_\_\_\_  
FBC / Delaware  
Entity Type / State of Formation

Approved As To Form:

\_\_\_\_\_  
Clackamas County Counsel                      Date



Gregory L. Geist  
Director

Board of County Commissioners  
Clackamas County

Members of the Board:

Approval of the Goods and Services Contract between  
Water Environment Services and Wasco County Landfill  
for Biosolids and Grit Disposal

<b>Purpose/Outcomes</b>	Grit must be removed from the wastewater treatment plants on a regular basis and landfilled. When biosolids cannot be applied to agricultural fields it must also be landfilled. Removal of these materials is critical to the operation of the plants.
<b>Dollar Amount and Fiscal Impact</b>	Water Environment Services FY2017-18 budget. The total as needed amount per Contractor is \$400,000 per year for 3 years with a cumulative not to exceed total contract value of \$1,200,000.
<b>Funding Source</b>	Water Environment Services FY 2017-18 annual budget. No General Funds impacted.
<b>Duration</b>	From execution of the Contract to June 30, 2020
<b>Previous Board Action</b>	N/A
<b>Strategic Plan Assignment</b>	1. This service supports the WES Strategic Plan to provide wastewater treatment services to members of the community. 2. This service supports the County Strategic Priority to ensure safe, healthy and secure communities.
<b>Contact Person</b>	Chanin Bays, WES, Resource Recovery Programs Supervisor, 503-557-2820

**BACKGROUND:**

Grit is the settled solid material that is removed from the waste stream during primary treatment. Unlike biosolids, this material is not stabilized and has no resource value so it is landfilled. The contracts will allow the Tri-City WWTP, Kellogg Creek WWTP and the Hoodland WWTP to dispose of their grit.

Biosolids are typically applied to agricultural fields in Sherman County, Oregon as a soil amendment. Occasionally there are circumstances when biosolids quality does not meet Department of Environmental Quality (DEQ) criteria for land application, or District trucks cannot get to/from Sherman County due to winter weather, accidents or fire closing Interstate 84. The contracts will allow the Tri-City WWTP and the Kellogg Creek WWTP to dispose of their dewatered biosolids if needed.

District is contracting with all landfills in the area to maximize options and pricing for landfill disposal.

**PROCUREMENT PROCESS:**

A formal Invitation to Bid was published on August 2, 2017 for the above mentioned bid request. The project was advertised in accordance with ORS and LCRB Rules. Four (4) bids were received: Hillsboro Landfill, Inc. - \$40 per ton + Metro and DEQ fees; Valley Landfills, Inc. dba Republic Services - \$35 per ton + Metro and DEQ fees; Wasco County Landfill - \$19.58 per ton + Metro fees; and Waste Management Disposal of Oregon, Inc. - \$27 per ton + Metro fees.

After review of all bids, it was determined to contract with all four landfills on an as needed basis. The total as needed amount per Contractor is \$400,000 per year for three (3) years with a total not to exceed contract value of \$1,200,000. The Contract will expire on June 30, 2020.

This contract has been reviewed and approved by County Counsel.

**RECOMMENDATION:**

District staff recommends that the Board of County Commissioners of Clackamas County, acting as the governing body of Water Environment Services, approve the Goods and Services Contract with Wasco County Landfill for an annual contract value of \$400,000 with a total cumulative contract total of not to exceed \$1,200,000 and authorize the Director of Water Environment Services to sign on behalf of Water Environment Services.

Respectfully submitted,

Greg Geist, Director  
Water Environment Services

Placed on the \_\_\_\_\_ agenda by Procurement.

## OREGON GOVERNMENTAL CONTRACTING ADDENDUM

This Oregon Governmental Contracting Addendum (“Addendum”) is entered into by Clackamas County Service District #1 and Water Environment Services (“collectively referred to as “District”), and **WASCO County Landfill, Inc.** (“Contractor”). As used below, "Contract" or “Contract Documents” or similar term shall include this Addendum and the Industrial Waste & Disposal Services Agreement. To the extent there is any conflict between the Contract Documents, the terms of this Addendum shall control.

- A.** The Contract shall become effective upon signature of both parties and unless earlier terminated shall expire **June 30, 2020**. Upon agreement of the parties, the Contract may be extended for an additional three (3) year period.
- B.** The services under this Contract are not exclusive and are on an “as needed” basis. The District agrees to pay Contractor, from available and authorized funds, a sum not to exceed **\$400,000** per fiscal year of the Contract (July 1 to June 30) with a Contract maximum not to exceed of \$1,200,000. This contract covers Grit and BioSolids (inclusive by Service Agreements) disposal from the District’s.
- C.** All employers, including Contractor, which employ workers who work under this Contract in the State of Oregon shall comply with Oregon Revised Statutes ("ORS") Chapter 656.017 and provide required workers' compensation coverage, unless such employers are exempt under ORS 656.126. Contractor shall ensure that each of its subcontractors complies with these requirements. Contractors shall maintain employer’s liability insurance with limits of \$500,000 each accident, \$500,000 per disease for each employee, and \$500,000 minimum policy limit.
- D.** The Contract Documents are 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. The following terms and conditions are made a part of this Contract:
  - 1.** Contractor shall:
    - a)** Make payments promptly, as due, to all persons supplying to Contractor labor or materials for the prosecution of the work provided for in the Contract Documents.
    - b)** Pay all contributions or amounts due the Industrial Accident Fund from such Contractor or subcontractor incurred in the performance of the Contract Documents.
    - c)** Not permit any lien or claim to be filed or prosecuted against District on account of any labor or material furnished.
    - d)** Pay the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.
  - 2.** If Contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to Contractor or a subcontractor by any person in connection with the Contract Documents as such claim becomes due, the proper officer 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 Contractor by reason of the Contract Documents.
  - 3.** The Contractor shall pay employees for work in accordance with ORS 279B.020 and ORS 279B.235, which is incorporated herein by this reference.
  - 4.** 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 Contractor, of all sums which Contractor

agrees to pay for such services and all moneys and sums which Contractor collected or deducted from the wages of Contractor's employees pursuant to any law, contract or agreement for the purpose of providing or paying for such services.

5. Payment and late fees shall only be in accordance with ORS 293.462.
- E.** The insurance described in this section shall provide sixty (60) days written notice to the District in the event of a cancellation or material change. This policy(s) shall be primary insurance as respects to the District. Any insurance or self-insurance maintained by the District shall be excess and shall not contribute to it.
1. The Contractor agrees to furnish the District evidence of commercial general liability insurance in the amount of not less than \$1,000,000 combined single limit per occurrence, \$2,000,000 general annual aggregate 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 Contract Documents. The general aggregate shall apply separately to this project / location. The District, at its option, may require a complete copy of the above policy.
  2. If any other required liability insurance is arranged on a "claims made" basis, "tail" coverage will be required at the completion of the Contract Documents for a duration of thirty-six (36) months or the maximum time period the Contractor's, whichever is greater, insurer will provide "tail" coverage as subscribed, or continuous "claims made" liability coverage for thirty-six (36) months following the contract completion. Continuous "claims made" coverage will be acceptable in lieu of "tail" coverage, provided the coverage's retroactive date is on or before the effective date of the Contract Documents.
  3. The Contractor agrees to furnish the District evidence of business automobile liability insurance in the amount of not less than \$500,000 combined single limit for bodily injury and property damage for the protection of the District, its officers, commissioners, and employees against liability for damages because of bodily injury, death or damage to property, including loss of use thereof in any way related to this Addendum. The District, at its option, may require a complete copy of the above policy.
  4. The insurance, other than the Workers' Compensation, Professional liability and Pollution liability insurance, shall include the District as an additional insured. Proof of insurance must include a copy of the endorsement showing the District as a scheduled insured. There shall be no cancellation, material change, exhaustion of aggregate limits or intent not to renew insurance coverage without 60 days written notice by the Contractor to the District. This policy(s) shall be primary insurance as respects to the District. Any insurance or self-insurance maintained by the District shall be excess and shall not contribute to it,
  5. The Contractor will provide written notice to the District within sixty (60) days after any reduction in the general aggregate limit.
  6. Any obligation that District agree to a waiver of subrogation is hereby stricken.
- F.** The laws of the State of Oregon shall govern as to the interpretation, validity, and effect of this Contract without giving effect to conflict of law provisions thereof.
- G.** This Contract may be terminated by either party upon at least ten (10) days written notice to the other.



**H.** The Contractor shall comply with all federal, state and local laws, regulation, executive orders and ordinances applicable to the Work under this Contract. 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:

1. Termination of this Contract, in whole or in part;
2. 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
3. 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.

**I.** The Contractor represents and warrants that, for a period of no fewer than six calendar years preceding the effective date of this Contract, has faithfully complied with:

1. All tax laws of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318;
2. 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;
3. 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
4. Any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions.

**J.** Indemnification

1. The Contractor agrees to indemnify, hold harmless and defend the District, its officers, elected officials, agents and employees from and against all claims and actions, and all expenses incidental to the investigation and defense thereof, arising out of or based upon damage or injuries to persons or property caused by the errors, omissions, fault or negligence of the Contractor or the Contractor's employees or agents.
2. Any obligation of the District to indemnify, hold harmless and defend the Contractor, its officers, agents and employees, or any other indemnitee, shall only be to the extent provided by Article XI, Section 10 of the Oregon Constitution and the Oregon Tort Claims Act (ORS 30.260 through

30.300) from and against all claims and actions, and all expenses incidental to the investigation and defense thereof, arising out of or based on damage or injuries to persons or property caused by the errors, omissions, fault or negligence of the District or the District's employee or agents.

- K.** No attorney fees shall be paid for or awarded to either party in the course of any dispute, indemnification, or other recovery. It is the intent of the parties that each shall bear the costs of its own legal counsel.
- L.** Any documents that are requested to be maintained as confidential by either party shall only be maintained as confidential to the extent permitted by the Oregon Public Records Law (ORS 192.410-505).
- M.** This Addendum may be executed in several counterparts, each of which shall be an original, all of which shall constitute but one and the same instrument.

By their signatures below, the parties to this Addendum agree to the terms, conditions, and content expressed herein. The Contractor agrees to perform the scope of work as described in the contract documents and meet the performance standards set forth therein.

**WASCO County Landfill, Inc.**  
2550 Steele Road  
The Dalles, OR 97058

**Water Environment Services**

\_\_\_\_\_  
Authorized Signature                      Date

\_\_\_\_\_  
Gregory Geist, Director                      Date

\_\_\_\_\_  
Name/Title (Printed)

**Clackamas County Service District No. 1**

761935-81  
Oregon Business Registry #

\_\_\_\_\_  
Gregory Geist, Director                      Date

FBC / Delaware  
Entity Type / State of Formation

Approved As To Form:

\_\_\_\_\_  
Clackamas County Counsel                      Date