

AGENDA

Thursday December 20, 2018 - 10:00 AM
BOARD OF COUNTY COMMISSIONERS

Beginning Board Order No. 2018-131

CALL TO ORDER

- Roll Call
- Pledge of Allegiance

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

1. Clackamas County 2018 Accomplishments – A Year in Review (Dylan Blaylock, Public & Government Affairs)

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

A. Health, Housing & Human Services

1. Approval of a Professional, Technical, and Consultant Contract with Alfredo J. Soto, M.D. to Serve as Medical Director for the Behavioral Health Division – *Behavioral Health*
2. Approval of a HOME Loan Agreement with River Glen Renewal Associates, LLC to Rehabilitate the River Glen Apartments in Gladstone – *Housing & Community Development*
3. Approval of a Subrecipient Grant Agreement with Northwest Family Services for Youth Marijuana and Substance Abuse Prevention Efforts in North Clackamas – *Children, Family & Community Connections*
4. Approval of a Subrecipient Grant Agreement with Todos Juntos for Youth Substance Abuse Prevention – *Children, Family & Community Connections*

B. Department of Transportation & Development

1. Approval of Amendment No. 1 to the Intergovernmental Agreement with City of Milwaukie for Work Related to the Monroe Street Design Plan
2. Authorization to Purchase One 500X High Dump Sweeper from Tymco Inc., Delivered by Pac West Machinery for the Transportation Maintenance Division - *Procurement*

C. Finance Department

1. Approval of a Contract with Hal's Construction, Inc. for the County Campus Parking Lot Repair Project - *Procurement*

D. Elected Officials

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

E. Administration

1. Approval of a Contract with the Athena Group, LLC for the Community Outreach and Engagement of the Equity Pilot Area Project - *Procurement*

F. Technology Services

1. Approval of ORMAP Intergovernmental Agreement Contract No. 3739-18 with Oregon Department of Revenue for Digital GIS Tax Lot Conversion
2. Approval of a Telecommunication Services Contract with Atos IT Solution and Services Inc. for Voice Communication Services - *Procurement*

IV. NORTH CLACKAMAS PARKS & RECREATION DISTRICT

1. Approval of Addendum No. 2 to the Development Agreement between North Clackamas Parks & Recreation District and Hidden Falls Development, LLC
2. Approval of a Personal/Professional Services Contract between North Clackamas Parks & Recreation District and Cascadia Northwest Officials, LLC for Basketball Officials – *Procurement*

V. COUNTY ADMINISTRATOR UPDATE

VI. 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. <https://www.clackamas.us/meetings/bcc/business>



GARY SCHMIDT
DIRECTOR

PUBLIC AND GOVERNMENT AFFAIRS
PUBLIC SERVICES BUILDING
2051 KAEN ROAD OREGON CITY, OR 97045

December 20, 2018

Board of County Commissioners
Clackamas County

Members of the Board:

Presentation: 2018 Accomplishments – A Year in Review

Purpose/Outcomes	This informational presentation recaps many of the 2018 accomplishments of the Board of County Commissioners and county staff, showcased by a new video.
Dollar Amount and Fiscal Impact	N/A
Funding Source	N/A
Duration	5 minutes
Previous Board Action/Review	N/A
Strategic Plan Alignment	Build public trust through good government.
Contact Person	Gary Schmidt, Public and Government Affairs, 503-742-5908

BACKGROUND:

The Department of Public and Government Affairs has produced a short video highlighting major accomplishments of the Board of County Commissioners and County staff in 2018. The video will be shared on the County's social media channels following the Business Meeting.

Respectfully submitted,

Gary Schmidt
Director, Public and Government Affairs

December 20, 2018

Board of County Commissioners
 Clackamas County

Members of the Board:

Approval of Professional, Technical, and Consultant Contract with
 Alfredo J. Soto, M.D. to serve as Medical Director for the Behavioral Health Division

Purpose/Outcomes	Provides medical director services to the Behavioral Health Division for oversight of care to Clackamas County residents.
Dollar Amount and Fiscal Impact	The maximum contract value is \$268,000
Funding Source	No County General Funds are involved. Funding provided by Oregon Health Plan (OHP) and Community Mental Health Program (CMHP)
Duration	Effective January 1, 2019, terminates December 31, 2020
Previous Board Action	Previous agreement #8081 reviewed and approved by Board on March 2, 2107.
Strategic Plan Alignment	1. Individuals and families in need are healthy and safe. 2. Ensure safe, healthy and secure communities.
Contact Person	Mary Rumbaugh, Director, Behavioral Health Division – 503-722-5305
Contract No.	#9079

Background

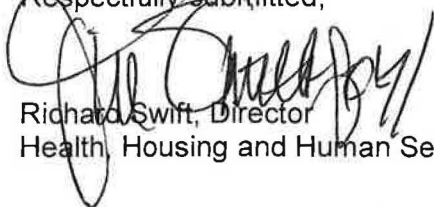
The Behavioral Health Division of the Health, Housing & Human Services Department (H3S) requests the approval of Professional, Technical, and Consultant Contract with Alfredo J. Soto, M.D., LLC, assigned as Medical Director for the care of Clackamas County residents receiving services from the Behavioral Health Division. Dr. Soto provides consultation to the Behavioral Health Program on system development and implementation regarding the further development and monitoring of the local and regional system of care for both serious and persistent mentally ill adults and seriously emotionally disturbed children, youth and their families. Additionally, Dr. Soto provides consultation to program staff regarding procedures, denials and appeals for treatment services, and leveraging community resources.

This contract is effective January 1, 2019 through December 31, 2020 with a maximum expenditure of \$268,000. Dr. Soto was awarded this contract through a regional request for proposal (RFP) shared with Washington and Multnomah counties in 2015. County Counsel reviewed and approved this contract on November 5, 2018. This is a renewal of agreement #8081, reviewed and approved by the Board on March 2, 2017.

Recommendation

We recommend approval of this contract and authorization Richard Swift to sign on behalf of the Board of County Commissioners.

Respectfully submitted,



Richard Swift, Director
 Health, Housing and Human Service

Healthy Families. Strong Communities.

**PROFESSIONAL, TECHNICAL, AND CONSULTANT SERVICES CONTRACT
CONTRACT #9079**

This Professional, Technical, and Consultant Services Contract (this "Contract") is between Clackamas County acting by and through its Health, Housing and Human Services Department, Behavioral Health Division, hereinafter called "County" and **Alfredo J. Soto, M.D., LLC** hereinafter called "Contractor".

CONTRACT

1.0 Engagement

County hereby engages Contractor to act as Medical Director for the Behavioral Health Division as more fully described in **Exhibit B**, Scope of Work, attached hereto and incorporated herein (the "Services").

2.0 Term

Services provided under the terms of this Contract shall commence **January 1, 2019 and shall terminate December 31, 2020** unless terminated earlier by one or both parties as provided for in paragraph 6.0.

3.0 Compensation and Fiscal Records

3.1 Compensation. County shall compensate Contractor as specified in **Exhibit C**, Compensation, for satisfactorily performing contracted services as specified in **Exhibit B**, Scope of Work, as follows:

Total payment to Contractor shall not exceed **\$268,000.00**.

Payment shall be full compensation for work performed, for services rendered, and for all labor, materials, supplies, equipment, travel expenses, mileage, and incidentals necessary to perform the work and services.

3.2. Method of Payment. To receive payment, Contractor shall submit invoices as described in **Exhibit C**, Compensation.

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

3.4 Financial Records. Contractor shall maintain complete and legible financial records pertinent to payments received. Such records shall be maintained in accordance with Generally Accepted Accounting Principles. Financial records shall be retained for at least six (6) years after final payment is made under this Contract or until all pending matters are resolved, whichever period is longer. If an audit of financial records discloses that payments to Contractor were in excess of the amount to which Contractor was entitled, Contractor shall repay the amount of the excess to County.

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

3.4.2 County may conduct a fiscal compliance review of Contractor as part of compliance monitoring of this Contract. Contractor agrees to provide, upon reasonable notice, access to all financial books, documents, papers and records of Contractor which are pertinent to this Contract to

ensure appropriate expenditure of funds under this Contract. County shall monitor compliance with County's financial reporting and accounting requirements.

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

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

4.0 Manner of Performance

4.1 Compliance with Applicable Laws and Regulations, and Special Federal Requirements. Contractor shall comply with all Federal and State regulations and laws, Oregon Administrative Rules, local laws and ordinances applicable to work performed under this Contract, including, but not limited to, all applicable Federal and State civil rights and rehabilitation statutes, rules and regulations, which by this reference are incorporated herein.

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

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

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

4.2 Subcontracts. Contractor shall not enter into any subcontracts for any of the work scheduled under this Contract without written consent of County.

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

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

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

5.0 General Conditions

5.1 **Indemnification.** Contractor agrees to indemnify, save, hold harmless, and defend County, its officers, elected officials, agents and employees from and against all claims and actions, and all expenses incidental to the investigation and defense thereof, arising out of actions, suits, claims or demand attributable in whole or in part to the acts or omissions of Contractor, and Contractor's officers, agents, and employees, in performance of this Contract.

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

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

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

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

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

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

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

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

5.8 Oregon Public Contracting Requirements. Pursuant to the requirements of Oregon law, the following terms and conditions are made a part of this Contract:

5.8.1 Workers' Compensation. All subject employers working under this Contract must either maintain workers' compensation insurance as required in the **Exhibit D**, Insurance.

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

5.8.3 Oregon Public Contracting Conditions. Pursuant to the terms of ORS 279B.220, Contractor shall:

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

5.8.4 Contractor shall pay employees for work in accordance with ORS 279B.020 and ORS 279B.235, which is incorporated herein by this reference.

5.8.5 As required by ORS 279B.230, Contractor shall promptly, as due, make payment to any person or partnership, association, or corporation furnishing medical, surgical, and hospital care or other needed care and attention incident to sickness and injury, to the employees of Contractor, of all sums that Contractor agrees to pay for the services and all monies and sums that Contractor collected or deducted from the wages of its employees pursuant to any law, Contract or Agreement for the purpose of providing or paying for such services.

5.9 Integration. This Contract contains the entire Contract between County and Contractor and supersedes all prior written or oral discussions or Agreements.

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

6.0 Termination

6.1 Termination Without Cause. This Contract may be terminated by mutual consent of both parties, or by either party upon thirty (30) business days' written notice, delivered by certified mail or in person.

6.2 Termination With Cause. County, by written notice of default (including breach of Contract) to Contractor, may terminate this Contract effective upon delivery of written notice to Contractor, or at such later date as may be established by County, under any of the following conditions:

- i. If County funding from Federal, State, or other sources is not obtained and continued at levels sufficient to allow for purchase of the indicated quantity of services, the Contract may be modified to accommodate a reduction in funds.
- ii. If Federal or State regulations or guidelines are modified, changed, or interpreted in such a way that the services are no longer allowable or appropriate for purchase under this Contract or are no longer eligible for the funding authorized by this Contract.
- iii. If any license or certificate required by law or regulation to be held by Contractor to provide the services required by this Contract is for any reason denied, revoked, or not renewed.
- iv. If Contractor fails to provide services, outcomes, reports as specified by County in this Contract.
- v. If Contractor fails to perform any of the other provisions of this Contract, or so fails to pursue the work as to endanger performance of this Contract in accordance with its terms, and after receipt of written notice from County, fails to correct such failures within ten (10) days or such longer period as County may authorize.

6.3 Transition. Any such termination of this Contract shall be without prejudice to any obligations or liabilities of either party already accrued prior to such termination. Contractor and County shall continue to perform all duties and obligations under this Contract with respect to individuals under care of Contractor to the date of termination.

7.0 Notices

Any notice under this Contract shall be deemed received the earlier of the time of delivery of two (2) business days after mailing certified and postage prepaid through the U.S. Postal Service addressed as follows:

If to Contractor:
Alfredo J. Soto, M.D., LLC
3051 Kensington Court
West Linn, OR 97068

If to County:
Clackamas County Behavioral Health Division
2051 Kaen Road, Suite #154
Oregon City, OR 97045

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

- Exhibit A – Definitions
- Exhibit B – Scope of Work
- Exhibit C – Compensation
- Exhibit D – Insurance
- Exhibit E – CMHP Required Provider Contract Provisions
- Exhibit F – OHP Required Federal Terms & Conditions
- Exhibit G – CMHP Service Element
- Exhibit H – Business Associate Agreement (BAA)
- Exhibit I – Qualified Service Organization Business Associate Agreement (QSOBAA)
- Exhibit J – Certification Statement for Independent Contractor
- Exhibit K – Performance Standards

[Signature Page Follows]

COPY

December 20, 2018

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of a HOME Loan Agreement with River Glen Renewal Associates, LLC
To Rehabilitate the River Glen Apartments in Gladstone

Purpose/Outcomes	The 44-unit River Glen Apartments is an affordable housing project in Gladstone and is currently owned and operated by Northwest Housing Alternatives. The complex was built in 1971. Repairs and some rehabilitation occurred in 2009 with assistance from CDBG funds. The complex currently needs significant rehabilitation and modernization to extend its useful life as affordable housing.
Dollar Amount and Fiscal Impact	\$550,000 of HOME Investment Partnerships Program funds, 0.0% interest loan. The total project cost is estimated at \$4,662,000.
Funding Source	U.S. Department of Housing and Urban Development (HUD) No County General Funds are involved
Duration	Effective upon project completion. The HOME provisions expires 15 years after project completion. The affordability provisions will continue for an additional 27 years.
Previous Board Action	2018 Action Plan was approved by the BCC on May 3, 2018
Strategic Plan Alignment	1. Build a strong infrastructure 2. Ensure safe, healthy and secure communities
Contact Person	Kevin Ko, Housing and Community Development - (503) 655-8359
Contract No.	H3S-9103

BACKGROUND:

The Housing and Community Development Division of the Health, Housing and Human Services Department requests the approval of a HOME Program loan of \$550,000 for the renovation and modernization of the River Glen Apartments, located at 1055 Risley Avenue in Gladstone. Northwest Housing Alternatives (NHA) currently owns the property, and will be the developer of this project. The project will be owned by River Glen Renewal Associates LLC, a partnership created for the purpose of the Low Income Housing Tax Credit (LIHTC) Program. NHA is the General Partner and will continue to manage the complex. After the renovation is complete, the 44-unit complex will continue to provide much needed affordable housing for the benefit of Clackamas County residents for no less than 42 years. The

Healthy Families. Strong Communities.

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www.clackamas.us

HOME Program loan agreement and associated documents were reviewed by County Counsel on November 21, 2018.

The term of the HOME loan will be at 0.0% interest, with deferred payments, maturity date is 42 years after project completion. The HOME programmatic and affordability requirements will be enforced by a recorded Trust Deed and Declaration of Land Use and Restrictive Covenants. These documents are available for review upon request.

RECOMMENDATION:

We recommend the approval of the HOME Investment Partnerships Loan Agreement and that Richard Swift H3S Director be authorized to sign on behalf of the Board of County Commissioners.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Richard Swift", written over a horizontal line.

Richard Swift, Director
Health, Housing & Human Services Department

LOAN AGREEMENT

CLACKAMAS COUNTY HOME PROGRAM

Name of Project: River Glen Apartments

This Loan Agreement ("Agreement") is entered into between River Glen Renewal Associates LLC ("Owner"), and Clackamas County ("County"), a Participating Jurisdiction under the HOME Program.

This Agreement includes the following attachments:

- | | |
|-----------------------------|--|
| A. Legal Description | E. HOME Affordability Requirements |
| B. Sources and Uses | F. Affirmative Marketing and MBE/WBE Outreach Requirements |
| C. Schedule of Tasks | G. Project Completion documentation |
| D. HOME Match Contributions | |

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

1. **DEFINITIONS.** Capitalized terms in this Agreement and in the other Loan Documents have the following definitions:
 - a. **Annual Income.** Annual income as defined at 24 CFR 5.609.
 - b. **Affordability Requirements.** The Affordability Requirements refer to the restrictions on rents and tenant incomes set forth in Section 10 below.
 - c. **HOME-Assisted Units or HOME Unit.** HOME-Assisted units "HOME units" are those units in the Project which were partially or totally rehabilitated, constructed, or otherwise assisted with the use of HOME Funds. The HOME-Assisted units are designated in Section 4 below.
 - d. **HOME Funds.** HOME Funds means the total amount of HOME Program dollars being provided by the County to the Project under this Agreement. See Section 2 below.
 - e. **HOME Program and HOME Regulations.** The federal HOME Investment Partnership Program (HOME Program) is authorized under Title II of the Cranston-Gonzalez National Affordable Housing Act of 1990. HUD's regulations and requirements for the HOME Program are located in 24 CFR Part 92. Should anything in this Agreement or the other Loan Documents conflict with the HOME regulations, the HOME regulations shall prevail.
 - f. **HUD.** The United States Department of Housing and Urban Development.
 - g. **Loan Documents.** The Loan Documents are this Agreement, the Promissory Note, the Trust Deed, and the Declaration of Land Use Restrictive Covenants, all of which are incorporated into this Agreement by reference.
 - h. **Low-Income and Very Low-Income.** A Low-Income household is one whose total income does not exceed 80% of the County's median income. A Very Low-Income household is one whose total income does not exceed 50% of the County's median income.
 - i. **Median Income.** Median Income means the median income for Clackamas County, adjusted for family size, as published by HUD, from time to time.
 - j. **Owner** includes the current Owner and any subsequent Project owner, subject to the County consenting to any transfer under Section 29 below.
 - k. **Period of Affordability.** See Section 9 below.
 - l. **Project.** Owner is undertaking the refinance and rehabilitation of River Glen Apartments – a 44 unit apartment complex located at 1055 SE Risley Avenue, Gladstone, Oregon. The property – which sits on a 2.24 acre site - was originally constructed in 1971 and renovated in 1994. The site includes five, 2-story buildings situated on a rectangular site. One building contains 12 units; the remaining four contain 8 units. Surface parking is provided for 79 vehicles. All 44 units operate under a HUD Project Based Section 8 contract. The legal description of the property is set forth in **Attachment A**.

- m. **Project Completion Date.** The project completion date shall be the later of the date when (a) the work is completed, (b) the final HOME drawdown has been disbursed to the Project, or (c) the County has entered the project completion information into HUD's disbursement and information system.

2. HOME FUNDS; LOAN TERMS

- a. **Amount and Purpose:** County shall loan HOME funds in the amount of Five Hundred and Fifty Thousand Dollars (**\$550,000**) to the Owner for the Project.
- b. **Loan Terms:**
 - i. The HOME Funds will be provided as a **0.0% interest deferred payment loan.**
 - ii. The outstanding principal balance of this loan, together with all accrued and unpaid interest, shall be paid in full upon the earlier of 42 years from the date of the Promissory Note ("Maturity Date"); the sale, assignment or other transfer of title to the Property without the County's written consent; or the date Owner or its agents or subcontractors is otherwise in default under any of the Loan Documents (including but not limited to the failure to meet the Affordability Requirements of Section 10 below). Exceptions: The transfer or assignment of a member's interest in Owner, a transfer of any interest in the sole member or the removal of the sole member for cause, pursuant to the terms of Owner's Operating Agreement, shall not cause the Loan to be due and payable.
- c. **Loan Documents:** The loan shall be evidenced by this Agreement, a Promissory Note, a Trust Deed, and a Declaration of Land Use Restrictive Covenants, all of which together are incorporated by reference into this Agreement and are referred to collectively as the "**Loan Documents.**"
- d. **Recording Requirement:** Owner agrees to record the Trust Deed and the Declaration of Land Use Restrictive Covenants.

3. PAYMENT OF OBLIGATION.

- a. Payments of principal and interest, if any, shall be made until the loan is paid in full. All payments on the loan shall be applied first to the interest due on the loan and then the remaining amount shall be applied to the principal. No late fees will be charged.
- b. Payments shall be made at such place as County may designate in writing and shall be in the manner and amount as is described in the Promissory Note between the parties relating to this project.

4. HOME-ASSISTED UNITS

- a. Six (6) units in the project are HOME-Assisted Units. The total number of HOME-Assisted units has been calculated on the total amount of HOME funds invested in the project, including, but not limited to, this loan. The HOME units are as follows:

Bedroom Size	TOTAL UNITS	Low-Home Units	High Home Units	Total HOME-Assisted
Studio (tenant) unit:	0	0	0	0
1-bedroom (tenant) unit:	14	3	0	3
2-bedroom (tenant) unit:	12	2	0	2
3-bedroom (tenant) unit:	18	1	0	1
TOTALS	44	6	0	6

- b. **Fixed/Floating:** The HOME-Assisted units are designated as FLOATING HOME units as defined at 24 CFR 92.252.
- c. See Section 10 below and Attachment E for rent and income limits for the HOME-Assisted Units.
- d. **Special Needs Set-aside.** 7 units will be set aside for persons with special needs to comply with the County's requirement.

5. SOURCES AND USES OF FUNDS; SCHEDULE OF TASKS

- a. All current anticipated sources and uses of funds for the acquisition phase of the Project are set forth in **Attachment B**. The Uses Statement shall specify by line item the source of funds for each such line item. The Owner certifies that (i) it has, or will obtain, commitments of the funds from each of the sources identified, (ii) the sources of funds are sufficient to fund the project in full, and (iii) HOME funds shall only be used for HOME-eligible costs (see 24 CFR 92.206 and 92.214).
- b. The Schedule of Tasks to be undertaken in order to complete the Project is set forth in **Attachment C**.

6. MATCH REQUIREMENT

Attachment D documents the Project-related eligible sources of matching contributions as allowed by 24 CFR 92.218 through 92.222.

7. HOME REGULATIONS

The Owner agrees to comply with all applicable law including, but not limited to, the HOME Regulations set forth in 24 C.F.R. § 92 *et. seq.*, and with all other requirements of the Loan Documents.

8. ENVIRONMENTAL REVIEW

- a. The environmental effects of each activity carried out with HOME funds must be assessed in accordance with the provisions of the National Environmental Policy Act of 1969 and the related authorities in 24 CFR Parts 50 and 58.
- b. The County is responsible for environmental review, decision-making, and action for each activity that it carries out with HOME funds, in accordance with 24 CFR part 58. The County will not commit any HOME funds toward construction of the Project before completion of the environmental review and approval of the request for release of funds and related certification, except as authorized by 24 CFR Part 58.
- c. HOME Funds cannot be used for acquisition or construction in identified special flood hazard areas unless the Project is subject to the mandatory purchase of flood insurance as required by Section 102(a) of the Flood Disaster Protection Act of 1973.
- d. In the event that changes or modifications to the approved HOME activities are necessary, the Owner must, prior to any additional commitment or expenditure of funds, submit all necessary supplemental environmental review information and data to the County for the purpose of updating the environmental review record.

9. PERIOD OF AFFORDABILITY

- a. **The Initial Period of Affordability is the HUD-required Period of Affordability. It shall be 15 years**, without regard to the term of the loan or the transfer of ownership, except as noted in subsection d below. The Initial Period of Affordability begins on the Project Completion Date.
- b. The **Extended Period of Affordability** begins at the end of the Initial Period of Affordability and continues until such time as the loan is paid in full.
- c. Unless specified otherwise, the Period of Affordability includes both the Initial and the Extended Periods of Affordability.
- d. **Termination of Period of Affordability.** In accordance with 24 CFR 92.252(e), the Period of Affordability may be terminated upon foreclosure or transfer in lieu of foreclosure, but shall be revived according to the original terms if during the original Period of Affordability, the owner of record before the foreclosure or deed in lieu of foreclosure, or any entity that includes the former owner or those with whom the former owner has or had family or business ties, obtains an ownership interest in the project or property.

10. AFFORDABILITY REQUIREMENTS (RENTS AND TENANT INCOMES)

- a. To ensure compliance with the HOME "Program Rule," at initial occupancy all of the HOME-Assisted Units must be rented to tenants whose incomes at the time of the tenant's initial occupancy, are less than or equal to 60% of the median income.
- b. **Low-HOME Units.** If the number of HOME-Assisted Units is 5 or more, at least 20% of the HOME-assisted units must be occupied initially and throughout the Period of Affordability by tenants, who at the time of their initial occupancy are very-low-income tenants and the initial rents for those units must not exceed the Low HOME rents shown in **Attachment E**. These rents are subject to periodic adjustment by

- HUD. If the unit receives federal or state project-based rental assistance, the Low-HOME rent shall not exceed the allowable rent under the rental assistance program.
- c. **High-HOME Units.** After initial occupancy as indicated in paragraph (a) above, the remaining HOME-Assisted Units must be rented during the Period of Affordability to tenants, who at the time of their initial occupancy are low-income tenants and the initial rents for these units must not exceed the High HOME rents shown in **Attachment E**. These rents are subject to periodic adjustments by HUD.
 - d. Increases in Tenant's Income.
 - i. Low-HOME rent units
 1. If the income of a tenant in a Low-HOME rent unit rises above 50% of median income, but does not exceed 80% of median income, then the next available HOME-Assisted Unit (for fixed-unit projects) or the next available comparable unit (for floating-unit projects) must be rented to a very-low-income tenant. The unit occupied by the tenant whose income increased becomes a High-HOME unit and the High-HOME rent must be charged, provided that in no event shall the rent of a tenant of a HOME-assisted unit that has been allocated federal low-income housing tax credits "LIHTC" increase beyond the maximum applicable LIHTC rent for such unit.
 2. The rent for the unit occupied by the tenant whose income has increased above 80% of median income will be set in accordance with subparagraph iii below.
 - ii. High-HOME rent units
 1. The income of a tenant in a High-HOME rent unit can increase to 80% of median income with no change in the status as a HOME-Assisted Unit or in the tenant's rent.
 2. If the income of a tenant in a High-HOME rent unit rises above 80% of median income, then the next available HOME-Assisted Unit (for fixed-unit projects) or the next available comparable unit (for floating-unit projects) must be rented to a tenant whose income does not exceed 80% of median income.
 3. The rent for the unit occupied by the tenant whose income has increased above 80% of median income will be set in accordance with subparagraph iii below.
 - iii. Project-based rent subsidy: In accordance with 24 CFR 92.252(b)(2), if the unit receives federal or state project-based rental subsidy, the maximum rent is the rent allowable under the federal or state project-based rental subsidy program.
 - iv. Over-income Tenants: In accordance with 24 CFR 92.252(i), a tenant who no longer qualifies as a low-income household must pay as rent 30 percent of the household's adjusted gross income, except that:
 1. In no event shall the tenant of a HOME-assisted unit that has been allocated federal low-income housing tax credits be charged rent in excess of the maximum applicable LIHTC rent for such unit.
 2. If the HOME-assisted unit is a floating unit, a tenant who no longer qualifies as a low-income household is not required to pay as rent an amount that exceeds the market rent for a comparable unassisted unit in the neighborhood.
 - e. Certification and Recertification of Tenant Income: The Owner must certify each tenant's household income, and must recertify such income annually in accordance with HOME regulations.

11. TENANT SELECTION CRITERIA; LEASE REQUIREMENTS

- a. The Owner must adopt written tenant selection policies and criteria, which must be approved by the County. The criteria must be consistent with the purpose of providing housing for very-low-income and low-income households, must be reasonably related to program eligibility and the applicant's ability to perform the lease obligations, must provide for the selection of tenants from a written waiting list in the chronological order of their application, insofar as practicable, and must give prompt written notification to any rejected applicant of the grounds for any rejection.
- b. Tenants must be offered renewable lease agreements with an initial duration of at least one year, unless a shorter time period is mutually agreed upon by the tenant and the landlord.
- c. In compliance with 24 CFR 92.253(d), the owner cannot discriminate against rental assistance subsidy holders.

- d. Tenant leases may not contain any of the following provisions:
- i. Agreement by the tenant to be sued or to have a judgment entered in favor of Owner.
 - ii. Except as allowed by Oregon law, agreement by the tenant to allow Owner to take, hold, or sell personal property of household members without notice to the tenant and a court decision on the rights of the parties.
 - iii. Agreement by the tenant not to hold Owner liable for any action or failure to act.
 - iv. Agreement by the tenant that Owner may institute a lawsuit without notice to the tenant.
 - v. Agreement by the tenant that Owner may evict tenant without instituting court proceedings in which the tenant has the opportunity to present a defense, or before a court decision on the rights of the parties.
 - vi. Agreement by the tenant to waive any right to a trial by jury, to waive the tenant's right to appeal, or otherwise challenge in court, a court decision in connection with the lease.
 - vii. Agreement by the tenant to pay attorney fees or costs even if the tenant wins in a court proceeding against the Owner. The tenant may however be obligated to pay costs and attorney fees if the tenant loses.
- e. The Owner may not terminate the tenancy or refuse to renew the tenant's lease except for serious or repeated violation of the terms of the lease, for violation of law, for completion of the tenancy period for transitional housing, or for other good cause. To terminate or refuse to renew tenancy, Owner must serve written notice on the tenant specifying the grounds for the eviction at least 30 days before the termination of the tenancy.

12. PROPERTY STANDARDS

- a. Upon completion, the Project must meet all of the applicable Property Standards in 24 CFR 92.251 for new construction. County staff will periodically inspect the Project during construction and at completion to assure compliance with the Property Standards.
- b. Upon project completion and throughout the Period of Affordability, the Project must be maintained so that it continues to meet the property standards set forth in 24 CFR 92.251.

13. INDEMNIFICATION AND INSURANCE

The Owner agrees to indemnify, defend and hold harmless the County and its officers, elected officials, agents and employees against all liability, loss and costs arising from actions, suits, claims or demands, except when due to the County's negligence or intentional misconduct, arising from performance of this Agreement.

The Owner shall maintain all-risk property insurance in the amount of the full replacement value of the property, commercial general liability insurance in the minimum amount of \$ 1,000,000.00, and Rent Loss insurance in an amount equal to 12 months rental income. Owner shall provide County proof of insurance in the required amounts upon execution of this loan document, and again upon request of the County. Owner shall give county no less than 30 days notice if there is a cancellation, nonrenewal or material change of Owner's insurance. See paragraph 1.12 of the Trust Deed for additional insurance requirements.

14. EVENTS OF DEFAULT

An event of default under the Loan Documents includes, but is not limited to, the following:

- a. Securing all Funding. The Owner must secure all fund sources identified in Attachment B within 12 months from the Effective Date identified in Section 31. A failure to do so shall constitute an event of default under this Agreement.
- b. Availability of the Project's HOME-assisted housing units. Within 24 months from the Effective Date identified in Section 31, the HOME-assisted units funded under this Agreement must be available for occupancy. A failure to do so shall constitute an event of default under this Agreement.
- c. Noncompliance with the Affordability Requirements at any time during the term of this Loan shall constitute an event of default under this Agreement.

- d. Noncompliance with any term or condition of the Loan Documents shall constitute an event of default under this Agreement.

Provided, however, that the party declaring a default must first provide to the other party thirty (30) days written notice specifying the alleged default and giving such other party the opportunity to cure the alleged default during that thirty (30) day period, or during such longer period as is agreed to by the non-defaulting party in writing. County agrees that any cure of any default made or tendered by Investor Member shall be deemed to be a cure by Borrower and shall be accepted or rejected on the same basis as if made or tendered by Borrower.

15. REMEDIES FOR DEFAULT

- a. In the event of default, either party may pursue any legal or equitable remedy available to it. Without limiting the foregoing, County may (i) declare the entire amount of the Loan due and payable at once, or (ii) extend the Period of Affordability for a period equal to the length of the period during which noncompliance with the Affordability Requirements existed.
- b. The County and any tenant or applicant who meets the income limitation applicable under 24 CFR 92 (whether prospective, present or former occupant) shall be entitled, for any breach of the provisions hereof, and in addition to all other remedies provided by law or in equity, to enforce specific performance by the Owner of its obligations under this Agreement in state court.

16. AFFIRMATIVE MARKETING

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

17. MINORITY/WOMEN'S BUSINESS

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

18. NON-DISCRIMINATION

- a. The Owner must comply with all applicable federal, state, and local laws prohibiting discrimination on the basis of age, sex, marital status, familial status, religion, race, creed, color, sexual orientation, nationality, the presence of any sensory, mental or physical handicap, or other protected class. These requirements apply to both employment opportunities and the provision of housing and are specified in
 - i. The Federal requirements set forth in 24 CFR part 5, subpart A, which include: nondiscrimination and equal opportunity; disclosure requirements; debarred, suspended or ineligible contractors; and drug-free work; and housing counseling.
 - ii. Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 200d et seq.);
 - iii. Title VI; Civil Rights Act of 1968, Title VIII, as amended;
 - iv. Equal Employment Opportunity, Executive Order 11246, as amended;
 - v. Section 3 of the Housing and Urban Development Act of 1968;
 - vi. Section 504 of the Rehabilitation Act of 1973;
 - vii. The Fair Housing Act of 1988 (42 U.S.C. 3601-3620);
 - viii. Equal Opportunity in Housing (Executive Order 11063, as amended by Executive Order 12259);
 - ix. Age Discrimination Act of 1975, as amended (42 U.S.C. 6101); and
 - x. Americans with Disabilities Act of 1990 (42 U.S.C. 12131; 47 U.S.C. 155, 201, 218, and 225).
- b. The Owner must maintain data on the extent to which each racial and ethnic group and single-headed household (by gender of head of household) have applied for and rented units in the Project.

19. DISBURSEMENT OF FUNDS

- a. The Owner agrees to request funds under this Agreement only when they are needed for payment of specific allowable costs and only in amounts needed to pay such costs. The payment request must be accompanied by source documentation for actual expenses.
- b. The County shall verify requested amounts for satisfactory completion prior to payment. Payments shall be based upon work completed and approved by the County.
- c. County will not disburse any HOME funds until all the Loan Documents are signed and the following documents are received:
 - i. Copy of the Management Agreement;
 - ii. Copy of HOME tenant lease; and
 - iii. Copy of the written tenant selection criteria.
- d. Five percent (5%) of HOME funds will be withheld until the Owner provides the County with the documentation outlined in **Attachment G**.
- e. The Owner must submit Form HUD-40097 (Project Completion Report - Part C, household characteristics for each HOME-assisted unit) within 120 days of the request for final disbursement.

20. CONTRACTOR DEBARMENT AND SUSPENSION

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

21. SECTION 3 REQUIREMENTS

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

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

Section 3 requires that to the greatest extent feasible opportunities for training and employment in connection with planning and carrying out the Project be given to low-income residents of the project area, and contracts for work in connection with the Project be awarded to business concerns, including but not limited to individuals for firms doing business in the field of planning, consulting, design, architecture, building construction, rehabilitation, maintenance, or repair, which are located in or owned in substantial part by persons residing in the project area.

22. LEAD BASED PAINT

For all units in the Project (not just HOME-Assisted Units) and for common areas, the Owner must comply with the HUD Lead-Based Paint Regulations (24 CFR Part 35 and 24 CFR 982.401(j)) issued pursuant to the Lead-Based Paint Poisoning Prevention Act (42 USC Sections 4831 et. seq.) requiring prohibition of the use of lead-based paint whenever HOME Funds are used directly or indirectly for construction, rehabilitation, or modernization of residential structures; elimination of immediate lead-based paint hazards in residential structures; and notification of the hazards of lead-based paint poisoning to purchasers and tenants of residential structures constructed prior to 1978.

23. DISPLACEMENT, RELOCATION, ACQUISITION, AND REPLACEMENT

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

24. CONFLICT OF INTEREST

Unless an exception is granted by the County pursuant to 24 CFR 92.356(f)(2), no developer, owner or sponsor of the Project, or officer, employee, agent or consultant of the owner, developer or sponsor, may occupy a HOME-Assisted Unit in the Project. This section does not apply to an employee or agent who occupies a HOME-Assisted Unit as the project manager or maintenance worker.

25. FAITH BASED ACTIVITIES

- a. Organizations that are directly funded under the HOME program may not engage in inherently religious activities, such as worship, religious instruction, or proselytizing as part of the assistance funded under this part. If an organization conducts such activities, the activities must be offered separately, in time or location, from the assistance funded under this part, and participation must be voluntary for the beneficiaries of the assistance provided.
- b. An organization that participates in the HOME program shall not, in providing program assistance, discriminate against a program beneficiary, or prospective program beneficiary, on the basis of religion or religious belief.
- c. HOME funds may not be used for the acquisition, construction, or rehabilitation of structures to the extent that those structures are used for inherently religious activities. HOME funds may be used for the acquisition, construction, or rehabilitation of structures only to the extent that those structures are used for conducting eligible activities under this part.

26. RECORDS

- a. Owner must keep such records as are necessary to demonstrate compliance with all parts of this Agreement, including but not limited to the affordability requirements, tenant lease provisions, property standards, affirmative marketing, anti-discrimination, Section 3, MBE/WBE, environmental review, relocation/displacement/property acquisition, labor requirements, lead-based paint, conflict of interest, debarment and suspension and intergovernmental review.
- b. Owner must annually provide tenant eligibility records to the County.
- c. Records provided by Owner must, in addition to any other requirement set forth herein, include the information required under 24 C.F.R. 95.504.
- d. Record Retention Periods
 - i. Except as stated in this subparagraph, records must be retained for five years following the Project Completion Date.
 - ii. Owner must maintain records pertaining to each HOME assisted tenant's income verifications, project rents and project inspections for at least the most recent five year period, until five years after the Period of Affordability has expired.
 - iii. Written agreements must be retained for five years after the agreement terminates.
 - iv. Records covering displacement and acquisition must be retained for five years after the date by which all persons displaced from the Property and all persons whose property is acquired for the Project have received the final payment to which they are entitled under 24 CFR 92.353.
 - v. If any litigation, claim, negotiation, audit, monitoring, inspection or other action has been started before the expiration of the required record retention period, records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the required period, whichever is later.
- e. Access to Records. HUD, the Comptroller General of the U.S., the County, and any of their representatives, have the right of access to any pertinent books, documents, papers or other records, in order to make audits, examinations, excerpts or transcripts, or otherwise determine compliance with HOME regulations.
- f. Any duly authorized representative of the Secretary of HUD or the Comptroller General of the United States or the County shall at all reasonable times have access to and the right to inspect, copy audit, and examine all books, records and other documents relating directly to the Owner's receipt and disbursement of the HOME Funds, as well as access to the Project. Upon request, the Owner must assist the County by serving notice to affected tenants, as required under Oregon Law.

27. MONITORING

- a. Within 60 days of completion, the county staff will make an on-site visit to monitor compliance with the HOME rent and occupancy standards.

The County will monitor the performance of the Owner to assure compliance with the requirements of this Agreement. During the INITIAL Period of Affordability, the monitoring will be conducted in accordance with 24 CFR 92.504(d) and will include on-site inspections and a review of all records required in Section 26 above.

28. WAIVER

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

29. SUCCESSORS AND ASSIGNS

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

30. AUTHORITY TO SIGN

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

31. EFFECTIVE DATE

The Effective Date of this Agreement is _____, 2018, the date originally signed by all parties.

Signature Page follows

PROJECT OWNER:

River Glen Renewal Associates LLC
By: Northwest Housing Alternatives, Inc.
Its Sole Member and Manager
By: Trell Anderson, Executive Director

Address: 13819 SE McLoughlin Boulevard
Milwaukie, OR 97222

By:

(signature)

Printed Name: Trell Anderson
Title: Executive Director

Phone: (503) 654-1007
Fax: (503) 654-1319
Federal ID# 82-4839842

Date

CLACKAMAS COUNTY

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

Signing on Behalf of BCC:

(signature)

Printed Name: Richard Swift
Title: Director,
Health Housing and Human Services

Date

Reviewed as to Form:

County Counsel

Date

Attachment A. Legal Description

Attachment B. Sources and Uses of Funds

Attachment C. Schedule of Tasks

	PROPOSED DATE (month/year)*	REVISED DATE (month/year)*	COMPLETED DATE (month/year)*
SITE			
Option/Contract executed			
Site Acquisition			
Zoning Approval			
Site Analysis			
Building Permits & Fees			
Off-site Improvements			
PRE-DEVELOPMENT			
Plans Completed (permit)			
Final Bids			
Contractor Selected			
FINANCING			
CONSTRUCTION LOAN:			
Proposal			
Firm Commitment (submittal)			
Closing/Funding of Loan			
Proposal			
Firm Commitment			
Closing/funding of Loan			
DEVELOPMENT			
Syndication Agreement			
Construction Begins			
Construction Completed			
Certificate Of Occupancy			
MARKETING			
Lease up begins			
Lease up completed			
Absorption (units per month)			

**Attachment D.
Home Match Contribution Form**

PROJECT: River Glen Apartments

Total number of units in project: 44
Number of HOME-assisted units: 6
Applicable match credit percentage*: 14%

MATCH SOURCE*	ELIGIBLE MATCH TYPE	ELIGIBLE MATCH AMOUNT	MATCH CREDIT

Eligible forms of match as defined in 24 CFR 92.220(a):

- (1) Cash Contribution from Nonfederal Source
- (2) Foregone Taxes, Fees and Charges
- (3) Donated Land or Other Real Property
- (4) On-site or Off-site Infrastructure
- (5) Proceeds from Affordable Housing Bonds
- (6) Donated Site Preparation and Construction Materials
- (7) Donated Site Preparation and Construction Equipment
- (8) Donated or Voluntary Labor or Professional Services
- (9) Sweat Equity (homeownership only)
- (10) Supportive Services (for rental projects only)

*24 CFR 92.219 states that 100% of the matching contribution can be recognized if "at least 50 percent of the housing units in the project are HOME-assisted."

Attachment E. HOME Affordability Requirements

1. HOME Rent Schedule

US Department of Housing and Urban Development
PMSA: Portland-Vancouver, OR-WA
Effective: April 2018

	Low HOME	High HOME
Efficiency	\$712	\$919
1 Bedroom	\$763	\$986
2 Bedroom	\$916	\$1184
3 Bedroom	\$1058	\$1360

Notes:

- Utility Allowance: The gross rents must be reduced if the tenant pays for any utilities besides telephone. Utility adjustments may be proposed by Owner for the Project, but must be approved by the County.
- Throughout the Period of Affordability rents plus utility standards for the Project will not be set at amounts less than those shown in this initial table.

2. HOME Tenant Income Limits

US Department of Housing and Urban Development
Effective: June 1, 2018

HOUSEHOLD SIZE	30% OF MEDIAN	50% OF MEDIAN	60% OF MEDIAN	80% OF MEDIAN
1 Person	\$17,100	\$28,500	\$34,200	\$45,600
2 Persons	\$19,550	\$32,600	\$39,120	\$52,100
3 Persons	\$22,000	\$36,650	\$43,980	\$58,600
4 Persons	\$24,400	\$40,700	\$48,840	\$65,100
5 Persons	\$26,400	\$44,000	\$52,800	\$70,350
6 Persons	\$28,350	\$47,250	\$56,700	\$75,550

Note: This schedule will be updated from time to time when adjustments are provided by HUD.

ATTACHMENT F.

OUTREACH TO MINORITY-OWNED AND WOMEN-OWNED BUSINESSES ENTERPRISES (MBE/WBE)

Clackamas County Housing and Community Development Division (HCD) will take the following steps to ensure, to the maximum extent possible, that small and minority-owned business enterprises and women-owned business enterprises (MBE/WBE) are used whenever possible and economically feasible:

- ◆ Include language in all notices and advertisements related to the HOME Program which states that MBE/WBE are encouraged to apply for such funds and to participate as suppliers, contractors, professional service providers, etc. on projects assisted with HOME funds. All informational and documentary materials will also include this language.
- ◆ Include qualified MBE/WBE on any contractor or solicitation lists.
- ◆ Coordinate with the Oregon Office of Minority, Women and Emerging Small Business to maintain a list of eligible MBE/WBE. This list will be made available to HOME recipients.
- ◆ When necessary and appropriate, utilize the services and assistance of the US Department of Commerce's Small Business Administration and Minority Business Development Agency.
- ◆ Through contractual agreement, ensure that recipients of HOME program funds solicit MBE/WBE whenever they are potential sources.
- ◆ When feasible, divide total requirements into smaller tasks or quantities to permit maximum participation by MBE/WBE.
- ◆ When feasible, establish delivery schedules which will encourage participation by MBE/WBE.
- ◆ In conjunction with HOME-Assisted Projects, HCD will:
 - ◆ Encourage project sponsors, developers and owners to include, to the maximum extent feasible, the use of MBE/WBE in providing supplies, professional and construction services.
 - ◆ Request that project sponsors/developers maintain statistical data and identify jobs which have been bid by MBE/WBE. HCD may inspect the project site to confirm the percentage of minority and women laborers working at the site.

Monitor project sponsors, developers and owners to determine their compliance efforts in promoting the use of MBE/WBE in specific procurement areas, i.e. supplies, professional services, and construction services.

AFFIRMATIVE MARKETING

For housing containing five or more HOME-assisted units, the HOME regulations at 24 CFR Part 92.351 require project Owners to provide information and otherwise attract eligible persons from all racial, ethnic, and gender groups in the housing market area to the available housing.

The project owner must:

- 1) Display the Equal Housing Opportunity statement or logo on all project signs.
- 2) Use the Equal Housing Opportunity statement or logo on all advertisements and publications. *Advertising media may include newspapers of general circulation, radio, television, brochures, or flyers.*
- 3) Display a Fair Housing Poster in a place visible to tenants and prospective tenants and in common area(s) of housing assisted with HOME funds.
- 4) Solicit applications for vacant units from persons in the housing market who are least likely to apply for the HOME-assisted housing without the benefit of special outreach efforts.

In general, persons who are not of the race/ethnicity of the residents of the neighborhood in which the newly constructed or rehabilitated building is located shall be considered those least likely to apply.

For outreach purposes, the owner may utilize the housing authority, community action agencies, community development corporations, other community organizations, places of worship, employment centers, fair housing groups, housing counseling agencies, Clackamas County's Social Services' Information and Referral, the Community Connections website, or medical service centers to publicize unit vacancies or otherwise provide information to potential tenants.

- 5) Maintain file records containing all marketing efforts including, but not limited to, copies of newspaper advertisements, file memorandums documenting phone inquiries, copies of inquiry letters and related responses, etc. *These records shall be made available to County for inspection during normal working hours.*

During the rent-up and initial marketing phase, HCD will assess the efforts of owners through the use of certifications of compliance by the owner. Thereafter, HCD will annually assess the efforts and the success of the affirmative marketing actions by the project owner.

In the event an owner fails to comply with the affirmative marketing requirements, HCD will require corrective actions which include, but are not limited to, requiring the owner to conduct extensive outreach efforts on all future vacancies using appropriate contacts such as those outlined above in order to achieve occupancy goals. HCD may impose other sanctions as deemed necessary.

ATTACHMENT G.

REPORTING REQUIREMENTS

1. **Monthly Progress Reports.**

During the construction phase, the owner must submit a progress report each month that describes:

- a. Work completed during the reporting period; and
- b. Any decisions that have been made in the field, including changes to the scope of work, schedule and resolution to problems or disputes.

2. **Final disbursement of HOME Funds at Project Completion.**

Five percent of HOME funds will be withheld until:

- a. The County inspects the completed project to verify that the HOME-Assisted Units meet the property standards set for at 24 CFR 92.251; and
- b. The owner submits the following documentation:
 - i. Documentation that relocation (If any) was conducted in accordance with Section 24 of this Agreement.
 - ii. Certification statement that the completed project meets the accessibility requirements of 24 CFR 92.251(a)(3).
 - iii. Certificate of Occupancy.
 - iv. Final Sources and Uses or Cost Certification that identifies the actual cost and funding source of each line item on the development budget.
 - v. Documentation for each source of match.
 - vi. Contractor information.
 - (1) Copy of construction contract between Owner and General Contractor.
 - (2) Certification that neither the General Contractor nor participants in lower tier covered transactions having to do with the project are currently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in federal projects.
 - (3) Forms and Assurances from General Contractor:
 - (a) Affidavit of Payment of Debts and Claims;
 - (b) Affidavit of Release of Liens from General Contractor and all Subcontractors;
 - (c) Consent of Surety Company to Final Payment (if bonded);
 - (d) Section 3 Summary Report (form HUD-60002);
 - (e) Minority- and Woman-Owned Business Enterprise Activity (form HUD-40107); and
 - (f) Contractor/Subcontractor Activity form (form HUD-2516).
 - vii. Copy of the Management Agreement;
 - viii. Copy of HOME tenant lease; and
 - ix. Copy of the written tenant selection criteria.
 - x. Form HUD-40097 (Project Completion Report - Part C, household characteristics for each HOME-Assisted Unit) must be submitted within 120 days of the request for final disbursement.

December 20, 2018

Board of Commissioners
Clackamas County

Members of the Board:

Approval of a Subrecipient Grant Agreement with Northwest Family Services for youth marijuana and substance abuse prevention efforts in North Clackamas

Purpose/Outcomes	Provide youth marijuana and substance abuse prevention in North Clackamas to middle and high school students.
Dollar Amount and Fiscal Impact	\$90,000 No fiscal impact to county. No County General Funds are involved.
Funding Source	Marijuana Tax Revenue
Duration	October 1, 2018 through June 30, 2019
Previous Board Action	N/A
Strategic Plan Alignment	<ul style="list-style-type: none"> • Improve community safety and health • Ensure safe, healthy and secure communities
Contact Person	Rodney Cook, 503-650-5677
Contract No.	CFCC-9093

BACKGROUND:

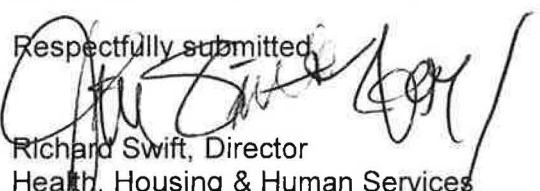
The Children, Family and Community Connections Division of the Health, Housing & Human Services Department requests the approval of a Subrecipient Grant Agreement with Northwest Family Services for youth marijuana and substance abuse prevention programs for middle and high school youth in North Clackamas. The primary goals will be to increase awareness of marijuana and other drug effects, incorporate anti-marijuana campaigns and provide case management for at-risk youth. Over 700 youth will be served, 85% of student participants will demonstrate increased perception of harm and increased resistance skills of marijuana/drug use as measured by pre/posttests.

Services are funded with Marijuana Tax Revenue funds. This Agreement becomes effective upon signature for services starting October 1, 2018 and terminating June 30, 2019. It has a maximum value of \$90,000 and has been reviewed by County Counsel.

RECOMMENDATION:

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

Respectfully submitted,


Richard Swift, Director
Health, Housing & Human Services

**CLACKAMAS COUNTY, OREGON
LOCAL SUBRECIPIENT GRANT AGREEMENT CFC-9093**

Program Name: **Northwest Family Services Youth Substance Abuse Prevention program**
Program/Project Number: 9093

This Agreement is between **Clackamas County, Oregon**, acting by and through its Children, Family and Community Connections Division (COUNTY) and Northwest Family Services (SUBRECIPIENT), an Oregon Non-profit Organization.

COUNTY Data

Grant Accountant: Larry Crumbaker

Clackamas County Finance
2051 Kaen Rd.
Oregon City, OR 97045
(503) 742-5429
LarryCru@co.clackamas.or.us

Program Manager: Brian McCrady

Clackamas County Children, Family and Community Connections
150 Beaver Creek Rd.
Oregon City, OR 97045
(503) 650-5681
bmccrady@clackamas.us

SUBRECIPIENT Data

Finance/Fiscal Representative: Rose Fuller

Northwest Family Services
6200 SE King Rd.
Portland, OR 97206
503-546-6377
rfuller@nwfs.org
FEIN: 93-0841022

Program Representative: Rose Fuller

Northwest Family Services
6200 SE King Rd.
Portland, OR 97206
503-546-6377
rfuller@nwfs.org

RECITALS

1. Northwest Family Services (SUBRECIPIENT) will oversee the implementation of the youth marijuana prevention efforts in the North Clackamas area at Alder Creek, Rowe, Kraxberger and Gardiner, and for Vibrant Futures Coalition work at Happy Valley and Rock Creek middle schools and at Milwaukie and Rex Putnam high schools.
2. Children, Family & Community Connections Division (COUNTY) selected SUBRECIPIENT through a competitive process to implement programming to decrease risk factors and increase protective factors through a combination of direct services, evidence-based curricula, and community, parent, and youth education. SUBRECIPIENT has demonstrated capacity to successfully address youth substance use and improve youth wellbeing in Clackamas County
3. This Grant Agreement of 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 Local Grant Agreement the 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, 2018** and not later than **June 30, 2019**, unless this Agreement is sooner terminated or extended

pursuant to the terms hereof. No grant funds are available for expenditures after the expiration date of this Agreement.

2. **Program.** The Program is described in Attached Exhibit A: SUBRECIPIENT Statement of Program Objectives. SUBRECIPIENT agrees to perform 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.
4. **Grant Funds.** The COUNTY's funding for this Agreement is the **Marijuana Tax Revenue Funds**. The maximum, not to exceed, grant amount that the COUNTY will pay on this Agreement is **\$90,000 (\$30,000 for Alder Creek, Rowe Middle Schools, \$30,000 for Gardiner, Kraxberger Middle Schools, and \$30,000 for Vibrant Futures Coalition)**.
5. **Disbursements.**
This is a cost reimbursement grant and disbursements will be made monthly in accordance with the requirements contained in Exhibit C-1: Request for Reimbursement.

Failure to comply with the terms of this Agreement may result in withholding of payment.

6. **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 effective before SUBRECIPIENT performs work subject to the amendment.
7. **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. This notice may be transmitted in person, by mail, facsimile, or by email, with confirming record of delivery confirmation through electronic mail return-receipt, or by confirmation that the electronic mail was accessed, downloaded, or printed.
8. **Funds Available and Authorized.** The COUNTY certifies that it has been awarded funds sufficient to finance the costs of 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 reasonable administrative discretion, to continue to make payments under this Agreement.
9. **Future Support.** COUNTY makes no commitment of future support and assumes no obligation for future support for the activity contracted herein except as set forth in this agreement.
10. **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 Generally Accepted Accounting Principles (GAAP) or another equally accepted basis of accounting, 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) **Budget.** 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 modifications change the scope of the original grant application or agreement.
- d) **Allowable Uses of Funds.** SUBRECIPIENT shall use funds only for those purposes authorized in this Agreement.
- e) **Period of Availability.** SUBRECIPIENT may charge to the award only allowable costs resulting from obligations incurred during the term and effective date. Cost incurred prior or after this date will be disallowed.
- f) **Match.** Matching funds are not required for this Agreement.
- g) **Payment.** Routine requests for reimbursement should be submitted monthly by the 15th of the following month using the form and instructions in Exhibit C-1: Request for Reimbursement. SUBRECIPIENT must submit a final request for payment no later than fifteen (15) days after the end date of this Agreement.
- h) **Performance and Financial Reporting.** SUBRECIPIENT must submit Performance Reports according to the schedule specified in Exhibit C: SUBRECIPIENT Performance Reporting. SUBRECIPIENT must submit Financial Reports according to the schedule specified in Exhibit D: Request for Reimbursement. All reports must be submitted on SUBRECIPIENT letterhead, must reference this agreement number, and be signed and dated by an authorized official of SUBRECIPIENT.
- i) **Audit.** SUBRECIPIENT shall comply with the audit requirements prescribed by State and Federal law.
- j) **Monitoring.** SUBRECIPIENT agrees to allow access to conduct site visits and inspections of financial and programmatic records for the purpose of monitoring. COUNTY and its duly authorized representatives shall have access to such records and other books, documents, papers, plans, records of shipments and payments and writings of SUBRECIPIENT that are pertinent to this Agreement, whether in paper, electronic or other form, to perform examinations and audits and make excerpts, copies and transcripts. Monitoring may be performed onsite or offsite, at the COUNTY’s discretion.
- k) **Record Retention.** 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 six (6) years following the Project End Date (June 30, 2019), or such longer period as may be required by applicable law, or until the conclusion of any audit, controversy or litigation arising out of or related to this Agreement, whichever date is later.
- l) **Failure to Comply.** 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 contract 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,

reclaim grant funds in the case of omissions or misrepresentations in financial or programmatic reporting, or to terminate this relationship including the original contract and all associated amendments.

11. Compliance with Applicable Laws

- a) **Public Policy.** 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, 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 as applicable to SUBRECIPIENT.
- b) **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. SUBRECIPIENT shall comply with the terms of the Grant Management Handbook available at http://www.oregon.gov/cjc/grants/Documents/2015_CJC_Grants_Management_Handbook.pdf and incorporated herein by reference.
- c) **Conflict Resolution.** If conflicts are discovered among federal, state and local statutes, regulations, administrative rules, executive orders, ordinances and other laws applicable to the Services under the Agreement, SUBRECIPIENT shall in writing request COUNTY resolve the conflict. SUBRECIPIENT shall specify if the conflict(s) create a problem for the design or other Services required under the Agreement.

12. State Procurement Standards

- a) County's performance under the Agreement is conditioned upon SUBRECIPIENT's compliance with, and SUBRECIPIENT shall comply with, the obligations applicable to public contracts under the Local Contract Review Board ("LCRB") regulations (Appendix C of Clackamas County Code, located at <http://www.clackamas.us/code/>), which are incorporated by reference herein.

13. General Agreement Provisions

- a) **Indemnification.** SUBRECIPIENT agrees to indemnify and hold COUNTY, 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 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.
- b) **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, 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, commissioners, 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.
- 3) **Professional Liability.** If the Agreement involves the provision of professional services, SUBRECIPIENT shall obtain and furnish the COUNTY evidence of Professional Liability Insurance covering any damages caused by an error, omission, or negligent act related to the services to be provided under this agreement, with limits not less than \$2,000,000 per occurrence for the protection of the COUNTY, its elected officials, officers, employees, and agents 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, officers, and employees" as an additional insured, as well as the but only with respect to SUBRECIPIENT's activities under this agreement.
- 6) **Notice of Cancellation.** There shall be no cancellation, material change, exhaustion of aggregate limits or intent not to renew insurance coverage without 30 days written notice to the COUNTY. Any failure to comply with this provision will not affect the insurance coverage provided to COUNTY. The 30 day notice of cancellation provision shall be physically endorsed on to the policy.
- 7) **Insurance Carrier Rating.** Coverage provided by 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. 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.

- c) Assignment.** SUBRECIPIENT shall not enter into any subcontracts or subawards for any of the Program activities required by the Agreement without prior written approval. This Agreement may not be assigned in whole or in part with the express written approval of the COUNTY.
- d) 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.
- e) 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.
- f) 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. 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.
- g) 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.
- h) 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.
- i) 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.
- j) Binding Effect.** This Agreement shall be binding on all parties hereto, their heirs, administrators, executors, successors and assigns.
- k) Integration.** This agreement contains the entire agreement between COUNTY and SUBRECIPIENT and supersedes all prior written or oral discussions or agreements.

(Signature Page Attached)

SIGNATURE PAGE TO THE YOUTH SUBSTANCE ABUSE PREVENTION GRANT AGREEMENT

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

SUBRECIPIENT

Northwest Family Services
6200 SE King Rd.
Portland, OR 97222

By: Rose Fuller
Rose Fuller, Executive Director

Dated: 11/29/18

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: _____

Approved work plan and budget:

Rodney A. Cook
By: _____
Rodney A. Cook, Director
Children, Family & Community Connections

Dated: 12/5/18

- Exhibit A-1: Statement of Program Objectives
- Exhibit A-2: Performance Reporting Schedule and Work Plan Quarterly Reporting Forms
- Exhibit A-3: Client Feedback Survey and Report
- Exhibit A-4: Demographic Report
- Exhibit B: Program Budget
- Exhibit C-1: Financial Report and Reimbursement Request
- Exhibit C-2: Monthly Activity Report

December 20, 2018

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of a Subrecipient Grant Agreement with Todos Juntos for
Youth Substance Abuse Prevention

Purpose/Outcomes	Funds will be used for marijuana and other drug/alcohol prevention strategies and activities for youth in rural areas of Clackamas County.
Dollar Amount and Fiscal Impact	\$60,000 No County General Funds
Funding Source	Marijuana Tax Revenue
Duration	December 1, 2018 through June 30, 2019
Previous Board Action	N/A
Strategic Plan Alignment	<ul style="list-style-type: none"> • Improve community safety and health • Ensure safe and healthy communities
Contact Person	Rodney A. Cook 503-650-5677
Contract No.	CFCC-9096

BACKGROUND:

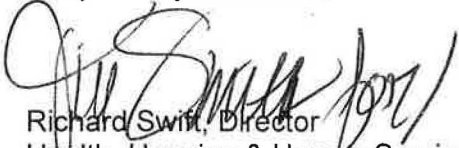
Children, Family and Community Connections Division of the Health, Housing & Human Services Department requests approval of a Subrecipient Grant Agreement with Todos Juntos to coordinate resources and services for students and their families exhibiting drug and alcohol use to meet their academic success goals. Site managers will identify youth at risk of or involved in the use of alcohol and drugs, and provide afterschool prosocial and drug/alcohol prevention activities at a time when youth are often unsupervised and at the highest risk of engaging in risky behaviors. A minimum of 490 youth and their families will be served.

This Agreement has a maximum value of \$60,000 and has been reviewed and approved by County Counsel. It becomes effective upon signature by all parties for services starting December 1, 2018 and terminating June 30, 2019.

RECOMMENDATION:

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

Respectfully submitted,


Richard Swift, Director
Health, Housing & Human Services

CLACKAMAS COUNTY, OREGON
LOCAL SUBRECIPIENT GRANT AGREEMENT CFCC-Prevention-9096

Program Name: ***Todos Juntos Youth Substance Abuse Prevention (YSAP)***

Program/Project Number: 9096

This Agreement is between **Clackamas County, Oregon**, acting by and through its Health Housing and Human Services Department – Children, Family & Community Connections Division (COUNTY) and **Todos Juntos** (SUBRECIPIENT), an Oregon Non-profit Organization.

COUNTY Data

Grant Accountant: Larry Crumbaker

Program Manager: Tiffany Hicks

Clackamas County Dept. of Finance
 2051 Kaen Rd.
 Oregon City, OR 97045
 503-722-5429
 larrycrum@clackamas.us

Children, Family & Community Connections Division
 150 Beavercreek Rd.
 Oregon City, OR 97045
 503-722-6867
 thicks@clackamas.us

SUBRECIPIENT Data

Finance/Fiscal Representative: ***Eric Johnston***

Program Representative: ***Eric Johnston***

PO Box 645
 Canby, Oregon 97013
 (503) 544-1513
 ejtodosjuntos2@gmail.com

PO Box 645
 Canby, Oregon 97013
 (503) 544-1513
 ejtodosjuntos2@gmail.com

FEIN: 93-1308023

RECITALS

1. Todos Juntos (SUBRECIPIENT) is a not-for-profit organization whose mission is to develop the partnerships necessary to create and/or enhance local resources and services for all youth and families. Todos Juntos partners with schools, local law enforcement, county agencies and others to deliver a range of challenging, age-appropriate programs in a safe structured and positive environment
2. Clackamas County (COUNTY) selected SUBRECIPIENT through a competitive process to implement programming to improve engagement, achievement, attendance, behavior, and other skills for healthy development for youth identified as at risk of or involved in the use of alcohol and drugs. The COUNTY desires to work with Todos Juntos to reduce youth risk of substance use/abuse and to build prosocial and resistance skills through direct services and activities, as well as youth, family, and community education.
3. This Grant Agreement of 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 Local Grant Agreement the 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 **December 1, 2018** and not later than **June 30, 2019**, unless this Agreement is sooner terminated or

extended pursuant to the terms hereof. No grant funds are available for expenditures after the expiration date of this Agreement.

2. **Program.** The Program is described in Attached Exhibit A-1: SUBRECIPIENT Statement of Program Objectives. SUBRECIPIENT agrees to perform 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.
4. **Grant Funds.** The COUNTY's funding for this Agreement is Marijuana Tax Revenue. The maximum, not to exceed, grant amount that the COUNTY will pay on this Agreement is **\$60,000 [\$30,000 Canby/Molalla and \$30,000 Sandy/Estacada]**.
5. **Disbursements.** This is a cost reimbursement grant and disbursements will be made monthly in accordance with the requirements contained in Exhibit C-1: Request for Reimbursement.

Failure to comply with the terms of this Agreement may result in withholding of payment.

6. **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 effective before SUBRECIPIENT performs work subject to the amendment.
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 - b) **Revenue Accounting.** Grant revenue and expenses generated under this Agreement should be recorded in compliance with generally accepted accounting principles and/or governmental accounting standards. This requires that the revenues are treated as unearned income or "deferred" until the compliance requirements and objectives of the grant have been met. Revenue may be recognized throughout the life cycle of the grant as the funds are "earned". All grant revenues not fully earned and expended in compliance with the requirements and objectives at the end of the period of performance must be returned to the County within 15 days.

- c) **Budget.** 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 modifications change the scope of the original grant application or agreement.
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- e) **Period of Availability.** SUBRECIPIENT may charge to the award only allowable costs resulting from obligations incurred during the term and effective date. Cost incurred prior or after this date will be disallowed.
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- g) **Payment.** Routine requests for reimbursement should be submitted monthly by the 15th of the following month using the form and instructions in Exhibit C-1: Request for Reimbursement. SUBRECIPIENT must submit a final request for payment no later than fifteen (15) days after the end date of this Agreement.
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- i) **Audit.** SUBRECIPIENT shall comply with the audit requirements prescribed by State and Federal law.
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- k) **Record Retention.** 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 six (6) years following the Project End Date (June 30, 2019), or such longer period as may be required by applicable law, or until the conclusion of any audit, controversy or litigation arising out of or related to this Agreement, whichever date is later.
- l) **Failure to Comply.** 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 contract 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, reclaim grant funds in the case of omissions or misrepresentations in financial or programmatic reporting, or to terminate this relationship including the original contract and all associated amendments.

11. Compliance with Applicable Laws

- a) **Public Policy.** 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, 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 as applicable to SUBRECIPIENT.

- b) **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.
- c) **Conflict Resolution.** If conflicts are discovered among federal, state and local statutes, regulations, administrative rules, executive orders, ordinances and other laws applicable to the Services under the Agreement, SUBRECIPIENT shall in writing request COUNTY resolve the conflict. SUBRECIPIENT shall specify if the conflict(s) create a problem for the design or other Services required under the Agreement.

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- a) County's performance under the Agreement is conditioned upon SUBRECIPIENT's compliance with, and SUBRECIPIENT shall comply with, the obligations applicable to public contracts under the Local Contract Review Board ("LCRB") regulations (Appendix C of Clackamas County Code, located at <http://www.clackamas.us/code/>), which are incorporated by reference herein.

13. General Agreement Provisions.

- a) **Indemnification.** SUBRECIPIENT agrees to indemnify and hold COUNTY, 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 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.
- b) **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, 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, commissioners, 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.
 - 3) **Professional Liability.** If the Agreement involves the provision of professional services, SUBRECIPIENT shall obtain and furnish the COUNTY evidence of Professional Liability Insurance covering any damages caused by an error, omission, or negligent act related to the services to be provided under this agreement, with limits not less than \$2,000,000 per

occurrence for the protection of the COUNTY, its officers, commissioners and employees against liability for damages because of personal injury, bodily injury, death, or damage to property, including loss of use thereof, and damages because of negligent acts, errors and omissions in any way related to this agreement. COUNTY, at its option, may require a complete copy of the above policy.

- 4) **Workers' Compensation.** Insurance in compliance with ORS 656.017, which requires all employers that employ subject workers, as defined in ORS 656.027, to provide workers' compensation coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). If contractor is a subject employer, as defined in ORS 656.023, contractor shall obtain employers' liability insurance coverage limits of not less than \$1,000,000.
 - 5) **Additional Insured Provisions.** All required insurance, other than Professional Liability, Workers' Compensation, and Personal Automobile Liability and Pollution Liability Insurance, shall include "Clackamas County, its agents, officers, and employees" as an additional insured, as well as the but only with respect to SUBRECIPIENT's activities under this agreement.
 - 6) **Notice of Cancellation.** There shall be no cancellation, material change, exhaustion of aggregate limits or intent not to renew insurance coverage without 30 days written notice to the COUNTY. Any failure to comply with this provision will not affect the insurance coverage provided to COUNTY. The 30 day notice of cancellation provision shall be physically endorsed on to the policy.
 - 7) **Insurance Carrier Rating.** Coverage provided by 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. 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.
- c) **Assignment.** SUBRECIPIENT shall not enter into any subcontracts or subawards for any of the Program activities required by the Agreement without prior written approval. This Agreement may not be assigned in whole or in part with the express written approval of the COUNTY.
- d) **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.

- e) **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.
- f) **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. 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.
- g) **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.
- h) **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.
- i) **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.
- j) **Binding Effect.** This Agreement shall be binding on all parties hereto, their heirs, administrators, executors, successors and assigns.
- k) **Integration.** This Agreement contains the entire agreement between COUNTY and SUBRECIPIENT and supersedes all prior written or oral discussions or agreements.


(Signature Page Attached)

SIGNATURE PAGE TO THE YOUTH SUBSTANCE USE PREVENTION GRANT AGREEMENT

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

SUBRECIPIENT

Todos Juntos
PO Box 645
Canby, OR 97013

By: 
Eric Johnston, Executive Director

Dated: 11/29/18

CLACKAMAS COUNTY

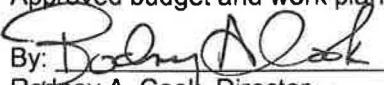
Commissioner Jim Bernard, Chair
Commissioner Sonya Fischer
Commissioner Ken Humberston
Commissioner Paul Savas
Commissioner Martha Schrader

Signing on behalf of the Board:

By: _____
Richard Swift, Director
Health, Housing & Human Services

Dated: _____

Approved budget and work plan

By: 
Rodney A. Cook, Director
Children, Family & Community Connections Division

Dated: 12/4/18

- Exhibit A-1: Statement of Program Objectives
- Exhibit A-2: Program Reporting Requirements and Work Plan Quarterly Report
- Exhibit A-3: Client Feedback Survey and Report
- Exhibit A-4 Quarterly Demographic Report
- Exhibit B: Program Budget
- Exhibit C-1: Request for Reimbursement
- Exhibit C-2: Monthly Activity Report



DAN JOHNSON
DIRECTOR

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

December 20, 2018

Board of Commissioners
Clackamas County

Members of the Board:

**Approval of Amendment No. 1 to the Intergovernmental Agreement
with City of Milwaukie for work related to the Monroe Street Design Plan**

Purpose/ Outcomes	This IGA amendment corrects the amount of costs associated with the survey work requested which are the responsibility of the City of Milwaukie.
Dollar Amount and Fiscal Impact	None
Funding Source	City of Milwaukie and Clackamas County Development Agency
Duration	Effective upon signature
Previous Board Action	This amendment updates the IGA that was fully executed March 22, 2018.
Strategic Plan Alignment	1. Build a strong infrastructure 2. Ensure safe, healthy and secure communities.
Contact Person	Karen Buehrig, DTD Transportation Planning Supervisor – 503-742-4683

BACKGROUND:

This Amendment is necessary because the city increased the amount of survey work parameters, after the scope of survey work was developed, which caused an increase in costs to the project. The City and County now desire to clarify the city's responsibility for the increased costs associated with the additional survey work through this amendment.

This IGA Amendment has been reviewed and approved by County Counsel.

RECOMMENDATION:

Staff recommends the Board of County Commissioners approve and sign Amendment No 1 to the Intergovernmental Agreement (IGA) with the City of Milwaukie related to the Monroe Street Design Plan.

Respectfully submitted,

Karen Buehrig, Transportation Planning Supervisor
Department of Transportation and Development

AMENDMENT TO THE INTERGOVERNMENTAL AGREEMENT
Between
CLACKAMAS COUNTY and CITY OF MILWAUKIE
Related to
THE MONROE STREET DESIGN PLAN

This is an amendment to the Intergovernmental Agreement (the “Amendment”) between the City of Milwaukie (“City”) and Clackamas County (“County”).

RECITALS

This Amendment is made and entered into by the City and the County as an amendment to the Intergovernmental Agreement between the parties, which was fully executed on March 22, 2018, and relates to the Monroe Street Design Plan (the “Agreement”).

During the course of the Project, the City increased the amount of survey work it wanted completed in connection with the Project. The City and County now desire to clarify the City’s responsibility for the increased costs associated with the additional survey work.

AGREEMENT

1. **Effective Date.** This Amendment shall become effective on the date it is fully executed and approved as required by applicable law.

2. **Amendments to Agreement.**

The following RECITALS in the Agreement shall be deleted in their entirety:

WHEREAS, the City shall be responsible for eleven percent (11%) of the costs associated with the Survey Work identified in Exhibit B, and its contribution shall not exceed \$7,377.00; and

WHEREAS, the County shall be responsible for eighty-nine percent (89%) of the costs associated with the Survey Work identified in Exhibit B, and its contribution shall not exceed \$59,683.00.

The deleted RECITALS shall be replaced with the following:

WHEREAS, the City shall be responsible for fifteen percent (15%) of the costs associated with the Survey Work identified in Exhibit B, and its contribution shall not exceed \$10,060.00; and

WHEREAS, the County shall be responsible for eighty-five percent (85%) of the costs associated with the Survey Work identified in Exhibit B, and its contribution shall not exceed \$57,000.00.

Section 2.D of the Agreement shall be deleted in its entirety and replaced with the following:

The County shall submit an invoice to the City for reimbursement of costs billed to the Project within thirty (30) days from the date the Survey Work is complete. Notwithstanding any provision herein which may be construed to the contrary, the total compensation provided to the County by the City under this Agreement shall not exceed \$10,060.00 without prior written amendment of this Agreement executed by the County and the City.

The County shall submit its invoice(s) to the City at the following address:

City of Milwaukie
 Attention: Finance
 6101 SE Johnson Creek Blvd.
 Milwaukee, OR 97206

A copy of County invoices may be emailed to: finance@milwaukieoregon.gov

Section 3.C of the Agreement shall be deleted in its entirety and replaced with the following:

The City shall reimburse the County for fifteen percent (15%) of the costs associated with the Survey Work, which have been incurred by the County. The City shall issue payment to the County for approved costs within 30 days of receipt of invoices submitted by the County. Notwithstanding any provision herein which may be construed to the contrary, the total compensation provided to the County by the City under this Agreement shall not exceed \$10,060.00 without prior written amendment of this Agreement executed by the County and the City.

The following portion of Exhibit B to the Agreement shall be deleted in its entirety:

Task	Estimated Cost	Assumptions/Comments
ROW Survey	\$67,060.00	Surveying includes work Identified in above Scope of Work
Less County Share	\$59,683.00	
Subtotal	\$7,377.00	Total City Cost

The deleted portion of Exhibit B to the Agreement shall be replaced with the following:

Task	Estimated Cost	Assumptions/Comments
ROW Survey	\$67,060.00	Surveying includes work Identified in above Scope of Work
Less County Share	\$57,000.00	
Subtotal	\$10,060.00	Total City Cost

- 3. Counterparts.** This Amendment may be executed in two or more counterparts (by facsimile or otherwise) each of which is an original and all of which when taken together are deemed one agreement binding on all parties, notwithstanding that all parties are not signatories to the same counterpart.

4. **Original Agreement.** Except as expressly amended above, all other terms and conditions of the original Agreement are still in full force and effect. The City and County certify that the representations, warranties, and certifications in the original Agreement are true and correct as of the effective date of this Amendment and with the same effect as though made at the time of this Amendment.

The Parties, by execution of this Amendment, hereby acknowledge that their signing representatives have read this Amendment, understand it, and agree to be bound by its terms and conditions.

In witness hereof, the parties have executed this Amendment by the date set forth opposite their names below.

City of Milwaukie

Mark Gamba, Mayor

Date: _____

Recording Secretary

**Clackamas County
Board of County Commissioners**

Name:

Date: _____

Title: Chair of the Board of County Commissioners

Recording Secretary



GEORGE MARLTON, JD
PROCUREMENT DIVISION DIRECTOR

PROCUREMENT DIVISION
PUBLIC SERVICES BUILDING
205 I KAEN ROAD | OREGON CITY, OR 97045

Board of County Commissioners
Clackamas County

Members of the Board:

**Authorization to Purchase 1 Tymco 500X High Dump Sweeper from
Tymco Inc, delivered by Pac West Machinery
for the Department of Transportation and Development**

Purpose / Outcome	Approval to purchase Qty. 1 Tymco 500X High Dump Sweeper for the Clackamas County Department of Transportation and Development
Dollar Amount and Fiscal Impact	\$298,205.00
Funding Source	Clackamas County Transportation Maintenance Division 215-7433-00-485520
Duration	June 30, 2019
Previous Board Action/Review	n/a
Strategic Plan Alignment	Improved efficiency as this will provide dumping into trucks and drop boxes, eliminating having to drive to dump sites.
Contact Person	Randall Harmon, Transportation Operations Manager, 503-650-3246 Russ Weber, Equipment Maintenance Coordinator, 503-722-6324

Background:

The Clackamas County Department of Transportation and Development has requested that Clackamas County Procurement purchase one (1) Tymco 500X High Dump Sweeper from Tymco, Inc to be delivered by Pac West Machinery.

This Sweeper will be assigned to the Department of Transportation and Development.

Procurement Process:

Approval of this purchase is being requested under the Local Contract Review Board Rule C-046-0440, Authority of Cooperative Procurements. The purchase will be made off cooperative contract #122017-TYM with Sourcewell (formerly NJPA) through Tymco, Inc. A notice of intent to purchase the one (1) Tymco 500X High Dump Sweeper was issued on December 3, 2018. No comments were received by the time of closing on December 10, 2018.

Recommendation:

Staff recommends the Board of County Commissioners approve this purchase.

Sincerely
Jan O’Gara
Clackamas County Procurement

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

Board Signature: _____



CHRISTA BOSSERMAN WOLFE, CPA
INTERIM DIRECTOR

DEPARTMENT OF FINANCE

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

Board of County Commissioners
Clackamas County

Members of the Board:

**Approval of Contract with Hal's Construction, Inc. for the
County Campus Parking Lot Repair Project**

Purpose/Outcome	Approval of contract
Dollar Amount and fiscal Impact	\$266,581.63
Funding Source	Budget Line: 420-0221-00437930-76272 Capital Funds Fiscal year 2018-2019
Duration	Contracting through May 31, 2019
Previous Board Action/Review	N/A
Strategic Plan Alignment	Build public trust through good government, build a strong infrastructure and ensure safe, healthy and secure communities.
Contact Person	Rick Cole, (971) 865-0124
Contract No.	2018-100

BACKGROUND:

Clackamas County's paved vehicle parking areas cover approximately 1.6 million square feet and include the Red Soils Campus, Abernethy Complex, North County Buildings, and various other County owned buildings and areas. With heavy public and daily employee use of the parking areas, inclement weather, and other degradations, there is a constant wear on the paved areas requiring continuous maintenance which has resulted in accelerated, deteriorating conditions.

Collectively, work will be required at four (4) separate parking lot locations on the Oregon City campus, and one (1) parking lot location at the Public Safety Training Center. Approximately 146,117 square feet of the paved areas are in good condition and will benefit from a clean and seal coat. This treatment will prolong the life expectancy of those areas significantly. Several parking areas are beyond the point of reseal and are in need of a full replacement. Currently, 53,660 square feet of the paved areas has exceeded its life cycle and has begun to crumble and deteriorate completely, creating pot holes and hazardous conditions.

There are several methods to care for, maintain and replace paving. The two main techniques used by the County at this time are seal coating and repaving; these would be the most cost effective procedures available for the current conditions of the pavement. This contract will allow for the removal and replacement of the pavement that has deteriorated beyond acceptable re-seal limitations and specifications, and re-sealing the parking areas that meet specifications that would extend the life of the pavement.

PROCUREMENT PROCESS:

This project advertised in accordance with ORS 279C and LCRB Rules on August 23, 2018. Bids were publicly opened on November 1, 2018. The County received three (3) bids: Hal's Construction, Inc., \$266,581.63; S-2 Contractors, \$448,259.50; and Brix Paving Northwest, \$281,456.77. After review of the bids it was determined that Hal's Construction was the lowest responsive and responsible bidder.

This contract has been reviewed and approved by County Counsel.

RECOMMENDATION:

Staff respectfully recommends the Board approve the contract with Hal's Construction, Inc. for the County Campus Parking Lot Repave Project.

Sincerely,



Christa Bosserman-Wolfe
Interim Finance Director

Placed on the board agenda of _____ by the Procurement Division.



CLACKAMAS COUNTY PUBLIC IMPROVEMENT CONTRACT

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

Project Name: **#2018-100 County Campus Parking Lot Repair**

1. Contract Price, Contract Documents and Work.

The Contractor, in consideration of the sum of **two hundred sixty-six thousand five hundred eighty-one dollars and sixty-three cents (\$266,581.63)** (the "Contract Price"), to be paid to the Contractor by Owner in the manner and at the time hereinafter provided, and subject to the terms and conditions provided for in the Instructions to Bidders and other Contract Documents (as defined in the Clackamas County General Conditions for Public Improvement Contracts (11/1/2017) ("General Conditions") referenced within the Instructions to Bidders), all of which are incorporated herein by reference, hereby agrees to perform all Work described and reasonably inferred from the Contract Documents. The Contract Price is the amount contemplated by the Base Bid.

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

- Notice of Contract Opportunity
- Supplemental Instructions to Bidders
- Public Improvement Contract Form
- Clackamas County General Conditions
- Prevailing Wage Rates
- Plans, Specifications and Drawings
- Instructions to Bidders
- Bid Bond
- Performance Bond and Payment Bond
- Supplemental General Conditions
- Payroll and Certified Statement Form
- Addenda 1 - 2

2. Representatives.

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

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

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

3. Key Persons.

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

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

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

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

4. Contract Dates.

COMMENCEMENT DATE: Upon Issuance of Notice to Proceed

SUBSTANTIAL COMPLETION DATE: April 30, 2019

FINAL COMPLETION DATE: May 31, 2019

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

5. Insurance Certificates.

In accordance with Section G.3.5 of the General Conditions Contractor shall furnish proof of the required insurance naming Clackamas County as an additional insured. Insurance certificates may be returned with the signed Contract or may be emailed to Procurement@clackamas.us.

6. Tax Compliance.

Contractor must, throughout the duration of this Contract and any extensions, comply with all tax laws of this state and all applicable tax laws of any political subdivision of this state. Any violation of this section shall constitute a material breach of this Contract. Further, any violation of Contractor's warranty in this Contract that Contractor has complied with the tax laws of this state and the applicable tax laws of any political subdivision of this state also shall constitute a material breach of this Contract. Any violation shall entitle County to terminate this Contract, to pursue and recover any and all damages that arise from the breach and the termination of this Contract, and to pursue any or all of the remedies available under this Contract, at law, or in equity, including but not limited to: (A) Termination of this Contract, in whole or in part; (B) Exercise of the right of setoff, and withholding of amounts otherwise due and owing to Contractor, in an amount equal to County's setoff right, without penalty; and (C) Initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief. County shall be entitled to recover any and all damages suffered as the result of Contractor's breach of this Contract, including but not limited to direct, indirect, incidental and consequential damages, costs of cure, and costs incurred in securing replacement performance. These remedies are cumulative to the extent the remedies are not inconsistent, and County may pursue any remedy or remedies singly, collectively, successively, or in any order whatsoever.

The Contractor represents and warrants that, for a period of no fewer than six calendar years preceding the effective date of this Contract, has faithfully complied with: (A) All tax laws of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318; (B) Any tax provisions imposed by a political subdivision of this state that applied to Contractor, to Contractor's property, operations, receipts, or income, or to Contractor's performance of or compensation for any work performed by Contractor; (C) Any tax provisions imposed by a political subdivision of this state that applied to Contractor, or to goods, services, or property, whether tangible or intangible, provided by Contractor; and (D) Any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions.

7. Confidential Information.

Contractor acknowledges that it and its employees or agents may, in the course of performing their responsibilities under this Contract, be exposed to or acquire information that is confidential to Owner. Any

and all information of any form obtained by Contractor or its employees or agents in the performance of this Contract shall be deemed confidential information of Owner (“Confidential Information”). Contractor agrees to hold Confidential Information in strict confidence, using at least the same degree of care that Contractor uses in maintaining the confidentiality of its own confidential information, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties or use Confidential Information for any purpose unless specifically authorized in writing under this Contract.

8. Required Terms.

In addition to the terms and conditions contained in this Contract and the Contract Documents, the following terms and conditions are required by Oregon law:

- A. 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 the claim becomes due, the proper officer representing the Owner may pay such claim to the person furnishing the labor or services and charge the amount of the payment against the funds due or to become due the Contractor by reason of the contract.
- B. If the Contractor or a first-tier subcontractor fails, neglects or refuses to pay a person that provides labor or materials in connection with the public improvement contract within 30 days after receiving payment from the contracting agency or a contractor, the Contractor or first-tier subcontractor owes the person the amount due plus interest charges that begin at the end of the 10-day period within which payment is due under ORS 279C.580 (4) and that end upon final payment, unless payment is subject to a good faith dispute as defined in ORS 279C.580. The rate of interest on the amount due is nine percent per annum. The amount of interest may not be waived.
- C. If the Contractor or a subcontractor fails, neglects or refuses to make payment to a person furnishing labor or materials in connection with the public contract, the person may file a complaint with the Construction Contractors Board, unless payment is subject to a good faith dispute as defined in ORS 279C.580.
- D. The Contractor shall include in each subcontract those provisions required under ORS 279C.580.
- E. For demolition tasks, if any, the Contractor shall salvage or recycle construction and demolition debris, if feasible and cost-effective.

9. Counterparts.

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

10. Integration.

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

The Contract Documents constitute the entire agreement between the parties. There are no other understandings, agreements or representations, oral or written, not specified herein regarding this Contract.

Contractor, by the signature below of its authorized representative, hereby acknowledges that it has read this Contract, understands it, and agrees to be bound by its terms and conditions.

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

Contractor DATA:

Hal's Construction, Inc.
20666 S. Hwy 213
Oregon City, Oregon 97045

Contractor CCB # 34434 Expiration Date: 1/13/2019

Oregon Business Registry # 139973-17 Entity Type: DBC

State of Formation: Oregon

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

Hal's Construction, Inc.

Clackamas County

Authorized Signature

Date

Chair

Date

Name / Title Printed

Recording Secretary

APPROVED AS TO FORM

County Counsel

Date

DRAFT

Approval of Previous Business Meeting Minutes:
November 8, 2018

BOARD OF COUNTY COMMISSIONERS BUSINESS MEETING MINUTES

A complete video copy and packet including staff reports of this meeting can be viewed at

<https://www.clackamas.us/meetings/bcc/business>

Thursday, November 8, 2018 – 10:00 AM

Public Services Building

2051 Kaen Rd., Oregon City, OR 97045

PRESENT: Commissioner Jim Bernard, Chair
Commissioner Sonya Fischer
Commissioner Martha Schrader
Commissioner Paul Savas
Paul Reynolds, Housing Authority Commissioner

EXCUSED: Commissioner Ken Humberston

CALL TO ORDER

- Roll Call
- Pledge of Allegiance

Chair Bernard state that Commissioner Humberston is out of the office and will not be in attendance today.

Chair Bernard announced the Board would recess as the Board of County Commissioners and convene as the Housing Authority Board for the next item and he introduced Housing Authority Commissioner Paul Reynolds.

I. HOUSING AUTHORITY CONSENT AGENDA

Chair Bernard asked the Clerk to read the Housing Authority consent agenda by title, then asked for a motion.

MOTION:

Commissioner Reynolds: I move we approve the Housing Authority consent agenda.
Commissioner Schrader: Second.
all those in favor/opposed:
Commissioner Reynolds Aye.
Commissioner Fischer: Aye.
Commissioner Schrader: Aye.
Commissioner Savas: Aye.
Chair Bernard: Aye – the Ayes have it, the motion carries 5-0.

1. Approval to Execute an Intergovernmental Agreement between the Housing Authority of Clackamas County and Clackamas County for the Director of Housing Development Position
2. Approval of Amendment No. 1 to the Environmental Engineering Service Contract between the Housing Authority of Clackamas County and PBS Environmental

Chair Bernard announced the Board will Adjourn as the Housing Authority Board and Reconvene as the Board of County Commissioners.

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

1. Recognition of Veterans Day
Erika Silver, Health, Housing, and Human Services presented the staff report including a PowerPoint presentation. She shared stories of three Veterans who were supported by the Veteran's Services office.
~Board Discussion~
The Board extended appreciation of all Veterans for their service. Veterans in the audience came forward for a group photo.

III. CITIZEN COMMUNICATION

<https://www.clackamas.us/meetings/bcc/business>

1. Bill Simonds, Brightwood – Small business owner. Spoke regarding issues regarding a portion of McIntyer Road, asked if the County could vacate the road.

Dan Johnson is in the audience and will meet with Mr. Simonds to talk about this issues.

2. Mike Foley, Milwaukie – thanked the Board for their good work and support of wheelchair charging stations at County Parks.

~Board Discussion~

3. Les Poole, Gladstone – spoke about the Nov. election; Metro and the economic impacts; complimented Dan Johnson for his work on Transportation issues.

~Board Discussion~

IV. CONSENT AGENDA

Chair Bernard the Clerk to read the consent agenda by title, then asked for a motion.

MOTION:

Commissioner Fischer: I move we approve the consent agenda.

Commissioner Schrader: Second.

all those in favor/opposed:

Commissioner Fischer: Aye.

Commissioner Schrader: Aye.

Commissioner Savas: Aye.

Chair Bernard: Aye – the Ayes have it, the motion carries 4-0.

A. Health, Housing & Human Services

1. Approval of Amendment No. 13 for the Intergovernmental Agreement with the State of Oregon, acting by and through its Oregon Health Authority, for Operation as the Local Public Health Authority for Clackamas County – *Public Health*

2. Approval of a Service Agreement with Legacy Laboratory Services Partnering with Clackamas County Health Centers Division for Laboratory Testing Services – *Health Centers*

3. Approval of a Ground Lease between Clackamas County Health, Housing & Human Services and the Clackamas County Development Agency Pertaining to the Property Located at 16575 SE 115th Ave. – *Community Development*

B. Department of Transportation & Development

1. Consent to the Annexation of a Portion of SE Armstrong Circle to the City of Happy Valley

2. Consent to the Annexation of a Portion of SE Hemrich Road (9,234 sqft) to the City of Happy Valley

3. Consent to the Annexation of a Portion of SE Hemrich Road (20,849 sqft) to the City of Happy Valley

4. Consent to the Annexation of a Portion of SE Crosswater Way to the City of Happy Valley

5. Approval of the Termination of the Construction Contract between Clackamas County and PCR, Inc. for the Jennings Lodge Pedestrian Improvements Project

C. Finance Department

1. Approval of Contracts with National Interpreting Services Inc. for On-Call Interpreter Services for Clackamas County Departments

D. Elected Officials

1. Approval of Previous Business Meeting Minutes – BCC

E. Public and Government Affairs

1. Approval of an Intergovernmental Agreement between Clackamas County and the City of West Linn for Payment of Services Related to Willamette Falls Locks State Commission

F. Technology Services

1. Approval of a Service Level Agreement between Clackamas Broadband eXchange and Portland General Electric for Eight Fiber Connections Along Highway 26
2. Approval of Amendment No. 2 to the Service Level Agreement between Clackamas Broadband eXchange and the City of Milwaukie for Dark Fiber Connection
3. Approval of a Service Level Agreement between Clackamas Broadband eXchange and West Linn-Wilsonville School District for Redundant School Connections

V. DEVELOPMENT AGENCY

1. Approval of a Ground Lease between Clackamas County and the Clackamas County Development Agency Pertaining to the Property Located at 16575 SE 115th Ave.

VI. COUNTY ADMINISTRATOR UPDATE

<https://www.clackamas.us/meetings/bcc/business>

VII. COMMISSIONERS COMMUNICATION

<https://www.clackamas.us/meetings/bcc/business>

MEETING ADJOURNED – 11:15 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. <https://www.clackamas.us/meetings/bcc/business>



Board of County Commissioners
Clackamas County

Members of the Board:

**Approval of Contract with The Athena Group, LLC. for the
Community Outreach and Engagement of the Equity Pilot Area Project**

Purpose/Outcome	Approval of contract
Dollar Amount and fiscal Impact	\$378,131.00
Funding Source	Budget Line: 100-9110-431000; department funds Fiscal year 2018-2019
Duration	Contracting through June 30, 2021
Previous Board Action/Review	N/A
Strategic Plan Alignment	Build public trust through good government, ensure safe, healthy and secure communities.
Contact Person	Dan Chandler, 503-742-5394
Contract No.	2018-53

BACKGROUND:

This project seeks to implement a strategy for community wealth building – reducing poverty and food insecurity in three of Clackamas County’s most challenged areas.

Clackamas County with a population of over 400,000 people, is comprised of 16 cities and a large unincorporated area. The County is increasingly divided by wealth. Because the County contains several of the wealthiest communities in the state, our overall poverty rate is relatively low at just under 10%.

There are areas of the County where overall poverty and childhood poverty are in excess of 30%. The county has a desire to create coordinated on-the ground strategies for reducing poverty and food insecurity at the neighborhood level, and has selected three “equity pilot areas” to focus resources and strategies.

PROCUREMENT PROCESS:

This project advertised in accordance with ORS 279C and LCRB Rules on July 19, 2018. ON August 21, 2018, the County received one (1) Proposal: The Athena Group, LLC. An Evaluation Committee was assembled and after scoring and committee discussion of the received proposal, it was determined that The Athena Group was qualified and recommendation was made to award a contract. The total contract amount for the three year contract is not to exceed \$378,131.00.

This contract has been reviewed and approved by County Counsel.

RECOMMENDATION:

Staff respectfully recommends the Board approve the contract with The Athena Group, LLC. for the Community Outreach and Engagement of the Equity Pilot Area Project.

Sincerely,

Dan Chandler
Assistant County Administrator

Placed on the board agenda of _____ by the Procurement Division.



CLACKAMAS COUNTY
PERSONAL/PROFESSIONAL SERVICES CONTRACT

This Personal/Professional Services Contract (this "Contract") is entered into between The Athena Group, LLC. ("Contractor"), and Clackamas County, a political subdivision of the State of Oregon ("County") on behalf of the Clackamas County Administrator.

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, 2021. This Contract may be renewed for a one (1) year term upon written approval of both parties.

2. Scope of Work. Contractor will provide the following personal/professional services: Community Outreach and Engagement of the Equity Pilot Area Project ("Work"), further described in Exhibit A.

3. Consideration. The County agrees to pay Contractor, from available and authorized funds, a sum not to exceed three hundred seventy-eight thousand one hundred thirty-one dollars (\$378,131.00), for accomplishing the Work required by this Contract.

4. Travel and Other Expense. Authorized: [X] Yes [] 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.

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, E, and F.

6. Contractor Data.

The Athena Group, LLC.
Address: 101 Capitol Way N, Suite 300
Olympia, WA 98501

Contractor Contract Administrator: Kate King

Phone No.: 360-754-1954 / 360-561-4081

Email: katek@athenaplace.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; 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)
- 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, or to Contractor at the address or number set forth in Section 1 of this Contract, or to such other addresses or numbers as either party may hereafter indicate. Any communication or notice so addressed and mailed shall be deemed to be given five (5) days after mailing. Any

communication or notice by personal delivery shall be deemed to be given when actually delivered.

- 13. OWNERSHIP OF WORK PRODUCT.** All work product of Contractor that results from this Contract (the “Work Product”) is the exclusive property of 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.

EXHIBIT A
PERSONAL/PROFESSIONAL SERVICES CONTRACT

SCOPE OF WORK

Contractor shall provide community outreach and engagement for the Equity Pilot Area Project. Work is further described in the Request for Proposals #2018-53 issued July 24, 2018, hereby attached and incorporated by reference as **Exhibit D**, and the vendors response hereby attached and incorporated by reference as **Exhibit E**.

The County Contract administrator for this Contract is: Dan Chandler.

CONSIDERATION

- a. Consideration Rates – Time and Material as listed in the Fee Schedule described in **Exhibit F**.
- b. Payment for all Work performed under this Contract shall be subject to the provisions of ORS 293.462 and shall not exceed the total maximum sum of **\$378,131.00**. Invoices shall be submitted to: Clackamas County Administration, Attn: Dan Chandler, 2051 Kaen Road, Oregon City, Oregon 97045, or via email at dchandler@clackamas.us.
- c. Unless otherwise specified, Contractor shall submit monthly invoices for Work performed. If Contractor fails to present invoices in proper form within sixty (60) calendar days after the end of the month in which the services were rendered, Contractor waives any rights to present such invoice thereafter and to receive payment therefor. Payments shall be made to Contractor following the County's review and approval of invoices submitted by Contractor. Contractor shall not submit invoices for, and the County will not pay, any amount in excess of the maximum compensation amount set forth above. If this maximum compensation amount is increased by amendment of this Contract, the amendment must be fully effective before Contractor performs Work subject to the amendment. The billings shall also include the total amount billed to date by Contractor prior to the current invoice.
- d. Invoices shall describe all Work performed with particularity, by whom it was performed, and shall itemize and explain all expenses for which reimbursement is claimed. The billings shall also include the total amount billed to date by Contractor prior to the current invoice.

**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 procurement@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
RFP #2018-53
Community Outreach and Engagement of
The Equity Pilot Area Project
Issued July, 24, 2018

EXHIBIT E
VENDOR'S PROPOSAL

**EXHIBIT F
FEE SCHEDULE**



Dave Cummings
Chief Information Officer

Technology Services

December 20, 2018

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of ORMAP Intergovernmental Agreement Contract # 3739-18
with the Oregon Department of Revenue for
Digital GIS Tax Lot Conversion

Purpose/Outcomes	This IGA will provide funding to continue the conversion of paper survey documents and Assessment maps to a digital GIS database as required under ORS 306.135.
Dollar Amount and Fiscal Impact	This semi-annual IGA Contract is \$42,000 for this funding period. Amount varies with each ORMAP grant request due to funding availability. The County matches \$35,000 annually, typically 35% of the amount the State provides.
Funding Source	State of Oregon, Department of Revenue
Duration	Terminates December 31, 2019
Previous Board Action/Review	The County has participated in this program since 1999 with the BCC approval of IGA Contracts with the Dept. of Revenue twice a year in varying amounts.
Strategic Plan Alignment	1. Creation of a publicly available internet based data and document portal including all legally available data 2. Building public trust through good government
Contact Person	Eric Bohard, Tech. Services Mgr. – Technology Services 503-723-4814

BACKGROUND:

This program, legislated in 1999 as ORS 306.135, provides for the funding from the State Department of Revenue for GIS digital tax lot capture and the creation of digital Assessor's tax lot maps. The ORMAP program collects \$1.00 for each recorded land related document from all Oregon Counties. These funds go into a pool administered by the Oregon State Department of Revenue. Funds are distributed to Counties based on competitive grant applications twice a year. This contract represents our Fall 2018 award of our grant request for continuing work on the capture of tax lot lines and annotation from survey documents and converting that information to a digital GIS database as spelled out by Oregon Department of Revenue standards.

The product created by funds from this IGA contract benefits the County, the State, and most importantly, the public. Having an accurate ownership GIS layer allows uses of the data to make more informed decisions and provides a more accurate base map for other GIS map data.

This project is a collaborative effort between the Clackamas County's Assessor's Office and the GIS Division of the Technology Services Department. Also assisting in this effort is the County's Surveyor. County Counsel has reviewed these on-going ORMAP contracts and has approved as to form.

RECOMMENDATION:

Staff respectfully recommends that the Board of County Commissioners approves Intergovernmental Agreement Contract # 3739-18 with the State of Oregon Department of Revenue for the continued conversion of paper survey documents and Assessment maps to a digital GIS database.

Respectfully submitted,

David Cummings
Chief Information Officer

**DEPARTMENT OF REVENUE
ORMAP INTERGOVERNMENTAL AGREEMENT
CONTRACT #3739-18**

This Agreement is entered into by and between the State of Oregon, acting by and through the Department of Revenue (“Department”) and Clackamas County (“County”).

WHEREAS, under ORS 306.135 the Department is charged with developing a base map system to facilitate and improve the administration of the ad valorem property tax system;

WHEREAS, pursuant to ORS 190.110, the Department may cooperate, by agreement or otherwise, with a unit of local government in performing the duties imposed upon it by ORS 306.135.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Department and the County agree to the following:

I. EFFECTIVE DATE OF AGREEMENT; AWARD; PROJECT COMPLETION

- A. Effective Date of Agreement. This Agreement shall become effective on the date this Agreement has been signed by every party and all required approvals have been obtained.
- B. Award. The Department shall provide funds in the amount of **\$42,000.00** (the “Award”) to the County to fund all or part of the activities set forth in Exhibit A (“Proposal”) which is attached hereto and by this reference made a part hereof. The part of the activities set forth in the Proposal which is funded by the Award shall be called the “Project”. All of the activities set forth in the Proposal, whether funded by the Department or by other sources, shall be referred to as the “Total Project”. (If there are no other funders beside the Department for the activities described in the Proposal, the Total Project is the same as the Project.) The Department shall not be obligated to provide to the County, and the County shall not use the Award other than for costs for the Project.
- C. Project Completion. County agrees to complete the Total Project in accordance with the terms and specifications of the Proposal by **December 31, 2019** (“Project Completion Date”). Final billing for the Project shall be submitted to the Department on or before **January 31, 2020**.

II. DISBURSEMENTS.

- A. Disbursement of Funds by the Department. Subject to Section IV, upon receipt of the County’s request for disbursement, the Department shall disburse the

Award to the County on a cost reimbursement basis. The Department may, in its sole discretion, impose a minimum or maximum dollar amount for each disbursement request or limit the frequency of disbursement requests.

- B. Overpayment. In the event that the aggregate amount of the Department's disbursements hereunder exceeds the costs of the County for the Project, the County agrees to refund to the Department the amount paid in excess of such costs within thirty (30) days of final billing by the County or the Project Completion Date, whichever is earlier.
- C. Disallowed Costs. The County agrees that payment(s) under this Agreement shall be subject to offset or reduction for amounts previously paid hereunder which are found by the Department not to constitute allowable costs under this Agreement. If such disallowed amount exceeds the payment(s); the County shall immediately upon demand pay the Department the amount of such excess.
- D. Cost Savings. Any cost savings realized on the Total Project shall be prorated between the funding sources based on the percentage of their respective cash contributions as set forth in the Proposal. In no event shall the Department pay for more than its pro rata share of the County's actual out-of-pocket cost of the Total Project.
- E. No Duplicate Payment. The County shall not be compensated for, or receive any other 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.

III. REPRESENTATIONS AND WARRANTIES

County represents and warrants to the Department that (1) it has the power and authority to enter into and perform this Agreement, (2) this Agreement, when executed and delivered, shall be a valid and binding obligation of County enforceable in accordance with its terms, (3) the Total Project shall be performed in a good and workmanlike manner and in accordance with the highest professional standards, (4) those persons performing work on the Total Project shall, at all times during the term of this Agreement, be qualified, professionally competent and duly licensed to perform work on the Total Project, and (5) Exhibit A presents a good faith estimate of the costs of the Total Project and the Project and accurately states the amount of other funds, whether in cash or through binding commitment(s), available for payment of the costs of the Total Project.

IV. CONDITIONS TO DISBURSEMENT

- A. Conditions Precedent to Disbursement. The Department shall not be obligated to disburse any funds hereunder for Project costs unless (1) there exists no event of default or default which with notice or lapse of time or both will become an event of default hereunder, and (2) the Department has received from the County (i) a request for disbursement signed by a duly authorized representative of the County (which shall, among other things, state that the County has or will have sufficient funds to complete the Total Project by the Project Completion Date), (ii) an itemized invoice and (iii) such other documentation as the Department may require, all in form and substance satisfactory to the Department; further, the Department shall only be obligated to disburse Award funds to the extent that the portion of the Award represented by the aggregate amount of all disbursements made through the date of the disbursement request (including the amount of the disbursement request) does not exceed the percentage of the Project completed through the date of the disbursement request, as determined by the Department.
- B. Conditions Precedent to Final Disbursement. The Department shall not be obligated to make final disbursement hereunder until a final payment request and such documentation as may be required by the Department, all in form and substance satisfactory to the Department, shall be submitted by the County to the Department. Final payment will be made to the County within forty-five (45) days of approval by the Department.

V. COVENANTS

- A. Assignment. If the County hires a contractor(s) to do all or part of the Project, the County shall remain liable for compliance with the terms and conditions of this Agreement and shall not in any way be relieved of any of its obligations under this Agreement. The County shall be responsible for all cost overruns.
- B. Payments. To the extent required by state and federal law, the County agrees to:
1. Make payment promptly as due to all contractors, subcontractors, vendors and other persons supplying labor and/or materials for the Project; and
 2. All employers, including County, that employ subject workers, as defined in ORS 656.027, shall comply with ORS 656.017 and shall provide workers' compensation insurance coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). County shall require and ensure that each of its subcontractors complies with these requirements.

- C. Liabilities. County shall perform its obligations under this Agreement as an independent contractor. Each party shall be responsible exclusively with respect to its employees, for providing for employment-related benefits and deductions that are required by law, including but not limited to federal and state income tax deductions, workers' compensation coverage, and contributions to the Public Employees Retirement System.

Each party shall be responsible, to the extent required by law (including the Oregon Tort Claims Act, ORS 30.260-30.300), only for the acts, omissions or negligence of its own officers, employees or agents.

- D. Compliance with Applicable Law. The County shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to this Agreement. The Department's performance under this Agreement is conditioned upon the County's compliance with the provisions of ORS 279B.220, 279B.235, 279B.230 and 279B.270, as amended from time to time, which are incorporated by reference herein. The parties shall, to the maximum extent economically feasible in the performance of this Agreement, use recycled paper (as defined in ORS 279A.010(ee)), recycled PETE products (as defined in ORS 279A.010(ff)), and other recycled products (as "recycled product" is defined in ORS 279A.010(gg))
- E. Records Maintenance. The County shall maintain all fiscal records relating to this Agreement in accordance with generally accepted accounting principles and the Oregon Local Budget Law, ORS 294.305 to 294.565.. In addition, the County shall maintain any other records pertinent to this Agreement in such a manner as to clearly document the County's performance. The County's accounting procedures shall provide for an accurate and timely recording of receipt of funds by source, of expenditures made from such funds, and of unexpended balances. Controls shall be established which are adequate to ensure that all expenditures reimbursed under this Agreement are for allowable purposes and that documentation is readily available to verify that such charges are accurate.
- F. Access. The County acknowledges and agrees that the Department and the Oregon Secretary of State's Office and the federal government and their duly authorized representatives shall have access to such fiscal records and other books, documents, papers, plans and writings of the County that are pertinent to this Agreement to perform examinations and audits and make copies, excerpts and transcripts. The County shall retain and keep accessible all such fiscal records, books, documents, papers, plans and writings for a minimum of five (5) years, or such longer period as may be required by applicable law, following final payment under this Agreement, or until the conclusion of any audit, controversy, or litigation arising out of or related to this Agreement, whichever date is later.

- G. Project Ownership. The Department acknowledges and agrees that the Project is the exclusive property of the County. The County acknowledges and agrees that the Department is not responsible or liable in any manner for the completion or maintenance of the Project or Total Project.

VI. TERMINATION; REMEDIES

- A. Termination for Convenience. Either party may terminate this Agreement at any time upon thirty (30) days prior written notice to the other party; provided, however, that the County shall, within thirty (30) days of such termination, reimburse the Department for all funds disbursed by the Department hereunder to the extent that the amount of funds disbursed exceeds the amount of the Award multiplied by the percentage of the Project completed to the satisfaction of the Department; provided further that until the County has fully reimbursed the Department for such funds, the County shall comply with the terms of this Agreement.

B. Termination Because of Non-Appropriation or Project Ineligibility.

1. The Department, at any time upon prior written notice to the County, may terminate this Agreement if the Department fails to receive funding or appropriations, limitations, or other expenditure authority at levels sufficient to allow Agency, in the exercise of its reasonable administrative discretion, to pay for the allowable costs of the Project to be funded hereunder or any state law, regulation or guideline is modified, changed or interpreted in such a way that the Total Project, or any portion of the Total Project, is no longer eligible for Award funds.
2. In the event insufficient funds are appropriated by the County for its share of the costs of the Total Project and the County has no other lawfully available funds, then the County may terminate this Agreement at the end of its current fiscal year, with no further liability to the Department. The County shall deliver to the Department written notice of such termination within thirty (30) days of its determination of such shortfall.

C. Termination for Default. The Department may, at any time upon thirty (30) days prior written notice to the County, terminate this Agreement if:

1. The design and implementation of the Total Project is not pursued with due diligence; or
2. The cadastral portions of the Total Project do not conform to the Department of Revenue Oregon Cadastral Map System; or

3. The County fails to receive funding for portions of the Total Project from outside sources as described in its Proposal; or
 4. The County, without the prior written approval of the Department, uses the funds provided by the Department hereunder in a way other than the Project described in the Proposal.
 5. The County violates any other provision of this Agreement.
- D. Rights and Remedies. The County shall, within thirty (30) days of its receipt of the notice described in Section VI.C above, reimburse the Department for all funds disbursed hereunder to the extent that the funds disbursed exceed the amount of the Award multiplied by the percentage of the Project completed to the satisfaction of the Department as of the date of County's receipt of the notice described in Section VI.C above. Further, the Department shall have any and all rights and remedies available at law or in equity.

VII. GENERAL PROVISIONS

- A. Force Majeure. Neither the Department nor the County shall be held responsible for delay or failure to perform when such delay or failure is due to fire, flood, epidemic, strike, public carrier, act of God, act of a public enemy or a public authority or a cause which cannot be reasonably foreseen or provided against.
- B. Persons Not to Benefit. No member of or delegate to Congress, resident commissioner, officer, agent or employee of the United States of America, member of the Oregon Legislative Assembly, elected official of the State of Oregon, or official, agent, or employee of the State of Oregon, or elected member, officer, agent, or employee of any political subdivision, municipality or municipal corporation of the State of Oregon shall derive any unfair knowledge or financial benefit from this Agreement that is not offered to others in a competitive process.
- C. No Third Party Beneficiaries. The Department and 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 third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.
- D. Successors and Assigns. The provisions of this Agreement shall be binding upon and shall inure to the benefit of the Department and County and their respective successors and assigns; provided however that the County may not

assign this Agreement or any interest therein without the prior written consent of the Department, which consent may be withheld for any reason.

- E. Severability. The Department and the County agree that 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 the Agreement did not contain the particular term or provisions held to be invalid.
- F. Notice. Except as otherwise expressly provided in this Agreement, any communications between the parties hereto or notices to be given hereunder shall be given in writing by personal delivery, facsimile, or mailing the same, postage prepaid, to the Department or the County at the address or number set forth on the signature page of this Agreement, or to such other addresses or numbers as either party may hereafter indicate pursuant to this Section. Any communication or notice so addressed and mailed shall be deemed to be given five (5) days after mailing. 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.
- G. Counterparts. This Agreement may be executed in several counterparts, all of which when taken together shall constitute one agreement binding all parties, notwithstanding that all parties are not signatories to the same counterpart. Each copy of the Agreement so executed shall constitute an original.
- H. Governing Law; Venue. 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 the Department and/or other agency or department of the State of Oregon and the County that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Marion County for the State of Oregon; provided, however, if a Claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District 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 it is 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. COUNTY, BY EXECUTION OF THIS CONTRACT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS.
- I. Merger Clause; Amendment; Waiver. THIS AGREEMENT CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE DEPARTMENT AND THE COUNTY ON THE SUBJECT MATTER HEREOF. NO MODIFICATION OR

CHANGE OF TERMS OF THIS AGREEMENT SHALL BIND EITHER PARTY UNLESS IN WRITING AND SIGNED BY BOTH THE DEPARTMENT AND THE COUNTY, AND NO CONSENT OR WAIVER SHALL BE EFFECTIVE UNLESS IN WRITING AND SIGNED BY THE PARTY AGAINST WHOM SUCH CONSENT OR WAIVER IS BEING ENFORCED. SUCH WAIVER, CONSENT, MODIFICATION OR CHANGE, IF MADE, SHALL BE EFFECTIVE ONLY IN THE SPECIFIC INSTANCE AND FOR THE SPECIFIC PURPOSE GIVEN. THERE ARE NO UNDERSTANDINGS, AGREEMENTS, OR REPRESENTATIONS, ORAL OR WRITTEN, NOT SPECIFIED HEREIN REGARDING THIS AGREEMENT. THE DELAY OR FAILURE OF THE DEPARTMENT TO ENFORCE ANY PROVISION OF THIS AGREEMENT SHALL NOT CONSTITUTE A WAIVER BY THE DEPARTMENT OF THAT PROVISION OR ANY OTHER PROVISION. THE COUNTY, 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.

DEPARTMENT:

State of Oregon, acting by and through its
Department of Revenue
Authorized Agency Signature

By: _____

Joshua Hardage, Contracts & Procurement Manager

Date: _____

COUNTY:

Clackamas County

By: _____

Title: _____

Date: _____

Telephone: _____

Fax No: _____

EXHIBIT A

AWARD LETTER
COUNTY GRANT PROPOSAL



Dave Cummings
Chief Information Officer

Technology Services

121 Library Court Oregon City, OR 97045

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of Telecommunication Services with Atos IT Solutions and Services, Inc.

Purpose/ Outcomes	Contract renewal for Telecommunication Services with ATOS IT Solutions, Inc.
Dollar Amount and Fiscal Impact	Total Contract Value: \$1,350,000.00
Funding Source	Fund 746 ORG 1223 (budgeted in the FY 18/19 Technology Services budget)
Duration	5 Years – 12/2023
Strategic Plan Alignment	-Build Public Trust Through Good Government -Build a Strong Infrastructure
Contact Person	Dave Devore 503.723.4996 / Ron Sandner 503.655.8828

BACKGROUND:

The Clackamas County Technology Services Department (TS) is tasked with providing high quality, feature rich and cost effective voice communication services to the County Departments and staff. This service is provided via the Telecommunications Division of TS. These voice communication services include management of high-performance communication servers and network to provide local and long distance telephone service as well as many other related features such as unified communications, integrated centralized Private Network E911, integrated centralized voice mail, integrated centralized conference calling, integrated centralized automated attendant, four digit dialing to any County Agency and other services in a cost effective manner to the County. TS utilizes communication servers from Atos IT Services Inc., a world leader in high performance, high reliability communications.

Renewing the contract will allow continued support and updates of the voice communications network and servers. TS will be able to maintain interoperability, compatibility, seamless integration and resiliency across the Enterprise Voice Communications Infrastructure in continued support of all County Departments.

Approval of this contract is being requested under the Local Contract Review Board Rule C-047-0288 (15); where the efficient use of an existing equipment of supplies

requires compatible products or services of a particular product or service without obtaining competitive bids or proposals.

Procurement Authority: This is a legacy software maintenance and support contract renewal. This software has been utilized by the County for more than twenty years. It is the intent of the County to continue to utilize this vendor for the above referenced services and will be brought for Board of County Commissioners approval every five years for review or until the system is replaced.

County Counsel has reviewed Atos' Agreement for Products and Services and attached the Clackamas County Government Addendum to the agreement.

RECOMMENDATION:

Staff respectfully recommends the Board of County Commissioners approve the attached Contract for renewal of Telecommunication Services.

Respectfully submitted,



Dave Cummings
Chief Information Officer / Director
Clackamas County Technology Services

Placed on the Agenda of _____ by the Procurement Division

OREGON GOVERNMENTAL CONTRACTING ADDENDUM

This Oregon Governmental Contracting Addendum (“Addendum”) is entered into by Clackamas County (“County”), Atos IT Solutions and Services, Inc. (“Contractor”). As used below, "Contract" or “Contract Documents” or similar term shall include this Addendum and Atos Agreement for Products and Services. To the extent there is any conflict between the Contract Documents, the terms of this Addendum shall control.

- A.** 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.
- B.** 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 Clackamas County 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 Clackamas 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 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. If Contractor fails to present invoices in proper form within one hundred twenty (120) calendar days after the end of the month in which the services were rendered, Contractor waives any rights to present such invoice thereafter and to receive payment therefor.
- C.** The insurance described in this section shall provide thirty days (30) days written notice to the County in the event of a cancellation or material change. This policy(s) shall be primary insurance as respects to the County. Any insurance or self-insurance maintained by the County shall be excess and shall not contribute to it.
- 1.** The Contractor agrees to furnish the County 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 County, 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.

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 insurance, other than the Workers’ Compensation, Professional liability,. 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 County.. Any insurance or self-insurance maintained by the County shall be excess and shall not contribute to it,
 4. The Contractor will provide written notice to the County within thirty days (30) days after any reduction in the general aggregate limit.
 5. Any obligation that County agree to a waiver of subrogation is hereby stricken.
- D.** 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.
- E.** This Contract may be terminated by either party upon at least ninety (90) days written notice to the other.
- F.** 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 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:
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 County’s setoff right, without penalty; and
 3. Initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief.
- 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.
- G.** 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.

- H.** 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.
- I.** 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).
- J.** 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.

Atos IT Solutions and Services, Inc.

Clackamas County

 Authorized Signature Date

 Authorized Signature Date

 Name/Title (Printed)

 Name/Title (Printed)

Approved As To Form:

 Clackamas County Counsel Date

Agreement for Products and Services

Customer Name and Address:

Clackamas County

168 Warner Milne Rd
Oregon City, OR 97045

Supplier Office Address:

2650 North Military Trail
Boca Raton, FL 33431

Agreement No.: CLA-0917-01A

Atos IT Solutions and Services, Inc. (Supplier) is pleased to offer our Customer (you) this Agreement for Products and Services (Agreement). After you have signed this Agreement, Supplier will accept it by signing below and will return it to you. Subject to Supplier's acceptance of your individual orders, you may order: (1) Products and (2) Services.

1. DEFINITIONS

"Cutover Date" means the date Supplier: (a) installs the original Product(s) as further described in an Ordering Document; or (b) provides original Product(s) to you for installation

"Enterprise" means a corporation (or other legal entity) and the subsidiaries that it owns by more than 50% that are located in the United States or Puerto Rico. Such entities may order under this Agreement, provided they agree to the terms of this Agreement.

"Exhibit" means supplemental terms and conditions specific to particular Products or Services under the Agreement and which are referenced on an Ordering Document.

"Implementation Date" means the date Supplier implements certain Services as further described in an Ordering Document.

"Installation Date" means: (a) the date Supplier installs a MAC Product or, if not installed by Supplier, ships it to you; or (b) for other MAC Services, the date on which performance is completed.

"MAC" means Products and/or Services that you order after your initial order for Products and Services is installed.

"Ordering Document" means a Schedule A, Installation Change Order (Change Order), Supplement, or other Supplier ordering document that incorporates additional terms for specified Products or Services.

"Part" is a replacement part.

"Premises" means your installation or service location as referenced on an Ordering Document.

"Product" means equipment and/or Software.

"Purchase Order" means your form of ordering document. Any Purchase Order submitted by you to Supplier for Products, Software and/or Services is issued under the terms of this Agreement. Notwithstanding any terms to the contrary in a Purchase Order, the terms and conditions in any Ordering Document, the Agreement, and its referenced Exhibit(s) are incorporated into any Purchase Order by reference and shall govern the provision and performance of the Products, Software and Services under the Purchase Order.

"Purchase Price" means charges for Product(s), including any Software license charge(s), or Services, and any applicable transportation charges.

"Services" means professional services including implementation, installation and integration; warranty support; maintenance support, managed services or other services provided to you.

"Software" means software, including all copies and documentation, provided to you.

2. PURCHASE PRICE, PAYMENT TERMS AND TAXES

The Purchase Price and payment terms for Products and Services you order will be specified on an Ordering Document or, if your Purchase Order does not require a signature, a Supplier invoice.

You agree to pay to Supplier applicable taxes and governmental fees resulting from this Agreement, exclusive of taxes based on Supplier's net income. Taxes will be specified on Supplier's invoice to you.

3. TITLE, SECURITY INTEREST AND RISK OF LOSS

Title to each Product, except for Software, passes to you on its shipment date.

Supplier reserves a purchase money security interest (PMSI) in each Product. You agree to sign appropriate documents to permit Supplier to perfect its PMSI. The PMSI will be released upon payment in full.

Supplier bears the risk of loss for each Product through its Cutover Date or Installation Date (except for loss caused by your negligence), after which you will be responsible for all risk of loss.

4. SOFTWARE LICENSE

An Exhibit(s) referenced in an Ordering Document describes the Software license applicable to a Product(s).

5. WARRANTY

An Exhibit(s) referenced in an Ordering Document describes the warranty terms applicable to a Product(s).

6. INDEMNIFICATION

Supplier agrees to indemnify, defend and save you harmless from a claim resulting in a final judgment against you by a court of competent jurisdiction for a direct damage arising from or in connection with a material breach of the Agreement in the following situation:

- willful or negligent misconduct of Supplier
- fraud and/or fraudulent misrepresentation of Supplier
- bodily injury, including death, to the extent such injury is caused by Supplier's negligence or intentional misconduct in the performance of this Agreement and provided you: (a) give Supplier prompt written notice of any such claim promptly after you first receive notification of the claim; (b) allow Supplier sole control of the defense and all related settlement negotiations; and (c) fully cooperate with Supplier. Notwithstanding the requirement of 6(b) above, the Customer at its sole expense may assume its own defense in its sole determination.

7. LIMITATION OF LIABILITY

This Agreement sets out the entire liability of and exclusion and limitation thereof by the Supplier and Customer under and/or in connection with this Agreement. The total liability of Supplier, its suppliers and subcontractors is for actual damages

only, and will not exceed the amount paid to Supplier for Products and Services provided under this Agreement, at the Premises where the damage occurred, for the 12-month period preceding the date the damage occurred. This limitation does not apply to the Supplier's obligations under Section 6, Indemnification, and, if applicable, the Patents and Copyright Section in an Exhibit incorporated by reference into an Ordering Document.

UNDER NO CIRCUMSTANCES WILL SUPPLIER BE LIABLE FOR DAMAGES RESULTING FROM:

- (A) LOSS OF STORED, TRANSMITTED OR RECORDED DATA;**
- (B) HACKING, UNLAWFUL INTRUSION, ISSUES WITH NETWORK SECURITY, OR LONG DISTANCE OR NETWORKING CHARGES;**
- (C) INDIRECT DAMAGES, CONSEQUENTIAL DAMAGES (INCLUDING LOST PROFITS OR SAVINGS), INCIDENTAL, SPECIAL OR PUNITIVE DAMAGES, EVEN IF SUPPLIER IS INFORMED OF THEIR POSSIBILITY;**
- (D) USE OF PRODUCTS OUTSIDE THE UNITED STATES AND PUERTO RICO;**
- (E) LOSS OF CONTRACTS;**
- (F) LOSS OF REVENUE;**
- (G) LOSS OF GOODWILL;**
- (H) LOSS OF BUSINESS;**
- (I) LOSS OF THE USE OF THE PRODUCT;**
- (J) LOSS OF OR CORRUPTION OF DATA OR SOFTWARE PROGRAMS;**
- (K) FINANCING EXPENSES;**
- (L) LOSSES ARISING FROM INTERRUPTION IN THE USE OR AVAILABILITY OF DATA;**
- (M) LOSSES ARISING FROM STOPPAGE OF OTHER WORK; OR**
- (N) ANY LOSS OR DAMAGE ARISING OUT OF ANY FAILURE BY YOU TO KEEP FULL AND UP-TO-DATE SECURITY COPIES OF ANY SOFTWARE AND DATA HELD OR USED BY YOU OR ON YOUR BEHALF.**

THE LIMITATIONS IN THIS SECTION APPLY REGARDLESS OF LEGAL THEORY UPON WHICH THE CLAIM IS BASED, EVEN IF THE REMEDIES PROVIDED HEREIN FAIL OF THEIR ESSENTIAL PURPOSE.

Notwithstanding the above, Supplier does not limit or exclude its liability (if any) to the Customer:

- for personal injury or death resulting from Supplier's negligence;
- for willful or negligent misconduct of Supplier;
- for fraud or fraudulent misrepresentation of Supplier; or
- for any matter for which it would be illegal for Supplier to exclude or limit or to attempt to exclude or limit its liability.

8. TERM AND TERMINATION

The term of this Agreement is three (3) years. Upon issuance of a quote by Supplier not later than 90 days prior to the then current expiration date, and acceptance by Customer through issuance of a new purchase order, this Agreement may be renewed for successive one-year periods.

If either party is not substantially complying with the terms of this Agreement, the other party will have the right to give prompt written notice of such failure to perform. The non-complying party will have forty-two (42) days after receiving such notice to correct its performance or commence a continuous good faith effort to correct its performance within a reasonable period of time. In the event the non-conforming party is not able to correct its performance or commence a good faith effort to correct its performance in a reasonable

period of time within such forty-two (42) day period, the other party may, at its option, and in addition to any other remedies under the Agreement, choose to terminate the Agreement.

Either party will have the right to terminate the Agreement immediately upon written notice in the event that the other Party: (a) becomes insolvent; (b) files for any form of bankruptcy; (c) makes any assignment for the benefit of creditors or commences voluntary proceedings under any bankruptcy, insolvency, or debtor's relief law; (d) has a receiver, administrative receiver or officer appointed over the whole or a substantial part of its assets; (e) ceases to conduct business; or (f) fails to pay its debts as they become due. Any assignment to a third party as a result of the filing of a petition for bankruptcy by you shall be conditioned upon such assignee (i) affirmatively assuming all of your obligations under the Agreement and (ii) meeting net worth or capital requirements as may be specified by Supplier in its sole discretion, to ensure that the obligations can be fulfilled by such assignee. Failure by Supplier to assert its rights to retain its benefits to the intellectual property (encompassed by the Products, including the Software and applications), pursuant to Sec. 365(n)(1)(B) of the Bankruptcy Code, 11 U.S.C. under an executory contract rejected by the trustee in bankruptcy, shall not be construed as a termination of the contract by Supplier under Sec. 365(n)(1)(A) of the Bankruptcy Code.

If sufficient funds are not provided in future approved budgets of the Customer (or from applicable federal, state, or other sources) to permit the Customer in the exercise of its reasonable administrative discretion to continue this Agreement, or if the program for which this Agreement was executed is abolished, Customer may terminate this Agreement without further liability by giving Supplier not less than thirty (30) days' notice subject to full payment of all fees for Services rendered through the termination effective date and any agreed upon termination fees.

9. FORCE MAJEURE

Neither party shall be responsible for any failure or delay in performance of its obligations under this Agreement (other than the obligation to make payments of money) due to any force majeure event including Act of God, riots, adverse weather conditions, volcanic eruption, earthquake or other natural disaster, refusal of license (other than as a result of any act or omission of the Supplier), or other Government act or order or restriction, war, threat of war, fire, explosion, embargo, customs and trade regulations, sanctions, breaking off of diplomatic relations, terrorism, civil disturbance, accident, epidemics, pandemics, lightning damage, interruption or failure of utility services, electromagnetic interference, radio interference, strikes, industrial dispute, failure of third-party Hardware or Software, or any other cause beyond its reasonable control and, in the case of the Supplier, the occurrence of any of the aforementioned force majeure events to its subcontractors or suppliers which result in their delay or failure to perform. For the avoidance of doubt, breach of contract by the End User Customer shall not be force majeure unless such party is itself subject to an event of force majeure which directly causes the breach.

10. EXPORT COMPLIANCE

Any export of the Products or Services must be made in compliance with the laws and regulation of the U.S. and of the EU or EU member states, where applicable.

You shall introduce and/or take effective measures to assess your end users' requirements for the Products within the country and abroad to ensure compliance with the

aforementioned export provisions and upon request advise the Supplier of such measures. In particular, but without limitation, such measures shall include your checking and guaranteeing that: (a) the Products are not intended for use in connection with armaments, nuclear technology or weapons; (b) no companies and persons on the U.S. Denied Persons List (DPL) are supplied with goods, software or technology subject to the U.S. Export Administration Regulations (EAR); (c) no companies and persons on the U.S. Entity List or U.S. Specially Designated Nationals List are supplied with goods, software or technology subject to the U.S. EAR without a license; and (d) no companies and persons, on the Specially Designated Terrorists List, Foreign Terrorist Organizations List, Specially Designated Global Terrorists List or on the Sanctions List of the EU are supplied.

TO THE EXTENT PERMITTED BY ARTICLE XI, SECTION 10 OF THE OREGON CONSTITUTION AND THE OREGON TORT CLAIMS ACT (ORS 30.260 THROUGH 30.300) YOU AGREE TO INDEMNIFY AND HOLD SUPPLIER HARMLESS FROM ANY AND ALL COSTS, LIABILITIES, PENALTIES, SANCTIONS AND FINES RELATED TO YOUR NON-COMPLIANCE WITH APPLICABLE EXPORT LAWS AND REGULATIONS.

Supplier will not be obligated to perform any obligations under this Agreement, and will not incur any liability or consequence as a result of such non-performance, to the extent that performance would constitute a violation of, or would result in, the imposition of any sanctions under any law, regulation or other applicable national or international foreign trade and customs requirements or embargos.

11. CONFIDENTIALITY

The confidentiality of information exchanged by the parties under the Agreement shall be governed by a non-disclosure agreement executed by the parties. In the absence of an executed non-disclosure agreement between the parties, the following terms will apply.

"Confidential Information" means any information supplied by or obtained from one party ("the Disclosing Party") to or by the other ("the Receiving Party") that is marked confidential if in tangible form, or, if orally disclosed, is reduced to writing and identified as confidential within thirty (30) days of such disclosure. Confidential Information does not include information that: (a) at the time of receipt by the Receiving Party was already published or was otherwise generally available to the public; (b) subsequent to receipt by the Receiving Party is published or becomes generally available to the public otherwise than through the Receiving Party's default hereunder; (c) the Receiving Party can demonstrate was rightfully in its possession prior to the time of receipt from the Disclosing Party; (d) becomes known independently to the Receiving Party from any third party who did not acquire it under pledge of secrecy; or, (e) is independently developed by the Receiving Party.

The Receiving Party shall: (a) treat all such Confidential Information as strictly confidential; (b) not disclose any Confidential Information in any way to any third party without the consent of the Disclosing Party nor to any employee of the Receiving Party except as is necessary in the performance of obligation under this Agreement; (c) ensure that all those of its officers or employees to whom the Confidential Information is disclosed are made aware of the confidentiality of the same and bound in writing to adhere to the provisions in this Section 11; (d) require any third party to whom Confidential Information is disclosed to enter into a written confidentiality and non-disclosure agreement no less restrictive than this Agreement; (e) not use any Confidential Information in any way except in

fulfillment of obligations under this Agreement and in particular (without limiting the generality of the foregoing) shall not use any Confidential Information for any purpose competitive with the Disclosing Party or in such a way as to obtain any commercial advantage over the Disclosing Party.

If a Receiving Party is required by law, regulation, or judicial order to disclose Confidential Information of the Disclosing Party, the Receiving Party shall (except when not legally permitted to do so) promptly notify the Disclosing Party and reasonably cooperate with Disclosing Party to minimize such disclosure and to otherwise protect the confidentiality of such Confidential Information under the relevant circumstances.

The nondisclosure obligations described herein shall, except with respect to trade secrets, survive termination or expiration of this Agreement for a period of three years. To the extent that Confidential Information constitutes trade secrets, the recipient's obligations under this paragraph shall remain in effect perpetually.

Notwithstanding anything contained in this Section 11, the Customer's obligation to maintain any Confidential Information confidential is only to the extent permitted by the Oregon Public Records Law.

12. END-USER CERTIFICATION

You agree you are acquiring each Product to use within your Enterprise and not for reselling, leasing or transferring to a third party except for lease-back financing of the Product.

13. SUBCONTRACTING AND ASSIGNMENT

Either party may delegate any or all of its duties to subcontractors, subsidiaries or parent or affiliated companies, provided that each party remains liable for their respective duties. You may not assign this Agreement without the prior written consent of the Supplier. Any attempt to do so is void.

14. MARKETING

Supplier may only use Customer's name for marketing and publicity materials in a manner that only references the Customer as a customer. No marketing or publicity materials may reference that the Customer endorses any particular vendor, good, or service.

15. DISPUTE RESOLUTION

Each party agrees to attempt to resolve all disputes related to the Agreement, at the request of either party, through negotiation by the business personnel of each party. If the dispute cannot be resolved at an account management or line level of management, the dispute will be escalated to executives of each party to attempt to settle the matter.

If, after a good faith effort to settle a dispute through negotiation within sixty (60) days, a dispute remains unresolved, either party may request, in writing to the other party, that the parties enter into non-binding alternative dispute resolution (ADR), such as mediation, to attempt to settle the matter. The selection of an independent third-party, with no prior affiliation with any of the parties or their contractors or subcontractors hereto or any of their respective parents or affiliates, to participate in the ADR shall be by mutual agreement, but, in the absence of such agreement, each party shall select a temporary participant and those participants shall jointly select a permanent participant. The parties agree to select an independent third-party within thirty (30) days of delivery of a party's written request to proceed to ADR.

Each party shall bear its own costs of any dispute procedures hereunder.

During the period when a dispute is being resolved, except for the matter being disputed, the parties shall in all other respects continue their performance under this Agreement, unless performance of the Agreement is otherwise suspended or terminated by a party in accordance with the terms of this Agreement.

17. GOVERNING LAW

This Agreement is governed by the laws of the State of Oregon without regard to its conflicts of laws rules.

18. ENTIRE AGREEMENT

This Agreement constitutes the entire Agreement between the parties, oral or written. Any modifications or changes to the Agreement will only be valid when made by written amendment, signed by each party.

19. ORDER OF PRECEDENCE

The following order of precedence, from highest to lowest priority, shall prevail upon the applicable documents under the Agreement: (a) Custom Exhibit or Amendment, the highest precedent to the most recent document in time; (b) End-User License Agreement for Supplier Products and Software; (c) Change Order Ordering Document; (d) Schedule A and/or Supplement Ordering Document; (e) Services Plan; (f) Supplemental Terms Exhibit; (g) Statement of Work; and (h) the Agreement. Any inconsistent terms on a Purchase Order are void unless specifically agreed to in writing by Supplier in the form of an amendment to this Agreement.

20. INTELLECTUAL PROPERTY RIGHTS OWNERSHIP

All intellectual property rights, including the right to patent, copyright, trademarks, mask works and design rights in the Product and documents provided to you in the performance of this Agreement and/or arising and created under and in connection with this Agreement shall remain vested in and/or automatically and immediately upon creation vest in Supplier and/or its licensors as the case may be.

21. SEVERABILITY

If any provision of this Agreement is held invalid or unenforceable to any extent: (a) such invalidity shall not affect the validity of all other terms in this Agreement which can be given effect without the invalid provision or application; (b) this Agreement shall be construed and both Parties shall amend this Agreement, so as to give effect as nearly as possible to the intent of the invalid Clause or application; and (c) to this end, the invalid and/or unenforceable provisions hereof are declared to be severable.

22. WAIVER

Failure by either party to enforce or exercise any right under this Agreement shall not amount to a waiver or bar to enforcement of that right.

23. HEADINGS

Section headings shall not affect the legal interpretation of this Agreement.

24. NOTICES

Notices shall be in writing and sent to the addresses set out herein, or such other address notified in writing.

Accepted By:

Clackamas County

By: _____

Authorized Signature

Name (Type or Print)

Date

Accepted By:

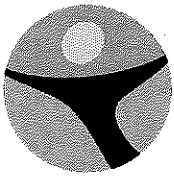
Atos Solutions and Services, Inc.

By: _____

Authorized Signature

Name (Type or Print)

Date



NORTH CLACKAMAS PARKS & RECREATION DISTRICT

Administration

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

13

December 20, 2018

COPY

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

Members of the Board:

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

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

BACKGROUND:

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

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

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

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

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

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

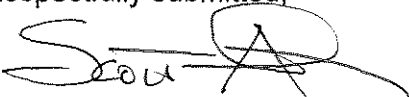
RECOMMENDATION:

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

ATTACHMENTS:

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

Respectfully submitted,



Scott Archer, Director
North Clackamas Parks and Recreation District

**SECOND ADDENDUM
TO THE
PARK DEVELOPMENT AGREEMENT**

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

RECITALS:

- A. On or about July 20, 2017, Developer and NCPRD entered into a Park Development Agreement (the "Agreement") pursuant to which Developer agreed to complete certain park improvements for NCPRD and NCPRD agreed to purchase the park improvements from Developer.
- B. On or about December 26, 2017, Developer and NCPRD amended the Agreement with an Addendum to the Park Development Agreement (the "Addendum 1").
- C. On November 9, 2018, the plat for Hidden Falls 3 was recorded by the Clackamas County clerk.
- D. The construction contemplated by the Agreement has been substantially completed, with the exception of the punch list items and the planting and irrigation.
- E. Closing of the sale for the Park property will not occur within 30 days of the plat recording, additional time is needed to complete the planting and irrigation, and there have been additional changes to the specifications requested by NCPRD or mandated by the applicable governing agency since the execution of Addendum 1.

AGREEMENTS:

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

- 1. Revised Attachment Q. The attached Attachment Q "Open Space Planting Plan" dated November 16, 2018 replaces and supersedes the original Attachment Q "HCA Planting Plans."
- 2. Completed Construction Improvements. NCPRD has completed a completeness inspection and both parties agree that all construction improvements have been completed except the planting and irrigation and the punch list items as shown on Exhibit A to this Addendum 2 (the "Punch List".) In addition, to the extent that the actual construction completed as of the date of this Addendum 2 deviated from the approved engineering, NCPRD acknowledges that they have inspected the construction and waives

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

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

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

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

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

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

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

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

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

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

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

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

North Clackamas Parks and
Recreation District,
A County Service District

Hidden Falls Development, LLC
an Oregon Limited Liability Company

Chair Bernard

Mark Handris

Date

Date

ATTACHMENTS:

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



NORTH CLACKAMAS PARKS & RECREATION DISTRICT

Administration

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

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

Members of the Board:

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

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

BACKGROUND

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

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

PROCUREMENT PROCESS

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

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

RECOMMENDATION

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

Respectfully submitted,

Laura Zentner, CPA
Director, Business & Community Services

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



PERSONAL/PROFESSIONAL SERVICES CONTRACT

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

ARTICLE I.

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

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

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

4. Travel and Other Expense. Authorized: Yes No

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

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

6. Contractor Data.

Address: 14584 SE Bonnie Way

Contractor Contract Administrator: Rebecca McGee

Phone No.: 503-652-9478

Email: mb2279@gmail.com

MWESB Certification: DBE # MBE # WBE # ESB #

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

ARTICLE II.

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

- 7. HAZARD COMMUNICATION.** Contractor shall notify District prior to using products containing hazardous chemicals to which District employees may be exposed. Products containing hazardous chemicals are those products defined by Oregon Administrative Rules, Chapter 437. Upon District's request, Contractor shall immediately provide Material Safety Data Sheets for the products subject to this provision.
- 8. INDEMNITY, RESPONSIBILITY FOR DAMAGES.** Contractor shall be responsible for all damage to property, injury to persons, and loss, expense, inconvenience, and delay which may be caused by, or result from, the conduct of Work, or from any act, omission, or neglect of Contractor, its subcontractors, agents, or employees. The Contractor agrees to indemnify, hold harmless and defend the District and Clackamas County, and their officers, elected officials, agents and employees from and against all claims and actions, and all expenses incidental to the investigation and defense thereof, arising out of or based upon damage or injuries to persons or property caused by the errors, omissions, fault or negligence of the Contractor or the Contractor's employees, subcontractors, or agents.
- 9. INDEPENDENT CONTRACTOR STATUS.** The service(s) to be rendered under this Contract are those of an independent contractor. Although the District reserves the right to determine (and modify) the delivery schedule for the Work to be performed and to evaluate the quality of the completed performance, District cannot and will not control the means or manner of Contractor's performance. Contractor is responsible for determining the appropriate means and manner of performing the Work. Contractor is not to be considered an agent or employee of District for any purpose, including, but not limited to: (A) The Contractor will be solely responsible for payment of any Federal or State taxes required as a result of this Contract; (B) This Contract is not intended to entitle the Contractor to any benefits generally granted to District employees, including, but not limited to, vacation, holiday and sick leave, other leaves with pay, tenure, medical and dental coverage, life and disability insurance, overtime, Social Security, Workers' Compensation, unemployment compensation, or retirement benefits; and (C) If the Contractor has the assistance of other persons in the performance of this Contract, and the Contractor is a subject employer, the Contractor shall qualify and remain qualified for the term of this Contract as an insured employer under ORS Chapter 656.
- 10. INSURANCE.** During the term of this Contract, Contractor shall maintain in full force at its own expense, each insurance noted below:
- A. Required by District of Contractor with one or more workers, as defined by ORS 656.027. Contractor, its subcontractors, if any, and all employers providing work, labor, or materials under this Contract are subject employers under the Oregon Workers' Compensation Law, and shall either comply with ORS 656.017, which requires said employers to provide workers' compensation coverage that satisfies Oregon law for all their subject workers, or shall comply with the exemption set out in ORS 656.126.
 - B. **Required by District** **Not required by District**
- Professional Liability** insurance with a combined single limit, or the equivalent, of not less than \$1,000,000 for each claim, incident, or occurrence, with an annual aggregate limit of \$2,000,000. This is to cover damages caused by error, omission or negligent acts related to the professional services to be provided under this Contract. The policy must provide extending reporting period coverage for claims made within two years after the contract is completed.

- C. **Required by District** **Not required by District**

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

- D. **Required by District** **Not required by District**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE III - SCOPE OF WORK

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

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

District Agrees that:

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

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

The District Contract Administrator for this Contract is: Josh Brandl

CONSIDERATION

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

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

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

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

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

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

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

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

