



# AGENDA Revised

**Thursday, February 12, 2015 - 10:00 AM**  
**BOARD OF COUNTY COMMISSIONERS**

Beginning Board Order No. 2015-13

## **CALL TO ORDER**

- Roll Call
- Pledge of Allegiance

**I. 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.)*

**II. DISCUSSION ITEMS** *(The following items will be individually presented by County staff or other appropriate individuals. Citizens wishing to comment on a discussion item must fill out a blue card provided on the table outside of the hearing room prior to the beginning of the meeting.)*

**~NO DISCUSSION ITEMS SCHEDULED**

**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 Study Session. The items on the Consent Agenda will be approved in one motion unless a Board member requests, before the vote on the motion, to have an item considered at its regular place on the agenda.)*

### **A. Department of Transportation & Development**

1. Approval of a Maintenance Agreement with the Oregon Department of Transportation Maintenance of Retaining Walls Constructed as Part of the I-205 at Strawberry Lane Overcrossing Project

### **B. Department of Technology Services**

1. Approval of the Purchase of 2 Nimble Storage CS500 Storage Arrays from CDW-G for County Information Storage *(Purchasing)*

## **IV. DEVELOPMENT AGENCY**

1. Approval of an Easement Agreement by and between EDC Industrial, LLC and the Clackamas County Development Agency

**V. WATER ENVIRONMENT SERVICES**

1. Approval of a Construction Agreement between Clackamas County Service District No. 1 and Realm Inc., for the Clackamas Pump Station Wet Well Rehab Project

**VI. COUNTY ADMINISTRATOR UPDATE**

**VII. COMMISSIONERS COMMUNICATION**

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

[www.clackamas.us/bcc/business.html](http://www.clackamas.us/bcc/business.html)



**BARBARA M. CARTMILL**  
DIRECTOR

**DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT**

**DEVELOPMENT SERVICES BUILDING**  
150 BEAVERCREEK ROAD | OREGON CITY, OR 97045

February 12, 2015

Board of County Commissioners  
Clackamas County

Members of the Board:

**Approval of a Maintenance Agreement with the Oregon Department of  
Transportation Maintenance of Retaining Walls Constructed as Part of the  
I-205 @ Strawberry Lane Overcrossing Project**

<b>Purpose/Outcomes</b>	Clackamas County agrees to ODOT's construction of retaining walls along Strawberry Lane in the County's right of way and the County agrees to accept ongoing maintenance of the retaining walls as constructed.
<b>Dollar Amount and Fiscal Impact</b>	The County is not required to contribute to the construction of this project. County expenses will be for ongoing maintenance of the County right of way adjacent to the project and is estimated at \$2,000 annually.
<b>Funding Source</b>	Road Fund
<b>Safety Impact</b>	Ongoing maintenance of the County right of way prolongs the life and safety of our transportation system.
<b>Duration</b>	Effective upon execution and for the duration of the useful life of the facilities construction as part of the project, defined as eighty (80) calendar years.
<b>Previous Board Action</b>	None.
<b>Contact Person</b>	Mike Bezner, Transportation Engineering Manager, 503-742-4651

**BACKGROUND:**

Oregon Department of Transportation has undertaken a project to raise the Strawberry Lane overcrossing of I-205. Although Strawberry Lane is a County road, since it crosses the state right of way, ODOT has taken responsibility for the management and expense of the project.

As part of this project, ODOT will construct retaining walls along Strawberry Lane that are within the County right of way. This agreement gives the County responsibility for the structural and surface maintenance of the retaining walls along Strawberry Lane that are constructed within our right of way. This maintenance responsibility extends for the useful life of the facility, defined as eighty (80) years, and is at the expense of the County, estimated at \$2,000 annually.

This agreement has been reviewed and approved by County Counsel.

**RECOMMENDATION:**

Staff respectfully recommends approval of the attached Maintenance Agreement with Oregon Department of Transportation for maintenance of retaining walls within the County right of way constructed as part of the Strawberry Lane Overcrossing Project.

Respectfully submitted,



Mike Bezner, PE  
Transportation Engineering Manager

For information on this issue or copies of attachments  
please contact Mike Bezner at 503-742-4651

**MAINTENANCE AGREEMENT  
I-205 @ Strawberry Lane Overcrossing**

**THIS AGREEMENT** is made and entered into by and between the STATE OF OREGON, acting by and through its Department of Transportation, hereinafter referred to as "State;" and the Clackamas County, acting by and through its Board of Commissioners, hereinafter referred to as "Agency," both herein referred to individually or collectively as "Party" or "Parties."

**RECITALS**

1. I-205, East Portland Highway, is a part of the state highway system under the jurisdiction and control of the Oregon Transportation Commission (OTC). Strawberry Lane is a part of the County road system under the jurisdiction and control of County.
2. By the authority granted in Oregon Revised Statutes (ORS) 190.110, 366.572 and 366.576, State may enter into cooperative agreements with counties, cities and units of local governments for the performance of work on certain types of improvement projects with the allocation of costs on terms and conditions mutually agreeable to the contracting parties.
3. State, by ORS 366.220, is vested with complete jurisdiction and control over the roadways of other jurisdictions taken for state highway purposes.
4. Due to the need to provide safe freight passage, State is raising the elevation of the Strawberry Lane structure over I-205. This will require construction of retaining walls to support Strawberry Lane along that portion of Strawberry lane to the east of I-205 on Agency right of way.

**NOW THEREFORE**, the premises being in general as stated in the foregoing Recitals, it is agreed by and between the Parties hereto as follows:

**TERMS OF AGREEMENT**

1. Under such authority, State and Agency agree to State's construction of retaining walls along Strawberry Lane on Agency right of way, hereinafter referred to as "Project". The location of the Project is approximately as shown on the sketch map attached hereto, marked Exhibit A, and by this reference made a part hereof.
2. The Project will be financed at an estimated cost of \$2,000,000 in State funds. The estimate for the total Project cost is subject to change. State shall be responsible for any Project costs beyond the estimate.
3. This Agreement shall become effective on the date all required signatures are obtained and shall remain in effect for the purpose of ongoing maintenance responsibilities for the useful life of the facilities constructed as part of the Project.

The useful life is defined as eighty (80) calendar years. The Project shall be completed within ten (10) calendar years following the date of final execution of this Agreement by both Parties.

#### **AGENCY OBLIGATIONS**

1. Agency shall, upon completion of the Project and at its own expense, be responsible for the structural and surface maintenance of the retaining walls along Strawberry Lane that are constructed on Agency Right of Way, and as shown in Exhibit A.
2. Agency grants State the right to enter onto Agency right of way for the performance of duties as set forth in this Agreement and by separate Agency Permit.
3. Agency certifies and represents that the individual(s) signing this Agreement has been authorized to enter into and execute this Agreement on behalf of Agency, under the direction or approval of its governing body, commission, board, officers, members or representatives, and to legally bind Agency.
4. Agency's Project Manager for this Project is Ken Fischer, 150 Beaver Creek Road, Oregon City, OR 97045; Phone: 503-742-4652; email: kenfis@co.clackamas.or.us; or assigned designee upon individual's absence. Agency shall notify the other Party in writing of any contact information changes during the term of this Agreement.

#### **STATE OBLIGATIONS**

1. State certifies, at the time this Agreement is executed, that sufficient funds are available and authorized for expenditure to finance costs of this Agreement within State's current appropriation or limitation of the current biennial budget.
2. State, or its consultant, shall conduct the necessary field surveys, environmental studies, traffic investigations, preliminary engineering and design work required to produce and provide final plans, specifications and cost estimates for the Project; identify and obtain all required permits; perform all construction engineering, including all required materials testing and quality documentation; prepare all bid and contract documents; advertise for construction bid proposals; award all contracts; pay all contractor costs, provide technical inspection, project management services and other necessary functions for sole administration of the construction contract entered into for this Project.
3. State shall be responsible for all costs associated with construction and installation of the Project.
4. State shall require its contractor(s) and subcontractor(s) that are not units of local government as defined in ORS 190.003, if any, to indemnify, defend, save and hold harmless the Agency and its members, officers, employees and agents from and against any and all claims, actions, liabilities, damages, losses, or expenses,

including attorneys' fees, arising from a tort, as now or hereafter defined in ORS 30.260, caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of State's contractor or any of the officers, agents, employees or subcontractors of the contractor ("Claims"). It is the specific intention of the Parties that the State shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Agency, be indemnified by the contractor and subcontractor from and against any and all Claims.

5. Any such indemnification shall also provide that neither the State's contractor and subcontractor nor any attorney engaged by State's contractor and subcontractor shall defend any claim in the name of the Agency, nor purport to act as legal representative of the Agency or any of its agencies, without the prior written consent of the Agency. The Agency may, at any time at its election assume its own defense and settlement in the event that it determines that State's contractor is prohibited from defending the Agency, or that State's contractor is not adequately defending the Agency's interests, or that an important governmental principle is at issue or that it is in the best interests of the Agency to do so. The Agency reserves all rights to pursue claims it may have against State's contractor if the Agency elects to assume its own defense.
6. State shall comply with all federal, state, and local laws, regulations, executive orders and ordinances applicable to the work under this Agreement, including, without limitation, the provisions of ORS 279C.505, 279C.515, 279C.520, 279C.530 and 279B.270 incorporated herein by reference and made a part hereof. Without limiting the generality of the foregoing, State expressly agrees to comply with (i) Title VI of Civil Rights Act of 1964; (ii) Title V and Section 504 of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 and ORS 659A.142; (iv) all regulations and administrative rules established pursuant to the foregoing laws; and (v) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.
7. State shall obtain any required permits from Agency and engineering design review approval from Agency. State agrees to comply with all provisions of said permit(s), and shall require its contractors, subcontractors, or consultants performing such work to comply with such permit and review provisions.
8. State shall, at its own expense, be responsible for structural and surface maintenance of all portions of the retaining walls along Strawberry Lane that are not on Agency right of way.
9. State's Project Manager for this Project is Mike Strauch, District 2B Manager, 9200 Lawnfield, Milwaukie, OR 97015; 971-673-6215; Michael.I.strauch@odot.state.or.us, or assigned designee upon individual's absence. State shall notify the other Party in writing of any contact information changes during the term of this Agreement.

## GENERAL PROVISIONS

1. Both Parties agree that maintaining the structural integrity and surface maintenance of the retaining walls is important and will be individually liable for their portion of the walls. If either Party notices a need for maintenance on the other Party's portion of the retaining wall system, they should contact the other Party immediately using the above contact information. If for any reason there is a benefit in combining maintenance responsibilities of the retaining walls, both Parties should make the initial contact addressed above and any necessary work, permissions, and cost sharing can be addressed through the use of a Work Order under the ODOT Flexible Services Agreement No.20656 of which both are a Party to.
2. This Agreement may be terminated by mutual written consent of both Parties.
3. State may terminate this Agreement effective upon delivery of written notice to Agency, or at such later date as may be established by State, under any of the following conditions:
  - a. If Agency fails to provide services called for by this Agreement within the time specified herein or any extension thereof.
  - b. If Agency fails to perform any of the other provisions of this Agreement, or so fails to pursue the work as to endanger performance of this Agreement in accordance with its terms, and after receipt of written notice from State fails to correct such failures within ten (10) days or such longer period as State may authorize.
  - c. If State fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow State, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement.
  - d. If federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the work under this Agreement is prohibited or State is prohibited from paying for such work from the planned funding source.
4. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.
5. If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 ("Third Party Claim") against State or Agency with respect to which the other Party may have liability, the notified Party must promptly notify the other Party in writing of the Third Party Claim and deliver to the other Party a copy of the claim, process, and all legal pleadings with respect to



the Third Party Claim. Each Party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with counsel of its own choosing. Receipt by a Party of the notice and copies required in this paragraph and meaningful opportunity for the Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to that Party's liability with respect to the Third Party Claim.

6. With respect to a Third Party Claim for which State is jointly liable with Agency (or would be if joined in the Third Party Claim), State shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by Agency in such proportion as is appropriate to reflect the relative fault of State on the one hand and of Agency on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of State on the one hand and of Agency on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. State's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if State had sole liability in the proceeding.
7. With respect to a Third Party Claim for which Agency is jointly liable with State (or would be if joined in the Third Party Claim), Agency shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by State in such proportion as is appropriate to reflect the relative fault of Agency on the one hand and of State on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of Agency on the one hand and of State on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. Agency's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if it had sole liability in the proceeding.
8. The Parties shall attempt in good faith to resolve any dispute arising out of this Agreement. In addition, the Parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation.
9. This Agreement may be executed in several counterparts (facsimile or otherwise) all of which when taken together shall constitute one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of this Agreement so executed shall constitute an original.

Agency/State  
Agreement No. 30325

10. This Agreement and attached exhibits constitute the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either Party unless in writing and signed by both Parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of State to enforce any provision of this Agreement shall not constitute a waiver by State of that or any other provision.

**THE PARTIES**, by execution of this Agreement, hereby acknowledge that their signing representatives have read this Agreement, understand it, and agree to be bound by its terms and conditions.

This Project is in the 2012-2015 Statewide Transportation Improvement Program, Key #18801 that was adopted by the Oregon Transportation Commission on March 21, 2012 (or subsequently approved by amendment to the STIP).

*SIGNATURE PAGE TO FOLLOW*

Agency/State  
Agreement No. 30325

**CLACKAMAS COUNTY**, by and through its  
Board of Commissioners

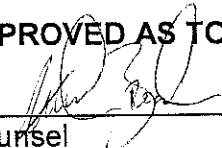
By \_\_\_\_\_

Date \_\_\_\_\_

By \_\_\_\_\_

Date \_\_\_\_\_

**APPROVED AS TO LEGAL SUFFICIENCY**

By  \_\_\_\_\_  
Counsel

Date 2/4/14 \_\_\_\_\_

**Agency Contact:**

Ken Fischer  
150 Beaver Creek Road, Oregon City, OR  
97045  
503-742-4652  
[kenfis@co.clackamas.or.us](mailto:kenfis@co.clackamas.or.us)

**State Contact:**

Mike Strauch, Reg. 1 District 2B Manager  
9200 Lawnfield, Milwaukie, OR 97015  
971-673-6215  
[Michael.I.strauch@odot.state.or.us](mailto:Michael.I.strauch@odot.state.or.us)

**STATE OF OREGON**, by and through  
its Department of Transportation

By \_\_\_\_\_

Highway Division Administrator

Date \_\_\_\_\_

**APPROVAL RECOMMENDED**

By \_\_\_\_\_

Region 1 Manager

Date \_\_\_\_\_

By \_\_\_\_\_

District 2B Manager

Date \_\_\_\_\_

**APPROVED AS TO LEGAL  
SUFFICIENCY**

By \_\_\_\_\_  
Assistant Attorney General

Date \_\_\_\_\_

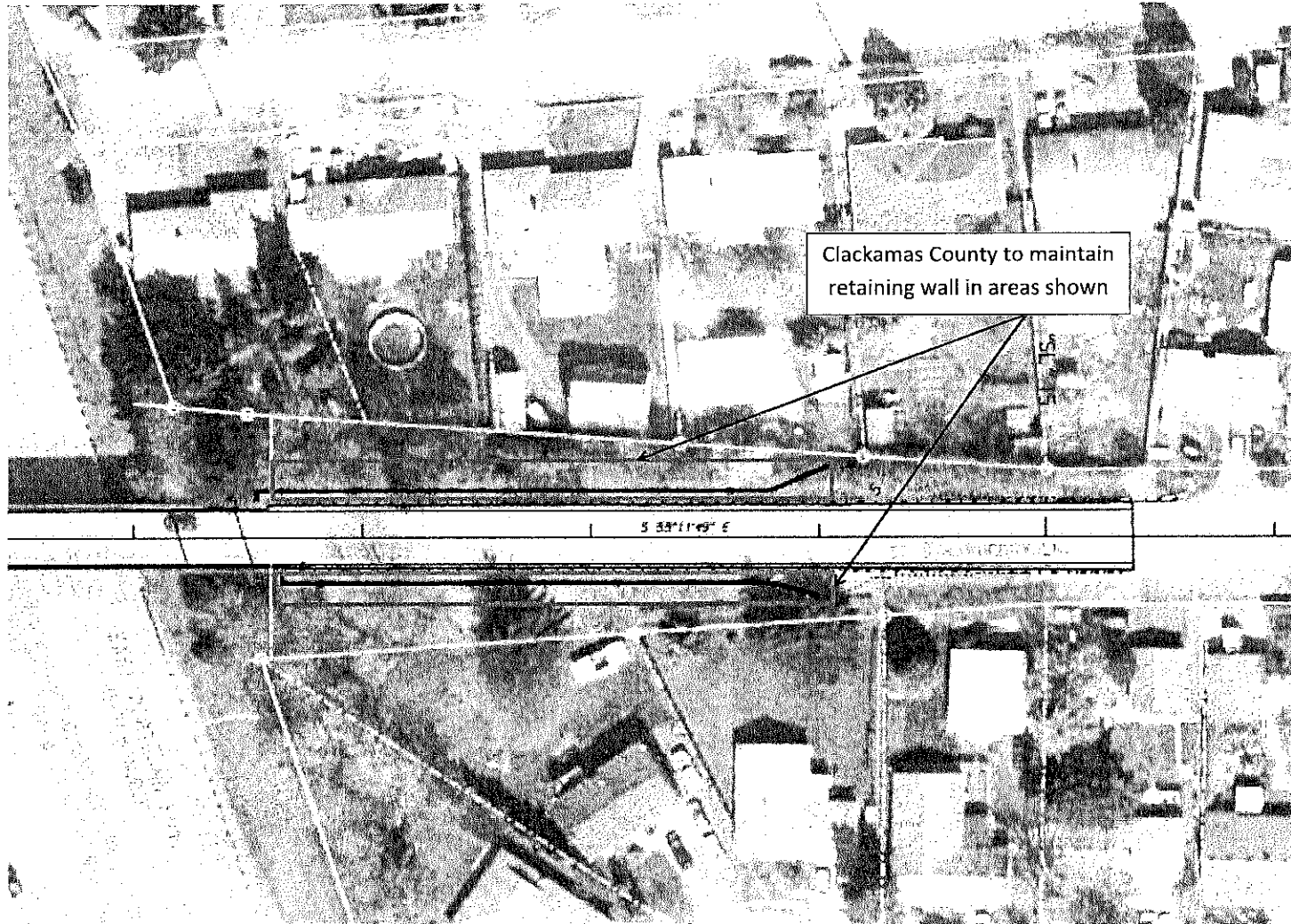


EXHIBIT A



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 the Purchase of 2 Nimble Storage CS500 Storage Arrays from CDW-G for County Information Storage**

<b>Purpose/Outcomes</b>	Upgrade and expansion of the County Storage System
<b>Dollar Amount and Fiscal Impact</b>	\$241,000.00 in current FY14-15 Budget
<b>Funding Source</b>	Fund 747 – Technology Services
<b>Safety Impact</b>	None
<b>Duration</b>	Procurement this FY, expected utilization of the arrays for 5-6 years
<b>Previous Board Action</b>	Not Applicable
<b>Contact Person</b>	Dave Devore
<b>Contract No.</b>	503-723-4996

#### **BACKGROUND:**

The Clackamas County Technology Services Department (TS) is tasked with the storage, security and availability of County information to include many types of data in the support of County business services. The size and availability demands on this data are constantly growing requiring ever increasing storage capacities, flexibility and performance. To meet this demand while containing costs, TS has designed a state of the art storage system utilizing multiple vendors and technologies to provide high-speed, reliable and cost effective storage solutions. This system is replicated to ensure storage redundancy, performance and availability.

As part of the ongoing support required to maintain the County's information storage requirements, both now and projected future needs, TS manages an equipment rotation process which periodically replaces aging equipment with new components. This process is designed to utilize new technology and capabilities, build in expansion to keep up with the growing County storage requirements and maximize performance within budget constraints. The proposed Nimble Storage purchase would expand the current storage array and eventually replace a large portion of the current system while preparing for future growth, maintaining redundancy, cost efficiencies and performance. Nimble Storage systems are currently utilized as a major part of the County's storage architecture and an industry leader in cost effective high-performance storage solutions.

An Invitation to Bid was advertised on January 12, 2015 in the Daily Journal of Commerce and the County website. At the time of closing on January 28, 2015, one bid was received from CDW-G, an authorized Nimble Storage reseller. The bid was for \$241,000.00. This includes a 1 year warranty.

Funds for this purchase are budgeted in the FY2014-2015 budget in Fund 747. TS will budget funds for continued maintenance of the arrays in following fiscal years.

RECOMMENDATION:

Staff respectfully recommends approval to procure two (2) Nimble Storage CS500 Storage arrays from CDW-G including 1 year warranty. CDW-G is an authorized Nimble Reseller. Staff further recommends the Board delegate authority to the Technology Services Director to sign agreements necessary in the performance of this contract and future maintenance.

Sincerely,



Dave Cummings  
CIO Technology Services

Placed on the Agenda of February 12, 2015 by the Purchasing Division



LANE MILLER  
MANAGER

**PURCHASING DIVISION**

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

February 12, 2015

MEMORANDUM TO THE BOARD OF COUNTY  
COMMISSIONERS

Please place on the Board Agenda of February 12, 2015, approval of the purchase of 2 Nimble Storage CS500 Storage Arrays from CDWG for Technology Services. This purchase was requested by Dave Cummings, Director, Extension 8525.

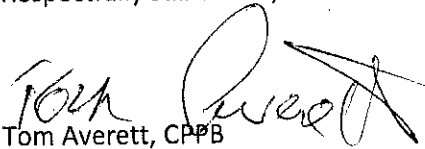
This contractor was selected through an Invitation to Bid process. A Invitation to Bid was issued on January 12, 2015. One responsive, responsible bid was received at the time of closing on January 28, 2015--CDWG. The bid from CDWG meets the needs of the County for this project.

The amount of this purchase is \$241,000. The purchase price includes a one year warranty for each array. Funds for this purchase are budgeted in FY 2014/2015, fund 747.

RECOMMENDATION:

Staff respectfully requests approval of the purchase of 2 Nimble Storage CS500 Storage Arrays from CDWG for Technology Services. Staff also recommends the Board delegate authority to the Technology Services Director to sign agreements necessary for future maintenance of this equipment.

Respectfully submitted,

  
Tom Averett, CPPB  
Buyer



IV.1

DAN JOHNSON  
MANAGER

**DEVELOPMENT AGENCY**

February 12, 2015

**DEVELOPMENT SERVICES BUILDING**  
150 BEAVERCREEK ROAD | OREGON CITY, OR 97045

Development Agency Board  
Clackamas County

Members of the Board:

**Approval of an Easement Agreement by and between  
EDC Industrial, LLC and the Clackamas County Development Agency**

<b>Purpose/ Outcomes</b>	This easement allows for resolution of a building encroachment issue associated with a recent real property transfer.
<b>Dollar Amount and Fiscal Impact</b>	No fiscal impacts are expected.
<b>Funding Source</b>	No funds are required.
<b>Safety Impact</b>	No safety issues are created with the provision of this easement.
<b>Duration</b>	Section 6 of the Easement Agreement identifies termination milestones.
<b>Previous Board Action</b>	Lease Option Authorization – July 2013
<b>Contact Person</b>	Dan Johnson, Manager; Clackamas County Development Agency

**BACKGROUND:**

In July of 2013, the Board of County Commissioners approved a lease/option agreement for real property located at 11811 SE Highway 212. Per the terms of this agreement, the lessee had the option to advance real property acquisition of the property. The lessee requested execution on the option to purchase on June 2, 2014 which was completed in December of that same year.

During the crafting of the lease/option agreement and subsequent closing documents, the lessee and lessor were aware of an encroachment issue with one of the existing buildings on the site. At the time of the closing there were a number of options for resolution of this issue, many dependent on the future of adjoining lands owned by the Agency to the north of the site. Until the future ownership of these lands is determined, all parties agreed to enter into an easement agreement which allows for continued use of the existing building and outlines corrective measures for this issue at a future date.

Attached you will find a copy of the Easement for your review and approval.

This Agreement is in a format approved by County Counsel.

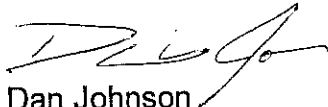


**RECOMMENDATION:**

Staff respectfully recommends that the Board, as the governing body of the Clackamas County Development Agency:

- Approve the Easement Agreement by and between EDC Industrial, LLC and the Clackamas County Development Agency.
- Delegate authority to the Chair to execute the Easement Agreement on behalf of the Development Agency Board.
- Record the Easement Agreement in the Deed Records of Clackamas County at no cost to the Development Agency.

Respectfully submitted,



Dan Johnson  
Development Agency Manager

**MAIL TAX STATEMENTS TO:**

No Change

**AFTER RECORDING RETURN TO:**

Clackamas County Development Agency  
Development Services Building  
150 Beaver Creek Rd.  
Oregon City, Oregon 97045

**EASEMENT AGREEMENT**

This Easement Agreement is made and entered into on \_\_\_\_\_ by and between EDC Industrial, LLC ("**Grantor**") and the Clackamas County Development Agency ("**Grantee**").

**RECITALS:**

- A. Grantor is the owner of the real property described in *Exhibit "A,"* attached hereto and incorporated by reference herein (the "**Servient Estate**");
- B. Grantee is the owner of the real property described in *Exhibit "B,"* attached hereto and incorporated by reference herein (the "**Dominant Estate**"); and
- C. Grantor and Grantee desire to create an easement that will permit the existing structure, which is sited primarily on the Dominant Estate but encroaches over the property line of the neighboring Servient Estate, to continue to be located upon the Servient Estate for the term of this Easement.

**AGREEMENT:**

In consideration of the mutual covenants set forth herein, the parties agree as follows:

**1. Grant of Easement**

For and in consideration of \$0, but other valuable consideration, Grantor hereby grants a nonexclusive easement under the existing building, being more particularly illustrated in *Exhibit "C"* attached hereto and incorporated herein by this reference.

**2. Appurtenant**

The easement shall be appurtenant to the Dominant Estate, shall run with the land, and the terms and conditions hereof shall be binding on and inure to the benefit of the parties' heirs, successors and assigns.

**3. Scope of Easement**

This easement shall include the right, privilege and authority of the owners of the Dominant Estate, and their agents, independent contractors and invitees, and any successors to maintain the existing building that encroaches on the Servient Estate and to enter upon those areas immediately adjacent to the building for purposes of performing necessary repair, maintenance, or any other act contemplated under this Agreement.

**4. Real Property Taxes**

Each owner of property described herein shall pay any and all real property taxes assessed to that owner's parcel without apportionment thereof relating to this easement.

**5. Maintenance**

The cost of maintaining, repairing and improving the structures and land covered by this easement shall be the responsibility of Grantor.

**6. Termination**

This easement shall terminate on first to occur of the following:

- the day after the Grantor vacates the existing building that is encroaching on the Servient Estate;
- the day Grantor acquires the Dominant Estate or the portion of the Dominant Estate which contains the existing building that is encroaching on the Servient Estate; or
- when that building that is entirely removed from the easement area.

**7. Removal of Building**

In the event Grantor vacates the existing building that is encroaching on the Servient Estate, Grantee shall have 6 months from the date the Grantor vacates the existing building to remove the portion of the building that is encroaching on the Servient Estate from the easement area.

**8. Attorneys' Fees**

In the event any arbitration, action or proceeding, including any bankruptcy proceeding, is instituted to enforce any term of this Easement Agreement, each party shall bear its own attorneys' fees and expenses.

**9. Time of Essence**

Time is of the essence of the performance of each of the obligations under this Easement Agreement.

**10. Governing Law and Venue**

The parties hereby submit to jurisdiction in Clackamas County, Oregon and agree that any and all disputes arising out of or related to this Easement Agreement shall be arbitrated exclusively in Clackamas County, Oregon and in no federal court or court of another county or state. Each party to this Easement Agreement further agrees that pursuant to such arbitration, the party and the party's officers, employees, and other agents shall appear, at that party's expense, for arbitration in Clackamas County, Oregon.

**11. Rule of Construction**

Any rule of construction interpreting a document against its drafter shall be inapplicable.

[Signatures and Acknowledgements on Following Page]



Exhibit "A"

Sunrise JTA/Emmert lease  
December 18, 2014  
Development Agency

County Project No. DB-00028  
Map No. 22E 10D 01600 adjusted  
Page 1 of 2

Tax Lot 1600 (adjusted)

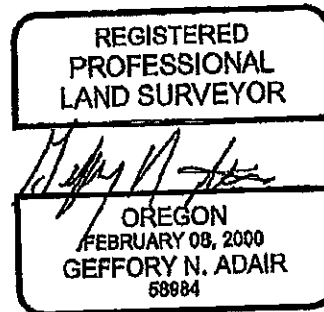
A portion of that tract of land being described in Statutory Warranty Deed Document Number 2007-031757, Clackamas County Deed Records. Said tract of land being situated in the southeast quarter of Section 10, Township 2 South, Range 2 East, of the Willamette Meridian, Clackamas County, Oregon, and more particularly described as follows:

Beginning at the southwest corner of that certain tract described in Contract of Sale to Sam R. Malfor and wife, recorded February 20, 1969 as Fee Number 69-2956, said point also being the southwest corner of that tract of land described in Deed Document Number 2011-069365, Clackamas County Deed Records, said point also being on the north right of way line of Oregon State Highway 212/224 (Clackamas Highway), said point being referenced by a found 5/8" diameter iron rod with an aluminum cap inscribed "COMPASS ENGINEERING", said monument bears North 0°14'11" West, 0.19 feet; Thence, along the west line of said Document Number 2011-069365 tract, North 0°14'11" West, 380.18 feet to the northwest corner of said Document Number 2011-069365 tract, said point also being the northwest corner of said Malfor tract, said point also being marked by a found 5/8" diameter iron rod with yellow plastic cap inscribed "COMPASS ENGINEERING"; Thence, along the north line of said Malfor tract and its easterly extension, also being the north line of those tracts of land described in Deed Document Numbers 2011-069365, 2018-008624, 2018-007839, 2011-089669 and 1992-005909 Clackamas County Deed Records, North 89°26'19" East, 489.67 feet to a point on the west line of that tract of land described as Parcel IV in Contract of Sale to Wilford E. Thatcher and wife, recorded January 20, 1970, said point being marked by a found punch mark on a sanitary manhole rim; Thence, along the west line of said Thatcher tract, North 0°45'36" West, 412.00 feet to a point of non-tangent curve, said point being at centerline station 611+48.37, 120.00 feet southwesterly of the proposed Sunrise JTA alignment, the radius of said curve bears South 86°35'51" West; Thence, leaving said west line of the Thatcher tract, along the arc of a non-tangent curve to the left, 120.00 feet southwesterly of and parallel with the proposed Sunrise JTA centerline alignment, having a radius of 971.35 feet, through a central angle of 5°38'12" an arc length of 95.56 feet, the chord of which bears North 56°13'14" West, 95.52 feet to a point on the east - west centerline of said Section 10; Thence, along said east - west centerline of Section 10; North 89°53'44" West, 410.94 feet to a point on the east line of that tract of land conveyed to Joseph M. Exley by deed recorded February 19, 1969; Fee Number 69-2817; Thence, along said west line, South 0°46'34" East, 425.94 feet to the most northerly southeast corner thereof, said point being marked by a found 5/8" iron rod with an aluminum cap that is unreadable; Thence, South 89°19'02" West, 33.07 feet to a point being marked by a found 5/8" iron rod with aluminum cap inscribed "COMPASS ENGINEERING";

Thence, continuing along said east line, South 0°54'21" East, 44.61 feet to an angle point therein, said point being marked by a found 5/8" iron rod with yellow plastic cap inscribed "COMPASS ENGINEERING"; Thence, continuing along said east line, South 0°19'07" East, 380.20 feet to a point on the north line of said Oregon State Highway 212/224; Thence, along said north line, North 89°23'03" East, 32.86 feet to the to the point of beginning.

Said tract of land contains 5.531 acres more or less.

Basis of bearings and boundary determination for this description is held from the Oregon Coordinate Reference System, Portland Zone (OCRS) and Record of Survey Number SN 2014-246, Clackamas County Surveyor's Office.



RENEWS: 12-31-15

Exhibit "B"

Sunrise JTA/Emmert lease  
December 18, 2014  
Development Agency

County Project No. DB-00028  
Map No. 22E 10D 01500 & 1590 adjusted  
Page 1 of 2

Tax Lot 1500 & 1590 (adjusted)

A portion of that tract of land being described in Statutory Warranty Deed Document Number 2007-081757, Clackamas County Deed Records. Said tract of land being situated in the northeast quarter of Section 10, Township 2 South, Range 2 East, of the Willamette Meridian, Clackamas County, Oregon, and more particularly described as follows:

Commencing at the southwest corner of that certain tract described in Contract of Sale to Sam R. Malfor and wife, recorded February 20, 1969 as Fee Number 69-2956, said point also being the southwest corner of that tract of land described in Deed Document Number 2011-069365, Clackamas County Deed Records, said point also being on the north right of way line of Oregon State Highway 212/224 (Clackamas Highway), said point being referenced by a found 5/8" diameter iron rod with an aluminum cap inscribed "COMPASS ENGINEERING", said monument bears North 0°14'11" West, 0.19 feet; Thence, along the west line of said Document Number 2011-069365 tract, North 0°14'11" West, 880.13 feet to the northwest corner of said Document Number 2011-069365 tract, said point also being the northwest corner of said Malfor tract, said point also being marked by a found 5/8" diameter iron rod with yellow plastic cap inscribed "COMPASS ENGINEERING"; Thence, along the north line of said Malfor tract and its easterly extension, also being the north line of those tracts of land described in Deed Document Numbers 2011-069365, 2013-008624, 2013-007839, 2011-039669 and 1992-005909 Clackamas County Deed Records, North 89°26'19" East, 489.67 feet to a point on the west line of that tract of land described as Parcel IV in Contract of Sale to Wilford E. Thatcher and wife, recorded January 20, 1970, said point being marked by a found punch mark on a sanitary manhole rim; Thence, along the west line of said Thatcher tract, North 0°45'36" West, 630.00 feet to the northeast corner of that tract of land described in Deed Document Number 78-6411, said point being the true point of beginning of the herein described tract of land; Thence, continuing along the west line of the said Thatcher tract, North 0°45'36" West, 192.00 feet to the northeast corner of said tract of land described at Parcel 1, Document Number 2007-081757; Thence, along the north line of said tract, South 89°26'44" West, 489.67 feet to a point on the east line of that tract of land conveyed to Joseph M. Exley by deed recorded February 19, 1969, Document Number 69-2817; Thence, along said east line, South 0°46'34" East, 351.40 feet to an point on the east - west centerline of said section 10; Thence, along said east - west line, South 89°53'44" East, 269.74 feet to a point on the west line of said Document Number 78-6411 tract; Thence, along said west line, North 0°45'36" West, 162.50 feet to the northwest corner of said tract; Thence, along the north line of said tract, North 89°26'44" East, 219.86 feet to the to the point of beginning.



<sup>B</sup>  
EXHIBIT B CONTINUED - Page 2 of 2  
12/18/14

Project DB-00028

Said tract of land contains 8.155 acres more or less.

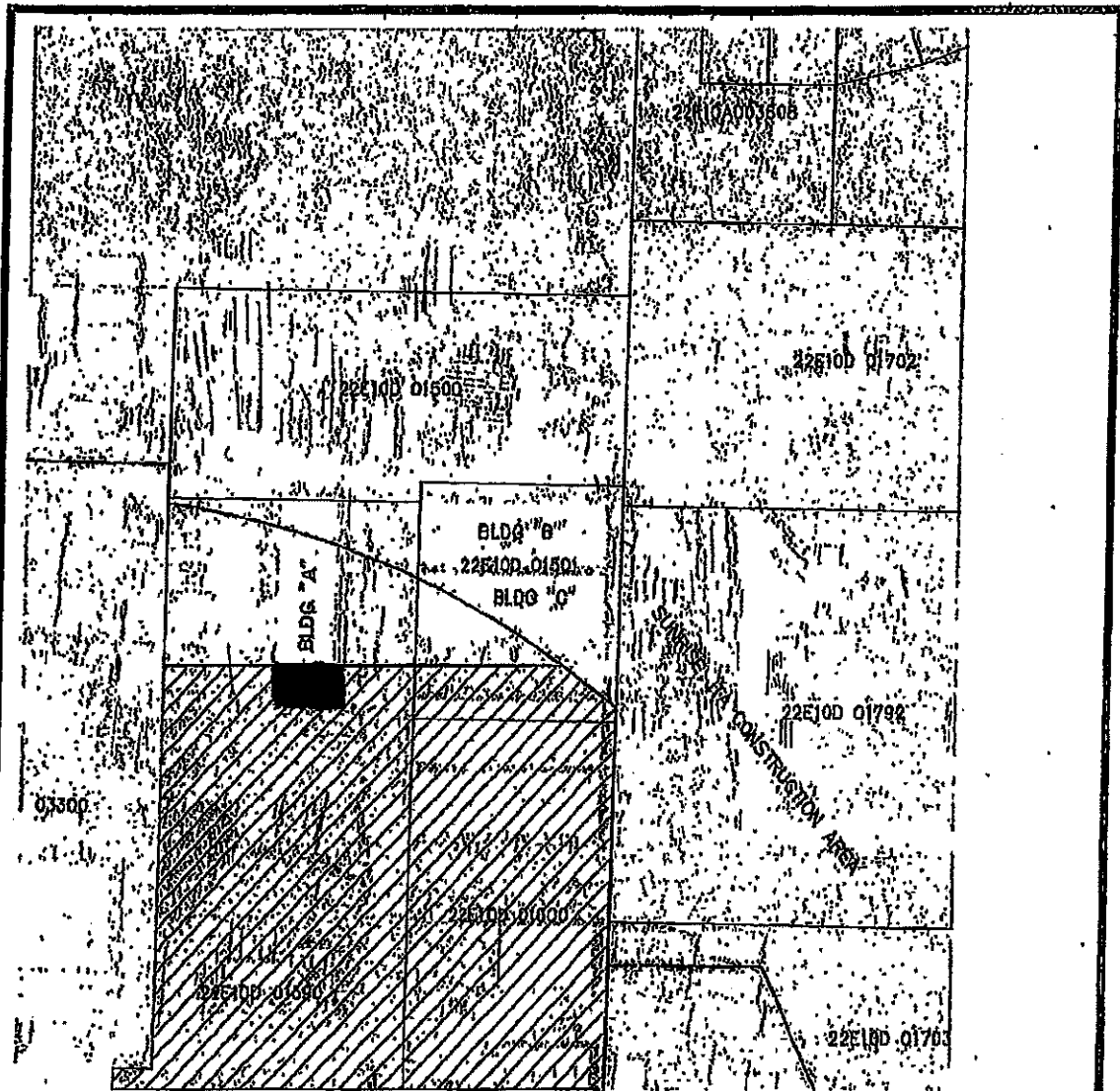
Basis of bearings and boundary determination for this description is held from the Oregon Coordinate Reference System, Portland Zone (OCRS) and Record of Survey Number SN 2014-246, Clackamas County Surveyor's Office.

REGISTERED  
PROFESSIONAL  
LAND SURVEYOR

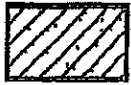
*Geffory N. Adair*  
OREGON  
FEBRUARY 08, 2000  
GEOFFORY N. ADAIR  
58984


RENEWS: 12-31-15


# Exhibit C



--- CONSTRUCTION  
IMPACT LINE

 **SERVIENT  
ESTATE**

 **EASEMENT  
AREA**

  
**CLACKAMAS  
COUNTY**

DEPARTMENT OF  
TRANSPORTATION  
AND  
DEVELOPMENT

**EXHIBIT "C"**  
HIGHWAY 212/122ND

RD. FILE NO.	DRAWN BY	DESIGN BY	DATE
			06-28-13



February 12, 2015

Board of County Commissioners  
Clackamas County

Members of the Board:

**APPROVAL OF CONSTRUCTION AGREEMENT  
BETWEEN CLACKAMAS COUNTY SERVICE DISTRICT NO. 1 AND REALM INC. FOR THE  
CLACKAMAS PUMP STATION WET WELL REHAB PROJECT**

<b>Purpose/Outcomes</b>	This pump stations wet well and appurtenances will be replaced, recoated and/or repaired to restore reliability and limit further damage from age and hydrogen sulfide.
<b>Dollar Amount and Fiscal Impact</b>	The agreement is for an amount not to exceed \$198,900.00 and is funded in the Clackamas County Service District #1 2014/2015 fiscal budget.
<b>Funding Source</b>	Clackamas County Service District #1
<b>Safety Impact</b>	Provides a safer means for crews to perform maintenance on submersible pumps and increases reliability of equipment in the wet well.
<b>Duration</b>	February 2014 thru May 2014
<b>Previous Board Action</b>	None
<b>Contact Person</b>	Dewayne Kliewer, PE, Project Manager WES 503-742-4572
<b>Contract No.</b>	P112135

**BACKGROUND:**

Originally constructed in the early '70's, the Clackamas Pump Station is in need of wet well rehabilitation work to restore the function and reliability of this vital pump station facility. The project is budgeted for and will be completed in fiscal year 2014/2015.

This project includes replacing corroded piping and controls, upgrading electrical connectivity of pumps, restoring deteriorated wet well walls and putting a protective coating on the wet well's interior. All labor and materials anticipated for this rehab work are included in the not to exceed amount.

The District publicly advertised the Clackamas County Service District #1 - Clackamas Pump Station Wet Well Rehab Project in the Daily Journal of Commerce on November 26, 2014 and December 3, 2014. This request for bids was also publicly advertised on the Water Environment Services website. The District then held a non-mandatory pre-bid site visit for potential bidders on December 4, 2014, providing opportunity for interaction between District personnel and potential bidders.

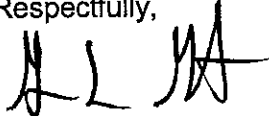
On December 16, 2014 the District opened received bids and confirmed that the low responsive bidder is eligible to perform work in the State of Oregon and is not on the States ineligible list. Of the bids received, it was determined that Realm Inc. is the low responsive bidder. Notice of Intent to Award was sent out to all bidders on December 22, 2014 and no bidder protests were received.

**RECOMMENDATION:**

For these reasons, Staff recommends:

1. The Board of County Commissioners, acting as the governing body of Clackamas County Service District #1, a county service district ("District"), and as the Local Contract Review Board, make a finding that advertisements for bids were properly published, that written bids were timely received by the District, and that bids were opened publicly at the designated time; and
2. The Board approve the contract for the Clackamas Pump Station Wet Well Rehab Project between Clackamas County Service District #1 and Realm Inc. for an amount not to exceed \$198,900.00; and
3. The Director of Water Environment Services be authorized to execute the agreement between Realm Inc. and Clackamas County Service District #1 without further Board action.

Respectfully,



Gregory L. Geist  
Interim WES Director

SECTION 00500

AGREEMENT

THIS AGREEMENT is dated as of the \_\_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_ by and between Clackamas County Service District No. 1 (hereinafter called OWNER) and ReaIm Inc.  
\_\_\_\_\_  
(hereinafter called Contractor).

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

Article 1. WORK

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

Clackamas Pump Station Wet Well Rehab Project

Article 2. THE PROJECT

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

Article 3. ENGINEER

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

Article 4. CONTRACT TIMES

- 4.1 All time limits for milestones, if any, substantial completion, and completion and readiness for final payment are stated in the Contract Documents and are of the essence of the Contract.
- 4.2 The Contractor shall commence work within 10 calendar days after receipt of written Notice-to-Proceed. Contractor shall substantially complete the Work identified within 60 calendar days of Notice-to-Proceed, and the Work shall be completed and ready for final payment in accordance with Paragraph 14.07 of the General Conditions within 75 calendar days after Notice-to-Proceed. The written notice to proceed will be forwarded to the Contractor after the Contractor submits the signed Agreement, Performance Bond and Payment Bond, and Certificate of Insurance to the OWNER and these documents have been approved as to form by the OWNER's attorney, signed by the OWNER.
- 4.3 Contractor and OWNER recognize that time is of the essence of this Agreement and that OWNER will suffer financial loss if the Work is not completed within the times specified in Paragraph 4.2 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. The parties also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by OWNER if the Work is not completed on time. Accordingly, instead of requiring any

such proof, OWNER and Contractor agree that as liquidated damages for delay (but not as a penalty) Contractor shall pay OWNER five hundred dollars (\$500.00) for each calendar day that expires after the time specified in Paragraph 4.2 above for Substantial Completion until the Work is substantially complete. After Substantial Completion, if Contractor shall neglect, refuse or fail to complete the remaining Work within the time specified in paragraph 4.2 above for completion and readiness for final payment or any proper extension thereof granted by OWNER, Contractor shall pay OWNER five hundred dollars (\$500.00) for each calendar day that expires after the time specified in Paragraph 4.2 above for completion and readiness for final payment, plus any fees or penalties imposed by regulators for other violations.

Article 5. CONTRACT PRICE

5.1 OWNER shall pay Contractor for completion of the Work in accordance with Contract Documents an amount in funds equal to the sum of the amounts determined pursuant to the paragraphs below:

A. Base Bid amount identified in the Bid Form.

Lump Sum Price: \$ 186,000.00  
(in figures)

B. Owner Contingency Allowance identified in the Bid Form: \$12,000.00

C. Bid Alternate "A" amount identified in the Bid Form.

Total Amount: \$ 900.00  
(in figures)

D. Total Bid Amount: \$ 198,900.00  
(in figures)

5.2 The Contract Price is the total price stated in Contractor's Bid, attached hereto as an exhibit.

Article 6. PREVAILING WAGE RATES

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

Article 7. PAYMENT PROCEDURES

7.1 Progress Payments and Retainage

A. Payment for all work under the Contract will be made at the price or prices bid, and those prices shall include full compensation for all incidental work.

- B. If the Contract is for a public work and the Contract price is \$50,000.00 or more, supply and file, and require every Subcontractor to supply and file, with the OWNER and with the Wage and Hour Division, Bureau of Labor and Industries, 1400 S.W. Fifth Avenue, Portland, Oregon 97201, a statement in writing that conforms to the requirements of ORS 279C.854. The schedule for submitting payroll information is as follows: Once before the first payment and once before the final payment is made; in addition, for projects exceeding ninety (90) days for completion, submissions are to be made at ninety (90) day intervals.
- C. Make progress estimate of work performed in any calendar month and submit to the Engineer for approval by the 5<sup>th</sup> day of the following month. These estimates shall include value of labor performed and materials incorporated in the work since commencing work under the Contract. Such estimates need not be made by strict measurements and may be approximate only, and shall be based upon the whole amount of money that will become due according to terms of the Contract when Project has been completed.
- D. If the Contract price is determined, in whole or in part, on a Lump Sum basis, prepare an itemized cost breakdown relating thereto and have the Engineer approve in accordance with Division 1 requirements; progress estimates based on said itemized cost breakdown may be the basis for progress payments. Upon direction by the Engineer provide for revision of the costs breakdown to reflect the true costs of the work as it progresses.
- E. If the Contract price is determined wholly on a unit basis, Engineer may use Unit Prices bid in making progress estimates on the work. In case said Unit Prices do not, in the opinion of the Engineer, truly represent actual relative costs of different parts of work, a percentage of the Unit Price may be used in making progress estimate adjustments.
- F. If the OWNER receives written notice of any unsettled claims for damages or other costs due to Contractor's operations including, without limitation, claims from any County Department or other governmental agency, an amount equal to the claim may be withheld from the progress or final payments until such claim has been resolved to the satisfaction of Engineer.
- G. Progress payments will be made by OWNER on a monthly basis within thirty (30) days after receipt of the Contractor's estimate of work performed, or 15 days after the payment is approved by the Engineer, whichever is the earlier date. Negotiable warrants will be issued by OWNER for the amount of the approved estimate, less five percent (5%) retainage. Such amount of retainage shall be withheld and retained by OWNER until it is included in and paid to Contractor as part of the final payment of the Contract amount. Securities in lieu of retainage will be accepted, or if Contractor elects, retainage as accumulated will be deposited by OWNER in an interest-bearing account pursuant to ORS Chapter 279 for progress payments. After fifty percent (50%) of the Work under Contract is completed, and the Work is progressing satisfactorily, the OWNER may elect to eliminate further retainage on any remaining monthly Contract payments. Said elimination or reduction of retainage shall be allowed only upon written application by the Contractor, which application shall include written approval of the Contractor's Surety.

- H. The Engineer may decline to approve an application for payment and may withhold such approval if, in the Engineer's opinion, the work has not progressed to the point indicated by the Contractor's submittal in paragraph C above. The Engineer may also decline to approve an application for payment or may reduce said payment or, because of subsequently discovered evidence or subsequent inspections, he may nullify the whole or any part of any payment previously made to such extent as may be necessary in his opinion to protect the OWNER from loss because of: (1) defective work not remedied, (2) third party claims filed or failure of the Contractor to make payments properly to Subcontractors for labor, materials or equipment, unless Surety consents to such payment, (3) reasonable doubt that the Work can be completed for the unpaid balance of the Contract sum, (4) damage to another contractor's work, (5) reasonable indication that the Work will not be completed within the Contract time (6) unsatisfactory prosecution of the Work by the Contractor, (7) claims against the Contractor by the OWNER, (8) failure of Contractor to submit updated project schedules as specified.

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

- I. If Contractor fails to complete the Project within the time limit fixed in the Contract or any extension, no further estimate may be accepted or progress or other payments allowed until the Project is completed, unless approved otherwise by OWNER.
- J. Progress estimates are for the sole purpose of determining progress payments and are not to be relied on for any other purpose. The making of a progress payment shall not be construed as an acceptance of any of the work or materials under the Contract.
- K. When the progress estimate indicates that the progress payment would be less than one thousand dollars (\$1000), no progress payment will be made for that estimate period, unless approved by the Engineer.
- L. Contractors are required to provide the OWNER with a list of Contractor's personnel who are authorized to personally receive contract payments. This written authorization must be signed by an officer of the Contracting company and will be placed on file in the OWNER's office. No payment will be released to an unauthorized person.

## 7.2 Final Estimate and Final Payment

- A. Pursuant to ORS Chapter 279C, notify the Engineer in writing when work is considered complete and Engineer shall, within fifteen (15) days after receiving notice, make a final inspection and either accept the work or notify Contractor of work yet to be performed on the Contract. If accepted, Engineer shall so notify Contractor, and will make a final estimate and prepare a Certificate of Completion recommending acceptance of the Work as of a certain date.



- B. If the Contractor believes the quantities and amounts specified in the final estimate and Certificate of Completion prepared by the Engineer to be incorrect, Contractor shall submit to the Engineer within fifteen (15) days of mailing of the Engineer's final estimate and Certificate of Completion to the Contractor's last known address as shown in the records of the OWNER, an itemized statement of any and all claims for additional compensation under the Contract which are based on differences in measurements or errors of computation. Any such claim not so submitted and supported by an itemized statement within said fifteen (15) day period is expressly waived and the OWNER shall not be obligated to pay the same. Nothing contained herein shall limit the requirements of Standard General Conditions; Section 00700, Subsection 10.05, *Claims*.
- C. Upon receipt of the executed Certificate of Completion from the Contractor, and approval by the Engineer, the Engineer will process the final payment.
- D. Provided Contractor submits a claim in the manner and time as required in B. above, the Engineer, as soon as practicable, will consider and investigate the claim or claims of the Contractor for compensation earned under the Contract and not included in the Engineer's final estimate and Certificate of Completion. The Engineer will then promptly advise the Contractor of acceptance or rejection of the claim in full or part. If the Engineer allows the Contractor's claims in full or in part, Engineer will prepare a revised final estimate and Certificate of Completion, including all such items allowed and will submit the same to the Contractor.
- E. The Contractor shall execute and return the revised Certificate of Completion within five (5) days of its receipt together with notice of his acceptance or rejection of the amount there stated as being full compensation earned under the Contract.
- F. If the Engineer rejects the claim or claims, he will issue written notice of rejection mailed to the Contractor's last known address as shown in the records of the OWNER.
- G. The Contractor shall commence any suit or action to collect or enforce the claim or claims for any additional compensation arising from differences in measurements or errors of computation in the final estimate within a period of one (1) year following the original mailing of the Engineer's final estimate and Certificate of Completion to the Contractor's last known address as shown in the records of the OWNER. The Engineer's issuance of a revised final estimate pursuant to this subsection does not alter the original final estimate date. If said suit, action or proceeding is not commenced in said one (1) year period, the final estimate and Certificate of Completion or revised final estimate and Certificate of Completion, if revisions are made, shall be conclusive with respect to the amount earned by the Contractor, and the Contractor expressly waives any and all claims for compensation and any and all causes of suit or action for the enforcement thereof that he might have had.
- H. Upon return of the fully executed Certificate of Completion from the Contractor, the Engineer will submit the Certificate of Completion and final estimate to the OWNER for approval. Upon approval and acceptance by the OWNER, Contractor will be paid a total payment equal to the amount due under the Contract including retainage.

- I. Monies earned by the Contractor are not due and payable until the procedures set forth in these Specifications for inspection, approval and acceptance of the Work, for determination of the work done and the amount due therefor, for the preparation of the final estimate and Certificate of Completion processing the same for payment, for consideration of the Contractor's claim, or claims, if any, and for the preparing of a revised final estimate and Certificate of Completion and processing same for payment have been carried out.
- J. Non-resident Contractor will provide OWNER with evidence that provisions of ORS Chapter 279A.120 have been satisfied; this is a prerequisite to final payment.
- K. Execute and deliver to OWNER, in form approved by the Attorney, a receipt for all amounts paid or payable to Contractor under the Contract, and a release and waiver of all claims against OWNER arising out of or relating to the Contract and furnish satisfactory evidence that all amounts due for labor, materials and other obligations under the Contract have been fully and finally settled or are fully covered by the Performance and Payment Bond and or insurance protecting OWNER, its officers, agents and employees as well as Contractor. This is a condition of final payment and Contractor will not be entitled to final payment on release of retainage nor interest thereon until execution and delivery of said Receipt, Release & Waiver.
- L. If OWNER declares a default of the Contract, and Surety completes said Contract, all payments after declaration of default and retainages held by OWNER shall be paid to Surety and not to Contractor in accordance with terms of the Contract.
- M. Acceptance by Contractor of final payment shall release OWNER and Engineer from any and all claims by Contractor whether known or unknown, arising out of and relating to the Work. No payment, however, final or otherwise shall operate to release Contractor or his Sureties from warranties or other obligations required in the performance of the Contract.

Article 8. CONTRACT DOCUMENTS

8.1 Contents

- A. The Contract Documents which comprise the entire agreement between OWNER and Contractor concerning the Work consist of the following:
  - 1. This Agreement
  - 2. Performance Bond
  - 3. Payment Bond
  - 4. General Conditions
  - 5. Supplementary Conditions

6. Specifications as listed in Table of Contents (Appendices and Plans) of the Contract Documents, to also include the prevailing wage rates for Public Works Contracts in Oregon.
  7. Drawings consisting of a cover sheet and sheets numbered 1 through 7 inclusive with each sheet bearing the following general title: *Clackamas Pump Station Wet Well Rehab.*
  8. Exhibits to this Agreement (enumerated as follows):
    - a. Addenda number(s) 1 to 1 included as Exhibit 1.
    - b. Bid Form
    - c. Bid Bond
    - d. Noncollusion Affidavit
    - e. Resident/Nonresident Bidder Status
    - f. Project Certification
    - g. First-tier Subcontractor Disclosure Form
  9. The following which may be delivered or issued on or after the effective Date of the Agreement and are not attached hereto:
    - a. Notice to Proceed.
    - b. Written Amendments.
    - c. Work Change Directives.
    - d. Change Order(s).
- B. The documents listed in Paragraph 8.1.A are attached to this Agreement (except as expressly noted otherwise above).

## 8.2 Coordination of Contract Requirements

- A. In general, in the case of a conflict or discrepancy between sections of the Contract Documents, the most stringent requirement and/or the highest quality product (as determined solely by the Engineer) shall be incorporated into the Work. The drawings and specifications are intended to describe and provide for a complete Work. Any requirement in one is as binding as if stated in all. The Contractor shall provide any work or material clearly implied in the Contract Documents even if the Contract Documents do not mention it specifically, using best industry practices. If there is still a conflict within the Contract Documents, it will be resolved in the sole judgment of the Engineer by the following order of precedence:

1. Permits from other agencies as may be required by law.
2. Owner-Contractor Agreement
3. Addenda and/or Change Orders
4. Bid Form
5. Supplementary Conditions
6. General Conditions
7. Technical Specifications, Divisions 1 through 16 with Division 1 taking precedence over Divisions 2 through 16
8. Drawings
9. Bonds

Dimensions shown on the drawings or that can be computed shall take precedence over scaled dimensions. Notes on drawings shall take precedence over drawing details.

### 8.3 Conflict of Provisions

- A. In the event of any conflicting provisions or requirements between the component parts of his Contract, the component part having the lowest number, as established in Subsection 8.2 above, shall govern.

This shall in no way relieve the performance bond and public liability insurance of their respective and specific protection to the Contractor, provided, however, that such sequence control does not conflict with the intent of or harm the product in any way. In case of such conflict which would alter the intent of or harm the product, the requirement which, in the opinion of the Engineer, will result in the best product will govern. It is hereby agreed that the entire project shall be completed in accordance with the full intent of the Contract, regardless of conflicting statements, omissions, or errors. The intent of the drawings and Specifications is to outline and control the work in a manner necessary to result in the best completely finished product practicable, at a minimum cost, incorporating all items. Any omissions in the Plans and Specifications pertinent to the requirements of the specified bid items are unintentional. If such are found, the Contractor will be required to perform the work in a customary workmanlike manner to achieve the intent as stated above.

It shall be definitely understood that omissions of one or more of the Documents shall not be construed as conflicting provisions. Any requirement given in one Document shall be known to be binding as though it is repeated in all Documents alike. The intent of the Contract is to combine all requirements of all Documents into one.

## Article 9. MISCELLANEOUS

- 9.1 Terms used in this Agreement will have the meaning indicated in the General Conditions, and as revised by Supplementary Conditions.
- 9.2 No assignment by a party hereto of any rights under or interests in the Contract will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, moneys that may become due and moneys

that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

- 9.3 OWNER and Contractor each binds itself, its partners, successors, assignees, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.
- 9.4 Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon OWNER and Contractor, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.
- 9.5 Two Year Maintenance and Warranty
- A. In addition to and not in lieu of any other warranties required under the Contract, make all necessary repairs and replacements to remedy, in a manner satisfactory to the OWNER and at no cost to OWNER, any and all defects, breaks, or failures of the Work occurring within two (2) years following the date of Acceptance of the Work due to faulty or inadequate materials or workmanship. Repair damage or disturbances to other improvements under, within, or adjacent to the Work, whether or not caused by settling, washing, or slipping, when such damage or disturbance is caused, in whole or in part, from activities of the Contractor in performing his duties and obligations under this Contract when such defects or damage occur within the warranty period. The two-year maintenance period required shall, with relation to such required repair, be extended two (2) years from the date of completion of such repair. Where equipment or systems are specified to have a longer warranty period, Contractor shall be bound to the longer warranty period for the specific equipment and/or systems.
- B. If Contractor, after written notice, fails within ten (10) days to proceed to comply with the terms of this section, OWNER may have the defects corrected, and Contractor and Contractor's Surety shall be liable for all expense incurred. In case of an emergency where, in the opinion of the OWNER, delay would cause serious loss or damage, repairs may be made without notice being given to Contractor and Contractor or Surety shall pay the cost of repairs. Failure of the OWNER to act in case of an emergency shall not relieve Contractor or Surety from liability and payment of all such costs.
- C. As a means of providing surety during the maintenance period, the Contractor shall provide to the OWNER written and legally attested proof of surety in the amount of not less than 10 percent of the final contract amount. The maintenance guarantee shall be one of the following types:
1. Continuance of the contract performance bond at the original or a reduced amount.

2. Maintenance bond in a format and with the conditions acceptable to the OWNER.
3. Cash deposit to the OWNER's Treasury, with a treasurer's receipt acting as proof of surety.
4. Other arrangements, as may be proposed by the contractor and accepted by the OWNER.

Article 10. GOVERNING LAW

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

Article 11. ASSIGNMENT OF ANTITRUST RIGHTS

- 11.1 By entering into this Agreement, the Contractor irrevocably assigns to OWNER any claim or cause of action which the Contractor now has or which may accrue in the future, including at OWNER's option, the right to control any such litigation, by reason of any violation of 15 USC Section 1-15 or ORS 646.725 or ORS 646.730, in connection with any goods or services provided to the Contractor by any person which are used, in whole or in part, for the purpose of carrying out the Contractor's obligations under this Agreement.
- 11.2 Contractor shall require any subcontractor to irrevocably assign to the OWNER, as a third party beneficiary, any right, title or interest that has accrued or may accrue to the subcontractor by reason of any violation of 15 USC Section 1-15, ORS 646.725 or ORS 646.730, including, at the OWNER's option, the right to control any litigation arising thereunder, in connection with any goods or services provided to the subcontractor by any person, in whole or in part, for the purpose of carrying out the subcontractor's obligations as agreed to by the Contractor in pursuance of the completion of this Agreement.
- 11.3 In connection with this assignment, it is an express obligation of the Contractor that it shall take no action which any way diminishes the value of the rights conveyed or assigned hereunder to the OWNER. It is an express obligation of the Contractor to advise the OWNER's legal counsel:
  - A. In advance of its intention to commence any action on its own behalf regarding such claims or causes of action;
  - B. Immediately, upon becoming aware of the fact that an action has been commenced on its own behalf by some other person or persons, of the pendency of such action; and
  - C. The date on which it notified the obligor(s) of any such claims for relief or causes of action of the fact of its assignments to the OWNER.
- 11.4 Furthermore, it is understood or agreed that in the event that any payment under any such claim is made to the Contractor, it shall promptly pay over to the OWNER its proportionate share thereof, if any, assigned to the OWNER hereunder.

Article 12. RECORDS RETENTION

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

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

WATER ENVIRONMENT SERVICES  
for  
CLACKAMAS COUNTY SERVICE DISTRICT NO. 1

CONTRACTOR:

OWNER:

Realm Inc.

Company

Director


P.O. Box 580

Address

Date

DuPont, Washington 98327

City, State, Zip

  
Authorized Signature

President

Title

93-1185537

Federal Tax ID Number

January 21, 2015

Date

APPROVED AS TO FORM

  
County Counsel

END OF SECTION



BOND #DAACSU0641156

SECTION 00610

PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS, that we Realm, Inc.

as PRINCIPAL, and International Fidelity Insurance Company

a corporation, duly authorized to do a general surety business in Oregon, as SURETY, and jointly and severally held and bound unto

Clackamas County Service District No. 1

the OBLIGEE herein, in the sum of One Hundred Ninety Eight Thousand Nine Hundred and no/100

(dollars) (\$) 198,900.00

for the payment of which we jointly and severally bind ourselves, our heirs, executors, administrators, successors, and assigns, firmly by these presents:

THE CONDITION OF THIS BOND IS SUCH THAT

WHEREAS, Realm, Inc.  
(Contractor)

*← contract date*

the PRINCIPAL herein, on the \_\_\_\_\_ day of \_\_\_\_\_ entered into a contract with the OBLIGEE which contract documents consist of the "Invitation to Bid", the "Instructions to Bidders", the "Bid Proposal", the "Bid Bond", the "Performance Bond and the Payment Bond", the "Certificate of Insurance", the "Prevailing Wage Rates for Public Works Contracts in Oregon", the "General Conditions", the "Supplementary General Conditions", the "Specifications including Divisions 01 through 16", the "Appendices", the "Plans and Drawings", and the "Agreement Form" all as hereto attached and made a part hereof, whereby said PRINCIPAL undertakes to do all labor, furnish all plant and equipment, and furnish all material, in accordance with all the terms and conditions set forth in said contract documents; and to save harmless the OBLIGEE from any claim for damages or injury to property or persons arising by reason of said work, as set out more fully in said contract documents; and to do and perform all things in said contract documents required, in the time and manner under the terms and conditions therein set forth; and in conformity with all laws, state and national, applicable thereto.

NOW, THEREFORE, if said PRINCIPAL herein shall commencing with the date hereof and continuing for two years after the complete performance of the contract and the final acceptance of the work in the contract, save harmless the OBLIGEEs, its officers and agents, from all claims therefore, or from any claim for damages or injury to property or persons arising by reason of said work; and shall, in the time

and manner, and under the terms and conditions prescribed, well and faithfully do, perform, and furnish all matters and things as by them in said contract undertaken, and as by law, state and national, prescribed, then this obligation shall be void; but otherwise it shall remain in full force and effect.

PROVIDED, HOWEVER, that this bond is subject to the following conditions:

(a) In no event shall the SURETY be liable for a greater sum than the penalty of this bond.

(b) The said SURETY for the value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to the work to be performed thereunder or the specifications accompanying the same shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract or to the work or to the specifications.

(c) The PRINCIPAL herein shall faithfully and truly observe and comply with the terms of the contract and shall well and truly perform all matters and things by him undertaken to be performed under said contract upon the terms proposed therein and shall promptly, as due, make payment to any person, copartnership, association, or corporation furnishing medical, surgical and hospital care or other needed care and attention incidental to sickness or injury to the employees of such PRINCIPAL, pursuant to the laws of this state and any contract entered into pursuant thereto or collected or deducted from the wages of said employees pursuant to any law, contract or agreement for the purpose of providing or paying for such services, and shall do all things required of said PRINCIPAL by the laws of this state.


This bond is given and received under the authority of ORS Chapter 279, the provisions of which hereby are incorporated into this bond and made a part hereof.

Provide the following information:

Bond #: DAACSU0641156  
Agent Contact Name: Jim Kuich  
Agent Address: PO Box 3018, Bothell, WA 98041-3018  
Agent Phone Number: (425)489-4500

IN WITNESS WHEREOF, the parties hereto have caused \_\_\_\_\_ day of \_\_\_\_\_ in one original, this \_\_\_\_\_ day of \_\_\_\_\_ ← contract date.

Realm, Inc. \_\_\_\_\_ (SEAL)

 \_\_\_\_\_ (SEAL)

Dave Follett \_\_\_\_\_ (SEAL)

President \_\_\_\_\_ (SEAL)

PRINCIPLE

WITNESSES:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

International Fidelity Insurance Company (SEAL)

 \_\_\_\_\_ (SEAL)

Jim S. Kuich, Attorney-in-fact \_\_\_\_\_ (SEAL)

~~XXXXXX~~

SURETY

The attorney-in-fact who executes this bond in behalf of the surety company, must attach a copy of his power-of-attorney as evidence of his authority.

To each executed original of this bond, there must be attached a complete set of the contract documents, as the term is defined in Section 00500 Agreement, Article 8.1.A, with all corrections, interlineations, signatures, etc., completed reproduced therein.

END OF SECTION

BOND #DAACSU0641156

SECTION 00620

PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS, that we Realm, Inc.

as PRINCIPAL, and International Fidelity Insurance Company

a corporation, duly authorized to do a general surety business in Oregon, as SURETY, and jointly and severally held and bound unto

Clackamas County Service District No. 1

the OBLIGEE herein, in the sum of One Hundred Ninety Eight Thousand Nine Hundred and no/100

(dollars) (\$) 198,900.00

for the payment of which we jointly and severally bind ourselves, our heirs, executors, administrators, successors, and assigns, firmly by these presents:

THE CONDITION OF THIS BOND IS SUCH THAT

WHEREAS, Realm, Inc.  
(Contractor)

*← Contract date*

the PRINCIPAL herein, on the \_\_\_\_\_ day of \_\_\_\_\_ and a contract with the OBLIGEE which contract documents consist of the "Invitation to Bid"; the "Instructions to Bidders", the "Bid Proposal", the "Bid Bond", the "Performance Bond and the Payment Bond", the "Certificate of Insurance", the "Prevailing Wage Rates for Public Works Contracts in Oregon", the "General Conditions", the "Supplementary General Conditions", the "Specifications including Divisions 01 through 16", the "Appendices", the "Plans and Drawings", and the "Agreement Form" all as hereto attached and made a part hereof, whereby said PRINCIPAL undertakes to promptly make payment for all labor, services, material, and sums due the workmen's compensation board or equivalent, the collector of internal revenue, the unemployment compensation trust fund, and the treasurer of the State of Oregon in conformity with all laws, state and national, applicable thereto.

NOW, THEREFORE, if said PRINCIPAL herein shall promptly pay all persons furnishing labor, services and material, and sums due for workmen's compensation insurance or equivalent, social security and unemployment compensation, sums due to the Department of Revenue, to him and to his subcontractor, or to their assigns, on or about said work then this obligation shall be void; but otherwise it shall remain in full force and effect.

PROVIDED, HOWEVER, that this bond is subject to the following conditions:

(a) All materialmen, and all persons who shall supply such laborers, mechanics, or subcontractors with material, supplies or provisions for carrying on such work, shall have a direct right of action against the PRINCIPAL and SURETY on this bond, second only to the right of the OBLIGEE under this bond, which right of action shall be asserted in proceedings instituted in the appropriate court of the State of Oregon, and insofar as permitted by the laws of Oregon, such right of action shall be asserted in a proceeding instituted in the name of the OBLIGEE to the use and benefit of the person, firm, or corporation instituting such action and of all other persons, firms, or corporations having claims hereunder, and any other person, firm or corporation having a claim hereunder shall have the right to be made a party to such proceeding (but not later than one year after the complete performance of said contract and final acceptance of the work in the contract) and to have such claim adjudicated in such action and judgment rendered thereon.

(b) In no event shall the SURETY be liable for a greater sum than the penalty of this bond.

(c) The said SURETY for the value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to the work to be performed thereunder or the specifications accompanying the same shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract or to the work or to the specifications.

(d) The PRINCIPAL herein shall faithfully and truly observe and comply with the terms of the contract and shall promptly make payments to all persons supplying labor or material for any prosecution of the work provided for in such contract and shall not permit any lien or claim to be filed or prosecution against the OBLIGEEs, on account of any labor or material furnished, and shall promptly pay all contributions or amount due the workmen's compensation board or equivalent and all contributions or amounts due the state employment compensation trust fund incurred in the performance of said contract, and shall also pay all sums of money withheld from the employees and payable to the state tax commission pursuant to ORS 316.711, and shall do all things required of said PRINCIPAL by the laws of this state.

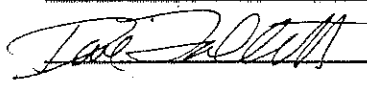
This bond is given and received under the authority of ORS Chapter 279, the provisions of which hereby are incorporated into this bond and made a part hereof.

Provide the following information:

Bond #: DAACSU0641156  
Agent Contact Name: Jim Kuich  
Agent Address: PO Box 3018, Bothell, WA 98041-3018  
Agent Phone Number: (425)489-4500

IN WITNESS WHEREOF, the parties hereto have <sup>← Contract date</sup> this bond to be executed in one original, this \_\_\_ day of \_\_\_\_\_

Realm, Inc. \_\_\_\_\_ (SEAL)

 \_\_\_\_\_ (SEAL)

Dave Follett \_\_\_\_\_ (SEAL)

President \_\_\_\_\_ (SEAL)

PRINCIPLE

WITNESSES:

\_\_\_\_\_ International Fidelity Insurance Company (SEAL)

\_\_\_\_\_  (SEAL)

\_\_\_\_\_ Jim S. Kuich, Attorney-in-fact (SEAL)

~~SURETY~~

SURETY

The attorney-in-fact who executes this bond in behalf of the surety company, must attach a copy of his power-of-attorney as evidence of his authority.

To each executed original of this bond, there must be attached a complete set of the contract documents, as the term is defined in Section 00500 Agreement, Article 8.1.A, with all corrections, interlineations, signatures, etc., completed reproduced therein.

END OF SECTION

# POWER OF ATTORNEY

## INTERNATIONAL FIDELITY INSURANCE COMPANY ALLEGHENY CASUALTY COMPANY

ONE NEWARK CENTER, 20TH FLOOR, NEWARK, NEW JERSEY 07102-6207

KNOW ALL MEN BY THESE PRESENTS: That INTERNATIONAL FIDELITY INSURANCE COMPANY, a corporation organized and existing under the laws of the State of New Jersey, and ALLEGHENY CASUALTY COMPANY a corporation organized and existing under the laws of the State of Pennsylvania, having their principal office in the City of Newark, New Jersey, do hereby constitute and appoint

JIM S. KUICH, MARYANNE CHANDLER, ANDY PRILL, THERESA A. LAMB, NANCY J. OSBORNE,  
STEVE WAGNER, DALE AHRÉNS, MICHAEL A. MURPHY, JIM W. DOYLE, JULIE M. GLOVER,  
DARLENE JAKIELSKI, CHAD M. EPPLE, BRANDON K. BUSH

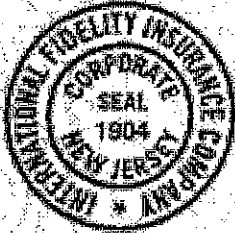
Bothell, WA.

their true and lawful attorney(s)-in-fact to execute, seal and deliver for and on its behalf as surety, any and all bonds and undertakings, contracts of indemnity and other writings obligatory in the nature thereof, which are or may be allowed, required or permitted by law, statute, rule, regulation, contract or otherwise, and the execution of such instrument(s) in pursuance of these presents, shall be as binding upon the said INTERNATIONAL FIDELITY INSURANCE COMPANY and ALLEGHENY CASUALTY COMPANY, as fully and amply, to all intents and purposes, as if the same had been duly executed and acknowledged by their regularly elected officers at their principal offices.

This Power of Attorney is executed, and may be revoked, pursuant to and by authority of the By-Laws of INTERNATIONAL FIDELITY INSURANCE COMPANY and ALLEGHENY CASUALTY COMPANY and is granted under and by authority of the following resolution adopted by the Board of Directors of INTERNATIONAL FIDELITY INSURANCE COMPANY at a meeting duly held on the 20th day of July, 2010 and by the Board of Directors of ALLEGHENY CASUALTY COMPANY at a meeting duly held on the 15th day of August, 2000:

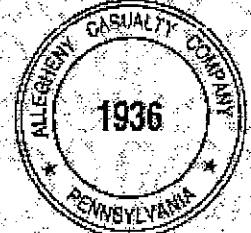
"RESOLVED, that (1) the President, Vice President, Executive Vice President or Secretary of the Corporation shall have the power to appoint, and to revoke the appointments of, Attorneys-in-Fact or agents with power and authority as defined or limited in their respective powers of attorney, and to execute on behalf of the Corporation and affix the Corporation's seal thereto, bonds, undertakings, recognizances, contracts of indemnity and other written obligations in the nature thereof or related thereto; and (2) any such Officers of the Corporation may appoint and revoke the appointments of joint-control custodians, agents for acceptance of process, and Attorneys-in-fact with authority to execute waivers and consents on behalf of the Corporation; and (3) the signature of any such Officer of the Corporation and the Corporation's seal may be affixed by facsimile to any power of attorney or certification given for the execution of any bond, undertaking, recognizance, contract of indemnity or other written obligation in the nature thereof or related thereto, such signature and seals when so used whether heretofore or hereafter, being hereby adopted by the Corporation as the original signature of such officer and the original seal of the Corporation, to be valid and binding upon the Corporation with the same force and effect as though manually affixed."

IN WITNESS WHEREOF, INTERNATIONAL FIDELITY INSURANCE COMPANY and ALLEGHENY CASUALTY COMPANY have each executed and attested these presents on this 12th day of March, 2012.



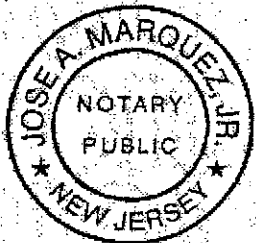
STATE OF NEW JERSEY  
County of Essex

ROBERT W. MINSTER  
Executive Vice President/Chief Operating Officer  
(International Fidelity Insurance Company)  
and President (Allegheny Casualty Company)



On this 12th day of March 2012, before me came the individual who executed the preceding instrument, to me personally known, and, being by me duly sworn, said he is the therein described and authorized officer of INTERNATIONAL FIDELITY INSURANCE COMPANY and ALLEGHENY CASUALTY COMPANY; that the seals affixed to said instrument are the Corporate Seals of said Companies; that the said Corporate Seals and his signature were duly affixed by order of the Boards of Directors of said Companies.

IN TESTIMONY WHEREOF, I have hereunto set my hand affixed my Official Seal, at the City of Newark, New Jersey the day and year first above written.



A NOTARY PUBLIC OF NEW JERSEY  
My Commission Expires Nov. 21, 2015

### CERTIFICATION

I, the undersigned officer of INTERNATIONAL FIDELITY INSURANCE COMPANY and ALLEGHENY CASUALTY COMPANY do hereby certify that I have compared the foregoing copy of the Power of Attorney and affidavit, and the copy of the Sections of the By-Laws of said Companies as set forth in said Power of Attorney, with the originals on file in the home office of said companies, and that the same are correct transcripts thereof, and of the whole of the said originals, and that the said Power of Attorney has not been revoked and is now in full force and effect.

IN TESTIMONY WHEREOF, I have hereunto set my hand this

day of

← contract date

MARIA BRANCO, Assistant Secretary



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
1/13/2015

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> Hub International Northwest LLC 12100 NE 195th St. Suite 200 Bothell, WA 98011	<b>CONTACT NAME:</b> PHONE (A/C, No, Ext): (425) 489-4500      FAX (A/C, No): (425) 485-8489	
	<b>E-MAIL ADDRESS:</b>	
<b>INSURED</b>  Realm, Inc. PO Box 580 DuPont, WA 98327	<b>INSURER(S) AFFORDING COVERAGE</b> NAIC #	
	<b>INSURER A: American Fire and Casualty Company</b> 24066	
	<b>INSURER B: Ohio Casualty Insurance Company</b> 24074	
	<b>INSURER C:</b>	
	<b>INSURER D:</b>	
<b>INSURER E:</b>		
<b>INSURER F:</b>		

**COVERAGES**      **CERTIFICATE NUMBER:**      **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSD YWVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> <b>COMMERCIAL GENERAL LIABILITY</b> <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> <b>Stop Gap \$1M</b>  GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC <input type="checkbox"/> OTHER		BKA55671290	08/19/2014	08/19/2015	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 15,000 PERSONAL & ADV INJURY \$ 2,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 \$
A	<b>AUTOMOBILE LIABILITY</b> <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS		BAA55671290	08/19/2014	08/19/2015	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
B	<input checked="" type="checkbox"/> <b>UMBRELLA LIAB</b> <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$ 10,000		USO55671290	08/19/2014	08/19/2015	EACH OCCURRENCE \$ 4,000,000 AGGREGATE \$ 4,000,000 \$
A	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) <input type="checkbox"/> Y/N If yes, describe under DESCRIPTION OF OPERATIONS below	N/A	BKA55671290	08/19/2014	08/19/2015	<input type="checkbox"/> PER STATUTE <input checked="" type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)  
RE: CCSD#1, CLACKAMAS PUMP STATION WET WELL REHAB PROJECT  
ADDITIONAL INSURED AS REQUIRED BY WRITTEN CONTRACT: CLACKAMAS COUNTY SERVICE DISTRICT NO.1, CLACKAMAS COUNTY, DESIGNATED EMPLOYEES OF CLACKAMAS COUNTY, CENTURY WEST ENGINEERING, AND THEIR OFFICERS, DIRECTORS, PARTNERS, EMPLOYEES, AND AGENTS. COVERAGE IS PRIMARY AND NON-CONTRIBUTORY. COMPLETED OPERATIONS AND WAIVER OF SUBROGATION APPLY. SEE ATTACHED ENDORSEMENTS.

**CERTIFICATE HOLDER**      **CANCELLATION**

CLACKAMAS COUNTY SERVICE DISTRICT NO.1 150 BEAVERCREEK ROAD Oregon City, OR 97045	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.  AUTHORIZED REPRESENTATIVE <i>Justine Bennett</i>
---	---



**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**ADDITIONAL INSURED – OWNERS, LESSEES OR  
CONTRACTORS – SCHEDULED PERSON OR  
ORGANIZATION**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

**SCHEDULE**

Name Of Additional Insured Person(s) Or Organization(s)	Location(s) Of Covered Operations
CLACKAMAS COUNTY SERVICE DISTRICT NO.1 150 BEAVERCREEK ROAD Oregon City OR 97045	CCSD#1, CLACKAMAS PUMP STATION WET WELL REHAB PROJECT
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

**A. Section II – Who Is An Insured** is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

1. Your acts or omissions; or
2. The acts or omissions of those acting on your behalf;

in the performance of your ongoing operations for the additional insured(s) at the location(s) designated above.

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

**B.** With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to "bodily injury" or "property damage" occurring after:

1. All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or
2. That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

C. With respect to the insurance afforded to these additional insureds, the following is added to **Section III – Limits Of Insurance:**

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or

2. Available under the applicable Limits of Insurance shown in the Declarations;

whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – COMPLETED OPERATIONS**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART  
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

**SCHEDULE**

Name Of Additional Insured Person(s) Or Organization(s)	Location And Description Of Completed Operations
CLACKAMAS COUNTY SERVICE DISTRICT NO.1 150 BEAVERCREEK ROAD Oregon City, OR 97045	CCSD#1, CLACKAMAS PUMP STATION WET WELL REHAB PROJECT
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

**A. Section II – Who Is An Insured** is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury" or "property damage" caused, in whole or in part, by "your work" at the location designated and described in the Schedule of this endorsement performed for that additional insured and included in the "products-completed operations hazard".

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

**B. With respect to the insurance afforded to these additional insureds, the following is added to Section III – Limits Of Insurance:**

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or
2. Available under the applicable Limits of Insurance shown in the Declarations;

whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**BLANKET ADDITIONAL INSURED  
CONTRACTORS - PRODUCTS/COMPLETED OPERATIONS**

This endorsement modifies insurance provided under the following:

**COMMERCIAL GENERAL LIABILITY COVERAGE PART**

- A.** Paragraph 2. under Section II - Who Is An Insured is amended to include as an insured any person or organization whom you have agreed to add as an additional insured in a written contract or written agreement. Such person or organization is an additional insured but only with respect to liability for "bodily injury" or "property damage":
1. Caused by "your work" performed for that additional insured that is the subject of the written contract or written agreement; and
  2. Included in the "products-completed operations hazard".

The insurance provided by this endorsement applies only if the written contract or written agreement is signed prior to the "bodily injury" or "property damage".

We have no duty to defend an additional insured under this endorsement until we receive written notice of a "suit" by the additional insured as required in Paragraph b. of Condition 2. Duties In The Event Of Occurrence, Offense, Claim Or Suit under Section IV - Commercial General Liability Conditions.

- B.** With respect to the insurance provided by this endorsement, the following are added to Paragraph 2. Exclusions under Section I - Coverage A - Bodily Injury And Property Damage Liability:

This insurance does not apply to:

1. "Bodily injury" or "property damage" that occurs prior to you commencing operations at the location where such "bodily injury" or "property damage" occurs.
2. "Bodily injury" or "property damage" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services including:
  - a. The preparing, approving or failure to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawing and specifications; and
  - b. Supervisory, inspection, architectural or engineering activities.

- C. With respect to the insurance afforded by this endorsement, exclusion I. **Damage To Your Work** of Paragraph 2. **Exclusions** under **Section I - Coverage A - Bodily Injury And Property Damage Liability** is replaced by the following:

**I. Damage To Your Work**

"Property damage" to "your work" arising out of it or any part of it and included in the "products-completed operations hazard".

- D. The limits of insurance applicable to the additional insured are those specified in a written contract or written agreement or the limits of insurance as stated in the Declarations of this policy and defined in **Section III - Limits Of Insurance** of this policy, whichever are less. These limits are inclusive of and not in addition to the limits of insurance available under this policy.
- E. With respect to the insurance afforded by this endorsement, **Section IV - Commercial General Liability Conditions** is amended as follows:

**1. The following is added to Paragraph 2. Duties In The Event Of Occurrence, Offense, Claims Or Suit:**

An additional insured under this endorsement will as soon as practicable:

- a. Give written notice of an "occurrence" or an offense that may result in a claim or "suit" under this insurance to us;
- b. Tender the defense and indemnity of any claim or "suit" to all insurers whom also have insurance available to the additional insured; and
- c. Agree to make available any other insurance which the additional insured has for a loss we cover under this Coverage Part.
- d. We have no duty to defend or indemnify an additional insured under this endorsement until we receive written notice of a "suit" by the additional insured.

**2. Paragraph 4. of Section IV - Commercial General Liability Conditions is amended as follows:**

**a. The following is added to Paragraph a. Primary Insurance:**

If an additional insured's policy has an Other Insurance provision making its policy excess, and you have agreed in a written contract or written agreement to provide the additional insured coverage on a primary and noncontributory basis, this policy shall be primary and we will not seek contribution from the additional insured's policy for damages we cover.

**b. The following is added to Paragraph b. Excess Insurance:**

When a written contract or written agreement, other than a premises lease, facilities rental contract or agreement, an equipment rental or lease contract or agreement, or permit issued by a state or political subdivision between you and an additional insured does not require this insurance to be primary or primary and non-contributory, this insurance is excess over any other insurance for which the additional insured is designated as a Named insured.

Regardless of the written agreement between you and an additional insured, this insurance is excess over any other insurance whether primary, excess, contingent or on any other basis for which the additional insured has been added as an additional insured on other policies.

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## COMMERCIAL GENERAL LIABILITY EXTENSION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

### INDEX

<u>SUBJECT</u>	<u>PAGE</u>
NON-OWNED AIRCRAFT	2
NON-OWNED WATERCRAFT	2
PROPERTY DAMAGE LIABILITY - ELEVATORS	2
EXTENDED DAMAGE TO PROPERTY RENTED TO YOU (Tenant's Property Damage)	2
MEDICAL PAYMENTS EXTENSION	3
EXTENSION OF SUPPLEMENTARY PAYMENTS - COVERAGES A AND B	3
ADDITIONAL INSUREDS - BY CONTRACT, AGREEMENT OR PERMIT	3
PRIMARY AND NON-CONTRIBUTORY- ADDITIONAL INSURED EXTENSION	5
ADDITIONAL INSUREDS- EXTENDED PROTECTION OF YOUR "LIMITS OF INSURANCE"	5
WHO IS AN INSURED - INCIDENTAL MEDICAL ERRORS/MALPRACTICE AND WHO IS AN INSURED - FELLOW EMPLOYEE EXTENSION - MANAGEMENT EMPLOYEES	6
NEWLY FORMED OR ADDITIONALLY ACQUIRED ENTITIES	6
FAILURE TO DISCLOSE HAZARDS AND PRIOR OCCURRENCES	7
KNOWLEDGE OF OCCURRENCE, OFFENSE, CLAIM OR SUIT	7
LIBERALIZATION CLAUSE	7
BODILY INJURY REDEFINED	7
EXTENDED PROPERTY DAMAGE	7
WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US - WHEN REQUIRED IN A CONTRACT OR AGREEMENT WITH YOU	7

With respect to coverage afforded by this endorsement, the provisions of the policy apply unless modified by the endorsement.

#### A. NON-OWNED AIRCRAFT

Under Paragraph 2. Exclusions of Section I - Coverage A - Bodily Injury And Property Damage Liability, exclusion g. Aircraft, Auto Or Watercraft does not apply to an aircraft provided:

1. It is not owned by any insured;
2. It is hired, chartered or loaned with a trained paid crew;
3. The pilot in command holds a currently effective certificate, issued by the duly constituted authority of the United States of America or Canada, designating her or him a commercial or airline pilot; and
4. It is not being used to carry persons or property for a charge.

However, the insurance afforded by this provision does not apply if there is available to the Insured other valid and collectible insurance, whether primary, excess (other than insurance written to apply specifically in excess of this policy), contingent or on any other basis, that would also apply to the loss covered under this provision.

#### B. NON-OWNED WATERCRAFT

Under Paragraph 2. Exclusions of Section I - Coverage A - Bodily Injury And Property Damage Liability, Subparagraph (2) of exclusion g. Aircraft, Auto Or Watercraft is replaced by the following:

This exclusion does not apply to:

- (2) A watercraft you do not own that is:
  - (a) Less than 52 feet long; and
  - (b) Not being used to carry persons or property for a charge.

#### C. PROPERTY DAMAGE LIABILITY - ELEVATORS

1. Under Paragraph 2. Exclusions of Section I - Coverage A - Bodily Injury And Property Damage Liability, Subparagraphs (3), (4) and (6) of exclusion j. Damage To Property do not apply if such "property damage" results from the use of elevators. For the purpose of this provision, elevators do not include vehicle lifts. Vehicle lifts are lifts or hoists used in automobile service or repair operations.
2. The following is added to Section IV - Commercial General Liability Conditions, Condition 4. Other Insurance, Paragraph b. Excess Insurance:

The insurance afforded by this provision of this endorsement is excess over any property insurance, whether primary, excess, contingent or on any other basis.

#### D. EXTENDED DAMAGE TO PROPERTY RENTED TO YOU (Tenant's Property Damage)

If Damage To Premises Rented To You is not otherwise excluded from this Coverage Part:

1. Under Paragraph 2. Exclusions of Section I - Coverage A - Bodily Injury and Property Damage Liability:
  - a. The fourth from the last paragraph of exclusion j. Damage To Property is replaced by the following:

Paragraphs (1), (3) and (4) of this exclusion do not apply to "property damage" (other than damage by fire, lightning, explosion, smoke, or leakage from an automatic fire protection system) to:

    - (i) Premises rented to you for a period of 7 or fewer consecutive days; or
    - (ii) Contents that you rent or lease as part of a premises rental or lease agreement for a period of more than 7 days.

Paragraphs (1), (3) and (4) of this exclusion do not apply to "property damage" to contents of premises rented to you for a period of 7 or fewer consecutive days.

A separate limit of insurance applies to this coverage as described in Section III - Limits of Insurance.

- b. The last paragraph of subsection 2. **Exclusions** is replaced by the following:

Exclusions c. through n. do not apply to damage by fire, lightning, explosion, smoke or leakage from automatic fire protection systems to premises while rented to you or temporarily occupied by you with permission of the owner. A separate limit of insurance applies to Damage To Premises Rented To You as described in **Section III - Limits Of Insurance**.

2. Paragraph 6. under **Section III - Limits Of Insurance** is replaced by the following:

6. Subject to Paragraph 5. above, the Damage To Premises Rented To You Limit is the most we will pay under Coverage A for damages because of "property damage" to:

- a. Any one premise:

(1) While rented to you; or

(2) While rented to you or temporarily occupied by you with permission of the owner for damage by fire, lightning, explosion, smoke or leakage from automatic protection systems; or

- b. Contents that you rent or lease as part of a premises rental or lease agreement.

3. As regards coverage provided by this provision **D. EXTENDED DAMAGE TO PROPERTY RENTED TO YOU (Tenant's Property Damage)** - Paragraph 9.a. of Definitions is replaced with the following:

9.a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire, lightning, explosion, smoke, or leakage from automatic fire protection systems to premises while rented to you or temporarily occupied by you with the permission of the owner, or for damage to contents of such premises that are included in your premises rental or lease agreement, is not an "insured contract".

#### **E. MEDICAL PAYMENTS EXTENSION**

If Coverage C Medical Payments is not otherwise excluded, the Medical Payments provided by this policy are amended as follows:

Under Paragraph 1. **Insuring Agreement of Section I - Coverage C - Medical Payments**, Subparagraph (b) of Paragraph a. is replaced by the following:

- (b) The expenses are incurred and reported within three years of the date of the accident; and

#### **F. EXTENSION OF SUPPLEMENTARY PAYMENTS - COVERAGES A AND B**

1. Under **Supplementary Payments - Coverages A and B**, Paragraph 1.b. is replaced by the following:

b. Up to **\$3,000** for cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which the Bodily Injury Liability Coverage applies. We do not have to furnish these bonds.

2. Paragraph 1.d. is replaced by the following:

d. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to **\$500** a day because of time off from work.

#### **G. ADDITIONAL INSURED - BY CONTRACT, AGREEMENT OR PERMIT**

1. Paragraph 2. under **Section II - Who Is An Insured** is amended to include as an insured any person or organization whom you have agreed to add as an additional insured in a written contract, written agreement or permit. Such person or organization is an additional insured but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused in whole or in part by:

- a. Your acts or omissions, or the acts or omissions of those acting on your behalf, in the performance of your on going operations for the additional insured that are the subject of the written contract or written agreement provided that the "bodily injury" or "property damage" occurs, or the "personal and advertising injury" is committed, subsequent to the signing of such written contract or written agreement; or



- b. Premises or facilities rented by you or used by you; or
- c. The maintenance, operation or use by you of equipment rented or leased to you by such person or organization; or
- d. Operations performed by you or on your behalf for which the state or political subdivision has issued a permit subject to the following additional provisions:
  - (1) This insurance does not apply to "bodily injury", "property damage", or "personal and advertising injury" arising out of the operations performed for the state or political subdivision;
  - (2) This insurance does not apply to "bodily injury" or "property damage" included within the "completed operations hazard".
  - (3) Insurance applies to premises you own, rent, or control but only with respect to the following hazards:
    - (a) The existence, maintenance, repair, construction, erection, or removal of advertising signs, awnings, canopies, cellar entrances, coal holes, driveways, manholes, marquees, hoist away openings, sidewalk vaults, street banners, or decorations and similar exposures; or
    - (b) The construction, erection, or removal of elevators; or
    - (c) The ownership, maintenance, or use of any elevators covered by this insurance.

With respect to Paragraph 1.a. above, a person's or organization's status as an additional insured under this endorsement ends when:

- (1) All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or
- (2) That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

With respect to Paragraph 1.b. above, a person's or organization's status as an additional insured under this endorsement ends when their written contract or written agreement with you for such premises or facilities ends.

With respects to Paragraph 1.c. above, this insurance does not apply to any "occurrence" which takes place after the equipment rental or lease agreement has expired or you have returned such equipment to the lessor.

The insurance provided by this endorsement applies only if the written contract or written agreement is signed prior to the "bodily injury" or "property damage".

We have no duty to defend an additional insured under this endorsement until we receive written notice of a "suit" by the additional insured as required in Paragraph b. of Condition 2. **Duties In the Event Of Occurrence, Offense, Claim Or Suit under Section IV - Commercial General Liability Conditions.**

**2. With respect to the insurance provided by this endorsement, the following are added to Paragraph 2. Exclusions under Section I - Coverage A - Bodily Injury And Property Damage Liability:**

This insurance does not apply to:

- a. "Bodily injury" or "property damage" arising from the sole negligence of the additional insured.
- b. "Bodily injury" or "property damage" that occurs prior to you commencing operations at the location where such "bodily injury" or "property damage" occurs.
- c. "Bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:

- (1) The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
  - (2) Supervisory, inspection, architectural or engineering activities.
- d. "Bodily injury" or "property damage" occurring after:
- (1) All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or
  - (2) That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.
- e. Any person or organization specifically designated as an additional insured for ongoing operations by a separate **ADDITIONAL INSURED -OWNERS, LESSEES OR CONTRACTORS** endorsement issued by us and made a part of this policy.

**H. PRIMARY AND NON-CONTRIBUTORY ADDITIONAL INSURED EXTENSION**

This provision applies to any person or organization who qualifies as an additional insured under any form or endorsement under this policy.

Condition 4. **Other Insurance of SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS** is amended as follows:

a. The following is added to Paragraph a. **Primary Insurance**:

If an additional insured's policy has an Other Insurance provision making its policy excess, and you have agreed in a written contract or written agreement to provide the additional insured coverage on a primary and noncontributory basis, this policy shall be primary and we will not seek contribution from the additional insured's policy for damages we cover.

b. The following is added to Paragraph b. **Excess Insurance**:

When a written contract or written agreement, other than a premises lease, facilities rental contract or agreement, an equipment rental or lease contract or agreement, or permit issued by a state or political subdivision between you and an additional insured does not require this insurance to be primary or primary and non-contributory, this insurance is excess over any other insurance for which the additional insured is designated as a Named Insured.

Regardless of the written agreement between you and an additional insured, this insurance is excess over any other insurance whether primary, excess, contingent or on any other basis for which the additional insured has been added as an additional insured on other policies.

**I. ADDITIONAL INSURED- EXTENDED PROTECTION OF YOUR "LIMITS OF INSURANCE"**

This provision applies to any person or organization who qualifies as an additional insured under any form or endorsement under this policy.

1. The following is added to Condition 2. **Duties In The Event Of Occurrence, Offense, Claim or Suit**:

An additional insured under this endorsement will as soon as practicable:

- a. Give written notice of an "occurrence" or an offense that may result in a claim or "suit" under this insurance to us;
- b. Tender the defense and indemnity of any claim or "suit" to all insurers whom also have insurance available to the additional insured; and
- c. Agree to make available any other insurance which the additional insured has for a loss we cover under this Coverage Part.

d. We have no duty to defend or indemnify an additional insured under this endorsement until we receive written notice of a "suit" by the additional insured.

2. The limits of insurance applicable to the additional insured are those specified in a written contract or written agreement or the limits of insurance as stated in the Declarations of this policy and defined in **Section III - Limits of Insurance** of this policy, whichever are less. These limits are inclusive of and not in addition to the limits of insurance available under this policy.

**J. WHO IS AN INSURED- INCIDENTAL MEDICAL ERRORS / MALPRACTICE  
WHO IS AN INSURED - FELLOW EMPLOYEE EXTENSION- MANAGEMENT EMPLOYEES**

Paragraph 2.a.(1) of **Section II - Who Is An Insured** is replaced with the following:

(1) "Bodily injury" or "personal and advertising injury":

- (a) To you, to your partners or members (if you are a partnership or joint venture), to your members (if you are a limited liability company), to a co-"employee" while in the course of his or her employment or performing duties related to the conduct of your business, or to your other "volunteer workers" while performing duties related to the conduct of your business;
- (b) To the spouse, child, parent, brother or sister of that co-"employee" or "volunteer worker" as a consequence of Paragraph (1) (a) above;
- (c) For which there is any obligation to share damages with or repay someone else who must pay damages because of the injury described in Paragraphs (1) (a) or (b) above; or
- (d) Arising out of his or her providing or failing to provide professional health care services. However, if you are not in the business of providing professional health care services or providing professional health care personnel to others, or if coverage for providing professional health care services is not otherwise excluded by separate endorsement, this provision (Paragraph (d)) does not apply.

Paragraphs (a) and (b) above do not apply to "bodily injury" or "personal and advertising injury" caused by an "employee" who is acting in a supervisory capacity for you. Supervisory capacity as used herein means the "employee's" job responsibilities assigned by you, includes the direct supervision of other "employees" of yours. However, none of these "employees" are insureds for "bodily injury" or "personal and advertising injury" arising out of their willful conduct, which is defined as the purposeful or willful intent to cause "bodily injury" or "personal and advertising injury", or caused in whole or in part by their intoxication by liquor or controlled substances.

The coverage provided by provision J. is excess over any other valid and collectable insurance available to your "employee".

**K. NEWLY FORMED OR ADDITIONALLY ACQUIRED ENTITIES**

Paragraph 3. of **Section II - Who Is An Insured** is replaced by the following:

- 3. Any organization you newly acquire or form and over which you maintain ownership or majority interest, will qualify as a Named Insured if there is no other similar insurance available to that organization. However:
  - a. Coverage under this provision is afforded only until the expiration of the policy period in which the entity was acquired or formed by you;
  - b. Coverage A does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization; and
  - c. Coverage B does not apply to "personal and advertising injury" arising out of an offense committed before you acquired or formed the organization.
  - d. Records and descriptions of operations must be maintained by the first Named Insured.

No person or organization is an insured with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations or qualifies as an insured under this provision.

**L. FAILURE TO DISCLOSE HAZARDS AND PRIOR OCCURRENCES**

Under Section IV - Commercial General Liability Conditions, the following is added to Condition 6. Representations:

Your failure to disclose all hazards or prior "occurrences" existing as of the inception date of the policy shall not prejudice the coverage afforded by this policy provided such failure to disclose all hazards or prior "occurrences" is not intentional.

**M. KNOWLEDGE OF OCCURRENCE, OFFENSE, CLAIM OR SUIT**

Under Section IV - Commercial General Liability Conditions, the following is added to Condition 2. Duties In The Event of Occurrence, Offense, Claim Or Suit:

Knowledge of an "occurrence", offense, claim or "suit" by an agent, servant or "employee" of any insured shall not in itself constitute knowledge of the insured unless an insured listed under Paragraph 1. of Section II - Who Is An Insured or a person who has been designated by them to receive reports of "occurrences", offenses, claims or "suits" shall have received such notice from the agent, servant or "employee".

**N. LIBERALIZATION CLAUSE**

If we revise this Commercial General Liability Extension Endorsement to provide more coverage without additional premium charge, your policy will automatically provide the coverage as of the day the revision is effective in your state.

**O. BODILY INJURY REDEFINED**

Under Section V - Definitions, Definition 3. is replaced by the following:

3. "Bodily Injury" means physical injury, sickness or disease sustained by a person. This includes mental anguish, mental injury, shock, fright or death that results from such physical injury, sickness or disease.

**P. EXTENDED PROPERTY DAMAGE**

Exclusion a. of COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY is replaced by the following:

**a. Expected Or Intended Injury**

"Bodily injury" or "property damage" expected or intended from the standpoint of the insured. This exclusion does not apply to "bodily injury" or "property damage" resulting from the use of reasonable force to protect persons or property.

**Q. WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US - WHEN REQUIRED IN A CONTRACT OR AGREEMENT WITH YOU**

Under Section IV - Commercial General Liability Conditions, the following is added to Condition 8. Transfer Of Rights Of Recovery Against Others To Us:

We waive any right of recovery we may have against a person or organization because of payments we make for injury or damage arising out of your ongoing operations or "your work" done under a contract with that person or organization and included in the "products-completed operations hazard" provided:

1. You and that person or organization have agreed in writing in a contract or agreement that you waive such rights against that person or organization; and
2. The injury or damage occurs subsequent to the execution of the written contract or written agreement.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## CONSTRUCTION PROJECT(S) - GENERAL AGGREGATE LIMIT (PER PROJECT)

This endorsement modifies insurance provided under the following:

### COMMERCIAL GENERAL LIABILITY COVERAGE PART

- A.** For all sums which the insured becomes legally obligated to pay as damages caused by "occurrences" under **Section I - Coverage A - Bodily Injury And Property Damage Liability**, and for all medical expenses caused by accidents under **Section I - Coverage C Medical Payments**, which can be attributed only to ongoing operations at a single construction project away from premises owned by or rented to you:
1. A separate Construction Project General Aggregate Limit applies to each construction project, and that limit is equal to the amount of the General Aggregate Limit shown in the Declarations.
  2. The Construction Project General Aggregate Limit is the most we will pay for the sum of all damages under Coverage A, except damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard", and for medical expenses under Coverage C regardless of the number of:
    - a. Insureds;
    - b. Claims made or "suits" brought; or
    - c. Persons or organizations making claims or bringing "suits".
  3. Any payments made under Coverage A for damages or under Coverage C for medical expenses shall reduce the Construction Project General Aggregate Limit for that construction project. Such payments shall not reduce the General Aggregate Limit shown in the Declarations nor shall they reduce any other Construction Project General Aggregate Limit for any other construction project.
  4. The limits shown in the Declarations for Each Occurrence, Fire Damage and Medical Expense continue to apply. However, instead of being subject to the General Aggregate Limit shown in the Declarations, such limits will be subject to the applicable Construction Project General Aggregate Limit.
- B.** For all sums which the insured becomes legally obligated to pay as damages caused by "occurrences" under **Section I - Coverage A - Bodily Injury And Property Damage Liability**, and for all medical expenses caused by accidents under **Section I - Coverage C Medical Payments**, which cannot be attributed only to ongoing operations at a single construction project away from premises owned by or rented to you:
1. Any payments made under Coverage A for damages or under Coverage C for medical expenses shall reduce the amount available under the General Aggregate Limit or the Products-Completed Operations Aggregate Limit, whichever is applicable; and
  2. Such payments shall not reduce any Construction Project General Aggregate Limit.
- C.** When coverage for liability arising out of the "products-completed operations hazard" is provided, any payments for damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard" will reduce the Products-Completed Operations Aggregate Limit, and not reduce the General Aggregate Limit nor the Construction Project General Aggregate Limit.
- D.** If the applicable construction project has been abandoned, delayed, or abandoned and then restarted, or if the authorized contracting parties deviate from plans, blueprints, designs, specifications or timetables, the project will still be deemed to be the same construction project.
- E.** The provisions of **Section III - Limits Of Insurance** not otherwise modified by this endorsement shall continue to apply.