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BOARD OF COUNTY COMMISSIONERS  
PUBLIC SERVICES BUILDING  
2051 KAEN ROAD | OREGON CITY, OR 97045

# AGENDA \*Revised

**Thursday, October 1, 2020 - 10:00 AM**  
**BOARD OF COUNTY COMMISSIONERS**

Beginning Board Order No. 2020-69

## **CALL TO ORDER**

- Roll Call
- Pledge of Allegiance

## **\*\*\* Wildfire Update**

- \*1. Approval of an Addendum No 2 to Board Order No. 2020-66 Declaring a State of Emergency Regarding Wildfires (Stephen Madkour, County Counsel)

## **\*\*\* COVID-19 Update**

### **I. HOUSING AUTHORITY CONSENT AGENDA**

- 1. Approval of Geotechnical Services Contract between Housing Authority of Clackamas County and Selected PBS Engineering and Environmental, Inc.
- 2. Approval of Environmental Engineering Service Contract between Housing Authority of Clackamas County and Vendor PBS Engineering and Environmental, Inc.

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

- 1. Second Reading of Ordinance No. 08-2020 Amending Chapter 6.05, Noise Control, of the Clackamas County Code (Nathan Boderman, County Counsel)  
*First Reading September 17, 2020*

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

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

1. Approval of an Intergovernmental Agreement with the State of Oregon, Department of Consumer and Business Services, Senior Health Insurance Benefits Assistance (SHIBA) – *Social Services*
2. Approval to Apply Oregon Department of Transportation, Rail and Public Transit Division, for FTA 5311 Rural Transportation Funds for COVID related Operations of Mt Hood Express – *Social Services*
3. Approval of Agreement with Oregon Department of Transportation, Rail and Public Transit Division, for FTA 5339 Bus and Bus Infrastructure Investment Programs Funds for Bus Purchases for Mt. Hood Express and Transportation Reaching People Programs - *Social Services*
4. Approval of Intra-Agency Agreement with Clackamas County Health Centers Division for School Based Health Centers (SBHC) operating funds – *Public Health*

**B. Elected Officials**

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

**C. County Counsel**

1. Resolution Related to the Concurrence of a Minor Revision to the Molalla Urban Renewal Plan

**D. Technology Services**

1. Approval for a Service Level Agreement for Clackamas Broadband eXchange With the Colton School District

**E. Community Corrections**

1. Approval of Subgrant Application, Acceptance, and Agreement between State of Oregon, Dept. of Corrections and Clackamas County to Provide Emergency Housing of Indigent, Non-COVID Positive Clients

**IV PUBLIC 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. Testimony is limited to three (3) minutes. Comments shall be respectful and courteous to all.*

**V. COUNTY ADMINISTRATOR UPDATE**

**VI. COMMISSIONERS COMMUNICATION**

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

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

In the Matter of Declaring a Local  
State of Emergency and Declaring  
Emergency Measures



Second Addendum to Board  
Order No. 2020-66  
*Page 1 of 2*

1. By way of Board Order 2020-66, Clackamas County formally declared a state of emergency due to Wildfires for Clackamas County, effective on the 8thth day of September for the entire County. On September 10, the Board of County Commissioners authorized the imposition of curfews as an emergency measure. That declaration of emergency was scheduled to expire on September 22, 2020.
2. By way of a First Addendum, on September 17, 2020, the Board of County Commissioners found that the conditions giving rise to the declaration of emergency remained in existence and it was therefore necessary to extend the duration of the declaration of emergency until November 10, 2020.

In addition to the conditions giving rise to the initial declaration of emergency, the consequence and the aftermath of the wildfires will require additional resources including but not limited to the sheltering of those individuals displaced by the wildfires, in addition to those combating the wildfires; the collecting, transporting, and disposing of the debris created by the wildfires; and assistance related to re-entry and resource centers needed for the impacted population.

3. On September 27, 2020, the Clackamas County Sheriff informed the Board of County Commissioners that the curfew emergency measure no longer was necessary and requested that the Board remove that as an emergency measure. At that time, the Board voted in the affirmative to remove the imposition of a curfew as an emergency measure effective immediately.

By way of this Second Addendum, the Board of County Commissioners formally removes item A. Curfew of the initial emergency declaration. All other emergency measure will remain in effect.

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

In the Matter of Declaring a Local  
State of Emergency and Declaring  
Emergency Measures



Second Addendum to Board  
Order No. 2020-66  
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**IT IS FURTHER ORDERED BY WAY OF THIS SECOND ADDENDUM that:**

Any individual or entity that violates any provision of any emergency measure is subject to a \$500 fine for each offense.

With the exception of item A. Curfew, all previously declared emergency measures (see attached) shall remain in effect for the duration of the declaration of emergency.

**DATED** this 1<sup>st</sup> day of October, 2020.

**BOARD OF COUNTY COMMISSIONERS**

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Jim Bernard, Chair

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Recording Secretary

October 1<sup>st</sup>, 2020

Housing Authority Board of Commissioners  
Clackamas County

Members of the Board:

Approval of Geotechnical Services Contract between Housing Authority of Clackamas County and Selected PBS Engineering and Environmental, Inc.

<b>Purpose/Outcomes</b>	Approval of Geotechnical Services Contract between Housing Authority of Clackamas County and PBS Engineering and Environmental Inc.
<b>Dollar Amount</b>	Not to exceed \$145,000 over three years
<b>Funding Source</b>	Housing Authority of Clackamas County No County General Funds
<b>Duration</b>	October 1, 2020 through September 30, 2023
<b>Previous Board Action</b>	None
<b>Strategic Plan Alignment</b>	<ol style="list-style-type: none"> <li>1. Ensure safe, healthy and secure communities</li> <li>2. Sustainable and Affordable Housing</li> </ol>
<b>Counsel Review</b>	Andrew Naylor, September 15, 2020
<b>Procurement Review</b>	Per Resolution No. 1936, HACC adopted the Local Contract Review Board rules for HACC Procurements. HACC conducts its own procurements following its procurement handbook.
<b>Contact Person</b>	Jill C. Smith, HACC Executive Director
<b>Contract Number</b>	9865

**BACKGROUND:**

The Clackamas County Housing Authority (HACC) a Division of the Health, Housing & Human Services Department requests approval to execute a Geotechnical Services Contract with PBS Engineering and Environmental Inc.

PBS Engineering and Environmental Inc. provides HACC with a range of consulting services for assessment of geotechnical conditions throughout its Public Housing portfolio as well as future sites that HACC may want to acquire for development and/or redevelopment of affordable housing. PBS Engineering and Environmental Inc. also provides environmental testing and analysis as required for affordable housing development, under a separate contract.

PBS Engineering and Environmental Inc. will provide on-call geotechnical services including soil quality and suitability assessments for a variety of HACC affordable housing development projects. These services will compliment other assessments that are completed in the due diligence stage of development to determine site suitability for construction.

PBS Engineering and Environmental Inc. was selected through a competitive RFQ process in September 2020. The contract amount is \$145,000. The contract is not to exceed \$145,000 over a three (3) year contract period. At the conclusion of the contract HACC will again advertise an RFP for geotechnical services.

No County General Funds used.

**RECOMMENDATION:**

Staff recommends the Board approve the proposed Geotechnical Services Contract and staff recommends the Board authorizes Jill Smith, Executive Director of HACC to sign on behalf of the Housing Authority of Clackamas County

Respectfully submitted,

A handwritten signature in blue ink that reads "Richard A. Swift, HHS copy for". The signature is written in a cursive style.

Richard Swift, Director  
Health, Housing and Human Services



**HOUSING AUTHORITY OF CLACKAMAS COUNTY  
GEOTECHNICAL SERVICES CONTRACT  
Contract #9865**

This Geotechnical Services Contract (this "Contract") is entered into between PBS Engineering and Environmental, Inc. ("Contractor"), and the Housing Authority of Clackamas County, a public corporation organized under ORS Chapter 456 ("HACC").

**ARTICLE I.**

1. **Effective Date and Duration.** This Contract shall become effective upon signature of both parties. Unless earlier terminated or extended, this Contract shall expire on September 30, 2023.
2. **Scope of Work.** Contractor shall provide the following personal services: On-call Geotechnical Services ("Work"), further described in **Exhibit A**.

This Contract is on an "on-call" or "as-needed basis" for performance of the Work. When HACC wishes Contractor to perform the Work, HACC will submit a task order detailing the Scope of Work to be performed and the total compensation pursuant to the fee schedule set forth in Exhibit A to this Contract. Contractor may not perform Work until a task order form has been executed by the parties. In the event a project authorized under the task order extends beyond the expiration of this Contract, the task order shall remain in effect under the terms of this Contract until the completion or expiration of the authorized task.

No task order shall modify or amend the terms and conditions of this Contract.

3. **Consideration.** HACC agrees to pay Contractor, from available and authorized funds, a sum not to exceed one hundred forty five thousand dollars (\$145,000.00), for accomplishing the Work required by this Contract. Consideration rates are on a time and materials basis in accordance with the rates and costs specified in Exhibit A. If any interim payments to Contractor are made, such payments shall be made only in accordance with the schedule and requirements in Exhibit A.
4. **Invoices and Payments.** Unless otherwise specified, Contractor shall submit monthly invoices for Work performed. Invoices shall describe all Work performed with particularity, by whom it was performed, and shall itemize and explain all expenses for which reimbursement is claimed. The invoices shall include the total amount billed to date by Contractor prior to the current invoice. If Contractor fails to present invoices in proper form within sixty (60) calendar days after the end of the month in which the services were rendered, Contractor waives any rights to present such invoice thereafter and to receive payment therefor. Payments shall be made to Contractor following the HACC's review and approval of invoices submitted by Contractor. Contractor shall not submit invoices for, and the HACC will not be obligated to pay, any amount in excess of the maximum compensation amount set forth above. If this maximum compensation amount is increased by amendment of this Contract, the amendment must be fully effective before Contractor performs Work subject to the amendment.

Invoices shall reference the above Contract Number and be submitted to: **haccap@clackamas.us**.

5. **Travel and Other Expense.** Authorized:  Yes  No  
If travel expense reimbursement is authorized in this Contract, such expense shall only be reimbursed at the rates in the County Contractor Travel Reimbursement Policy, hereby incorporated by reference and found at: <http://www.clackamas.us/bids/terms.html>. Travel expense reimbursement is not in excess of the not to exceed consideration described in Article I, Section 3, above.

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

7. **Contractor and HACC Contacts.**

PBS Engineering and Environmental, Inc. Administrator: Ryan White, PE, GE Phone: 503.417.7608 Email: ryan.white@pbsusa.com	HACC Administrator: Angel Sully Phone: 971.336.1761 Email: asully@clackamas.us
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Payment information will be reported to the Internal Revenue Service (“IRS”) under the name and taxpayer ID number submitted. (See I.R.S. 1099 for additional instructions regarding taxpayer ID numbers.) Information not matching IRS records will subject Contractor payments to backup withholding.

**ARTICLE II.**

1. **ACCESS TO RECORDS.** Contractor shall maintain books, records, documents, and other evidence, in accordance with generally accepted accounting procedures and practices, sufficient to reflect properly all costs of whatever nature claimed to have been incurred and anticipated to be incurred in the performance of this Contract. HACC and its duly authorized representatives shall have access to the books, documents, papers, and records of Contractor, which are directly pertinent to this Contract for the purpose of making audit, examination, excerpts, and transcripts. Contractor shall maintain such books and records for a minimum of six (6) years, or such longer period as may be required by applicable law, following final payment and termination of this Contract, or until the conclusion of any audit, controversy or litigation arising out of or related to this Contract, whichever date is later.
2. **AVAILABILITY OF FUTURE FUNDS.** Any continuation or extension of this Contract after the end of the fiscal period in which it is written is contingent on a new appropriation for each succeeding fiscal period sufficient to continue to make payments under this Contract, as determined by the HACC in its sole administrative discretion.
3. **CAPTIONS.** The captions or headings in this Contract are for convenience only and in no way define, limit, or describe the scope or intent of any provisions of this Contract.
4. **COMPLIANCE WITH APPLICABLE LAW.** Contractor shall comply with all applicable federal, state and local laws, regulations, executive orders, and ordinances, as such may be amended from time to time.
5. **COUNTERPARTS.** This Contract may be executed in several counterparts (electronic or otherwise), each of which shall be an original, all of which shall constitute the same instrument.
6. **GOVERNING LAW.** This Contract, and all rights, obligations, and disputes arising out of it, shall be governed and construed in accordance with the laws of the State of Oregon and the ordinances of Clackamas County without regard to principles of conflicts of law. Any claim, action, or suit between HACC and Contractor that arises out of or relates to the performance of this Contract shall be brought and conducted solely and exclusively within the Circuit Court for Clackamas County, for the State of Oregon. Provided, however, that if any such claim, action, or suit may be brought in a federal forum, it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this section be construed as a waiver by the HACC of any form of defense or immunity, whether sovereign immunity, governmental immunity,



immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court. Contractor, by execution of this Contract, hereby consents to the personal jurisdiction of the courts referenced in this section.

7. **RESPONSIBILITY FOR DAMAGES; INDEMNITY.** Contractor shall be responsible for all damage to property, injury to persons, and loss, expense, inconvenience, and delay which may be caused by, or result from, the conduct of Work, or from any act, omission, or neglect of Contractor, its subcontractors, agents, or employees. The Contractor agrees to indemnify, hold harmless and defend the HACC, and its officers, elected officials, agents and employees from and against all claims and actions, and all expenses incidental to the investigation and defense thereof, arising out of or based upon damage or injuries to persons or property caused by the errors, omissions, fault or negligence of the Contractor or the Contractor's employees, subcontractors, or agents. However, neither Contractor nor any attorney engaged by Contractor shall defend the claim in the name of HACC or any department of County, nor purport to act as legal representative of HACC or any of its departments, without first receiving from the Clackamas County Counsel's Office authority to act as legal counsel for HACC, nor shall Contractor settle any claim on behalf of HACC without the approval of the Clackamas County Counsel's Office. HACC may, at its election and expense, assume its own defense and settlement.
8. **INDEPENDENT CONTRACTOR STATUS.** The service(s) to be rendered under this Contract are those of an independent contractor. Although the HACC reserves the right to determine (and modify) the delivery schedule for the Work to be performed and to evaluate the quality of the completed performance, HACC cannot and will not control the means or manner of Contractor's performance. Contractor is responsible for determining the appropriate means and manner of performing the Work. Contractor is not to be considered an agent or employee of HACC for any purpose, including, but not limited to: (A) The Contractor will be solely responsible for payment of any Federal or State taxes required as a result of this Contract; and (B) This Contract is not intended to entitle the Contractor to any benefits generally granted to HACC employees, including, but not limited to, vacation, holiday and sick leave, other leaves with pay, tenure, medical and dental coverage, life and disability insurance, overtime, Social Security, Workers' Compensation, unemployment compensation, or retirement benefits.
9. **INSURANCE.** Contractor shall secure at its own expense and keep in effect during the term of the performance under this Contract the insurance required and minimum coverage indicated below. Contractor shall provide proof of said insurance and name the HACC and Clackamas County as additional insureds on all required liability policies. Proof of insurance and notice of any material change should be submitted to the following address: Housing Authority of Clackamas County, PO Box 1510 Oregon City, OR 97045 or [asully@clackamas.us](mailto:asully@clackamas.us).

Required - Workers Compensation: Contractor shall comply with the workers' compensation requirements in ORS 656.017, unless exempt under ORS 656.126.
<input checked="" type="checkbox"/> Required – Commercial General Liability: combined single limit, or the equivalent, of not less than \$1,000,000 per occurrence, with an annual aggregate limit of \$2,000,000 for Bodily Injury and Property Damage.
<input checked="" type="checkbox"/> Required – Professional Liability: combined single limit, or the equivalent, of not less than \$1,000,000 per occurrence, with an annual aggregate limit of \$2,000,000 for damages caused by error, omission or negligent acts.
<input checked="" type="checkbox"/> Required – Automobile Liability: combined single limit, or the equivalent, of not less than \$1,000,000 per occurrence for Bodily Injury and Property Damage.

This policy(s) shall be primary insurance as respects to the HACC. Any insurance or self-insurance maintained by the HACC shall be excess and shall not contribute to it. Any obligation that HACC agree to a waiver of subrogation is hereby stricken.

- 10. LIMITATION OF LIABILITIES.** This Contract is expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10, of the Oregon Constitution, and is contingent upon funds being appropriated therefore. Any provisions herein which would conflict with law are deemed inoperative to that extent. Except for liability arising under or related to Article II, Section 13 or Section 21 neither party shall be liable for (i) any indirect, incidental, consequential or special damages under this Contract or (ii) any damages of any sort arising solely from the termination of this Contract in accordance with its terms.
- 11. NOTICES.** Except as otherwise provided in this Contract, any required notices between the parties shall be given in writing by personal delivery, email, or mailing the same, to the Contract Administrators identified in Article 1, Section 6. If notice is sent to HACC, a copy shall also be sent to: Housing Authority of Clackamas County, PO Box 1510 Oregon City, OR 97045 or [asully@clackamas.us](mailto:asully@clackamas.us). Any communication or notice so addressed and mailed shall be deemed to be given five (5) days after mailing, and immediately upon personal delivery, or within 2 hours after the email is sent during HACC's normal business hours (Monday – Thursday, 7:00 a.m. to 6:00 p.m.) (as recorded on the device from which the sender sent the email), unless the sender receives an automated message or other indication that the email has not been delivered.
- 12. OWNERSHIP OF WORK PRODUCT.** All work product of Contractor that results from this Contract (the "Work Product") is the exclusive property of HACC. HACC and Contractor intend that such Work Product be deemed "work made for hire" of which HACC shall be deemed the author. If for any reason the Work Product is not deemed "work made for hire," Contractor hereby irrevocably assigns to HACC all of its right, title, and interest in and to any and all of the Work Product, whether arising from copyright, patent, trademark or trade secret, or any other state or federal intellectual property law or doctrine. Contractor shall execute such further documents and instruments as HACC may reasonably request in order to fully vest such rights in HACC. Contractor forever waives any and all rights relating to the Work Product, including without limitation, any and all rights arising under 17 USC § 106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use or subsequent modifications. Notwithstanding the above, HACC shall have no rights in any pre-existing Contractor intellectual property provided to HACC by Contractor in the performance of this Contract except to copy, use and re-use any such Contractor intellectual property for HACC use only. If this Contract is terminated prior to completion, and the HACC is not in default, HACC, in addition to any other rights provided by this Contract, may require the Contractor to transfer and deliver all partially completed Work Product, reports or documentation that the Contractor has specifically developed or specifically acquired for the performance of this Contract.
- 13. REPRESENTATIONS AND WARRANTIES.** Contractor represents and warrants to HACC that (A) Contractor has the power and authority to enter into and perform this Contract; (B) this Contract, when executed and delivered, shall be a valid and binding obligation of Contractor enforceable in accordance with its terms; (C) Contractor shall at all times during the term of this Contract, be qualified, professionally competent, and duly licensed to perform the Work; (D) Contractor is an independent contractor as defined in ORS 670.600; and (E) the Work under this Contract shall be performed in a good and workmanlike manner and in accordance with the highest professional standards. The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.
- 14. SURVIVAL.** All rights and obligations shall cease upon termination or expiration of this Contract, except for the rights and obligations set forth in Article II, Sections 1, 6, 7, 11, 13, 14, 16, 21, 22, and all other rights and obligations which by their context are intended to survive. However, such expiration shall not extinguish or prejudice the HACC's right to enforce this Contract with respect to:

(a) any breach of a Contractor warranty; or (b) any default or defect in Contractor performance that has not been cured.

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

**16. SUBCONTRACTS AND ASSIGNMENTS.** Contractor shall not enter into any subcontracts for any of the Work required by this Contract, or assign or transfer any of its interest in this Contract by operation of law or otherwise, without obtaining prior written approval from the HACC, which shall be granted or denied in the HACC's sole discretion. In addition to any provisions the HACC may require, Contractor shall include in any permitted subcontract under this Contract a requirement that the subcontractor be bound by this Article II, Sections 1, 7, 8, 13, 16 and 27 as if the subcontractor were the Contractor. HACC's consent to any subcontract shall not relieve Contractor of any of its duties or obligations under this Contract.

**17. SUCCESSORS IN INTEREST.** The provisions of this Contract shall be binding upon and shall inure to the benefit of the parties hereto, and their respective authorized successors and assigns.

**18. TAX COMPLIANCE CERTIFICATION.** The Contractor shall comply with all federal, state and local laws, regulation, executive orders and ordinances applicable to this Contract. Contractor represents and warrants that it has complied, and will continue to comply throughout the duration of this Contract and any extensions, with all tax laws of this state or any political subdivision of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318. Any violation of this section shall constitute a material breach of this Contract and shall entitle HACC to terminate this Contract, to pursue and recover any and all damages that arise from the breach and the termination of this Contract, and to pursue any or all of the remedies available under this Contract or applicable law.

**19. TERMINATIONS.**

(A) This Contract may be terminated by mutual agreement of the parties or by the HACC for one of the following reasons: (i) for convenience upon thirty (30) days written notice to Contractor; or (ii) at any time the HACC fails to receive funding, appropriations, or other expenditure authority as solely determined by the HACC. Upon receipt of written notice of termination from the HACC, Contractor shall immediately stop performance of the Work.

(B) If Contractor breaches any Contract provision or is declared insolvent, HACC may terminate after thirty (30) days written notice with an opportunity to cure. Upon termination of this Contract, Contractor shall deliver to HACC all documents, information, works-in-progress and other property that are or would be deliverables had the Contract Work been completed. Upon HACC's request, Contractor shall surrender to anyone HACC designates, all documents, research, objects or other tangible things needed to complete the Work.

**20. REMEDIES.** If terminated by the HACC due to a breach by the Contractor, then the HACC shall have any remedy available to it in law or equity. If this Contract is terminated for any other reason, Contractor's sole remedy is payment for the goods and services delivered and accepted by the HACC, less any setoff to which the HACC is entitled.

**21. NO THIRD PARTY BENEFICIARIES.** HACC and Contractor are the only parties to this Contract and are the only parties entitled to enforce its terms. Nothing in this Contract gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or

otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Contract.

22. **NO ATTORNEY FEES.** In the event any arbitration, action or proceeding, including any bankruptcy proceeding, is instituted to enforce any term of this Contract, each party shall be responsible for its own attorneys' fees and expenses.
23. **TIME IS OF THE ESSENCE.** Contractor agrees that time is of the essence in the performance this Contract.
24. **FOREIGN CONTRACTOR.** If the Contractor is not domiciled in or registered to do business in the State of Oregon, Contractor shall promptly provide to the Oregon Department of Revenue and the Secretary of State, Corporate Division, all information required by those agencies relative to this Contract. The Contractor shall demonstrate its legal capacity to perform these services in the State of Oregon prior to entering into this Contract.
25. **FORCE MAJEURE.** Neither HACC nor Contractor shall be held responsible for delay or default caused by events outside the HACC or Contractor's reasonable control including, but not limited to, fire, terrorism, riot, acts of God, or war. However, Contractor shall make all reasonable efforts to remove or eliminate such a cause of delay or default and shall upon the cessation of the cause, diligently pursue performance of its obligations under this Contract.
26. **WAIVER.** The failure of HACC to enforce any provision of this Contract shall not constitute a waiver by HACC of that or any other provision.
27. **PUBLIC CONTRACTING REQUIREMENTS.** Pursuant to the public contracting requirements contained in Oregon Revised Statutes ("ORS") Chapter 279B.220 through 279B.235, Contractor shall:
  - a. Make payments promptly, as due, to all persons supplying to Contractor labor or materials for the prosecution of the work provided for in the Contract.
  - b. Pay all contributions or amounts due the Industrial Accident Fund from such Contractor or subcontractor incurred in the performance of the Contract.
  - c. Not permit any lien or claim to be filed or prosecuted against HACC on account of any labor or material furnished.
  - d. Pay the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.
  - e. If Contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to Contractor or a subcontractor by any person in connection with the Contract as such claim becomes due, the proper officer representing HACC may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due Contractor by reason of the Contract.
  - f. As applicable, the Contractor shall pay employees for work in accordance with ORS 279B.235, which is incorporated herein by this reference. The Contractor shall comply with the prohibitions set forth in ORS 652.220, compliance of which is a material element of this Contract, and failure to comply is a breach entitling HACC to terminate this Contract for cause.
  - g. If the Work involves lawn and landscape maintenance, Contractor shall salvage, recycle, compost, or mulch yard waste material at an approved site, if feasible and cost effective.
27. **CONFIDENTIALITY.** Contractor acknowledges that it and its employees and agents may, in the course of performing their obligations under this Contract, be exposed to or acquire information that the HACC desires or is required to maintain as confidential. Any and all information of any form obtained by Contractor or its employees or agents in the performance of this Contract, including but

not limited to Personal Information (as "Personal Information" is defined in ORS 646A.602(11)), shall be deemed to be confidential information of the HACC ("Confidential Information"). Any reports or other documents or items (including software) which result from the use of the Confidential Information by Contractor shall be treated with respect to confidentiality in the same manner as the Confidential Information.

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

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

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

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

Notwithstanding any other provision in this Contract, Contractor will be responsible for all damages, fines and corrective action (including credit monitoring services) arising from disclosure of such Confidential Information caused by a data breach or the confidentiality provisions hereunder.

The provisions in this Section shall operate in addition to, and not as limitation of, the confidentiality and similar requirements set forth in the rest of the Contract, as it may otherwise be amended. Contractor's obligations under this Contract shall survive the expiration or termination of the Contract, as amended, and shall be perpetual.



**EXHIBIT A  
PERSONAL SERVICES CONTRACT  
SCOPE OF WORK**

**Scope of Work**

PBS Engineering and Environmental Inc. (PBS) will provide the following geotechnical engineering services:

- Geologic and recent site history reporting
- Feasibility studies
- Subsurface explorations
- Soils analysis and testing
- Infiltration testing
- Groundwater and stormwater recommendations
- Foundation and building reports and recommendations
- Construction observation and testing

**Hourly Rate Schedule**

<b>Position</b>	<b>Rate</b>
<b>Engineering Technician</b>	<b>95.00</b>
<b>Engineer I</b>	<b>110.00</b>
<b>Engineer II</b>	<b>120.00</b>
<b>Engineer III</b>	<b>130.00</b>
<b>Engineer IIII</b>	<b>140.00</b>
<b>Engineer V</b>	<b>150.00</b>
<b>Engineer VI</b>	<b>165.00</b>
<b>Engineer VII</b>	<b>180.00</b>
<b>Engineer VIII</b>	<b>190.00</b>
<b>Principal Engineer</b>	<b>225.00</b>
<b>Engineering Geologist I</b>	<b>130.00</b>
<b>Engineering Geologist II</b>	<b>150.00</b>
<b>Staff Geologist I</b>	<b>85.00</b>
<b>Staff Geologist II</b>	<b>95.00</b>
<b>Project Geologist I</b>	<b>105.00</b>
<b>Project Geologist II</b>	<b>120.00</b>
<b>Writer/Editor</b>	<b>95.00</b>
<b>Project Administrator II</b>	<b>95.00</b>





October 1<sup>st</sup>, 2020

Housing Authority Board of Commissioners  
Clackamas County

Members of the Board:

Approval of Environmental Engineering Contract between Housing Authority of Clackamas County and Vendor PBS Engineering and Environmental, Inc.

<b>Purpose/Outcomes</b>	Approval of Environmental Engineering Contract between Housing Authority of Clackamas County and PBS Engineering and Environmental, Inc.
<b>Dollar Amount</b>	Not to exceed \$145,000 over three years
<b>Funding Source</b>	Housing Authority of Clackamas County No County General Funds
<b>Duration</b>	October 1, 2020 through September 30, 2023
<b>Previous Board Action</b>	None
<b>Strategic Plan Alignment</b>	<ol style="list-style-type: none"> <li>1. Ensure safe, healthy and secure communities</li> <li>2. Sustainable and Affordable Housing</li> </ol>
<b>Counsel Review</b>	Andrew Naylor, September 15, 2020
<b>Procurement Review</b>	Per Resolution No. 1936, HACC adopted the Local Contract Review Board rules for HACC Procurements. HACC conducts its own procurements following its procurement handbook.
<b>Contact Person</b>	Jill C. Smith, HACC Executive Director
<b>Contract Number</b>	9864

**BACKGROUND:**

The Clackamas County Housing Authority (HACC) a Division of the Health, Housing & Human Services Department requests approval to execute an Environmental Service Contract between Housing Authority of Clackamas County (HACC) and PBS Engineering and Environmental, Inc.

PBS Engineering and Environmental, Inc. provides HACC with a range of consulting services for assessment of environmental conditions throughout its Public Housing portfolio as well as future sites that HACC may want to acquire for development and/or redevelopment of affordable housing. PBS Engineering and Environmental, Inc. also provides geotechnical testing and analysis as required for affordable housing development, under a separate contract.

PBS Engineering and Environmental, Inc. performs the following tasks under the current contract with HACC:

- Phase I environmental site assessments meeting ASTM standards and any HUD requirements.
- Phase II site assessments to confirm presence or absence of hazardous materials.

- Individual hazardous materials testing based on reported suspected presence. Materials testing may include, but are not limited to, presence of lead, asbestos, PCBs, and other regulated or hazardous substances.
- Testing for underground storage tanks. Soil and groundwater investigations.
- Testing for radon and recommendations based on results.
- NEPA studies meeting HUD requirements.
- Testing for moisture intrusion and mold evaluations.
- Review of historical data and existing documents.
- Development of recommended protocols for abating or addressing hazardous materials.
- Reporting on hazardous materials including locations sampled, observations made and tabulated results.
- Identification of Federal, State and local laws and regulations project must satisfy.
- Assistance with cost estimates for abatement work.

PBS Engineering and Environmental, Inc. was selected through a competitive RFQ process in September 2020. The contract is not to exceed \$145,000 over a three (3) year contract period. At the conclusion of the contract HACC will again advertise an RFP for environmental services.

No County General Funds used.

**RECOMMENDATION:**

Staff recommends the Board approve the Environmental Engineering Contract and staff recommends the Board authorizes Jill Smith, Executive Director of HACC to sign on behalf of the Housing Authority of Clackamas County

Respectfully submitted,



Richard Swift, HHS Deputy / For

Richard Swift, Director  
Health, Housing and Human Services



**HOUSING AUTHORITY OF CLACKAMAS COUNTY  
ENVIRONMENTAL ENGINEERING SERVICES CONTRACT  
Contract #9864**

This Environmental Engineering Services Contract (this "Contract") is entered into between PBS Engineering and Environmental, Inc. ("Contractor"), and the Housing Authority of Clackamas County, a public corporation organized under ORS Chapter 456 ("HACC").

**ARTICLE I.**

**1. Effective Date and Duration.** This Contract shall become effective upon signature of both parties. Unless earlier terminated or extended, this Contract shall expire on September 30, 2023.

**2. Scope of Work.** Contractor shall provide the following personal services: On-call Environmental Engineering Services ("Work"), further described in **Exhibit A**.

This Contract is on an "on-call" or "as-needed basis" for performance of the Work. When HACC wishes Contractor to perform the Work, HACC will submit a task order detailing the Scope of Work to be performed and the total compensation pursuant to the fee schedule set forth in Exhibit A to this Contract. Contractor may not perform Work until a task order form has been executed by the parties. In the event a project authorized under the task order extends beyond the expiration of this Contract, the task order shall remain in effect under the terms of this Contract until the completion or expiration of the authorized task.

No task order shall modify or amend the terms and conditions of this Contract.

**3. Consideration.** HACC agrees to pay Contractor, from available and authorized funds, a sum not to exceed one hundred forty five thousand dollars (\$145,000.00), for accomplishing the Work required by this Contract. Consideration rates are on a time and materials basis in accordance with the rates and costs specified in Exhibit A. If any interim payments to Contractor are made, such payments shall be made only in accordance with the schedule and requirements in Exhibit A.

**4. Invoices and Payments.** Unless otherwise specified, Contractor shall submit monthly invoices for Work performed. Invoices shall describe all Work performed with particularity, by whom it was performed, and shall itemize and explain all expenses for which reimbursement is claimed. The invoices shall include the total amount billed to date by Contractor prior to the current invoice. If Contractor fails to present invoices in proper form within sixty (60) calendar days after the end of the month in which the services were rendered, Contractor waives any rights to present such invoice thereafter and to receive payment therefor. Payments shall be made to Contractor following the HACC's review and approval of invoices submitted by Contractor. Contractor shall not submit invoices for, and the HACC will not be obligated to pay, any amount in excess of the maximum compensation amount set forth above. If this maximum compensation amount is increased by amendment of this Contract, the amendment must be fully effective before Contractor performs Work subject to the amendment.

Invoices shall reference the above Contract Number and be submitted to: **haccap@clackamas.us**.

**5. Travel and Other Expense.** Authorized:  Yes  No

If travel expense reimbursement is authorized in this Contract, such expense shall only be reimbursed at the rates in the County Contractor Travel Reimbursement Policy, hereby incorporated by reference and found at: <http://www.clackamas.us/bids/terms.html>. Travel expense reimbursement is not in excess of the not to exceed consideration described in Article I, Section 3, above.

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

7. **Contractor and HACC Contacts.**

PBS Engineering and Environmental Administrator: Derek May Phone: 503-248-1939 Email: derek@pbsusa.com	HACC Administrator: Angel Sully Phone: 971-336-1761 Email: asully@clackamas.us
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Payment information will be reported to the Internal Revenue Service (“IRS”) under the name and taxpayer ID number submitted. (See I.R.S. 1099 for additional instructions regarding taxpayer ID numbers.) Information not matching IRS records will subject Contractor payments to backup withholding.

**ARTICLE II.**

1. **ACCESS TO RECORDS.** Contractor shall maintain books, records, documents, and other evidence, in accordance with generally accepted accounting procedures and practices, sufficient to reflect properly all costs of whatever nature claimed to have been incurred and anticipated to be incurred in the performance of this Contract. HACC and its duly authorized representatives shall have access to the books, documents, papers, and records of Contractor, which are directly pertinent to this Contract for the purpose of making audit, examination, excerpts, and transcripts. Contractor shall maintain such books and records for a minimum of six (6) years, or such longer period as may be required by applicable law, following final payment and termination of this Contract, or until the conclusion of any audit, controversy or litigation arising out of or related to this Contract, whichever date is later.
2. **AVAILABILITY OF FUTURE FUNDS.** Any continuation or extension of this Contract after the end of the fiscal period in which it is written is contingent on a new appropriation for each succeeding fiscal period sufficient to continue to make payments under this Contract, as determined by the HACC in its sole administrative discretion.
3. **CAPTIONS.** The captions or headings in this Contract are for convenience only and in no way define, limit, or describe the scope or intent of any provisions of this Contract.
4. **COMPLIANCE WITH APPLICABLE LAW.** Contractor shall comply with all applicable federal, state and local laws, regulations, executive orders, and ordinances, as such may be amended from time to time.
5. **COUNTERPARTS.** This Contract may be executed in several counterparts (electronic or otherwise), each of which shall be an original, all of which shall constitute the same instrument.
6. **GOVERNING LAW.** This Contract, and all rights, obligations, and disputes arising out of it, shall be governed and construed in accordance with the laws of the State of Oregon and the ordinances of Clackamas County without regard to principles of conflicts of law. Any claim, action, or suit between HACC and Contractor that arises out of or relates to the performance of this Contract shall be brought and conducted solely and exclusively within the Circuit Court for Clackamas County, for the State of Oregon. Provided, however, that if any such claim, action, or suit may be brought in a federal forum, it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this section be construed as a waiver by the HACC of any form of defense or immunity, whether sovereign immunity, governmental immunity,

immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court. Contractor, by execution of this Contract, hereby consents to the personal jurisdiction of the courts referenced in this section.

- 7. RESPONSIBILITY FOR DAMAGES; INDEMNITY.** Contractor shall be responsible for all damage to property, injury to persons, and loss, expense, inconvenience, and delay which may be caused by, or result from, the conduct of Work, or from any act, omission, or neglect of Contractor, its subcontractors, agents, or employees. The Contractor agrees to indemnify, hold harmless and defend the HACC, and its officers, elected officials, agents and employees from and against all claims and actions, and all expenses incidental to the investigation and defense thereof, arising out of or based upon damage or injuries to persons or property caused by the errors, omissions, fault or negligence of the Contractor or the Contractor's employees, subcontractors, or agents. However, neither Contractor nor any attorney engaged by Contractor shall defend the claim in the name of HACC or any department of County, nor purport to act as legal representative of HACC or any of its departments, without first receiving from the Clackamas County Counsel's Office authority to act as legal counsel for HACC, nor shall Contractor settle any claim on behalf of HACC without the approval of the Clackamas County Counsel's Office. HACC may, at its election and expense, assume its own defense and settlement.
- 8. INDEPENDENT CONTRACTOR STATUS.** The service(s) to be rendered under this Contract are those of an independent contractor. Although the HACC reserves the right to determine (and modify) the delivery schedule for the Work to be performed and to evaluate the quality of the completed performance, HACC cannot and will not control the means or manner of Contractor's performance. Contractor is responsible for determining the appropriate means and manner of performing the Work. Contractor is not to be considered an agent or employee of HACC for any purpose, including, but not limited to: (A) The Contractor will be solely responsible for payment of any Federal or State taxes required as a result of this Contract; and (B) This Contract is not intended to entitle the Contractor to any benefits generally granted to HACC employees, including, but not limited to, vacation, holiday and sick leave, other leaves with pay, tenure, medical and dental coverage, life and disability insurance, overtime, Social Security, Workers' Compensation, unemployment compensation, or retirement benefits.
- 9. INSURANCE.** Contractor shall secure at its own expense and keep in effect during the term of the performance under this Contract the insurance required and minimum coverage indicated below. Contractor shall provide proof of said insurance and name the HACC and Clackamas County as additional insureds on all required liability policies. Proof of insurance and notice of any material change should be submitted to the following address: Housing Authority of Clackamas County, PO Box 1510 Oregon City, OR 97045 or [asully@clackamas.us](mailto:asully@clackamas.us).

Required - Workers Compensation: Contractor shall comply with the workers' compensation requirements in ORS 656.017, unless exempt under ORS 656.126.
<input checked="" type="checkbox"/> Required – Commercial General Liability: combined single limit, or the equivalent, of not less than \$1,000,000 per occurrence, with an annual aggregate limit of \$2,000,000 for Bodily Injury and Property Damage.
<input checked="" type="checkbox"/> Required – Professional Liability: combined single limit, or the equivalent, of not less than \$1,000,000 per occurrence, with an annual aggregate limit of \$2,000,000 for damages caused by error, omission or negligent acts.
<input checked="" type="checkbox"/> Required – Automobile Liability: combined single limit, or the equivalent, of not less than \$1,000,000 per occurrence for Bodily Injury and Property Damage.

This policy(s) shall be primary insurance as respects to the HACC. Any insurance or self-insurance maintained by the HACC shall be excess and shall not contribute to it. Any obligation that HACC agree to a waiver of subrogation is hereby stricken.

**10. LIMITATION OF LIABILITIES.** This Contract is expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10, of the Oregon Constitution, and is contingent upon funds being appropriated therefore. Any provisions herein which would conflict with law are deemed inoperative to that extent. Except for liability arising under or related to Article II, Section 13 or Section 21 neither party shall be liable for (i) any indirect, incidental, consequential or special damages under this Contract or (ii) any damages of any sort arising solely from the termination of this Contract in accordance with its terms.

**11. NOTICES.** Except as otherwise provided in this Contract, any required notices between the parties shall be given in writing by personal delivery, email, or mailing the same, to the Contract Administrators identified in Article 1, Section 6. If notice is sent to HACC, a copy shall also be sent to: Housing Authority of Clackamas County, PO Box 1510 Oregon City, OR 97045 or [asully@clackamas.us](mailto:asully@clackamas.us). Any communication or notice so addressed and mailed shall be deemed to be given five (5) days after mailing, and immediately upon personal delivery, or within 2 hours after the email is sent during HACC's normal business hours (Monday – Thursday, 7:00 a.m. to 6:00 p.m.) (as recorded on the device from which the sender sent the email), unless the sender receives an automated message or other indication that the email has not been delivered.

**12. OWNERSHIP OF WORK PRODUCT.** All work product of Contractor that results from this Contract (the "Work Product") is the exclusive property of HACC. HACC and Contractor intend that such Work Product be deemed "work made for hire" of which HACC shall be deemed the author. If for any reason the Work Product is not deemed "work made for hire," Contractor hereby irrevocably assigns to HACC all of its right, title, and interest in and to any and all of the Work Product, whether arising from copyright, patent, trademark or trade secret, or any other state or federal intellectual property law or doctrine. Contractor shall execute such further documents and instruments as HACC may reasonably request in order to fully vest such rights in HACC. Contractor forever waives any and all rights relating to the Work Product, including without limitation, any and all rights arising under 17 USC § 106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use or subsequent modifications. Notwithstanding the above, HACC shall have no rights in any pre-existing Contractor intellectual property provided to HACC by Contractor in the performance of this Contract except to copy, use and re-use any such Contractor intellectual property for HACC use only. If this Contract is terminated prior to completion, and the HACC is not in default, HACC, in addition to any other rights provided by this Contract, may require the Contractor to transfer and deliver all partially completed Work Product, reports or documentation that the Contractor has specifically developed or specifically acquired for the performance of this Contract.

**13. REPRESENTATIONS AND WARRANTIES.** Contractor represents and warrants to HACC that (A) Contractor has the power and authority to enter into and perform this Contract; (B) this Contract, when executed and delivered, shall be a valid and binding obligation of Contractor enforceable in accordance with its terms; (C) Contractor shall at all times during the term of this Contract, be qualified, professionally competent, and duly licensed to perform the Work; (D) Contractor is an independent contractor as defined in ORS 670.600; and (E) the Work under this Contract shall be performed in a good and workmanlike manner and in accordance with the highest professional standards. The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.

**14. SURVIVAL.** All rights and obligations shall cease upon termination or expiration of this Contract, except for the rights and obligations set forth in Article II, Sections 1, 6, 7, 11, 13, 14, 16, 21, 22, and all other rights and obligations which by their context are intended to survive. However, such expiration shall not extinguish or prejudice the HACC's right to enforce this Contract with respect to:

(a) any breach of a Contractor warranty; or (b) any default or defect in Contractor performance that has not been cured.

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

**16. SUBCONTRACTS AND ASSIGNMENTS.** Contractor shall not enter into any subcontracts for any of the Work required by this Contract, or assign or transfer any of its interest in this Contract by operation of law or otherwise, without obtaining prior written approval from the HACC, which shall be granted or denied in the HACC's sole discretion. In addition to any provisions the HACC may require, Contractor shall include in any permitted subcontract under this Contract a requirement that the subcontractor be bound by this Article II, Sections 1, 7, 8, 13, 16 and 27 as if the subcontractor were the Contractor. HACC's consent to any subcontract shall not relieve Contractor of any of its duties or obligations under this Contract.

**17. SUCCESSORS IN INTEREST.** The provisions of this Contract shall be binding upon and shall inure to the benefit of the parties hereto, and their respective authorized successors and assigns.

**18. TAX COMPLIANCE CERTIFICATION.** The Contractor shall comply with all federal, state and local laws, regulation, executive orders and ordinances applicable to this Contract. Contractor represents and warrants that it has complied, and will continue to comply throughout the duration of this Contract and any extensions, with all tax laws of this state or any political subdivision of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318. Any violation of this section shall constitute a material breach of this Contract and shall entitle HACC to terminate this Contract, to pursue and recover any and all damages that arise from the breach and the termination of this Contract, and to pursue any or all of the remedies available under this Contract or applicable law.

**19. TERMINATIONS.**

(A) This Contract may be terminated by mutual agreement of the parties or by the HACC for one of the following reasons: (i) for convenience upon thirty (30) days written notice to Contractor; or (ii) at any time the HACC fails to receive funding, appropriations, or other expenditure authority as solely determined by the HACC. Upon receipt of written notice of termination from the HACC, Contractor shall immediately stop performance of the Work.

(B) If Contractor breaches any Contract provision or is declared insolvent, HACC may terminate after thirty (30) days written notice with an opportunity to cure. Upon termination of this Contract, Contractor shall deliver to HACC all documents, information, works-in-progress and other property that are or would be deliverables had the Contract Work been completed. Upon HACC's request, Contractor shall surrender to anyone HACC designates, all documents, research, objects or other tangible things needed to complete the Work.

**20. REMEDIES.** If terminated by the HACC due to a breach by the Contractor, then the HACC shall have any remedy available to it in law or equity. If this Contract is terminated for any other reason, Contractor's sole remedy is payment for the goods and services delivered and accepted by the HACC, less any setoff to which the HACC is entitled.

**21. NO THIRD PARTY BENEFICIARIES.** HACC and Contractor are the only parties to this Contract and are the only parties entitled to enforce its terms. Nothing in this Contract gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or

otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Contract.

- 22. NO ATTORNEY FEES.** In the event any arbitration, action or proceeding, including any bankruptcy proceeding, is instituted to enforce any term of this Contract, each party shall be responsible for its own attorneys' fees and expenses.
- 23. TIME IS OF THE ESSENCE.** Contractor agrees that time is of the essence in the performance this Contract.
- 24. FOREIGN CONTRACTOR.** If the Contractor is not domiciled in or registered to do business in the State of Oregon, Contractor shall promptly provide to the Oregon Department of Revenue and the Secretary of State, Corporate Division, all information required by those agencies relative to this Contract. The Contractor shall demonstrate its legal capacity to perform these services in the State of Oregon prior to entering into this Contract.
- 25. FORCE MAJEURE.** Neither HACC nor Contractor shall be held responsible for delay or default caused by events outside the HACC or Contractor's reasonable control including, but not limited to, fire, terrorism, riot, acts of God, or war. However, Contractor shall make all reasonable efforts to remove or eliminate such a cause of delay or default and shall upon the cessation of the cause, diligently pursue performance of its obligations under this Contract.
- 26. WAIVER.** The failure of HACC to enforce any provision of this Contract shall not constitute a waiver by HACC of that or any other provision.
- 27. PUBLIC CONTRACTING REQUIREMENTS.** Pursuant to the public contracting requirements contained in Oregon Revised Statutes ("ORS") Chapter 279B.220 through 279B.235, Contractor shall:
- a. Make payments promptly, as due, to all persons supplying to Contractor labor or materials for the prosecution of the work provided for in the Contract.
  - b. Pay all contributions or amounts due the Industrial Accident Fund from such Contractor or subcontractor incurred in the performance of the Contract.
  - c. Not permit any lien or claim to be filed or prosecuted against HACC on account of any labor or material furnished.
  - d. Pay the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.
  - e. If Contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to Contractor or a subcontractor by any person in connection with the Contract as such claim becomes due, the proper officer representing HACC may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due Contractor by reason of the Contract.
  - f. As applicable, the Contractor shall pay employees for work in accordance with ORS 279B.235, which is incorporated herein by this reference. The Contractor shall comply with the prohibitions set forth in ORS 652.220, compliance of which is a material element of this Contract, and failure to comply is a breach entitling HACC to terminate this Contract for cause.
  - g. If the Work involves lawn and landscape maintenance, Contractor shall salvage, recycle, compost, or mulch yard waste material at an approved site, if feasible and cost effective.
- 27. CONFIDENTIALITY.** Contractor acknowledges that it and its employees and agents may, in the course of performing their obligations under this Contract, be exposed to or acquire information that the HACC desires or is required to maintain as confidential. Any and all information of any form obtained by Contractor or its employees or agents in the performance of this Contract, including but



not limited to Personal Information (as "Personal Information" is defined in ORS 646A.602(11)), shall be deemed to be confidential information of the HACC ("Confidential Information"). Any reports or other documents or items (including software) which result from the use of the Confidential Information by Contractor shall be treated with respect to confidentiality in the same manner as the Confidential Information.

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

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

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

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

Notwithstanding any other provision in this Contract, Contractor will be responsible for all damages, fines and corrective action (including credit monitoring services) arising from disclosure of such Confidential Information caused by a data breach or the confidentiality provisions hereunder.

The provisions in this Section shall operate in addition to, and not as limitation of, the confidentiality and similar requirements set forth in the rest of the Contract, as it may otherwise be amended. Contractor's obligations under this Contract shall survive the expiration or termination of the Contract, as amended, and shall be perpetual.

**28. MERGER.** THIS CONTRACT CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PARTIES WITH RESPECT TO THE SUBJECT MATTER REFERENCED THEREIN. THERE ARE NO UNDERSTANDINGS, AGREEMENTS, OR REPRESENTATIONS, ORAL OR WRITTEN, NOT SPECIFIED HEREIN REGARDING THIS CONTRACT. NO AMENDMENT, CONSENT, OR WAIVER OF TERMS OF THIS CONTRACT SHALL BIND EITHER PARTY UNLESS IN WRITING AND SIGNED BY ALL PARTIES. ANY SUCH AMENDMENT, CONSENT, OR WAIVER SHALL BE EFFECTIVE ONLY IN THE SPECIFIC INSTANCE AND FOR THE SPECIFIC PURPOSE GIVEN. CONTRACTOR, BY THE SIGNATURE HERETO OF ITS AUTHORIZED REPRESENTATIVE, IS AN INDEPENDENT CONTRACTOR, ACKNOWLEDGES HAVING READ AND UNDERSTOOD THIS CONTRACT, AND CONTRACTOR AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

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

PBS Engineering and Environmental, Inc.

 9/22/2020  
Authorized Signature Date

Derek May Vice President  
Name / Title (Printed)

176306-17  
Oregon Business Registry #

Corporation/Oregon  
Entity Type / State of Formation

HOUSING AUTHORITY OF CLACKAMAS COUNTY BOARD

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

Signing on Behalf of the Housing Authority Board

Jill Smith, Executive Director  
Housing Authority of Clackamas County

\_\_\_\_\_  
Date

Approved as to Form:

 09/23/2020  
County Counsel Date

**EXHIBIT A  
PERSONAL SERVICES CONTRACT  
SCOPE OF WORK**

**Scope of Work for Environmental and Industrial Hygiene Services**

When performing work under the Contract, PBS Engineering and Environmental Inc. (PBS) will meet the highest standards prevalent in the industry most closely related to the services described below. The scope of work for this contract will vary as need arises and will be at the discretion of HACC.

Environmental engineering requests may be, but not limited to, Phase I Environmental Site Assessments (ESA), hazardous materials testing, and developing protocols for handling discovered materials.

Requested services may be, but are not limited to:

- Phase I ESAs meeting ASTM standards and any Department of Housing and Urban Development (HUD) requirements.
- Phase II ESAs to confirm presence or absence of hazardous materials.
- Individual hazardous materials testing based on reported suspected presence. Materials testing may include, but are not limited to, presence of lead, asbestos, polychlorinated biphenyls (PCBs), and other regulated or hazardous substances.
- Testing for underground storage tanks and soil and groundwater investigations.
- Testing for radon and recommendations based on results.
- National Environmental Policy Act (NEPA) studies meeting HUD requirements.
- Testing for moisture intrusion and mold evaluations.
- Review of historical data and existing documents.
- Development of recommended protocols for abating or addressing hazardous materials.
- Reporting on hazardous materials including locations sampled, observations made, and tabulated results.
- Identification of federal, state, and local laws and regulations project must satisfy.
- Assistance with cost estimates for abatement work.





**Stephen L. Madkour**  
County Counsel

**Kathleen Rastetter**  
**Scott C. Ciecko**  
**Amanda Keller**  
**Nathan K. Boderman**  
**Shawn Lillegren**  
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Assistants

October 1, 2020

Board of County Commissioners  
Clackamas County

Members of the Board:

**Second Reading of Ordinance No. 08-2020 Amending Chapter 6.05,  
Noise Control, of the Clackamas County Code**

<b>Purpose/Outcomes</b>	<i>Amend the Noise Control chapter of the County's Code</i>
<b>Dollar Amount and Fiscal Impact</b>	<ul style="list-style-type: none"> <li><i>Elimination of the decibel meters will save costs associated with the purchase and maintenance of this equipment.</i></li> <li><i>Additional training may be needed for those in the Sheriff's Office charged with enforcing the amended rules, particularly with regards to applying the subjective standard when determining noise violations.</i></li> <li><i>A potential increase in the number of hearings associated with noise violations where violations are determined through the use of subjective standards.</i></li> </ul>
<b>Funding Source</b>	<i>General Fund</i>
<b>Duration</b>	<i>Indefinitely</i>
<b>Previous Board Action</b>	<i>Policy Sessions: November 27, 2018, July 2, 2019, and August 18, 2020 Ordinance First Reading: September 17, 2020</i>
<b>Strategic Plan Alignment</b>	<i>Build public trust through good government. Ensure safe, healthy, and secure communities.</i>
<b>Counsel Review</b>	<i>September 17, 2020 (NB)</i>
<b>Procurement Review</b>	<ol style="list-style-type: none"> <li><i>Was the item processed through Procurement? yes <input type="checkbox"/> no <input checked="" type="checkbox"/></i></li> <li><i>If no, provide brief explanation: The item is an amendment of the County Code and does not involve any procurement activities.</i></li> </ol>
<b>Contact Person</b>	<i>Nate Boderman, Assistant County Counsel; 503-655-8364</i>
<b>Contract No.</b>	<i>N/A</i>

**BACKGROUND:**

ORS 203.065 and 467.100 grant counties the ability to adopt and enforce noise regulations, and to define what a nuisance is. The County has adopted comprehensive noise control regulations, which have been codified in Chapter 6.05 of the County Code. Under 6.05.080, the Clackamas County Sheriff is vested with authority to administer, supervise and perform all acts necessary to enforce the County's noise ordinance.

The Board expressed interest in revising the County's current noise ordinance for purposes of incorporating a subjective standard to determine noise violations, as opposed to the current objective standard currently utilized in the Code. The County's noise ordinance is currently based on a decibel standard. The methods and equipment used for sound measurement are strictly prescribed in 6.05.030, and the specific decibel limits are set forth in 6.05.040. The primary advantage of this approach is that it provides an objective method for determining whether excessive noise is a violation under the County's Code. On the other hand, sound level meters are expensive, require maintenance and calibration, and require operation by trained staff. Additionally, while the use of sound level meters may be useful when measuring ongoing noise created by such things as mechanical equipment or loudspeakers, it often is not a practical way to measure intermittent noise created by such things as parties or vehicle engines.

Jurisdictions that want to address the shortcomings of the objective standard, such as the one currently utilized by Clackamas County and many others, instead opt for a more subjective approach, which relies on a reasonableness standard to determine whether excessive noise is a violation. Language implementing such an approach may rely on standards such as whether noise is "unreasonably loud" or "plainly audible" in lieu of a precise measurement made by a sound level meter.

The advantages are apparent in that this eliminates issues around the cost, availability and expertise associated with operating the sound level meter. Adopting a "reasonableness" standard would also provide the Sheriff's office more flexibility to determine what should constitute a noise violation depending on the context of the situation. The downside of this additional flexibility is that there is increased ambiguity and potentially inconsistent enforcement in terms of what would be considered to be a noise violation. Additionally, in the event a citation is challenged, it is more difficult for a court or hearings officer to determine whether the alleged noise should be considered unreasonable. This is because there is no specifically prescribed evidence that is required to support a citation, and because individuals' perception of what may or may not be "reasonable" often varies. Finally, regulation of noise may involve free speech issues when the subject of the excessive noise is protected speech. The County may regulate such aspects of the speech, such as volume, duration, location and timing, so long as the regulation is unrelated the content or message expressed by the noise. While the use of a decibel standard mostly avoids these First Amendment issues, additional care must be taken where enforcement officials are given discretion to decide what noise may be unreasonable under the circumstances.

The primary policy change in the proposed amendments would effectively make "unreasonably loud or raucous noise" a violation of the County's noise regulations. Section 6.05.030 defines in greater detail what is meant by these terms, and provides factors for determining when noise will be considered loud or raucous. As noted above, this amendment represents a departure from the existing standard, which strictly limits violations to those noises that exceed the defined decibel thresholds.

The Board has held three previous policy sessions to review the County's current noise ordinance and to discuss potential policy changes to the Code. The Board has recommended that staff move forward with changes discussed at those previous policy sessions. The attached ordinance reflects the changes previously endorsed by the Board. For convenience, the following is a summary of the more significant changes that the Board considered previously:

- A policy change from an objective, decibel-based noise standard, to a subjective standard that would effectively make "unreasonably loud or raucous noise" a violation of the County's noise regulations.
- The addition of the following exemptions to the noise standards:
  - o Sounds caused by excavations associated with bridges, streets or highways by or on behalf of the County, the State or the federal government, between the hours of 10 p.m., and 7 a.m. the following day, when the public welfare and convenience renders it impractical to perform the work between 7 a.m. and 10 p.m.;
  - o Outdoor gatherings, public dances, shows, sporting events and other similar outdoor events, provided that a permit has been obtained from the appropriate permitting authority or is being sponsored or hosted by the County; and
  - o Noise emanating from the combustion, detonation, or concussion caused by using fireworks or other similar devices from July 1 until July 5 of each year.
- Certain housekeeping-type amendments to improve consistency within the existing ordinance and to assist with enforcement, as follows:
  - o An adjustment of certain definitions for consistency with other County Code sections.
  - o Clarification of the location from which sound measurements must be taken. The proposed change would conform to the current practice by the Sheriff's Office.
  - o Standardizing all references to those times from which reduced noise is mandated under the code to 10 p.m. and 7 a.m. the following day, except for the blasting activity exemption, which would remain unchanged and allow permitted blasting activities between the hours of 9 a.m. and 4 p.m.
  - o Removal of specific provisions related to the notice and procedure associated with compliance hearings, and instead, utilize the generally applicable hearings officer procedures in Chapter 2.07.

In addition to the substantive changes discussed above, the Board also has discretion to set the amount of a fine for violation of the noise ordinance. The current fine for a noise violation is an amount not to exceed \$500. ORS 203.065 classifies violations of county ordinance as a Class A violation which can carry with it a maximum fine of up to \$2,000 under ORS 153.018(2)(a). Increased fines obviously act as an additional deterrent and may help mitigate excessive noise issues prior to issuance of a citation, and serves to discourage repeat offenders.

Concern around whether our current fines were sufficient to discourage violations of our noise ordinance was raised by the Board at previous policy sessions. Staff believes that there may have been some confusion with administering the current fine schedule, since there is a separately prescribed fine of \$55 for noise violations that occur within parks.

The Sheriff's Office has recommended the following adjustments to the fine schedule to help clarify:

- 1<sup>st</sup> Offense: \$150
- 2<sup>nd</sup> Offense: \$300

3<sup>rd</sup> Offense and every offense thereafter: \$500

Staff believes the penalties above are appropriate and commensurate with the type of violation at issue. If the Board agrees, the fine schedule may be updated along with the substantive changes to the ordinance described above.

During the previously policy sessions, the Board engaged in discussions around potential amendments to procedures associated with the review and approval of noise variances, which are provided for under Section 6.05.060. In the interest of efficiency, the Board directed staff to proceed with the amendments described herein, and to separately address any additional revisions related to variances as part of a separate process. The attached ordinance does not provide any change to the procedures currently associated with noise variances. A meeting has been scheduled on October 1, 2020 with representatives from County Administration, the Sheriff's Office, and the Department of Transportation and Development to discuss options and to form a proposal for consideration by the Board at a later meeting.

A public hearing was held, and the first reading of this proposed ordinance took place on September 17, 2020. No public testimony was provided during the hearing, and the Board requested no changes be made to the ordinance prior to this second reading.

**RECOMMENDATION:**

Staff respectfully requests that the Board read the ordinance by title only and proceed to adoption.

Respectfully submitted,

Nate Boderman  
Assistant County Counsel

Attachments:  
Proposed Ordinance 08-2020 with Exhibits A and B



**ORDINANCE NO. 08-2020**

**An Ordinance Amending  
Clackamas County Code Chapter 6.05, *Noise Control*,  
Amending Clackamas County Code Chapter 2.07, *Compliance Hearings  
Officer*, and Amending Clackamas County Code Appendix B: *Fines*.**

WHEREAS, the Board finds that it is in the public's interest to regulate noise in order to enhance public safety and livability; and

WHEREAS, the Board of Commissioners of Clackamas County finds that amendments are warranted to the County's existing noise control regulations in order to allow for more effective enforcement and to improve consistency with other sections of the County's Code; and

WHEREAS, the Board finds that an amendment to the County's fine schedule is warranted for purposes of clarifying the amount of a fine that should be imposed in connection with a citation for a violation of Chapter 6.05.

Now, therefore, the Board of Commissioners of Clackamas County ordains as follows:

**Section 1:** Chapter 6.05 of the Clackamas County Code is hereby amended as shown on Exhibit "A" and Exhibit "B", which are attached hereto and incorporated herein by this reference.

**Section 2:** Chapter 2.07 of the Clackamas County Code is hereby amended to add a reference to Chapter 6.05, *Noise Control*, in the second paragraph of Section 2.07.010 for purposes of clarifying that enforcement of the *Noise Control* Chapter shall be processed under the provisions of Chapter 2.07.

**Section 3:** Appendix B of the Clackamas County Code is hereby amended to clarify the fine amount associated with a "Noise Control Violation" as follows:

- 1<sup>st</sup> Offense: \$150
- 2<sup>nd</sup> Offense: \$300
- 3<sup>rd</sup> Offense and every offense thereafter: \$500

**Section 4:** Effective Date. This Ordinance shall take effect ninety (90) days after adoption.

ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

**CLACKAMAS COUNTY BOARD OF COMMISSIONERS**

\_\_\_\_\_  
Chair

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

## 6.05 NOISE CONTROL

### 6.05.010 Declaration Of Findings And Policy

The Board of Commissioners for Clackamas County finds that excessive sound can and does constitute a hazard to the health, safety, welfare, and quality of life of residents of the County. While certain activities essential to the economic, social, political, educational and technical advancements of the citizens of the County necessarily require the production of sounds which may offend, disrupt, intrude or otherwise create hardship among the citizenry, the Board is obliged to impose some limitation and regulation upon the production of excessive sound as will reduce the deleterious effects thereof.

Now, therefore, it is the policy of this Board to protect, preserve, and promote the health, safety, welfare, peace, and quiet of the citizens of Clackamas County through the reduction, control, and prevention of loud and raucous noise, or any noise which unreasonably disturbs, injures or endangers the comfort, repose, health, peace or safety; or causes public inconvenience, annoyance or alarm to reasonable persons of ordinary sensitivity. ~~prevent and regulate excessive sound wherever it is deemed to be harmful to the health, safety, welfare, and quality of life of citizens of Clackamas County. This chapter shall be liberally construed to effectuate that purpose.~~

[Codified by Ord. 05-2000, 7/13/00]

### 6.05.020 Definitions

The following terms and definitions shall apply herein unless the context requires otherwise:

- ~~A. DWELLING means a building, or portion thereof, which contains one or more rooms designed for residential occupancy. A dwelling may be a residential trailer or a manufactured dwelling but not a recreational vehicle.~~
- ~~B. "Emergency"EMERGENCY" means any occurrence or set of circumstances involving actual or imminent physical trauma or property damage demanding immediate attention.~~  
~~"Emergency work"EMERGENCY WORK" means any work performed to prevent or alleviate physical trauma or property damage, whether actually caused or threatened by an emergency, or work by private or public utilities in restoring service.~~
- ~~"Industrial and Commercial Districts" means any real property that is used for commercial and industrial activities provided that it is properly zoned, or is legally nonconforming, for commercial or industrial use in accordance with the terms and maps of the Clackamas County Zoning and Development Chapter.~~
- ~~C.~~
- ~~A.D. INDUSTRIAL or COMMERCIAL ORGANIZATIONS or WORKERS those industrial or commercial sound sources of sound which are subject to noise regulation by the State of Oregon Department of Environmental Quality;~~
- ~~B.E. NOISE SENSITIVE"Noise Sensitive UNIT Area"NOISE SENSITIVE AREA" any building or portion thereof, currently and regularly used for the overnight accommodation of persons, including, includes, but is not limited to, dwellings and real property normally~~

Exhibit A

~~used for sleeping or normally used as a school, church, hospital, nursing home or public library, individual residential units, individual apartments, hospitals, and nursing homes;~~

F. PERSON includes, in addition to any individual, any public or private corporation, association, partnership, or other legally recognized public or private entity;

G. ~~“Plainly audible~~PLAINLY AUDIBLE” means any sound that can be detected by a reasonable person of ordinary sensitivities using their unaided hearing faculties.

H. ~~“Public right of Way~~PUBLIC RIGHT OF WAY” means any street, avenue, boulevard, highway, sidewalk, alley, or similar place normally accessible to the public which is owned or controlled by a government entity; legal use or right of passage, given to the public, over a strip of ground under the jurisdiction of county, state, or federal agencies.

I. ~~“Public Space~~PUBLIC SPACE” means any real property or structures on real property, owned by a government entity and normally accessible to the public, including but not limited to parks and other recreational areas.

~~C. “Residential district” means any real property that contains a structure or building in which one or more persons reside, provided that the structure or building is properly zoned, or is legally noneonforming, for residential use in accordance with the terms and maps of the Clackamas County Zoning and Development Chapter.~~

~~D.~~J. SHERIFF the Sheriff of Clackamas County or the Sheriff’s designee; and

~~E.~~K. SOUND SOURCE includes, but is not limited to,

1. Loudspeakers, public address systems;
2. Radios, tape recorders and/or tape players, phonographs, television sets, stereo systems including those installed in a vehicle;
3. Musical instruments, amplified or un-amplified;
4. Sirens, bells;
5. Vehicle engines or exhausts, when the vehicle is not on a public right-of-way;
6. Motorboats;
7. Vehicle tires, when caused to squeal by excessive speed or acceleration;
8. Tools, including drills, chain saws, lawnmowers, saws, hammers, and similar tools, but only between 10 p.m. and 7~~6~~ a.m. of the following day;
9. Heat pumps, air conditioning units, generators, blowers and refrigeration units, including those mounted on vehicles; and,
10. Animals located in urban residential zoning districts.

~~F.~~L. URBAN RESIDENTIAL ZONING DISTRICTS means that those zoning districts defined in the Clackamas County Zoning and Development Chapter: ~~-The~~ Urban Low Density Residential (~~R-2.5/R-5/R-7/R-8.5/R-10/R-15/R-20/R-30~~), Medium Density Residential (MR-1), High Density Residential (H~~H~~DR), Special High Density Residential (SHD), Planned Medium Density Residential (PMD), Medium High Density Residential (MR-2), Village Small Lot Residential (VR-4/VR-5), Village Townhouse (VTH), Village Apartment (VA), Regional Center High Density Residential (RCHDR), and any other similar urban residential zoning district defined after the enactment of this chapter.

~~“Utility Service” means the normal operation of utilities within the County, whether provided by the County or by another entity, including but not limited to water, wastewater, electricity, natural gas, telecommunications and garbage hauling.~~

~~G.~~M. VEHICLE means automobiles, motorcycles, motorbikes, go-karts, trucks, buses, and snowmobiles.

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Exhibit A

[Codified by Ord. 05-2000, 7/13/00]

**6.05.030 General Prohibition**

- A. No person shall make or continue to make:
  - 1. Any unreasonably loud or raucous noise;
  - 2. Any noise which unreasonably disturbs, injures, or endangers the comfort, repose, health, peace or safety of reasonable persons of ordinary sensitivity; or
  - 3. Any noise that is so harsh, prolonged, unnatural, or unusual in time or place as to occasion unreasonable discomfort to any persons within the vicinity of the location from which that noise emanates, or as to unreasonably interfere with the peace and comfort of neighbors or their guests, or operators or customers in places of business, or as to detrimentally or adversely affect such dwellings or places of business.
- B. Factors for determining whether a sound is unreasonably loud or raucous include, but are not limited to:
  - 1. The proximity of the sound to dwellings or noise sensitive areas;
  - 2. The land use, nature, and zoning of the area from which the sound emanates and the area where it is received or perceived;
  - 3. The time of day or night the sound occurs;
  - 4. The duration of the sound; and
  - 5. Whether the sound is recurrent, intermittent, or constant.

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**6.05.040 Noises Specifically Prohibited**

~~X.XX.XXX Noises Prohibited in Noise Sensitive Areas and Residential Areas. A. It shall be a per se violation of this chapter for any person to produce or permit to be produced, from a sound source either owned and operated by them or under their control, sound which exceeds:~~

- 1. ~~50 dBA at any time between 10 p.m., and 7 a.m. the following day; or,~~
- 2. ~~60 dBA at any time between 7 a.m. and 10 p.m.~~

~~The following acts are declared per se violations of this ordinance chapter based upon a reasonable person standard. The enumeration does not constitute an exclusive list:~~

- B.
  - 1. ~~-Unreasonable Noises: The unreasonable making of, or knowingly and unreasonably permitting to be made, any unreasonably loud, boisterous, or unusual noise, disturbance, commotion, or vibration in any boarding facility, dwelling, place of business or other structure, or upon any public street, right of way, park, public space or other place or building. The ordinary and usual sounds, noises, commotion or vibration incidental to the operation of these places when conducted in accordance with the usual standards of practice and in a manner which will not unreasonably disturb the peace and comfort of adjacent noise sensitive areas or which will not detrimentally affect the operators of adjacent places of business are exempt from this provision.~~
  - 2. ~~Vehicle, Horns, Signaling Devices, and Similar Devices: The sounding of any horn, signaling device, or other similar device on any vehicle on any right of way or in the public space of the County, for more than ten consecutive seconds. The sounding of any horn, signaling device, or other similar device, as a danger warning is exempt from this prohibition.~~

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Exhibit A

3. Non-Emergency Signaling Devices: Sounding any amplified signal from any bell, chime, siren, whistle or similar device, intended primarily for non-emergency purposes, from any place for more than ten consecutive seconds in any hourly period.  
Emergency Signaling Devices: The intentional sounding or permitting the sounding outdoors of any emergency signaling device including fire, burglar, civil defense alarm, car alarm, siren, whistle, or similar emergency signaling device, except in an emergency or except as provided by the following:

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~~The testing of any emergency signaling device shall occur between 7 a.m. and 7 p.m. Any testing shall use only the minimum cycle test time. In no case shall such test time exceed five minutes. Testing of the emergency signaling system shall not occur more than once in each calendar month.~~

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4. Sounding or permitting the sound of any exterior burglar or fire alarm or any motor vehicle burglar alarm, shall terminate within 15 minutes of activation unless an emergency exists. If a false or accidental activation of an alarm occurs more than twice in a calendar month, the owner or person responsible for the alarm shall be in violation of this ordinance.

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5. Radios, Televisions, Boomboxes, Phonographs, Stereos, Musical Instruments and Similar Devices: The use or operation of a radio, television, boombox, stereo, musical instrument, or similar device, including but not limited to computers, mp3 players, and cellular phones, that produces or reproduces sound in a manner that is plainly audible to any person other than the player(s) or operator(s) of the device, and those who are voluntarily listening to the sound, and which unreasonably disturbs the peace, quiet, and comfort of neighbors as received or perceived in dwellings or noise sensitive areas and/or passer-bys, or is plainly audible at a distance of 50 feet from any person in a noise sensitive area. The use or operation of a radio, television, boombox, stereo, musical instrument or similar device that produces or reproduces sound in a manner that is plainly audible to any person other than the player(s) or operator(s) of the device, and those who are voluntarily listening to the sound, and unreasonably disturbs the peace, quiet and comfort of neighbors in residential sensitive areas, including multi-family or single family dwellings.

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6. Loudspeakers, Amplifiers, Public Address Systems and Similar Devices: The unreasonably loud and raucous use or operation of a loudspeaker, amplifier, public address system, or other device for producing or reproducing sound between the hours of 10 p.m. and 7 a.m. on weekdays the following day, and 10 p.m. and 10 a.m. on weekends and recognized County holidays in the following areas:

a. -Within or adjacent in proximity to residential dwellings or noise sensitive areas.

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b. Within the public space if the sound is plainly audible across the real property line of the public space from which the sound emanates, and is unreasonably loud.

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~~This provision shall not apply to any public performance, gathering, or parade for which a permit has been obtained from the County or for with the County is hosting.~~

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7. Yelling, Shouting and Similar Activities: Yelling, shouting, hooting, whistling or singing received or perceived in residential dwellings, or noise sensitive areas or in public places, between the hours of 10 p.m., and 7 a.m. the following day, or at any time or place so as to unreasonably disturb the quiet, comfort, or repose of reasonable

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Exhibit A

persons of ordinary sensitivities. This section is to be applied only to those situations where the disturbance is not a result of the content of the communication but due to the volume, duration, location, timing, or other factors not based on content.

8. Animals and Birds: Within urban residential zoning districts, Unreasonably loud and raucous noise emitted by an animal or bird for which a person is responsible. A person is responsible for an animal if the person owns, controls, or otherwise cares for the animal or bird.

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9. Dogs: Any dog that unreasonably causes annoyance, alarm or noise disturbance in violation of the Clackamas County Animal Licensing, Services, and Enforcement Chapter 5.01.

~~10. Loading or Unloading Merchandise, Materials, Equipment: The creation of unreasonably loud, raucous and excessive noise relating to the loading or unloading of any vehicle at a place of business or residence.~~

~~10.~~

11. Construction or Repair of Buildings, Excavation of Streets and Highways: The construction, demolition, alteration, or repair of any building or the excavation of streets and highways other than between the hours of 7 a.m. and 107 p.m. on weekdays.

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~~In cases of emergency, construction or repair noises are exempt from this provision. In non-emergency situations, the County Administrator/Manager may issue a permit upon application if the County Administrator/Manager determines that the public health and safety, as affected by loud and raucous noise is caused by construction or repair of buildings or excavation of streets and highways between the hours of 7 p.m. and 7 a.m. will not be impaired, and if the County Administrator/Manager further determines that loss or inconvenience would otherwise result. The permit shall grant permission in non-emergency cases for a period of not more than thirty days. The permit may be renewed once for a period of thirty days or less.~~

12. Blowers, and Similar Devices: In residential or noise sensitive areas, Bbetween the hours of 107 p.m. and 7 a.m. the following day, the operation of any noise-creating blower, power fan, or any internal combustion engine, the operation of which causes noise due to the explosion of operating gases or fluids, provided that the noise is unreasonably loud and is received or perceived in dwellings or noise sensitive areasraucous and can be heard across the property line of the property from which it emanates.

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13. Commercial Establishments Adjacent to Residential PropertyDwellings: Unreasonably loud and raucous noise from the premises of any commercial establishment, including any outdoor area which is part of or under control of the establishment, between the hours of 10 p.m. and 7 a.m. that is plainly audible at a distance of five feet from any residential propertydwelling.

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6.05.0306.05.050 Sound Measurement

A. Any dBA mMeasurments taken shall be made with a sound level meter. The sound level meter shall be an instrument in good operating condition, meeting the requirements of a Type I or Type II meter, as specified in ANSI Standard 1.4-1971. For purposes of this

## Exhibit A

chapter, a sound level meter shall contain at least an A weighted scale, and both fast and slow meter response capability.

- B. Personnel making measurements shall have completed training in the use of the sound level meter, and measurement procedures consistent with that training shall be followed.
- C. Measurements may only be made inside of a noise sensitive unit occupied by a person making a complaint under this chapter at, or within, three (3) feet of a closed window or closed door of a noise sensitive unit, occupied by a person making a complaint under this chapter.
- D. All measurements made pursuant to this chapter shall comply with the provisions of this section.

[Codified by Ord. 05-2000, 7/13/00]

### ~~6.05.040~~ — Prohibitions

- ~~A. — It shall be a violation of this chapter for any person to produce or permit to be produced, from a sound source either owned and operated by them or under their control, sound which, when measured at or within three feet of a window or door of a noise sensitive unit occupied by a person making a complaint under this chapter, exceeds:  
1. — 50 dBA at any time between 10 p.m. and 7 a.m. the following day; or,  
2. — 60 dBA at any time between 7 a.m. and 10 p.m. the same day.~~
- ~~B. — When the sound is emitted from a motorboat it shall not be subject to the standards above but a violation shall be established where the sound exceeds 75 dBA as measured on shore, provided that the measurement be taken no closer than 150 feet from the boat. Where a measurement is taken from a distance close than 150 feet, a violation shall be established where the sound exceeds 84 dBA measured no closer than 50 feet from the boat. Motorboats shall not be operated on public waterways within the County unless equipped with a functioning underwater exhaust, muffler, or system which continuously pipes water into the exhaust line, except as may be permitted under ORS 830.260.~~

[Codified by Ord. 05-2000, 7/13/00]

### ~~6.05.050~~ 6.05.060 — Exceptions

Notwithstanding ~~6.05.040~~, the following exceptions from this chapter are permitted when conditions therefor are met:

- A. Sounds caused by organized athletic, religious, educational, civic or racing activities on property generally used for such purposes, including stadiums, parks, schools, churches, athletic fields, race tracks, airports and waterways, between the hours of 7:00 a.m. and ~~10~~ 4:00 p.m. the same day;
- B. Sounds caused by emergency work, or by the ordinary and accepted use of ~~emergency~~ equipment, vehicles and apparatus in response to an emergency, whether or not such work is performed or equipment is used by a public or private agency, upon public or private property;
- C. Sounds caused by sources regulated as to sound production by federal law, including, but not limited to, sounds caused by railroad, aircraft or commercially licensed watercraft operations;
- D. Sounds caused by bona fide use of emergency warning devices and alarm systems



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authorized by the Clackamas County ~~Burglary and Robbery~~-Alarm Permit Chapter ~~6.098.07~~ or successor provisions;

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- E. Sounds caused by blasting activities when performed under a permit issued by appropriate governmental authorities and only between the hours of 9 a.m. and 4 p.m. excluding weekends, unless such permit expressly authorizes otherwise;
- F. Sounds caused by industrial, commercial, timber-harvesting, or utility organizations or workers during their normal operations;
- G. Sounds caused by animals associated with agricultural operations, animal husbandry, or agricultural operations, ~~when the source of such sound is located outside of urban residential zoning districts as defined by the Clackamas County Zoning and Development Chapter;~~
- H. Sounds caused by motor vehicles operated on a public road/right of way, which are regulated by state law (ORS 815.250) which the Sheriff has a mandate to enforce, and which are not otherwise prohibited by 6.05.040(B)(2) or (B)(4); or
- I. Sounds caused by construction activity or by tools, including drills, chain saws, lawnmowers, saws, hammers, and similar tools, between the hours of 7 a.m. to 10 p.m. of the same day;
- J. Repair or excavations of bridges, streets or highways by or on behalf of the County, the State or the federal government, between the hours of 10 p.m., and 7 a.m. the following day, when the public welfare and convenience renders it impractical to perform the work between 7 a.m. and 10 p.m.;
- K. Outdoor gatherings, public dances, shows, sporting events and other similar outdoor events, provided that a permit has been obtained from the appropriate permitting authority or is being sponsored or hosted by the County;
- L. Noise emanating from the combustion, detonation, or concussion caused by using fireworks or other similar devices from July 1 until July 5 of each year;
- ~~I.M.~~ When the sound is emitted from a motorboat it shall not be subject to the standards above but a violation shall be established where the sound exceeds 75 dBA as measured on shore, provided that the measurement be taken no closer than 150 feet from the boat. Where a measurement is taken from a distance close than 150 feet, a violation shall be established where the sound exceeds 84 dBA measured no closer than 50 feet from the boat. Motorboats shall not be operated on public waterways within the County unless equipped with a functioning underwater exhaust, muffler, or system which continuously pipes water into the exhaust line, except as may be permitted under ORS 830.260.

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[Codified by Ord. 05-2000, 7/13/00]

6.05.0606.05.070 **Variances**

Any person who is planning the operation of a sound source which may violate any provision of this chapter, may apply to the Sheriff for a variance from such provision.

- A. Application. The application shall state the provision from which a variance is being sought, the period of time for which the variance is to apply, the reason for which the variance is sought and any other supporting information which the Sheriff may reasonably require.
- B. Review Considerations. The Sheriff shall consider:
  - 1. The nature and duration of the sound emitted;

Exhibit A

2. Whether the public health, safety or welfare is endangered;
  3. If compliance with this chapter would produce a benefit to the public; and,
  4. Whether previous permits have been issued and the applicant's record of compliance.
- C. Time Duration of Variance. A variance may be granted for a specific time interval only.
- D. The Sheriff shall within ten (10) days deny the application, approve it, or approve it subject to conditions.
- E. The Sheriff's decision may be appealed to the Board of County Commissioners. Notice of Appeal must be delivered to the Board of County Commissioners within thirty (30) days from the date of the Sheriff's decision. The Board shall review the application de novo and within fifteen (15) days, deny the application, approve it, or approve it subject to conditions.
- F. The authority granting the variance may at any time before or during the operation of any variance revoke the variance for good cause.

[Codified by Ord. 05-2000, 7/13/00]

~~6.05.0706~~6.05.080 **Chapter Is Additional To Other Law**

The provisions of this chapter shall be cumulative and non-exclusive. It shall not affect any other claim, cause of action or remedy; nor, unless specifically provided, shall it be deemed to repeal, amend or modify any law, ordinance or regulation relating to noise or sound, but shall be deemed additional to existing legislation and common law on such subject.

Such existing legislation includes exhaust system and sound emission standards for motor vehicles operated on public roads set forth by ORS 815.250 and OAR 340-35-030. Existing legislation also includes exhaust system standards for motorboats set forth by ORS 830.260. The Sheriff has a mandate to enforce ORS 815.250 and 830.260. [Codified by Ord. 05-2000, 7/13/00]

~~6.05.0806~~6.05.090 **Administration And Enforcement**

- A. The Sheriff for Clackamas County shall administer, supervise, and perform all acts necessary to enforce this chapter. As applicable, Code Section 2.07 shall govern the procedure associated with any compliance hearing.
- B. Citation: whenever a person produces or permits to be produced sound which is found in violation of, or contrary to, any provision of this chapter, that person may be issued a citation.
- C. Unsworn persons may be utilized, as the Sheriff deems necessary, to issue citations for violation of this chapter, under the provisions of ORS 204.635.
- D. Forms of Citation: the form for the citation to be issued under this chapter shall contain the following: a description of the specific violation alleged, the name and address of the person producing or permitting the violation, the description of the sound source, the time and place of the occurrence of the violation, the name and address of the office of the Sheriff, a form for admitting or denying the violation as provided by subsection F of this section, and a schedule of the forfeiture amounts for specific violations.

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E. Upon citation of a person for a violation of this chapter, the person issuing the citation may seize the offending sound source as evidence. It is the intent of this chapter to avoid such seizures except where the person being cited has received two previous citations within the previous six- (6) months for the same or similar sound source. The previous citations may, but need not, occur on the same date as the citation, which prompts the seizure.

~~1. A person who receives a citation for violation of this chapter shall respond within fourteen (14) days of the issuance of the citation by payment of any penalties established under this chapter, or by requesting a hearing as provided in subsections G and H of this section County Code Section 2.07.040.~~

~~F.~~

~~F. The nNotice of hHearing and the procedure associated with the compliance hearing is subject to those provisions of County Code Section 2.07. A person who receives a citation for violation of this chapter may deny all or part of the alleged violation by completing an appropriate response form, attached to the citation, and mailing or delivering it to the Sheriff's office, as indicated on the citation. Upon receipt, the Sheriff's office shall forward the form to the office of the hearing officer, who shall establish a time and place for the hearing and provide notice of it to the person who received the citation. Notice of the time and place of the hearing shall be made by mailing the notice to the address designated by the person who received the citation. The notice shall be sent by regular first class mail.~~

~~G. Hearings Officer: the Board of County Commissioners shall appoint a quasi-judicial hearing officer or officers to hear and determine cases of alleged violations of this chapter. The hearing officer may establish a schedule of the amounts of forfeiture for violations with the approval of the Board of County Commissioners.~~

~~2. Every hearing to determine whether this chapter has been violated shall be held before a hearing officer. The hearing officer may prescribe procedures for the conduct of such hearings.~~

~~3. Evidence, including rebuttal evidence, may be presented at the hearing and shall be limited to that which is relevant to the violation alleged.~~

~~4. The hearing officer has the authority to administer oaths and take the testimony of witnesses. The hearings officer may issue subpoenas in accordance with Oregon Rule of Civil Procedure 55, provided that if the person who receives a citation desires that witnesses be ordered to appear by subpoena, he must so request in writing either at the time response is made to the citation or subsequently by mail at any time before five (5) days prior to the scheduled hearing. A deposit for each witness in an amount set by resolution of the Board of County Commissioners shall accompany the request, such deposit to be refunded if no forfeiture is assessed or if the total witness cost is less than the amount deposited. Witnesses appearing by subpoena shall be allowed the same fees and mileage as allowed in civil cases in district court. If a forfeiture is declared, the person ordered to forfeit shall also be ordered to pay all witness fees.~~

~~5. The parties shall have the right to cross examine witnesses who testify.~~

~~6.G. After due consideration of the evidence and arguments, the hearings officer shall determine whether the violation as alleged in the complaint the complaint has been established. If the violation has been established, the hearings officer shall issue a decision including a brief statement of the findings of fact necessary to establish a violation and ordering the person to pay an appropriate forfeiture and witness costs, to be~~

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~~paid into the County General Fund. The decision and order may be oral and issued at the conclusion of the hearing, but in all cases must be recorded in the record of the hearing.~~

- H. In addition to any other enforcement procedures, the Board of County Commissioners may, upon its own motion, or upon receipt of a petition requesting hearing by the Board, issue its order to the person producing or permitting to be produced, the sound which allegedly violates this chapter, to appear before the Board and show cause why the Board should not declare the sound a violation of this chapter and order the violation abated. Noncompliance with the order may result in the Board referring the matter to the County Counsel for enforcement.
- I. An attorney at any hearing may represent a person who receives a citation or an order to show cause, provided that in the case of representation by an attorney, the person gives one (1) day of written notice to the hearings officer or Board of County Commissioners so that the County may, at its option, arrange for representation by an attorney on its behalf.
- J. County Counsel may prosecute or bring a civil action against violators of this chapter, or those who fail to comply with the hearing procedure, or an order of the Hearings Officer or Board. Such action shall be brought or pursued in the District or Circuit Court of the State of Oregon.

[Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 05-2003, 3/13/03]

~~6.05.0906~~6.05.0100 **Penalties**

Violation of this chapter shall be punishable by a penalty or fine in an amount set by resolution of the Board of County Commissioners.

[Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 5-2003, 3-13-03]

~~6.05.1006~~6.05.110 **Payment**

Payment of all fines under this chapter shall be made by mailing or delivering the response form attached to the citation accompanied by a check or money order for the amount of the fine to the Sheriff's Office at ~~2223 S. Kaen Road, Oregon City, Oregon 97045~~9101 SE Sunnybrook Blvd, Clackamas, OR 97015.

[Codified by Ord. 05-2000, 7/13/00]

## 6.05 NOISE CONTROL

### 6.05.010 Declaration Of Findings And Policy

The Board of Commissioners for Clackamas County finds that excessive sound can and does constitute a hazard to the health, safety, welfare, and quality of life of residents of the County. While certain activities essential to the economic, social, political, educational and technical advancements of the citizens of the County necessarily require the production of sounds which may offend, disrupt, intrude or otherwise create hardship among the citizenry, the Board is obliged to impose some limitation and regulation upon the production of excessive sound as will reduce the deleterious effects thereof.

Now, therefore, it is the policy of this Board to protect, preserve, and promote the health, safety, welfare, peace, and quiet of the citizens of Clackamas County through the reduction, control, and prevention of loud and raucous noise, or any noise which unreasonably disturbs, injures or endangers the comfort, repose, health, peace or safety; or causes public inconvenience, annoyance or alarm to reasonable persons of ordinary sensitivity. .

[Codified by Ord. 05-2000, 7/13/00]

### 6.05.020 Definitions

The following terms and definitions shall apply herein unless the context requires otherwise:

- A. DWELLING means a building, or portion thereof, which contains one or more rooms designed for residential occupancy. A dwelling may be a residential trailer or a manufactured dwelling but not a recreational vehicle.
- B. EMERGENCY means any occurrence or set of circumstances involving actual or imminent physical trauma or property damage demanding immediate attention.
- C. EMERGENCY WORK means any work performed to prevent or alleviate physical trauma or property damage, whether actually caused or threatened by an emergency, or work by private or public utilities in restoring service.
- D. INDUSTRIAL or COMMERCIAL ORGANIZATIONS or WORKERS those industrial or commercial sound sources which are subject to noise regulation by the State of Oregon Department of Environmental Quality;
- E. NOISE SENSITIVE AREA includes, but is not limited to, dwellings and real property normally used as a school, church, hospital, nursing home or public library;
- F. PERSON includes, in addition to any individual, any public or private corporation, association, partnership, or other legally recognized public or private entity;
- G. PLAINLY AUDIBLE means any sound that can be detected by a reasonable person of ordinary sensitivities using their unaided hearing faculties.
- H. PUBLIC RIGHT OF WAY means any legal use or right of passage, given to the public, over a strip of ground under the jurisdiction of county, state, or federal agencies.
- I. PUBLIC SPACE means any real property or structures on real property, owned by a government entity and normally accessible to the public, including but not limited to parks and other recreational areas.

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- J. SHERIFF the Sheriff of Clackamas County or the Sheriff's designee; and
- K. SOUND SOURCE includes, but is not limited to,
  - 1. Loudspeakers, public address systems;
  - 2. Radios, tape recorders and/or tape players, phonographs, television sets, stereo systems including those installed in a vehicle;
  - 3. Musical instruments, amplified or un-amplified;
  - 4. Sirens, bells;
  - 5. Vehicle engines or exhausts, when the vehicle is not on a public right-of-way;
  - 6. Motorboats;
  - 7. Vehicle tires, when caused to squeal by excessive speed or acceleration;
  - 8. Tools, including drills, chain saws, lawnmowers, saws, hammers, and similar tools, but only between 10 p.m., and 7 a.m. of the following day;
  - 9. Heat pumps, air conditioning units, generators, blowers and refrigeration units, including those mounted on vehicles; and,
  - 10. Animals located in urban residential zoning districts.
- L. URBAN RESIDENTIAL ZONING DISTRICTS means that those zoning districts defined in the Clackamas County Zoning and Development Chapter: Urban Low Density Residential (R-2.5/R-5/R-7/R-8.5/R-10/R-15/R-20/R-30), Medium Density Residential (MR-1), High Density Residential (HDR), Special High Density Residential (SHD), Planned Medium Density Residential (PMD), Medium High Density Residential (MR-2), Village Small Lot Residential (VR-4/VR-5), Village Townhouse (VTH), Village Apartment (VA), Regional Center High Density Residential (RCHDR), and any other similar urban residential zoning district defined after the enactment of this chapter.
- M. VEHICLE means automobiles, motorcycles, motorbikes, go-karts, trucks, buses, and snowmobiles.

[Codified by Ord. 05-2000, 7/13/00]

**6.05.030 General Prohibition**

- A. No person shall make or continue to make:
  - 1. Any unreasonably loud or raucous noise;
  - 2. Any noise which unreasonably disturbs, injures, or endangers the comfort, repose, health, peace or safety of reasonable persons of ordinary sensitivity; or
  - 3. Any noise that is so harsh, prolonged, unnatural, or unusual in time or place as to occasion unreasonable discomfort to any persons within the vicinity of the location from which that noise emanates, or as to unreasonably interfere with the peace and comfort of neighbors or their guests, or operators or customers in places of business, or as to detrimentally or adversely affect such dwellings or places of business.
- B. Factors for determining whether a sound is unreasonably loud or raucous include, but are not limited to:
  - 1. The proximity of the sound to dwellings or noise sensitive areas;
  - 2. The land use, nature, and zoning of the area from which the sound emanates and the area where it is received or perceived;
  - 3. The time of day or night the sound occurs;
  - 4. The duration of the sound; and
  - 5. Whether the sound is recurrent, intermittent, or constant.

**6.05.040 Noises Specifically Prohibited**

A. It shall be a per se violation of this chapter for any person to produce or permit to be produced, from a sound source either owned and operated by them or under their control, sound which exceeds:

1. 50 dBA at any time between 10 p.m., and 7 a.m. the following day; or,
2. 60 dBA at any time between 7 a.m. and 10 p.m..

B. The following acts are declared per se violations of this chapter based upon a reasonable person standard. The enumeration does not constitute an exclusive list:

1. Unreasonable Noises: The unreasonable making of, or knowingly and unreasonably permitting to be made, any unreasonably loud, boisterous, or unusual noise, disturbance, commotion, or vibration in any boarding facility, dwelling, place of business or other structure, or upon any public right of way, public space or other place or building. The ordinary and usual sounds, noises, commotion or vibration incidental to the operation of these places when conducted in accordance with the usual standards of practice and in a manner which will not unreasonably disturb the peace and comfort of adjacent noise sensitive areas or which will not detrimentally affect the operators of adjacent places of business are exempt from this provision.
2. Vehicle, Horns, Signaling Devices, and Similar Devices: The sounding of any horn, signaling device, or other similar device on any vehicle on any right of way or in the public space of the County, for more than ten consecutive seconds. The sounding of any horn, signaling device, or other similar device, as a danger warning is exempt from this prohibition.
3. Non-Emergency Signaling Devices: Sounding any amplified signal from any bell, chime, siren, whistle or similar device, intended primarily for non-emergency purposes, from any place for more than ten consecutive seconds in any hourly period.
4. Emergency Signaling Devices: The intentional sounding or permitting the sounding outdoors of any emergency signaling device including fire, burglar, civil defense alarm, car alarm, siren, whistle, or similar emergency signaling device, except in an emergency.
5. Radios, Televisions, Stereos, Musical Instruments and Similar Devices: The use or operation of a radio, television, stereo, musical instrument, or similar device, including but not limited to computers, mp3 players, and cellular phones, that produces or reproduces sound in a manner that is plainly audible to any person other than the player(s) or operator(s) of the device, and those who are voluntarily listening to the sound, and which unreasonably disturbs the peace, quiet, and comfort of neighbors as received or perceived in dwellings or noise sensitive areas or passer-bys, or is plainly audible at a distance of 50 feet from any person in a noise sensitive area.
6. Loudspeakers, Amplifiers, Public Address Systems and Similar Devices: The unreasonably loud and raucous use or operation of a loudspeaker, amplifier, public address system, or other device for producing or reproducing sound between the hours of 10 p.m. and 7 a.m. the following day in the following areas:
  - a. Within or in proximity to dwellings or noise sensitive areas.
  - b. Within the public space if the sound is plainly audible across the real property line of the public space from which the sound emanates, and is unreasonably loud.
7. Yelling, Shouting and Similar Activities: Yelling, shouting, hooting, whistling or

## Exhibit B

- singing received or perceived in dwellings, noise sensitive areas or in public places, between the hours of 10 p.m., and 7 a.m. the following day, or at any time or place so as to unreasonably disturb the quiet, comfort, or repose of reasonable persons of ordinary sensitivities. This section is to be applied only to those situations where the disturbance is not a result of the content of the communication but due to the volume, duration, location, timing, or other factors not based on content.
8. **Animals and Birds:** Within urban residential zoning districts, unreasonably loud and raucous noise emitted by an animal or bird for which a person is responsible. A person is responsible for an animal if the person owns, controls, or otherwise cares for the animal or bird.
  9. **Dogs:** Any dog that unreasonably causes annoyance, alarm or noise disturbance in violation of the Clackamas County Animal Licensing, Services, and Enforcement Chapter 5.01.
  10. **Loading or Unloading Merchandise, Materials, Equipment:** The creation of unreasonably loud, raucous and excessive noise relating to the loading or unloading of any vehicle at a place of business or residence.
  11. **Construction or Repair of Buildings, Excavation of Streets and Highways:** The construction, demolition, alteration, or repair of any building or the excavation of streets and highways other than between the hours of 7 a.m. and 10 p.m..
  12. **Blowers, and Similar Devices:** Between the hours of 10 p.m. and 7 a.m. the following day, the operation of any noise-creating blower, power fan, or any internal combustion engine, the operation of which causes noise due to the explosion of operating gases or fluids, provided that the noise is unreasonably loud and is received or perceived in dwellings or noise sensitive areas.
  13. **Commercial Establishments Adjacent to Dwellings:** Unreasonably loud and raucous noise from the premises of any commercial establishment, including any outdoor area which is part of or under control of the establishment, between the hours of 10 p.m. and 7 a.m. that is plainly audible at a distance of five feet from any dwelling.

### **6.05.050 Sound Measurement**

- A. Any dBA measurements taken shall be made with a sound level meter. The sound level meter shall be an instrument in good operating condition, meeting the requirements of a Type I or Type II meter, as specified in ANSI Standard 1.4-1971. For purposes of this chapter, a sound level meter shall contain at least an A weighted scale, and both fast and slow meter response capability.
- B. Personnel making measurements shall have completed training in the use of the sound level meter, and measurement procedures consistent with that training shall be followed.
- C. Measurements may only be made inside of a noise sensitive unit occupied by a person making a complaint under this chapter at, or within, three (3) feet of a closed window or closed door.
- D. All measurements made pursuant to this chapter shall comply with the provisions of this section.

[Codified by Ord. 05-2000, 7/13/00]



### 6.05.060 Exceptions

Notwithstanding 6.05.040, the following exceptions from this chapter are permitted when conditions therefor are met:

- A. Sounds caused by organized athletic, religious, educational, civic or racing activities on property generally used for such purposes, including stadiums, parks, schools, churches, athletic fields, race tracks, airports and waterways, between the hours of 7:00 a.m. and 10:00 p.m. the same day;
- B. Sounds caused by emergency work, or by the ordinary and accepted use of equipment, vehicles and apparatus in response to an emergency, whether or not such work is performed or equipment is used by a public or private agency, upon public or private property;
- C. Sounds caused by sources regulated as to sound production by federal law, including, but not limited to, sounds caused by railroad, aircraft or commercially licensed watercraft operations;
- D. Sounds caused by bona fide use of emergency warning devices and alarm systems authorized by the Clackamas County Alarm Permit Chapter 8.07 or successor provisions;
- E. Sounds caused by blasting activities when performed under a permit issued by appropriate governmental authorities and only between the hours of 9 a.m. and 4 p.m. excluding weekends, unless such permit expressly authorizes otherwise;
- F. Sounds caused by industrial, commercial, timber-harvesting, or utility organizations or workers during their normal operations;
- G. Sounds caused by animals associated with agricultural operations, animal husbandry, or agricultural operations;
- H. Sounds caused by motor vehicles operated on a public right of way, which are regulated by state law (ORS 815.250) which the Sheriff has a mandate to enforce, and which are not otherwise prohibited by 6.05.040(B)(2) or (B)(4);
- I. Sounds caused by construction activity or by tools, including drills, chain saws, lawnmowers, saws, hammers, and similar tools, between the hours of 7 a.m. to 10 p.m. of the same day;
- J. Repair or excavations of bridges, streets or highways by or on behalf of the County, the State or the federal government, between the hours of 10 p.m., and 7 a.m. the following day, when the public welfare and convenience renders it impractical to perform the work between 7 a.m. and 10 p.m.;
- K. Outdoor gatherings, public dances, shows, sporting events and other similar outdoor events, provided that a permit has been obtained from the appropriate permitting authority or is being sponsored or hosted by the County;
- L. Noise emanating from the combustion, detonation, or concussion caused by using fireworks or other similar devices from July 1 until July 5 of each year;
- M. When the sound is emitted from a motorboat it shall not be subject to the standards above but a violation shall be established where the sound exceeds 75 dBA as measured on shore, provided that the measurement be taken no closer than 150 feet from the boat. Where a measurement is taken from a distance close than 150 feet, a violation shall be established where the sound exceeds 84 dBA measured no closer than 50 feet from the boat. Motorboats shall not be operated on public waterways within the County unless equipped with a functioning underwater exhaust, muffler, or system which continuously

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pipes water into the exhaust line, except as may be permitted under ORS 830.260.  
[Codified by Ord. 05-2000, 7/13/00]

**6.05.070 Variances**

Any person who is planning the operation of a sound source which may violate any provision of this chapter, may apply to the Sheriff for a variance from such provision.

- A. Application. The application shall state the provision from which a variance is being sought, the period of time for which the variance is to apply, the reason for which the variance is sought and any other supporting information which the Sheriff may reasonably require.
- B. Review Considerations. The Sheriff shall consider:
  - 1. The nature and duration of the sound emitted;
  - 2. Whether the public health, safety or welfare is endangered;
  - 3. If compliance with this chapter would produce a benefit to the public; and,
  - 4. Whether previous permits have been issued and the applicant's record of compliance.
- C. Time Duration of Variance. A variance may be granted for a specific time interval only.
- D. The Sheriff shall within ten (10) days deny the application, approve it, or approve it subject to conditions.
- E. The Sheriff's decision may be appealed to the Board of County Commissioners. Notice of Appeal must be delivered to the Board of County Commissioners within thirty (30) days from the date of the Sheriff's decision. The Board shall review the application de novo and within fifteen (15) days, deny the application, approve it, or approve it subject to conditions.
- F. The authority granting the variance may at any time before or during the operation of any variance revoke the variance for good cause.

[Codified by Ord. 05-2000, 7/13/00]

**6.05.080 Chapter Is Additional To Other Law**

The provisions of this chapter shall be cumulative and non-exclusive. It shall not affect any other claim, cause of action or remedy; nor, unless specifically provided, shall it be deemed to repeal, amend or modify any law, ordinance or regulation relating to noise or sound, but shall be deemed additional to existing legislation and common law on such subject.

Such existing legislation includes exhaust system and sound emission standards for motor vehicles operated on public roads set forth by ORS 815.250 and OAR 340-35-030. Existing legislation also includes exhaust system standards for motorboats set forth by ORS 830.260. The Sheriff has a mandate to enforce ORS 815.250 and 830.260. [Codified by Ord. 05-2000, 7/13/00]

**6.05.090 Administration And Enforcement**

- A. The Sheriff for Clackamas County shall administer, supervise, and perform all acts necessary to enforce this chapter. As applicable, Code Section 2.07 shall govern the

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- procedure associated with any compliance hearing.
- B. Citation: whenever a person produces or permits to be produced sound which is found in violation of, or contrary to, any provision of this chapter, that person may be issued a citation.
  - C. Unsworn persons may be utilized, as the Sheriff deems necessary, to issue citations for violation of this chapter, under the provisions of ORS 204.635.
  - D. Forms of Citation: the form for the citation to be issued under this chapter shall contain the following: a description of the specific violation alleged, the name and address of the person producing or permitting the violation, the description of the sound source, the time and place of the occurrence of the violation, the name and address of the office of the Sheriff, a form for admitting or denying the violation as provided by subsection F of this section, and a schedule of the forfeiture amounts for specific violations.
  - E. Upon citation of a person for a violation of this chapter, the person issuing the citation may seize the offending sound source as evidence. It is the intent of this chapter to avoid such seizures except where the person being cited has received two previous citations within the previous six- (6) months for the same or similar sound source. The previous citations may, but need not, occur on the same date as the citation, which prompts the seizure.
  - F. A person who receives a citation for violation of this chapter shall respond within fourteen (14) days of the issuance of the citation by payment of any penalties established under this chapter, or by requesting a hearing as provided in County Code Section 2.07.040.
  - G. The notice of hearing and the procedure associated with the compliance hearing is subject to those provisions of County Code Section 2.07.
  - H. In addition to any other enforcement procedures, the Board of County Commissioners may, upon its own motion, or upon receipt of a petition requesting hearing by the Board, issue its order to the person producing or permitting to be produced, the sound which allegedly violates this chapter, to appear before the Board and show cause why the Board should not declare the sound a violation of this chapter and order the violation abated. Noncompliance with the order may result in the Board referring the matter to the County Counsel for enforcement.
  - I. An attorney at any hearing may represent a person who receives a citation or an order to show cause, provided that in the case of representation by an attorney, the person gives one (1) day of written notice to the hearings officer or Board of County Commissioners so that the County may, at its option, arrange for representation by an attorney on its behalf.
  - J. County Counsel may prosecute or bring a civil action against violators of this chapter, or those who fail to comply with the hearing procedure, or an order of the Hearings Officer or Board. Such action shall be brought or pursued in the District or Circuit Court of the State of Oregon.

[Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 05-2003, 3/13/03]

### **6.05.0100 Penalties**

Violation of this chapter shall be punishable by a penalty or fine in an amount set by resolution of the Board of County Commissioners.

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[Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 5-2003, 3-13-03]

**6.05.110 Payment**

Payment of all fines under this chapter shall be made by mailing or delivering the response form attached to the citation accompanied by a check or money order for the amount of the fine to the Sheriff's Office at 9101 SE Sunnybrook Blvd, Clackamas, OR 97015.

[Codified by Ord. 05-2000, 7/13/00]

October 1, 2020

Board of County Commissioners  
Clackamas County

Members of the Board:

Approval of an Intergovernmental Agreement with  
the State of Oregon, Department of Consumer and Business Services,  
Senior Health Insurance Benefits Assistance (SHIBA)

<b>Purpose/Outcomes</b>	To support the activities of the Social Services' Volunteer Connection SHIBA Program to provide information, counseling and assistance to seniors and other Medicare recipients regarding health insurance matters.
<b>Dollar Amount and Fiscal Impact</b>	\$48,000 revenue
<b>Funding Source</b>	Federal State Health Insurance Assistance Program (SHIP) grant provided through the State of Oregon, Department of Consumer and Business Services, Senior Health Insurance Benefits Assistance (SHIBA). There is no match requirement. County General Funds are not involved.
<b>Duration</b>	April 1, 2020 through March 31, 2023
<b>Previous Board Action</b>	N/A
<b>Strategic Plan Alignment</b>	<ol style="list-style-type: none"> <li>1. This funding aligns with H3S's strategic priority to increase self-sufficiency for our clients.</li> <li>2. This funding aligns with the County's strategic priority to ensure safe, healthy and secure communities.</li> </ol>
<b>Counsel Review</b>	County Counsel reviewed and approved this document on 6/30/2020
<b>Procurement Review</b>	<ol style="list-style-type: none"> <li>1. Was this time processed through Procurement? No</li> <li>2. If no, provide brief explanation: This is a Revenue agreement. Not subject to Procurement Review.</li> </ol>
<b>Contact Person</b>	Brenda Durbin, Director – Social Services Division – (503)655-8641
<b>Contract No.</b>	State Grant #45G000224, H3S#9819

**BACKGROUND:**

Social Services Division of the Health, Housing and Human Services Department requests the approval of an Intergovernmental Agreement (IGA) with the State of Oregon, Department of Consumer and Business Services, Senior Health Insurance Benefits Assistance (SHIBA) supporting Social Services' Volunteer Connection SHIBA Program. The SHIBA program provides information, counseling and assistance to seniors and other Medicare recipients regarding health insurance matters.

The Volunteer Connection program within Social Services Division has operated the SHIBA program for several years. This program is designed to educate seniors and other Medicare recipients about their rights, resources and needs relating to Medicare and other health insurance.

*Healthy Families. Strong Communities.*

2051 Kaen Road, Oregon City, OR 97045 • Phone (503) 650-5697 • Fax (503) 655-8677

[www.clackamas.us](http://www.clackamas.us)

The program provides education through the fraud hotline, SHIBA helpline, and at public group presentations. In addition, information is made available during public outreach events, such as the Clackamas County Fair and Medicare enrollment events at locations such as low cost housing units. Information presented has included financial assistance for citizens with limited resources, preventing Medicare fraud, identity theft, and do-not-call registration. These services are invaluable to our senior and disabled citizens.

The State issued the retroactive IGA in late April of 2020. The end date of the new IGA is March 31, 2023 and is for a not to exceed amount of \$48,000. County Counsel has reviewed and approved the IGA. There is no match requirement and no County General Funds are involved.

**RECOMMENDATION:**

Staff recommends the approval of this IGA, and that Richard Swift, H3S Director, or his designee, be authorized to sign all documents necessary on behalf of Clackamas County.

Respectfully submitted,

A handwritten signature in blue ink that reads "Rodney Alford, H3S deputy / For". The signature is written in a cursive style.

Richard Swift, Director  
Health, Housing and Human Services Department

# **INTERGOVERNMENTAL AGREEMENT**

## **Agreement No. 45G000224**

This Agreement is between the State of Oregon acting by and through its Department of Consumer and Business Services, Oregon Health Insurance Marketplace, Senior Health Insurance Benefit Assistance Program (“Agency”) and Clackamas County acting by and through its Health, Housing and Human Services Department, Social Services Division (“Local Government”), each a “Party” and, together, the “Parties”.

### **SECTION 1: AUTHORITY**

This Agreement is authorized by ORS 190.110.

### **SECTION 2: PURPOSE**

This Agreement is for the local implementation and delivery of the federal State Health Insurance Assistance Program (SHIP) grant (CFDA 93.324). Local Government will be part of Oregon’s effort to strengthen its capability to provide all Medicare eligible individuals, family members, and caregivers information, counseling and assistance on health insurance matters. This Agreement is 100% funded with Federal funds.

The SHIP grant is a federal grant from the Administration for Community Living (ACL) and is intended to strengthen the capability of the State of Oregon to provide Oregon Medicare eligible individuals, their family members, and caregivers information, counseling, and assistance on Medicare and related health insurance matters. The SHIP grant helps ensure that states have a network of staff and volunteers to provide accurate and objective health insurance information and assistance in making informed health coverage decisions and understanding related rights and protections. Although states have adopted a variety of methods to provide such services to individuals, Section 4360 of the Omnibus Budget Reconciliation Act of 1990 requires that each state program must encompass particular activities. See Exhibit A, Statement of Work for additional information.

### **SECTION 3: EFFECTIVE DATE AND DURATION**

This Agreement shall be effective retroactively to April 1, 2020, and terminates on March 31, 2023, unless terminated earlier in accordance with Section 16. This Agreement may be extended if the grant period is extended or for additional grant years and/or funds.

## **SECTION 4: AUTHORIZED REPRESENTATIVES**

### **4.1 Agency's Authorized Representative is:**

Lisa Emerson, Medicare (SHIBA) Program Analyst  
Department of Consumer and Business Services  
Oregon Health Insurance Marketplace  
350 Winter Street NE  
PO Box 14480  
Salem, OR 97309-0405  
503-947-7087  
[Lisa.emerson@oregon.gov](mailto:Lisa.emerson@oregon.gov)

### **4.2 Local Government's Authorized Representative is:**

Lois Orner, Human Services Manager  
Clackamas County Health, Housing and Human Services Department  
Social Services Division  
2051 Kaen Rd. #170  
Oregon City, OR 97045  
503-655-8862  
[lorner@co.clackamas.or.us](mailto:lorner@co.clackamas.or.us)

### **4.3 A Party may designate a new Authorized Representative by written notice to the other Party.**

## **SECTION 5: RESPONSIBILITIES OF EACH PARTY**

**5.1** Local Government shall perform the work set forth on Exhibit A, attached hereto and incorporated herein by this reference.

**5.2** Agency shall pay Local Government as described in Section 6.

## **SECTION 6: COMPENSATION AND PAYMENT TERMS**

**6.1** Agency agrees to pay Local Government a yearly not to exceed amount of \$16,000.00 with a maximum cumulative not to exceed amount of \$48,000.00 for performance of the work set forth in Exhibit A for the grant period ending March 31, 2023. Funding for future years is dependent on Agency receiving grant awards from the ACL.

**6.2** Local Government agrees to submit semi-annual invoices by Oct. 15 and April 15 of each Agreement year for work completed under this Agreement. Final invoice must be submitted no later than 30 days after expiration of this Agreement.

**6.3** Invoices submitted to Agency by Local Government shall itemize and explain all expenses for which reimbursement is claimed.



- 6.4 Agency shall pay Local Government following Agency's acceptance, review and approval of the invoice(s) submitted. Invoice(s) shall be submitted to the Agency Authorized Representative by email.
- 6.5 Agency may make interim payments to the Local Government following the review and approval of invoices submitted by the Local Government.
- 6.6 Agency certifies that at the time the Agreement is written, sufficient funds are available and authorized for expenditure to finance costs of this Agreement within the Agency's current appropriation or limitation, subject to Section 6.7 below.
- 6.7 Agency must use the funds as described in the State Health Insurance Assistance Program annual grant funding opportunity announcement # HHS-2020-ACL-CIP-SAPG-0363. If Agency uses these funds for any purpose other than those awarded, the Agency may be required to return the funds to the United States Treasury. Therefore, Local Government shall not use any amount of funds Agency pays to Local Government under this Agreement in a manner that could trigger the Agency's obligation to return the funds.

## **SECTION 7: REPRESENTATIONS AND WARRANTIES**

Local Government represents and warrants to Agency that:

- 7.1 Local Government is a county duly organized and validly existing. Local Government has the power and authority to enter into and perform this Agreement;
- 7.2 The making and performance by Local Government of this Agreement (a) have been duly authorized by Local Government, (b) do not and will not violate any provision of any applicable law, rule, regulation, or order of any court, regulatory commission, board, or other administrative agency or any provision of Local Government's charter or other organizational document and (c) do not and will not result in the breach of, or constitute a default or require any consent under any other agreement or instrument to which Local Government is party or by which Local Government may be bound or affected. No authorization, consent, license, approval of, or filing or registration with or notification to any governmental body or regulatory or supervisory authority is required for the execution, delivery or performance by Local Government of this Agreement, other than those that have already been obtained;
- 7.3 This Agreement has been duly executed and delivered by Local Government and constitutes a legal, valid and binding obligation of Local Government enforceable in accordance with its terms;
- 7.4 Local Government has the skill and knowledge possessed by well-informed members of the industry, trade or profession most closely involved in providing the services under this Agreement, and Local Government will apply that skill and knowledge with care and diligence to perform its obligations under this Agreement in a professional manner and in accordance with the highest standards prevalent in the related industry, trade or profession; and
- 7.5 Local Government shall be qualified, professionally competent, and duly licensed to perform its obligations under this Agreement at all times during the term of this Agreement.

The representations and warranties set forth in this section are in addition to, and not in lieu of, any other representations or warranties provided by Local Government.

## **SECTION 8: GOVERNING LAW, CONSENT TO JURISDICTION**

This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively "Claim") between Agency or any other agency or department of the State of Oregon, or both, and Local Government that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Marion County for the State of Oregon; provided, however, if a Claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this Section be construed as a waiver by the State of Oregon of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the eleventh amendment to the Constitution of the United States or otherwise, to or from any Claim or from the jurisdiction of any court. LOCAL GOVERNMENT, BY EXECUTION OF THIS AGREEMENT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS.

## **SECTION 9: OWNERSHIP OF WORK PRODUCT**

**9.1** As used in this Section 9 and elsewhere in this Agreement, the following terms have the meanings set forth below:

**9.1.1 "Local Government Intellectual Property"** means any intellectual property owned by Local Government and developed independently from the work under this Agreement.

**9.1.2 "Third Party Intellectual Property"** means any intellectual property owned by parties other than Local Government or Agency.

**9.1.3 "Work Product"** means every invention, discovery, work of authorship, trade secret or other tangible or intangible item that Local Government is required to deliver to Agency under this Agreement, and all intellectual property rights therein.

**9.2** All Work Product created by Local Government under this Agreement, including derivative works and compilations, and whether or not such Work Product is considered a work made for hire or an employment to invent, shall be the exclusive property of Agency. Agency and Local Government agree that any Work Product that is an original work of authorship created by Local Government under this Agreement is a "work made for hire" of which Agency is the author within the meaning of the United States Copyright Act. If for any reason the original Work Product created by Local Government under this Agreement is not "work made for hire," Local Government hereby irrevocably assigns to Agency any and all of its rights, title, and interest in all original Work Product created by Local Government under this Agreement, whether arising from copyright, patent, trademark, trade secret, or any other state or federal intellectual property law or doctrine. Upon Agency's reasonable request, Local Government shall execute such further documents and instruments necessary to fully vest such rights in Agency. Local Government forever waives any and all rights relating to Work Product created by Local Government under this Agreement, including without limitation, any and all rights

arising under 17 U.S.C. §106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use or subsequent modifications.

If the Work Product created by Local Government under this Agreement is a derivative work based on Local Government Intellectual Property, or is a compilation that includes Local Government Intellectual Property, Local Government hereby grants to Agency an irrevocable, non-exclusive, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform, and display the pre-existing elements of the Local Government Intellectual Property employed in the Work Product, and to authorize others to do the same on Agency's behalf.

If the Work Product created by Local Government under this Agreement is a derivative work based on Third Party Intellectual Property, or is a compilation that includes Third Party Intellectual Property, Local Government shall secure on Agency's behalf and in the name of Agency an irrevocable, non-exclusive, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the pre-existing element of the Third party Intellectual Property employed in the Work Product, and to authorize others to do the same on Agency's behalf.

- 9.3** If Work Product is Local Government Intellectual Property, Local Government hereby grants to Agency an irrevocable, non-exclusive, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the Local Government Intellectual Property, and to authorize others to do the same on Agency's behalf.
- 9.4** If Work Product is Third Party Intellectual Property, Local Government shall secure on Agency's behalf and in the name of Agency an irrevocable, non-exclusive, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the Third Party Intellectual Property, and to authorize others to do the same on Agency's behalf.
- 9.5** If state or federal law requires that Agency or Local Government grant to the United States a license to any intellectual property in the Work Product, or if state or federal law requires that Agency or the United States own the intellectual property in the Work Product, then Local Government shall execute such further documents and instruments as Agency may reasonably request in order to make any such grant or to assign ownership in such intellectual property to the United States or Agency.

## **SECTION 10: CONTRIBUTION**

- 10.1** 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 (a "Third Party Claim") against a Party (the "Notified Party") with respect to which the other Party (the "Other Party") may have liability, the Notified Party shall promptly notify the Other Party in writing of the Third Party Claim and deliver to the Other Party, along with the written notice, a copy of the claim, process and all legal pleadings with respect to the Third Party Claim that have been received by the Notified Party. 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 the Other Party of the notice and copies required in this Section and a meaningful opportunity for the Other Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing

are conditions precedent to the Other Party's contribution obligation under this Section 10 with respect to the Third Party Claim.

## **SECTION 11: LOCAL GOVERNMENT DEFAULT**

Local Government will be in default under this Agreement upon the occurrence of any of the following events:

- 11.1** Local Government fails to perform, observe or discharge any of its covenants, agreements or obligations under this Agreement;
- 11.2** Any representation, warranty or statement made by Local Government in this Agreement or in any documents or reports relied upon by Agency to measure the delivery of services, the expenditure of funds or the performance by Local Government is untrue in any material respect when made;
- 11.3** Local Government (a) applies for or consents to the appointment of, or taking of possession by, a receiver, custodian, trustee, or liquidator of itself or all of its property, (b) admits in writing its inability, or is generally unable, to pay its debts as they become due, (c) makes a general assignment for the benefit of its creditors, (d) is adjudicated a bankrupt or insolvent, (e) commences a voluntary case under the Federal Bankruptcy Code (as now or hereafter in effect), (f) files a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, (g) fails to controvert in a timely and appropriate manner, or acquiesces in writing to, any petition filed against it in an involuntary case under the Bankruptcy Code, or (h) takes any action for the purpose of effecting any of the foregoing; or
- 11.4** A proceeding or case is commenced, without the application or consent of Local Government, in any court of competent jurisdiction, seeking (a) the liquidation, dissolution or winding-up, or the composition or readjustment of debts of Local Government, (b) the appointment of a trustee, receiver, custodian, liquidator, or the like of Local Government or of all or any substantial part of its assets, or (c) similar relief in respect to Local Government under any law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, and such proceeding or case continues undismissed, or an order, judgment, or decree approving or ordering any of the foregoing is entered and continues unstayed and in effect for a period of sixty consecutive days, or an order for relief against Local Government is entered in an involuntary case under the Federal Bankruptcy Code (as now or hereafter in effect).

## **SECTION 12: AGENCY DEFAULT**

Agency will be in default under this Agreement if Agency fails to perform, observe or discharge any of its covenants, agreements, or obligations under this Agreement.

## **SECTION 13: REMEDIES**

- 13.1** In the event Local Government is in default under Section 11, , and such default remains uncured 15 days after written notice thereof to Local Government, Agency may, at its option,

pursue any or all of the remedies available to it under this Agreement and at law or in equity, including, but not limited to: (a) termination of this Agreement under Section 16, (b) reducing or withholding payment for work or Work Product that Local Government has failed to deliver within any scheduled completion dates or has performed inadequately or defectively, (c) requiring Local Government to perform, at Local Government's expense, additional work necessary to satisfy its performance obligations or meet performance standards under this Agreement, (d) initiation of an action or proceeding for damages, specific performance, or declaratory or injunctive relief, or (e) exercise of its right of recovery of overpayments under Section 14 of this Agreement or setoff, or both. These remedies are cumulative to the extent the remedies are not inconsistent, and Agency may pursue any remedy or remedies singly, collectively, successively or in any order whatsoever.

**13.2** The Agency and Local Government shall attempt in good faith to resolve any dispute arising out of this Agreement. In addition, the Agency and Local Government may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation. In the event Agency is in default under Section 12, and such default remains uncured 15 days after written notice thereof to Agency, and whether or not Local Government elects to exercise its right to terminate this Agreement under Section 16.3.3, or in the event Agency terminates this Agreement under Sections 16.2.1, 16.2.2, 16.2.3, or 16.2.5, Local Government's sole monetary remedy will be (a) for work compensable at a stated rate, a claim for unpaid invoices for work completed and accepted by Agency, for work completed and accepted by Agency within any limits set forth in this Agreement but not yet invoiced, for authorized expenses incurred, and for interest within the limits of ORS 293.462, less any claims Agency has against Local Government, and (b) for deliverable-based work, a claim for the sum designated for completing the deliverable multiplied by the percentage of work completed on the deliverable and accepted by Agency, for authorized expenses incurred, and for interest within the limits of ORS 293.462, less previous amounts paid for the deliverable and any claims that Agency has against Local Government. In no event will Agency be liable to Local Government for any expenses related to termination of this Agreement or for anticipated profits. If previous amounts paid to Local Government exceed the amount due to Local Government under this Section 13.2, Local Government shall promptly pay any excess to Agency.

## **SECTION 14: RECOVERY OF OVERPAYMENTS**

The Agency and Local Government shall attempt in good faith to resolve any dispute arising out of this Agreement. In addition, the Agency and Local Government may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation. If payments to Local Government under this Agreement, or any other agreement between Agency and Local Government, exceed the amount to which Local Government is entitled, Agency may, after notifying Local Government in writing, withhold from payments due Local Government under this Agreement, such amounts, over such periods of times, as are necessary to recover the amount of the overpayment.

## **SECTION 15: LIMITATION OF LIABILITY**

EXCEPT FOR LIABILITY ARISING UNDER OR RELATED TO SECTION 10, NEITHER PARTY WILL BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL, OR OTHER INDIRECT DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT, REGARDLESS OF WHETHER THE LIABILITY CLAIM IS BASED IN AGREEMENT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, PRODUCT

LIABILITY OR OTHERWISE. NEITHER PARTY WILL BE LIABLE FOR ANY DAMAGES OF ANY SORT ARISING SOLELY FROM THE TERMINATION OF THIS AGREEMENT IN ACCORDANCE WITH ITS TERMS.

## **SECTION 16: TERMINATION**

**16.1** This Agreement may be terminated at any time by mutual written consent of the Parties.

**16.2** Agency may terminate this Agreement as follows:

**16.2.1** Upon 30 days advance written notice to Local Government;

**16.2.2** Immediately upon written notice to Local Government, if Agency fails to receive funding, or appropriations, limitations or other expenditure authority at levels sufficient in Agency's reasonable administrative discretion, to perform its obligations under this Agreement;

**16.2.3** Immediately upon written notice to Local Government, if federal or state laws, rules, regulations or guidelines are modified or interpreted in such a way that Agency's performance under this Agreement is prohibited or Agency is prohibited from paying for such performance from the planned funding source;

**16.2.4** Immediately upon written notice to Local Government, if Local Government is in default under this Agreement and such default remains uncured 15 days after written notice thereof to Local Government; or

**16.2.5** As otherwise expressly provided in this Agreement.

**16.3** Local Government may terminate this Agreement as follows:

**16.3.1** Immediately upon written notice to Agency, if Local Government fails to receive funding, or appropriations, limitations or other expenditure authority at levels sufficient in Local Government's reasonable administrative discretion, to perform its obligations under this Agreement;

**16.3.2** Immediately upon written notice to Agency, if federal or state laws, rules, regulations or guidelines are modified or interpreted in such a way that Local Government's performance under this Agreement is prohibited or Local Government is prohibited from paying for such performance from the planned funding source;

**16.3.3** Immediately upon written notice to Agency, if Agency is in default under this Agreement and such default remains uncured 15 days after written notice thereof to Agency; or

**16.3.4** As otherwise expressly provided in this Agreement.

**16.4** Upon receiving a notice of termination of this Agreement, Local Government will immediately cease all activities under this Agreement, unless Agency expressly directs otherwise in such notice. Upon termination, Local Government will deliver to Agency all documents, information, works-in-progress, Work Product and other property that are or would be deliverables under the Agreement. And upon Agency's reasonable request, Local Government will surrender all

documents, research or objects or other tangible things needed to complete the work that was to have been performed by Local Government under this Agreement.

## **SECTION 17: INSURANCE**

Local Government shall maintain insurance as set forth in Exhibit B, attached hereto and incorporated herein by this reference.

## **SECTION 18: NONAPPROPRIATION**

Agency's obligation to pay any amounts and otherwise perform its duties under this Agreement is conditioned upon Agency receiving funding, appropriations, limitations, allotments, or other expenditure authority sufficient to allow Agency, in the exercise of its reasonable administrative discretion, to meet its obligations under this Agreement. Nothing in this Agreement may be construed as permitting any violation of Article XI, section 7 of the Oregon Constitution or any other law limiting the activities, liabilities or monetary obligations of Agency.

## **SECTION 19: AMENDMENTS**

The terms of this Agreement may not be altered, modified, supplemented or otherwise amended, except by written agreement of the Parties. The Agreement not to exceed amount may be increased to reflect any authorized extension period.

## **SECTION 20: NOTICE**

Except as otherwise expressly provided in this Agreement, any notices to be given relating to this Agreement must be given in writing by facsimile, email, personal delivery, or postage prepaid mail, to a Party's Authorized Representative at the physical address, fax number or email address set forth in this Agreement, or to such other addresses as either Party may indicate pursuant to this Section 20. Any notice so addressed and mailed becomes effective five (5) days after mailing. Any notice given by personal delivery becomes effective when actually delivered. Any notice given by email becomes effective upon the sender's receipt of confirmation generated by the recipient's email system that the notice has been received by the recipient's email system. Any notice given by facsimile becomes effective upon electronic confirmation of successful transmission to the designated fax number.

## **SECTION 21: SURVIVAL**

All rights and obligations of the Parties under this Agreement will cease upon termination of this Agreement, other than the rights and obligations arising under Sections 8, 9, 10, 14, 15 and 21 hereof and those rights and obligations that by their express terms survive termination of this Agreement; provided, however, that termination of this Agreement will not prejudice any rights or obligations accrued to the Parties under this Agreement prior to termination.

## **SECTION 22: SEVERABILITY**

The Parties agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions will not be affected, and the rights and obligations of the Parties will be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.

## **SECTION 23: COUNTERPARTS**

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

## **SECTION 24: COMPLIANCE WITH LAW**

In connection with their activities under this Agreement, the Parties shall comply with all applicable federal, state and local law. Unless exempt, Local Government shall comply and, as indicated, cause all subcontractors to comply with the following federal requirements to the extent that they are applicable to this Agreement, to Local Government, or to the Services or deliverables, or to any combination of the foregoing.

### **24.1 Audits:**

- 24.1.1** Local Government shall comply and, if applicable, cause subcontractors to comply with the applicable audit requirements and responsibilities set forth in the Office of Management and Budget Circular A-133 entitled "Audits of States, Local Governments and Non-Profit Organizations" as implemented by 45 CFR 92.26. The Agency reserves the right to audit, at the Agency's expense, all records pertinent to this Agreement.

### **24.2 Federal Terms and Conditions:**

- 24.2.1** Compliance with Federal Law Local Government shall comply with all applicable federal laws, including, without limitation, those set forth in Exhibit C, which is attached and incorporated into this Agreement by this reference.

## **SECTION 25: INDEPENDENT LOCAL GOVERNMENTS**

The Parties agree and acknowledge that their relationship is that of independent contracting parties and that Local Government is not an officer, employee, or agent of the State of Oregon as those terms are used in ORS 30.265 or otherwise.

## **SECTION 26: INTENDED BENEFICIARIES**

Agency and Local Government are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement provides, is intended to provide, or may be construed to provide any direct or indirect benefit or right to third persons unless such third



persons are individually identified by name herein and expressly described as intended beneficiaries of this Agreement.

## **SECTION 27: FORCE MAJEURE**

Neither Party is responsible for any failure to perform or any delay in performance of any obligations under this Agreement caused by fire, civil unrest, labor unrest, natural causes, or war, which is beyond that Party's reasonable control. Each Party shall, however, make all reasonable efforts to remove or eliminate such cause of failure to perform or delay in performance and shall, upon the cessation of the cause, diligently pursue performance of its obligations under this Agreement. Agency may terminate this Agreement upon written notice to Local Government after reasonably determining that the failure or delay will likely prevent successful performance of this Agreement.

## **SECTION 28: ASSIGNMENT AND SUCCESSORS IN INTEREST**

Local Government may not assign or transfer its interest in this Agreement without the prior written consent of Agency and any attempt by Local Government to assign or transfer its interest in this Agreement without such consent will be void and of no force or effect. Agency's consent to Local Government's assignment or transfer of its interest in this Agreement will not relieve Local Government of any of its duties or obligations under this Agreement. The provisions of this Agreement will be binding upon and inure to the benefit of the Parties hereto, and their respective successors and permitted assigns.

## **SECTION 29: SUBCONTRACTS**

Local Government shall not, without Agency's prior written consent, enter into any subcontracts for any of the work required of Local Government under this Agreement. Agency's consent to any subcontract will not relieve Local Government of any of its duties or obligations under this Agreement.

## **SECTION 30: TIME IS OF THE ESSENCE**

Time is of the essence in Local Government's performance of its obligations under this Agreement.

## **SECTION 31: MERGER, WAIVER**

This Agreement and all exhibits and attachments, if any, 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 or consent under this Agreement binds either Party unless in writing and signed by both Parties. Such waiver or consent, if made, is effective only in the specific instance and for the specific purpose given. EACH PARTY, BY SIGNATURE OF ITS AUTHORIZED REPRESENTATIVE, HEREBY ACKNOWLEDGES THAT IT HAS READ THIS AGREEMENT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

## **SECTION 32: RECORDS MAINTENANCE AND ACCESS**

Local Government shall maintain all financial records relating to this Agreement in accordance with generally accepted accounting principles. In addition, Local Government shall maintain any other records, books, documents, papers, plans, records of shipments and payments and writings of Local Government, whether in paper, electronic or other form, that are pertinent to this Agreement in such a manner as to clearly document Local Government's performance. All financial records, other records, books, documents, papers, plans, records of shipments and payments and writings of Local Government, whether in paper, electronic or other form, that are pertinent to this Agreement, are collectively referred to as "Records." Local Government acknowledges and agrees that Agency and the Oregon Secretary of State's Office and the federal government and their duly authorized representatives will have access to all Records to perform examinations and audits and make excerpts and transcripts. Local Government shall retain and keep accessible all Records for a minimum of six (6) years, or such longer period as may be required by applicable law, following termination of this Agreement, or until the conclusion of any audit, controversy or litigation arising out of or related to this Agreement, whichever date is later. Subject to foregoing minimum records retention requirement, Local Government shall maintain Records in accordance with the records retention schedules set forth in OAR Chapter 166.

## **SECTION 33: HEADINGS**

The headings and captions to sections of this Agreement have been inserted for identification and reference purposes only and may not be used to construe the meaning or to interpret this Agreement.

## **SECTION 34: ADDITIONAL REQUIREMENTS**

Local Government shall comply with the additional requirements set forth in Exhibit C, attached hereto and incorporated herein by this reference.

## **SECTION 35: AGREEMENT DOCUMENTS**

This Agreement consists of the following documents, which are listed in descending order of precedence: this Agreement less all exhibits, attached Exhibit A (the Statement of Work), Exhibit B (Insurance), and Exhibit C (Federal Terms and Conditions).

*Signatures on next page*

## SECTION 36: SIGNATURES

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the dates set forth below.

**Clackamas County acting by and through its Health, Housing & Human Services  
Department, Social Services Division**

\_\_\_\_\_  
Name, Title

\_\_\_\_\_  
Date

**STATE OF OREGON acting by and through its Department of Consumer and Business  
Services, Oregon Health Insurance Marketplace, Senior Health Insurance Benefit Assistance  
Program**

\_\_\_\_\_  
Reviewed By: Chiqui Flowers

\_\_\_\_\_  
Date

Administrator, Oregon Health Insurance Marketplace

\_\_\_\_\_  
Executed by: Nancy A. Cody

\_\_\_\_\_  
Date

Designated Procurement Officer

**Approved for Legal Sufficiency in accordance with ORS 291.047**

\_\_\_\_\_  
Name, Title

N/A

\_\_\_\_\_  
Date



# EXHIBIT A

## STATEMENT OF WORK

### SECTION 1: OBJECTIVES

#### 1.1 Local Government shall:

- 1.1.1 Provide an adequate workforce (including volunteers) to provide local and trusted SHIBA counseling services to Clackamas County.
- 1.1.2 Provide personalized choice counseling to an increasing number and diversity of individual beneficiaries, their family members, and caregivers unable to access other channels of information or needing and preferring locally based individual choice counseling services.
- 1.1.3 Conduct targeted community outreach to beneficiaries in public forums either under their sponsorship or with community-based partners or coalitions to increase understanding of Medicare program benefits and raise awareness of the opportunities for assistance with benefits, choice counseling, and Medicare rights and protections.
- 1.1.4 Increase and enhance beneficiary access to a counselor work force that is trained, certified, fully equipped, and proficient in providing the full range of services including enrollment assistance in appropriate beneficiary selected benefit plans and screening, assistance, and referrals with patient assistance programs.
- 1.1.5 Participate in ACL and Medicare education and communication activities to ensure that SHIP counselors are equipped to respond to both Medicare program updates and a rapidly changing counseling environment and to satisfy the yearly continuing education requirement for certified counselors. Active participation also provides ACL and the Centers for Medicare and Medicaid Services with information about the support and resources that SHIPs need to provide accurate and reliable choice counseling services.

### SECTION 2: SERVICES

#### 2.1 Local Government Responsibilities

##### Local Government shall:

- 2.1.1 Provide choice counseling and assistance to Medicare eligible individuals, their family members and caregivers in need of health insurance information including:
  - 2.1.1.1 Information regarding all Medicare health insurance coverage options.
  - 2.1.1.2 Information that may assist individuals in obtaining benefits and filing claims under Titles XVIII and XIX of the Social Security Act.
  - 2.1.1.3 Policy Comparison information for Medicare supplemental policies (as described in

section 1882 (g) (1) of the Social Security Act, as amended) and information that may assist eligible individuals with filing claims under such Medicare supplemental policies.

**2.1.1.3.1** SHIBA counselors will provide information and assistance on using the agent locator tool located on [oregonhealthcare.gov](http://oregonhealthcare.gov) so beneficiaries can search for a local licensed and vetted Medicare agent.

**2.1.1.4** Information on Medicare Advantage and Prescription Drug Plans available in the state.

**2.1.1.5** Information resources on long-term care insurance, including where to obtain information.

**2.1.1.6** Information regarding Medicaid programs, including Medicare Savings Programs.

**2.1.1.6.1** SHIBA counselors will be trained to assist individuals who are dually-eligible for Medicare and Medicaid, and be trained on changes to our current state's Medicaid programs, in order to provide accurate counseling.

**2.1.1.7** Information on patient assistance programs.

**2.1.1.8** Information regarding other types of health insurance benefits that may be provided to eligible individuals in the state.

**2.1.1.9** Participate in the Oregon Health Insurance Marketplace as follows:

**2.1.1.9.1** Where appropriate, SHIBA counselors may refer individuals to other appropriate programs and services including HealthCare.gov and application assisters, partners, and state and federal resources.

**2.1.2** Conduct outreach programs to provide health insurance information, choice counseling, and assistance to eligible individuals, including an emphasis on reaching low-income, vulnerable, isolated, non-English speaking and tribal Medicare beneficiaries. In achieving these efforts, the Recipient shall:

**2.1.2.1** Provide counseling to Medicare beneficiaries, their family members, and caregivers unable to access other channels of information or needing and preferring locally-based individual counseling services. Ideally, counseling sites should be located near public transportation, have free parking and be accessible for people with disabilities.

**2.1.2.2** Create more counseling resources and locations that are locally accessible to low-income, dual-eligible, and hard-to-reach beneficiaries, including rural communities.

**2.1.2.3** Conduct targeted outreach in order to provide access to counseling for low-income, dual-eligible, and hard-to-reach populations.

**2.1.2.4** Provide educational materials as necessary to assist in achieving these standards.

**2.1.3** Develop systems of referral to appropriate federal or state departments or agencies that provide assistance with problems related to health insurance coverage (including legal

problems).

- 2.1.4** Assure full accessibility of Local Government services to all categories of Medicare eligible individuals, including the aged, disabled, and patients with end-stage renal disease. Local Government's services are to be provided without discrimination on the basis of race, color, national origin, disability, age, sex, or income. Reasonable efforts must also be made to accommodate eligible individuals with existing barriers that limit their access to information, e.g. language, visual, hearing or speech impairments, physical accessibility, literacy, and location.
- 2.1.5** Establish a sufficient number of staff positions (including volunteers) necessary to provide the services of a health insurance information, choice counseling, and assistance program.
- 2.1.6** Request, as necessary, federal Unique Identifiers (IDs) for staff and volunteers through the Agency. Maintain copies of signed confidentiality agreements for individually assigned Unique IDs.
- 2.1.7** Ensure that local SHIBA staff and volunteers have no conflicts of interest in providing health insurance information, choice counseling and assistance, and agree to abide by the SHIBA Confidentiality and Conflict of Interest policy for safeguarding confidential beneficiary information. SHIBA paid staff, in-kind paid and volunteers must annually complete an online security and privacy training provided by Agency to maintain their certification.
- 2.1.8** Provide private on-site or local community counseling space in order for SHIBA volunteer counselors to be able to provide confidential, personalized counseling assistance to clients. At a minimum, private space will have a phone, computer, and access to a printer.
- 2.1.9** Collect and disseminate timely and accurate health insurance information to staff members (including volunteers).
- 2.1.10** Utilize state and federal training program materials as part of the training program for staff members (including volunteers). Conduct a certification review for quality assurance to ensure staff and volunteers are trained in accordance with their job duties. Conduct continuing education and provide continuing education resources to ensure staff and volunteers are up to date in the knowledge necessary to complete their duties.
- 2.1.11** Recruit and screen the staff and volunteer workforce for the program. As such, Local Government shall:
  - 2.1.11.1** Provide formal training opportunities for SHIBA coordinators and volunteers utilizing state and federal training materials, at times including the preparation of copies of materials
  - 2.1.11.2** Periodically host trainings with the appropriate amenities, e.g. water, coffee, tea and/or juice and light snack. Contact Agency if supplemental funding is needed to meet this requirement.
  - 2.1.11.3** Ensure completion of all volunteer application forms and federal fingerprint-based

criminal background check forms.

- 2.1.11.4** Ensure completion of all volunteer confidentiality / non-conflict of interest forms.
- 2.1.11.5** Ensure that all volunteers who provide one-to-one counseling or education seminars have satisfactorily completed extended training and volunteers of all other job descriptions have satisfactorily completed basic training.
- 2.1.11.6** Ensure that all volunteers have satisfactorily completed their certification and notify the Agency upon the completion of all training (e.g. on-line training, 2-day New Volunteer Training and a minimum of 10 hours of mentored counseling sessions).
- 2.1.11.7** Ensure all volunteers achieve 12 recertification credits (by September 30 preferred) each calendar year. This includes annual mandatory information security and privacy training provided by Agency.
- 2.1.11.8** Implement quality assurance protocols within the program including but not limited to:
  - 2.1.11.8.1** an annual touch base with each counselor,
  - 2.1.11.8.2** annual joint counseling session with each counselor,
  - 2.1.11.8.3** periodic review of counselor data entry
- 2.1.11.9** Provide up-to-date resources, information and training libraries (either in paper or electronic format) to local volunteers.
- 2.1.11.10** Facilitate volunteer support meetings periodically, but no less than quarterly.
- 2.1.11.11** Create and support full local volunteer access to internet-based information, training materials, counseling and enrollment tools as necessary.
- 2.1.11.12** Train volunteers on the use of internet-based counseling, SHIBA program tools and internet-based enrollment tools.
- 2.1.11.13** Solicit direct feedback from counselors to determine if the training and support materials they receive are helpful in counseling activities.
- 2.1.11.14** Ensure that any notices from state or federal resources are delivered and explained to counselors in a timely manner.
- 2.1.11.15** Be responsible for the actions of the volunteers.
- 2.1.12** Ensure that SHIBA services are publicized to Medicare beneficiaries throughout the program area. Maintain contact with the community, including distributing literature and



speaking at public gatherings to promote SHIBA.

**2.1.13** Sponsor at least one recognition event annually for SHIBA volunteers.

**2.1.14** Increase SHIBA participation in ACL education activities.

**2.1.14.1** Ensure SHIBA Coordinator and volunteers have access to training materials through registration on <http://www.shiptacenter.org/>

**2.1.14.2** Ensure that the SHIBA Coordinator sends local event information and outreach activities to the Agency for posting to the state SHIBA website calendar of events.

**2.1.15** Respond to constituent requests for information or assistance in a timely fashion (the standard is within two (2) business days).

**2.1.16** Make available to Agency, copies of all publications, intake forms, training materials, systems, items developed, and samples of any forms used by Local Government to provide these services. Local Government shall provide Agency and ACL or the appropriate designee royalty-free, non-exclusive, and irrevocable rights to reproduce, publish, use, and authorize others to use the items.

**2.1.17** Include the acknowledgement that "This publication has been created or produced by (official name) with financial assistance, in whole or in part, through a grant from the Administration for Community Living, the federal agency" on all published SHIBA materials. Use the SHIP logo and tagline on grant related publications. Include statement that "Its contents are solely the responsibility of the authors and do not necessarily represent the official views of the ACL, DCBS, or SHIBA."

**2.1.18** Ensure program/agency representation at SHIBA Coordinator meetings/trainings/conference calls.

**2.1.19** Develop performance goals, including targets (with the assistance of Agency staff) in order to help the state improve its five National SHIP Performance Measures.

- *Agency staff will provide current and/or historical state and county level performance reports to assist Local Government with development of goals.*

**2.1.20** Establish the capability to send and receive e-mail and to access and download internet published information in the provision of SHIBA services.

**2.1.21** Allow Agency to monitor and assess programmatic records, reports, and activities under this subaward. Local government shall allow Agency and ACL or the appropriate designee to conduct one annual site visit, at minimum, to determine the effectiveness and efficiency of Local Government's service delivery. Local Government shall provide ready access to all records and reports relating to this subaward, subject to governing entity client confidentiality, to Agency and ACL or the appropriate designee.

**2.1.22** Notify Agency of any changes in key personnel, contact information, or other significant administrative changes immediately upon learning of the change. This includes, but is not limited to, notification of inactive or terminated volunteers and changes to permissions for

Unique IDs issued.

- 2.1.23** Enter the following into the SHIP Tracking and Reporting System (STARS) located on the web at <https://stars.acl.gov> no later than the end of each month. Local Government shall conduct frequent audits of STARS to ensure the following data is being submitted.
- 2.1.23.1** Total Beneficiary Contact Sessions.
  - 2.1.23.2** Total Group Outreach and Education Sessions.
  - 2.1.23.3** Total Media Outreach Activities
  - 2.1.23.4** Total “Other” Activities
  - 2.1.23.5** Total “Training” Activities
  - 2.1.23.6** Total SHIP Team Members (volunteer, SHIP paid, in-kind paid)
- 2.1.24** Provide the Agency information regarding upcoming events on a monthly basis and no later than the 10th day of the month prior to the event.
- 2.1.25** Provide input information for semi-annual subaward reports, when requested (September 15 and April 15 annually).
- *Agency will provide a reporting template.*
- 2.1.26** Assume responsibility for the accuracy and completeness of the information contained in all documents and reports.
- 2.1.27** Retain all records pertaining to the SHIP grant, including STARS, as described in 45 Code of Federal Regulation (CFR) Section 92.42. Copies or other facsimiles of program records, such as electronic media, are acceptable substitutions for original documents.
- 2.1.28** Retain financial reports in accordance with state and federal grant policies/procedures.

## **2.2 Agency Responsibilities**

### **Agency Shall Provide:**

- 2.2.1** Planning and implementation counseling and support to help identify outreach opportunities.
- 2.2.2** Support for all Medicare enrollment activities, including escalation of Medicare related issues, facilitation and coordination of enrollment fairs, etc.
- 2.2.3** Annual on-line security and privacy training for local government SHIBA staff and

volunteers

- 2.2.4 A statewide SHIBA website calendar of events
- 2.2.5 Co-brand advertising on Facebook pages to support Local Government's community.
- 2.2.6 Direct referrals from 800 Medicare (633-4227) customer service centers.
- 2.2.7 Current and/or historical state and county level performance reports to assist Local Government with development of goals as referenced in Section 2.1.19.
- 2.2.8 Monitoring and assessment of programmatic records, reports, and activities under this subaward as referenced in Section 2.1.21.
- 2.2.9 Written notice prior to conducting one minimum annual site visit to determine the effectiveness and efficiency of Local Government's service delivery as referenced in Section 2.1.21.
- 2.2.10 A reporting template as referenced in Section 2.1.25.

## **SECTION 3: Required Standards**

### **3.1 Cultural Competency Standards**

#### **Local Government shall:**

- 3.1.1 Acknowledge that cultural and linguistic competence is an ongoing, developmental process. Local Government shall have the following indicators in place on the day operations begin:
  - 3.1.1.1 Demonstrate the alternatives and options available for consumers requesting application assistance that accommodates individual preference, cultural and linguistic differences or people with disabilities or facing other barriers.
  - 3.1.1.2 Demonstrate the existence of policies and procedures for meeting consumer language needs.
  - 3.1.1.3 Demonstrate in-person, phone, and electronic consumer access to bilingual-bicultural staff for the languages and cultures of the target populations being served.
  - 3.1.1.4 Identify populations whose primary language is other than English, by region or county within the regions served.
  - 3.1.1.5 Demonstrate how consumers whose primary language is other than English, but not a language broadly available, will be assisted to secure or link to appropriate services. Also, demonstrate the progressive steps to assist these consumers to obtain services in their primary language.
  - 3.1.1.6 Make available culturally and linguistically appropriate written information for

identified consumer populations. Literature shall read at the sixth grade reading level.

**3.1.1.7** Demonstrate an approach to informing ethnic consumers of the availability of cultural and linguistic services and programs.

**3.1.1.8** Demonstrate willingness to partner with other organizations.

**3.1.1.9** Assess factors and develop a plan to facilitate the ease with which culturally diverse populations can obtain services. Such factors should include: location, hours of operation or other relevant areas; adapting physical facilities to be comfortable and inviting to persons of diverse cultural backgrounds; locating facilities in settings that are non-threatening, including co-location of services or partnerships with community groups. May include travel to the consumer or providing services off-site.

## **3.2 Organization Standards**

### **Local Government shall not:**

**3.2.1** Offer or provide any gift, favors or other inducement.

**3.2.2** Accept money or premium payments.

**3.2.3** Divulge any personal information obtained when assisting Medicare beneficiaries.

**3.2.4** Allow any volunteer counselor that has not passed an Agency criminal background check to perform any SHIBA counseling services.

**3.2.5** Provide inaccurate, misleading or coercive oral or written information or materials.

**3.2.6** Encourage customers to provide any false or misleading information regarding income, residency, alienage and other eligibility information.

**Agency may immediately terminate this Agreement by written notification if Local Government is believed to have committed any of the items in this Section 3.2.**

## **3.3 SHIBA Counselor Standards**

### **SHIBA Counselor shall:**

**3.3.1** Be trained and certified as required by Agency. Potential SHIBA counselors must complete a review of levels 1 and 2 of the SHIP TA Center Online Counselor Certification Tool (OCCT) training and tests, complete 10 hours (minimum) of mentoring by an experienced counselor and a 2-day New Volunteer Training (classroom or online recording if available).

**3.3.2** Provide information about all Medicare health insurance options to potentially eligible Oregonians. The information shall include an explanation of the role of a Certified SHIBA Counselor.

**3.3.3** Encourage Medicare beneficiaries to provide accurate and truthful information, and shall not attempt to pre-determine consumer eligibility, or make any assurances regarding the

eligibility of a consumer for any health coverage option.

- 3.3.4** Provide plan comparison and enrollment assistance using the Medicare.gov Plan Finder.
- 3.3.5** Obtain appropriate permissions from the Medicare beneficiaries or their representatives prior to enrollment using the Medicare.gov Plan Finder tool and enrollment portal. Counselors will provide the Medicare enrollment confirmation form or number and keep appropriate records of the transaction.
- 3.3.6** Retain and destroy copies of all records whether paper, electronic or other form related to counseling and enrollment for a minimum of 6 years or as required by state and local records retention schedules. Such records should be kept in a secure and locked location; including any type of paper application submitted on a consumer's behalf. Medicare Advantage and Part D Plan enrollments conducted using a beneficiaries MyMedicare.gov account should have consent to create an account or use an existing account documented as "Yes" in the STARS Beneficiary Contact Form Special Use Field 3.
- 3.3.7** Provide objective and personalized counseling using information provided by Agency and Medicare.gov. If a consumer requests a recommendation about which qualified health plan or type of plan to choose, the SHIBA Counselor will explain making recommendations is outside their scope of work and refer to a licensed, certified Medicare agent if appropriate.
- 3.3.8** Disclose any potential conflicts of interest as defined by Agency.

## EXHIBIT B – INSURANCE REQUIREMENTS

**REQUIRED INSURANCE:** Local Government shall obtain at Local Government's expense the insurance specified in this Exhibit B, prior to performing under this Agreement, and shall maintain it in full force and at its own expense throughout the duration of this Agreement and any warranty periods that apply, or such longer period as described in the tail coverage provisions below, if those provisions apply. Local Government shall obtain the following insurance from insurance companies or entities that are authorized to transact the business of insurance and issue coverage in the State of Oregon and that are acceptable to Agency. Coverage shall be primary and non-contributory with any other insurance and self-insurance. Local Government shall pay for all deductibles, self-insured retention and self-insurance, if any.

**WORKERS COMPENSATION AND EMPLOYER'S LIABILITY:** All employers, including Local Government, shall provide workers' compensation insurance as required by applicable workers' compensation laws for persons performing work under this Agreement and shall obtain Employers' Liability Insurance with limits of not less than \$1,000,000 each occurrence. Local Government shall require and ensure that each of its subcontractors complies with these requirements.

**PROFESSIONAL LIABILITY:**

**REQUIRED BY AGENCY**

**NOT REQUIRED BY AGENCY**

*Professional Liability Insurance* covering any damages caused by an error, omission or any negligent acts related to the work to be performed under this Agreement in an amount not less than \$1,000,000 per occurrence. Annual aggregate limit shall not be less than \$2,000,000. If coverage is on a claim made bases, then either an extended reporting period of not less than 24 months shall be included in the Professional Liability insurance coverage, or Local Government shall provide Tail Coverage as stated below.

**COMMERCIAL GENERAL LIABILITY:**

**REQUIRED BY AGENCY**

**NOT REQUIRED BY AGENCY**

*Commercial General Liability Insurance* covering bodily injury, death and property damage in a form and with coverage that are satisfactory to Agency. This insurance must include personal injury liability, products and completed operations, and contractual liability coverage. Coverage must be written on an occurrence basis in an amount not less than \$1,000,000 per occurrence. Annual aggregate limit shall not be less than \$1,000,000.

**AUTOMOBILE LIABILITY INSURANCE:**

**REQUIRED BY AGENCY**

**NOT REQUIRED BY AGENCY**

*Automobile Liability Insurance* covering all owned, non-owned, or hired vehicles with a combined single limit of not less than \$1,000,000 for bodily injury and property damage.

**ADDITIONAL INSURED.** The *Commercial General Liability* insurance and *Automobile Liability* insurance required under this Agreement must include the State of Oregon, its officers, employees and agents as Additional Insureds but only with request to Local Government's activities to be performed under this Agreement.

**NOTICE OF CANCELLATION OR CHANGE.** Local Government or its insurer shall provide at least 30 days' written notice to agency before cancellation of, material change to, potential exhaustion of aggregate limits of, or non-renewal of the required insurance coverages. A failure to comply with the reporting provisions of this clause will constitute a Local Government default under this Agreement and will be grounds for Agency's immediate termination of this Agreement.

**CERTIFICATES AND PROOF OF INSURANCE.** Local Government shall provide to agency a Certificate of Insurance for each required insurance before commencing performance under this Agreement. All Certificates must specify that Local Government shall pay for all deductibles, self-insured retention and self-insurance, if any, and that all coverage is primary and non-contributory with any other insurance and self-insurance, and confirm that either an extended reporting period of at least 24 months is provided. Certificates for *Commercial Liability* insurance and *Automobile Liability Insurance* must list the State of Oregon, its officers, employees and agents as a Certificate Holder and as Additional Insured. As proof of insurance, Agency has the right to request copies of insurance policies relating to the insurance requirements in this Agreement.

**"TAIL" COVERAGE.** If any of the required insurance is on a claims made basis and does not include an extended reporting period of at least 24 months, Local Government shall maintain either tail coverage or continuous claims made liability coverage, provided the effective date of the continuous claims made coverage is on or before the effective date of this Agreement, for a minimum of 24 months following the later of (a) Local Government's completion and Agency's acceptance of all work required under this Agreement, or (b) the expiration of all warranty periods provided under this Agreement.

**SELF-INSURANCE.** Local Government may fulfill its insurance obligations herein through a program of self-insurance, provided that Agency's determines that Local Government's self-insurance program complies with all applicable laws, and provides insurance coverage equivalent in both type and level of coverage to that required in this Exhibit B. Notwithstanding Section VII of this Exhibit B, Local Government shall furnish an acceptable insurance certificate to Agency for any insurance coverage required by this Agreement that is fulfilled through self-insurance.

## **EXHIBIT C**

### **FEDERAL TERMS AND CONDITIONS**

**General Applicability and Compliance.** Unless exempt under 45 Part 87 for Faith-Based Organizations (Federal Register, July 16, 2004, Volume 69, #136), or other federal provisions, Agency shall comply and, as indicated, cause all Local Governments to comply with the following federal requirements to the extent that they are applicable to this Agreement, to Agency, or to the grant activities, or to any combination of the foregoing. For purposes of this Agreement, all references to federal and state laws are references to federal and state laws as they may be amended from time to time.

#### **1. Miscellaneous Federal Provisions.**

Agency shall comply and require all Local Governments to comply with all federal laws, regulations, and executive orders applicable to the Agreement or to the delivery of grant activities. Without limiting the generality of the foregoing, Agency expressly agrees to comply and require all Local Governments to comply with the following laws, regulations and executive orders to the extent they are applicable to the Agreement: (a) Title VI and VII of the Civil Rights Act of 1964, as amended, (b) Sections 503 and 504 of the Rehabilitation Act of 1973, as amended, (c) the Americans with Disabilities Act of 1990, as amended, (d) Executive Order 11246, as amended, (e) the Health Insurance Portability and Accountability Act of 1996, as amended, (f) the Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended, (g) the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, (h) all regulations and administrative rules established pursuant to the foregoing laws, (i) all other applicable requirements of federal civil rights and rehabilitation statutes, rules and regulations, and (j) all federal laws requiring reporting of Agency Client abuse. These laws, regulations and executive orders are incorporated by reference herein to the extent that they are applicable to the Agreement and required by law to be so incorporated. No federal funds may be used to provide grant activities in violation of 42 U.S.C. 14402.

#### **2. Equal Employment Opportunity.**

If this Agreement, including amendments, is for more than \$10,000, then Agency shall comply and require all Local Governments to comply with Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR Part 60).

#### **3. Clean Air, Clean Water, EPA Regulations.**

If this Agreement, including amendments, exceeds \$100,000 then Agency shall comply and require all Local Governments to comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 7606), the Federal Water Pollution Control Act as amended (commonly known as the Clean Water Act) (33



U.S.C. 1251 to 1387), specifically including, but not limited to Section 508 (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (2 CFR Part 1532), which prohibit the use under non-exempt Federal contracts, grants or loans of facilities included on the EPA List of Violating Facilities. Violations shall be reported to Agency, United States Department of Health and Human Services and the appropriate Regional Office of the Environmental Protection Agency. Agency shall include and require all Local Governments to include in all Agreements with Local Governments receiving more than \$100,000, language requiring the Local Government to comply with the federal laws identified in this Section.

#### **4. Energy Efficiency.**

Agency shall comply and require all Local Governments to comply with applicable mandatory standards and policies relating to energy efficiency that are contained in the Oregon energy conservation plan issued in compliance with the Energy Policy and Conservation Act 42 U.S.C. 6201 et. seq. (Pub. L. 94-163).

#### **5. Truth in Lobbying.**

By signing this Agreement, the Agency certifies, to the best of the Agency's knowledge and belief that:

- a. No federal appropriated funds have been paid or will be paid, by or on behalf of Agency, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any federal contract, grant, loan or cooperative agreement.
- b. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan or cooperative agreement, the Agency shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying" in accordance with its instructions.
- c. The Agency shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all Local Governments and subLocal Governments shall certify and disclose accordingly.
- d. This certification is a material representation of fact upon which reliance was placed when this Agreement was made or entered into. Submission of this certification is a prerequisite for making or entering into this Agreement imposed by 31 U.S.C. 1352.

Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

- e. No part of any federal funds paid to Agency under this Agreement shall be used other than for normal and recognized executive legislative relationships, for publicity or propaganda purposes, for the preparation, distribution, or use of any kit, pamphlet, booklet, publication, electronic communication, radio, television, or video presentation designed to support or defeat the enactment of legislation before the United States Congress or any State or local legislature itself, or designed to support or defeat any proposed or pending regulation, administrative action, or order issued by the executive branch of any State or local government itself.
- f. No part of any federal funds paid to Agency under this Agreement shall be used to pay the salary or expenses of any grant or contract Agency, or agent acting for such Agency, related to any activity designed to influence the enactment of legislation, appropriations, regulation, administrative action, or Executive order proposed or pending before the United States Congress or any State government, State legislature or local legislature or legislative body, other than for normal and recognized executive-legislative relationships or participation by an agency or officer of a State, local or tribal government in policymaking and administrative processes within the executive branch of that government.
- g. The prohibitions in subsections (e) and (f) of this Section shall include any activity to advocate or promote any proposed, pending or future Federal, State or local tax increase, or any proposed, pending, or future requirement or restriction on any legal consumer product, including its sale or marketing, including but not limited to the advocacy or promotion of gun control.
- h. No part of any federal funds paid to Agency under this Agreement may be used for any activity that promotes the legalization of any drug or other substance included in schedule I of the schedules of controlled substances established under section 202 of the Controlled Substances Act except for normal and recognized executive congressional communications. This limitation shall not apply when there is significant medical evidence of a therapeutic advantage to the use of such drug or other substance of that federally sponsored clinical trials are being conducted to determine therapeutic advantage.

#### **6. Resource Conservation and Recovery.**

Agency shall comply and require all Local Governments to comply with all mandatory standards and policies that relate to resource conservation and recovery pursuant to the Resource Conservation and Recovery Act (codified at 42 U.S.C. 6901 et. seq.). Section 6002 of that Act (codified at 42 U.S.C. 6962) requires that preference be given in procurement programs to the purchase of specific products containing recycled materials identified in guidelines developed by the Environmental Protection Agency. Current guidelines are set forth in 40 CFR Part 247.

**7. Audits.**

- a. Agency shall comply, and require all Local Governments to comply, with applicable audit requirements and responsibilities set forth in this Agreement and applicable state or federal law.
- b. If Agency expends \$500,000 or more in Federal funds (from all sources) in its fiscal year beginning prior to December 26, 2014, Agency shall have a single organization-wide audit conducted in accordance with the Single Audit Act. If Agency expends \$750,000 or more in federal funds (from all sources) in a fiscal year beginning on or after December 26, 2014, Agency shall have a single organization-wide audit conducted in accordance with the provisions of 2 CFR Subtitle B with guidance at 2 CFR Part 200. Copies of all audits must be submitted to Agency within 30 days of completion. If Agency expends less than \$500,000 in Federal funds in a fiscal year beginning prior to December 26, 2014, or less than \$750,000 in a fiscal year beginning on or after that date, Agency is exempt from Federal audit requirements for that year. Records must be available as provided in Exhibit B, "Records Maintenance, Access".

**8. Debarment and Suspension.**

Agency shall not permit any person or entity to be a Local Government if the person or entity is listed on the non-procurement portion of the General Service Administration's "List of Parties Excluded from Federal Procurement or Nonprocurement Programs" in accordance with Executive Orders No. 12549 and No. 12689, "Debarment and Suspension" (See 2 CFR Part 180). This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and Local Governments declared ineligible under statutory authority other than Executive Order No. 12549. Local Governments with awards that exceed the simplified acquisition threshold shall provide the required certification regarding their exclusion status and that of their principals prior to award.

**9. Drug-Free Workplace.**

Agency shall comply and cause all Local Governments to comply with the following provisions to maintain a drug-free workplace: (i) Agency certifies that it will provide a drug-free workplace by publishing a statement notifying its employees that the unlawful manufacture, distribution, dispensation, possession or use of a controlled substance, except as may be present in lawfully prescribed or over-the-counter medications, is prohibited in Agency's workplace or while providing services to Agency Clients. Agency's notice shall specify the actions that will be taken by Agency against its employees for violation of such prohibitions; (ii) Establish a drug-free awareness program to inform its employees about: The dangers of drug abuse in the workplace, Agency's policy of maintaining a drug-free workplace, any available drug counseling, rehabilitation, and employee assistance programs, and the penalties that may be imposed upon employees for drug abuse violations; (iii) Provide each employee to be engaged in the performance of services under this Agreement a copy of the statement mentioned in paragraph (i) above; (iv) Notify each

employee in the statement required by paragraph (i) above that, as a condition of employment to provide services under this Agreement, the employee will: abide by the terms of the statement, and notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction; (v) Notify AGENCY within ten (10) days after receiving notice under subparagraph (iv) above from an employee or otherwise receiving actual notice of such conviction; (vi) Impose a sanction on, or require the satisfactory participation in a drug abuse assistance or rehabilitation program by any employee who is so convicted as required by 41 U.S.C. 8104; (vii) Make a good-faith effort to continue a drug-free workplace through implementation of subparagraphs (i) through (vi) above; (viii) Require any Local Government to comply with subparagraphs (i) through (vii) above; (ix) Neither Agency, or any of Agency's employees, officers, agents or Local Governments may provide any service required under this Agreement while under the influence of drugs. For purposes of this provision, "under the influence" means: observed abnormal behavior or impairments in mental or physical performance leading a reasonable person to believe the Agency or Agency's employee, officer, agent or Local Government has used a controlled substance, prescription or non-prescription medication that impairs the Agency or Agency's employee, officer, agent or Local Government's performance of essential job function or creates a direct threat to Agency Clients or others. Examples of abnormal behavior include, but are not limited to: hallucinations, paranoia or violent outbursts. Examples of impairments in physical or mental performance include, but are not limited to: slurred speech, difficulty walking or performing job activities; and (x) Violation of any provision of this subsection may result in termination of the Agreement.

#### **10. Pro-Children Act.**

Agency shall comply and require all Local Governments to comply with the Pro-Children Act of 1994 (codified at 20 U.S.C. 6081 et. seq.).

#### **11. Medicaid Services.**

Agency shall comply with all applicable federal and state laws and regulation pertaining to the provision of Medicaid Services under the Medicaid Act, Title XIX, 42 U.S.C. 1396 et. seq., including without limitation:

- a. Keep such records as are necessary to fully disclose the extent of the services provided to individuals receiving Medicaid assistance and shall furnish such information to any state or federal agency responsible for administering the Medicaid program regarding any payments claimed by such person or institution for providing Medicaid Services as the state or federal agency may from time to time request. 42 U.S.C. 1396a (a)(27); 42 CFR Part 431.107(b)(1) & (2).
- b. Comply with all disclosure requirements of 42 CFR Part 1002.3(a) and 42 CFR Part 455 Subpart (B).

- c. Maintain written notices and procedures respecting advance directives in compliance with 42 U.S.C. 1396(a)(57) and (w), 42 CFR Part 431.107(b)(4), and 42 CFR Part 489 Subpart I.
- d. Certify when submitting any claim for the provision of Medicaid Services that the information submitted is true, accurate and complete. Agency shall acknowledge Agency's understanding that payment of the claim will be from federal and state funds and that any falsification or concealment of a material fact may be prosecuted under federal and state laws.
- e. Entities receiving \$5 million or more annually (under this Agreement and any other Medicaid contract) for furnishing Medicaid health care items or services shall, as a condition of receiving such payments, adopt written fraud, waste and abuse policies and procedures and inform employees, Local Governments and agents about the policies and procedures in compliance with Section 6032 of the Deficit Reduction Act of 2005, 42 U.S.C. 1396a(a)(68).

**12. Agency-based Voter Registration.**

If applicable, Agency shall comply with the Agency-based Voter Registration sections of the National Voter Registration Act of 1993 that require voter registration opportunities be offered where an individual may apply for or receive an application for public assistance.

**13. Disclosure.**

- a. 42 CFR Part 455.104 requires the State Medicaid agency to obtain the following information from any provider of Medicaid or CHIP services, including fiscal agents of providers and managed care entities: (1) the name and address (including the primary business address, every business location and P.O. Box address) of any person (individual or corporation) with an ownership or control interest in the provider, fiscal agent or managed care entity; (2) in the case of an individual, the date of birth and Social Security Number, or, in the case of a corporation, the tax identification number of the entity, with an ownership interest in the provider, fiscal agent or managed care entity or of any Local Government in which the provider, fiscal agent or managed care entity has a 5% or more interest; (3) whether the person (individual or corporation) with an ownership or control interest in the provider, fiscal agent or managed care entity is related to another person with ownership or control interest in the provider, fiscal agent or managed care entity as a spouse, parent, child or sibling, or whether the person (individual or corporation) with an ownership or control interest in any Local Government in which the provider, fiscal agent or managed care entity has a 5% or more interest is related to another person with ownership or control interest in the provider, fiscal agent or managed care entity as a spouse, parent, child or sibling; (4) the name of any other provider, fiscal agent or managed care entity in which an owner of the provider, fiscal agent or managed care entity has an ownership or control interest; and, (5)

the name, address, date of birth and Social Security Number of any managing employee of the provider, fiscal agent or managed care entity.

- b. 42 CFR Part 455.434 requires as a condition of enrollment as a Medicaid or CHIP provider, to consent to criminal background checks, including fingerprinting when required to do so under state law, or by the category of the provider based on risk of fraud, waste and abuse under federal law.
- c. As such, a provider must disclose any person with a 5% or greater direct or indirect ownership interest in the provider whom has been convicted of a criminal offense related to that person's involvement with the Medicare, Medicaid, or Title XXI program in the last 10 years.
- d. Local Government shall make the disclosures required by this Section to Agency. Agency reserves the right to take such action required by law, or where Agency has discretion, it deems appropriate, based on the information received (or the failure to receive information) from the provider, fiscal agent or managed care entity.

**14. Federal Intellectual Property Rights Notice.**

The federal funding agency, as the awarding agency of the funds used, at least in part, for the activities performed under this Agreement, may have certain rights as set forth in the federal requirements pertinent to these funds. For purposes of this subsection, the terms “grant” and “award” refer to funding issued by the federal funding agency to the State of Oregon. The Agency agrees that it has been provided the following notice:

- a. The federal funding agency reserves a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use the work, and to authorize others to do so, for Federal Government purposes with respect to:
  - (1) The copyright in any work developed under a grant, subgrant or Agreement under a grant or subgrant; and
  - (2) Any rights of copyright to which a grantee, subgrantee or a Local Government purchases ownership with grant support.
- b. The parties are subject to applicable federal regulations governing patents and inventions, including government-wide regulations issued by the Department of Commerce at 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements.”
- c. The parties are subject to applicable requirements and regulations of the federal funding agency regarding rights in data first produced under a grant, subgrant or contract under a grant or subgrant.

**15. Whistleblower Protections.**

This Agreement includes the requirements of the "Pilot Program for Enhancement of Local Government Employee Whistleblower Protections". See, 48 CFR 3.908 of the National Defense Authorization Act (NDAA). By reference, these requirements are a term and condition of the Agreement.

**16. DOMA: Implementation of United States v. Windsor and Federal Recognition of Same-Sex Spouses/Marriages:**

United States v. Windsor, 133 S.Ct. 2675 (June 26, 2013); section 3 of the Defense of Marriage Act, codified at 1 USC § 7. All grantees are expected to recognize any same-sex marriage legally entered into in a U.S. jurisdiction that recognizes their marriage, including one of the 50 states, the District of Columbia, or a U.S. territory, or in a foreign country so long as that marriage would also be recognized by a U.S. jurisdiction. This applies regardless of whether or not the couple resides in a jurisdiction that recognizes same-sex marriage. However, this does not apply to registered domestic partnerships, civil unions or similar formal relationships recognized under the law of the jurisdiction of celebration as something other than a marriage. Accordingly, recipients must review and revise, as needed, any policies and procedures which interpret or apply Federal statutory or regulatory references to such terms as "marriage," "spouse," family," "household member" or similar references to familiar relationships to reflect inclusion of same-sex spouse and marriages. Any similar familial terminology references in HHS statutes, regulations, or policy transmittals will be interpreted to include same-sex spouses and marriages legally entered into as described herein.

**17. Trafficking Victims Protection Act.**

Agency shall comply and require all Local Governments to comply with Section 106 (g) of the Trafficking Victims Protection Act of 2000, as amended (22 U.S.C. 7104).

**18. The Department of Defense and Labor, Health and Human Services, and Education Appropriations Act, 2019 and Continuing Appropriations Act, 2019.**

Although consistent with the HHS GPS, any applicable statutory or regulatory requirements, including 45 CFR Part 75, directly apply to this Agreement apart from any coverage in the HHS GPS. Also, the general provisions from "The Department of Defense and Labor, Health and Human Services, and Education Appropriations Act, 2019 and Continuing Appropriations Act, 2019," Pub. L. No 115-245, signed into law on September 28, 2018.

**19. Federal Financial Accountability and Transparency Act (FFATA).**

The Federal Financial Accountability and Transparency Act (FFATA) requires data entry at the FFATA Subaward Reporting System located at <http://www.FSRS.gov> for

all sub-awards and sub-contracts issued for \$25,000 or more as well as addressing executive compensation for both grantee and sub-award organizations.

**20. Security and Privacy.**

Should the collection of information require the use of an information technology system (2 CFR 200.58), the grant recipient and subrecipient(s) will be expected to adhere to the NIST Cybersecurity Framework to help ensure the security of any system used or developed by the grant recipient or subrecipient(s). In particular, if the data to be collected includes Personally Identifiable Information (PII, 2CFR 200.79) or Protected PII (2 CFR 200.82), the grant recipient and subrecipient(s) must apply the appropriate security controls required to protect the privacy and security of the collect PII and/or Protected PII.



Use this form to track your potential grant from conception to submission.  
Sections of this form are designed to be completed in collaboration between department program and fiscal staff.

**CONCEPTION**  
Note: The processes outlined in this form are not applicable to disaster recovery grants.

Application for:  Subrecipient Assistance  Direct Assistance  
Grant Renewal?  Yes  No

Name of Funding Opportunity: Senior Health Insurance Benefit Assistance Program (SHIBA) FY21-23

Funding Source: Federal  State  Local

Requestor Information (Name of staff person initiating form): Jessica Diridoni

Requestor Contact Information: jdiridoni@clackamas.us

Department Fiscal Representative: Jennifer Snook

Program Name or Number (please specify): 242 4345 05190 331067

Brief Description of Project:

The State of Oregon agrees to pay Clackamas County a yearly not to exceed amount of \$16,000.00 with a maximum cumulative not to exceed amount of \$48,000.00. Clackamas County will be part of Oregon's effort to strengthen its capability to provide all Medicare eligible individuals, family members, and caregivers information, counseling and assistance on health insurance matters.

Name of Funding Agency: Administration for Community Living (ACL)

Agency's Web Address for funding agency Guidelines and Contact Information:

https://acl.gov/

Application Packet Attached:  Yes  No

Completed By: Jessica Diridoni 8/5/2020  
Date

**\*\* NOW READY FOR SUBMISSION TO DEPARTMENT FISCAL REPRESENTATIVE \*\***

Competitive Application <input type="checkbox"/>	Non-Competing Application <input checked="" type="checkbox"/>	Other <input type="checkbox"/>	Funding Agency Award Notification Date:	
CFDA(s), if applicable:			Announcement/Opportunity #:	
Announcement Date:			Max Award Value:	<u>\$48,000</u>
Grant Category/Title:	<u>SHIBA - IGA</u>		Match Requirement:	
Allows Indirect/Rate:			Other Deadlines:	<u>Return to State ASAP</u>
Application Deadline:			Other Deadline Description:	
Award Start Date:	<u>4/ 2020</u>		Program Income Requirement:	<u>None - medicare eligible individuals</u>
Award End Date:	<u>3/31/2023</u>			
Completed By:	<u>Jessica Diridoni</u>			
Pre-Application Meeting Schedule:				

**Section III: Funding Opportunity Information - To be completed at Pre-Application Meeting by Dept Program and Fiscal Staff**

**Mission/Purpose:**

1. How does the grant/funding opportunity support the Department and/or Division's Mission/Purpose/Goals?

2. What, if any, are the community partners who might be better suited to perform this work?

3. What are the objectives of this funding opportunity? How will we meet these objectives?

4. Does the grant/financial assistance fund an existing program? If yes, which program? If no, what is the purpose of the program?

**Organizational Capacity:**

1. Does the organization have adequate and qualified staff? If no, can staff be hired within the grant/financial assistance funding opportunity timeframe?

2. Are there partnership efforts required? If yes, who are we partnering with and what are their roles and responsibilities?

3. If this is a pilot project, what is the plan for sunseting the project and/or staff if it does not continue (e.g. making staff positions temporary or limited duration, etc.)?

4. If funded, would this grant/financial assistance create a new program, does the department intend for the program to continue after initial funding is exhausted? If yes, how will the department ensure funding (e.g. request new funding during the budget process, supplanted by a different program, etc.)?

**Collaboration**

1. List County departments that will collaborate on this award, if any.

**Reporting Requirements**

1. What are the program reporting requirements for this grant/funding opportunity?

2. How will performance be evaluated? Are we using existing data sources? If yes, what are they and where are they housed? If not, is it feasible to develop a data source within the grant timeframe?

3. What are the fiscal reporting requirements for this funding?

**Fiscal**

1. Will we realize more benefit than this financial assistance will cost to administer?

2. Are other revenue sources required? Have they already been secured?

3. For applications with a match requirement, how much is required (in dollars), and what type of funding will be used to meet it (Cash-CGF, In-kind meaning the value from a 3rd party/non-county entity, Local Grant, etc.)?

4. Does this grant/financial assistance cover indirect costs? If yes, is there a rote cap? If no, can additional funds be obtained to support indirect expenses and what are they?

Program Approval:

**Teresa Christopherson**

**8/24/20**

Teresa D.  
Christopherson

Digitally signed by Teresa D. Christopherson  
Date: 2020.08.24 13:51:33 -0700

Name (Typed/Printed)

Date

Signature

**\*\* NOW READY FOR PROGRAM MANAGER SUBMISSION TO DIVISION DIRECTOR \*\***

**\*\*ATTACH ANY CERTIFICATIONS REQUIRED BY THE FUNDING AGENCY. COUNTY FINANCE OR ADMIN WILL SIGN.\*\***

Brenda Durbin	August 27, 2020	Brenda Durbin	Digitally signed by Brenda Durbin Date: 2020.08.27 08:47:58 -07'00'
Name (Typed/Printed)	Date	Signature	

Rodney A. Cook	9/21/2020	Rodney Cook	Digitally signed by Rodney Cook Date: 2020.09.21 11:37:21 -07'00'
Name (Typed/Printed)	Date	Signature	

Matt Westbrook	9-21-20	Matt Westbrook	Digitally signed by Matt Westbrook Date: 2020.09.21 14:20:59 -04'00'
Name (Typed/Printed)	Date	Signature	

Name (Typed/Printed)	Date	Signature	

*(Required for all grant applications. If your grant is awarded, all grant awards must be approved by the Board on their weekly consent agenda regardless of amount per local budget law 294.338.)*  
**For applications less than \$150,000:**

		Denied: <input type="checkbox"/>
Name (Typed/Printed)	Date	Signature

**For applications greater than \$150,000 or which otherwise require BCC approval:**

BCC Agenda item #:

Date:

Policy Session Date:

\_\_\_\_\_  
 County Administration Attestation



Richard Swift  
*Director*

October 1, 2020

Board of Commissioners  
Clackamas County

Members of the Board:

Approval to apply to Oregon Department of Transportation, Rail and Public Transit Division, for FTA 5311 Rural Transportation Funds for COVID related Operations of Mt Hood Express

<b>Purpose/Outcomes</b>	Grant application with Oregon Department of Transportation Rail and Public Transit Division to fund COVID related operations for the Mt Hood Express bus service
<b>Dollar Amount and Fiscal Impact</b>	Maximum amount to be funded would be \$211,000. No match is required.
<b>Funding Source</b>	Federal Transit Administration 5311 Rural Transportation Funds- CARES Discretionary
<b>Duration</b>	Effective upon execution and terminates on June 30, 2021
<b>Previous Board Action</b>	None
<b>Strategic Plan Alignment</b>	1. This funding aligns with the strategic priority to increase self-sufficiency for our clients. 2. This funding aligns with the strategic priority to ensure safe, healthy and secure communities by addressing transportation needs for seniors, persons with disabilities and low income job seekers.
<b>Counsel Review</b>	N/A
<b>Contact Person</b>	Brenda Durbin, Director, Social Services Division 503-655-8641
<b>Contract No.</b>	H3S#9767

The Social Services Division of the Department of Health, Housing and Human Services requests approval to apply to Oregon Department of Transportation Rail and Public Transit Division to fund COVID related operation expenses for the Mt Hood Express buses. The Mt Hood Express provides public transit bus service between the City of Sandy, Government Camp and Timberline, along with other locations in the Mt. Hood area, increasing access to employment, recreation, shopping and medical services for residents and visitors.

The federal Coronavirus Aid, Relief and Economic Security (CARES) Act provides emergency appropriations to support transit agency operations during the pandemic. Funds provided are available for transit agencies to maintain service and address needs such as personal protective equipment and cleaning supplies. Due to social distancing requirements, we are not currently able to meet the needs of our passengers, including sufficient capacity for requested rides. These funds would allow for additional capacity, as well as cover the costs of service. Clackamas County Social Services has received 5311 rural transit funds since it took over operating the Mountain Express/Mt Hood Express bus service in 2007.

No match is required for these funds. The grant lifecycle application form was approved by Nancy Bush, Director of Disaster Management, on 9/21/20.

*Healthy Families. Strong Communities.*

2051 Kaen Road, Oregon City, OR 97045 • Phone: (503) 742-5300 • Fax: (503) 742-5352  
www.clackamas.us/community\_health

**RECOMMENDATION:**

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

Respectfully submitted

A handwritten signature in blue ink, appearing to read "Richard Swift, H3S deputy / for". The signature is written in a cursive style with a large initial "R".

Richard Swift, Director  
Health, Housing and Human Services

# Grant Application Lifecycle Form

Use this form to track your potential grant from conception to submission.

Sections of this form are designed to be completed in collaboration between department program and fiscal staff.

## \*\* CONCEPTION \*\*

Note: The processes outlined in this form are not applicable to disaster recovery grants.

### Section I: Funding Opportunity Information - To be completed by Requester

Lead Department: H3S/SSD Application for:  Subrecipient funds  Direct Grant  
Grant Renewal?  Yes  No

If renewal, complete sections 1, 2, & 4 only

Name of Funding Opportunity: FY20-21 5311 Needs-Based CARES Act Funds  
Funding Source:  Federal  State  Local: \_\_\_\_\_  
Requestor Information (Name of staff person Initiating form): Teresa Christopherson  
Requestor Contact Information: x5718 teresachr@clackamas.us  
Department Fiscal Representative: Jennifer Snook  
Program Name or Number (please specify): 5353  
Brief Description of Project:

Formula grant from Oregon Dept. of Transportation Rail and Public Transit Division to support COVID related operation expenses for the Mt. Hood Express. Funds may be used to maintain service, lost revenue, COVID related supplies and equipment such as personal protective equipment and for paid administrative leave.

Name of Funding (Granting) Agency: ODOT

Agency's Web Address for Grant Guidelines and Contact Information:

<https://www.oregon.gov/ODOT/RPTD/Pages/Funding-Opportunities.aspx>

### OR

Application Packet Attached:  Yes  No

Completed By: Kristina Babcock Date: 8/11/2020

## \*\* NOW READY FOR SUBMISSION TO DEPARTMENT FISCAL REPRESENTATIVE \*\*

### Section II: Funding Opportunity Information - To be completed by Department Fiscal Rep

Competitive Grant  Non-Competing Grant  Other Funding Agency Award Notification Date: N/A  
CFDA(s), if applicable: 20.509 (5311)  
Announcement Date: 4/22/2020 Announcement/Opportunity #: N/A  
Grant Category/Title: 5311 Needs-Based CARES Act Max Award Value: \$211,000  
Allows Indirect/Rate: N/A Match Requirement: No match required  
Application Deadline: N/A Other Deadlines: \_\_\_\_\_  
Grant Start Date: Upon signature Other Deadline Description: \_\_\_\_\_  
Grant End Date: 6/30/2021  
Completed By: Teresa Christopherson Program Income Requirement: None  
Pre-Application Meeting Schedule: N/A

**Section III: Funding Opportunity Information - To be completed at Pre-Application Meeting by Dept Program and Fiscal Staff**

**Mission/Purpose:**

1. How does the grant support the Department and/or Division's Mission/Purpose/Goals?

These funds will address operating deficits in the Mt Hood Express transportation service by covering costs associated with the COVID crises such as service changes, lost revenue, administrative leave, and supplies and equipment such as PPE

2. What, if any, are the community partners who might be better suited to perform this work?

There are no other public transit providers in this area.

3. What are the objectives of this grant? How will we meet these objectives?

The grant is to support the continuing operations of the Mt Hood Express service and to mitigate the financial impacts of the COVID crises. The funds will allow service to continue over the next year despite loss of revenue. As demand returns to normal COVID required social distancing measures will mean reduced capacity on each bus and the need to deploy more buses on normal routes to accommodate demand.

4. Does the grant proposal fund an existing program? If yes, which program? If no, what is the purpose of the program?

The Mt Hood Express provides public transportation to the communities of the Mt Hood Area, specifically between Sandy, the Hoodland area along Highway 26, Government Camp and Timberline Lodge.

**Organizational Capacity:**

1. Does the organization have adequate and qualified staff? If no, can staff be hired within the grant timeframe?

We have adequate staffing for this program.

2. Are there partnership efforts required? If yes, who are we partnering with and what are their roles and responsibilities?

We continue to partner with the City of Sandy around operational aspects of the service. These funds will focus on the financial impact of COVID operations.

3. If this is a pilot project, what is the plan for sunseting the project and/or staff if it does not continue (e.g. making staff positions temporary or limited duration, etc.)?

N/A

4. If funded, this grant would create a new program, does the department intend for the program to continue after initial funding is exhausted? If yes, how will the department ensure funding (e.g. request new funding during the budget process, supplanted by a different program, etc.)?

N/A



**Collaboration**

1. List County departments that will collaborate on this award, if any.

N/A

**Reporting Requirements**

1. What are the program reporting requirements for this grant?

Quarterly reporting as we do with our current 5311 operations grant, as well as NTD reporting to the FTA

2. How will grant performance be evaluated? Are we using existing data sources? If yes, what are they and where are they housed? If not, is it feasible to develop a data source within the grant timeframe?

We will continue to collect performance data to inform the operations and future of the public transit service.

3. What are the fiscal reporting requirements for this grant?

No changes from current reporting for the 5311 operations formula grant.

**Fiscal**

1. Will we realize more benefit than this grant will cost to administer?

This grant will ensure continued service during this time and will also provide sufficient funds to implement COVID related safety and service measures.

2. Are other revenue sources required? Have they already been secured?

N/A

3. For applications with a match requirement, how much is required (in dollars) and what type of funding will be used to meet it (CGF, In-kind, Local Grant, etc.)?

N/A

4. Does this grant cover indirect costs? If yes, is there a rate cap? If no, can additional funds be obtained to support indirect expenses and what are they?

N/A

Program Approval:

Teresa Christopherson

9/20/2020

*Teresa Christopherson*

Name (Typed/Printed)

Date


Signature

**\*\* NOW READY FOR PROGRAM MANAGER SUBMISSION TO DIVISION DIRECTOR \*\***

**\*\* ATTACH ANY CERTIFICATIONS REQUIRED BY THE FUNDING AGENCY COUNTY FINANCE OR ADMIN WILL SIGN \*\***

**Section IV: Approvals**

<b>DIVISION DIRECTOR (or designee, if applicable)</b>		
Brenda Durbin	9/21/2020	Brenda Durbin
Name (Typed/Printed)	Date	Signature

<b>DEPARTMENT DIRECTOR (or designee, if applicable)</b>		
Richard Swift	ROONEY A. COOLEY III DEPT 9/21/2020	
Name (Typed/Printed)	Date	Signature

<b>FINANCE GRANT MANAGER (or designee, if applicable; FOR FEDERALLY-FUNDED APPLICATIONS ONLY)</b>		
Matt Westbrook		Matt Westbrook 9/21/20
Name (Typed/Printed)	Date	Signature

**Section V: Board of County Commissioners/County Administration**

*(Required for all grant applications. If your grant is awarded, all grant awards must be approved by the Board on their weekly consent agenda regardless of amount per local budget law 294.338.)*

**For applications less than \$150,000:**

<b>COUNTY ADMINISTRATOR</b>	Approved: <input type="checkbox"/>	Denied: <input type="checkbox"/>
Name (Typed/Printed)	Date	Signature

**For applications greater than \$150,000 or which otherwise require BCC approval:**

BCC Agenda Item #:  Date:

OR

Policy Session Date:

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County Administration Attestation

**County Administration:** re-route to department contact when fully approved.  
**Department:** keep original with your grant file.

October 1, 2020

Board of Commissioners  
Clackamas County

Members of the Board:

Approval of Agreement with Oregon Department of Transportation, Rail and Public  
Transit Division, for FTA 5339 Bus and Bus Infrastructure Investment Programs Funds  
for Bus Purchases for Mt Hood Express and Transportation Reaching People  
Programs

<b>Purpose/Outcomes</b>	Agreement with Oregon Department of Transportation to provide funding for the purchase of two buses for the Mt Hood Express and one van for the Transportation Reaching People program.
<b>Dollar Amount and Fiscal Impact</b>	The maximum agreement is \$304,300. These funds will be used to purchase three vehicles in total. Two vehicles will support the Mt Hood Express program and one vehicle will support the Transportation Reaching People program. Match funds will be provided by Special Transportation Funds (state grant), the State Transportation Improvement Fund, and a public-private partnership with businesses in the Mt. Hood area.
<b>Funding Source</b>	FTA 5339- Bus and Bus Infrastructure Investment Program funds- no County General Funds are involved.
<b>Duration</b>	N/A- one time capital purchase
<b>Previous Board Action</b>	02/27/2020
<b>Strategic Plan Alignment</b>	1. This funding aligns with the strategic priority to increase self-sufficiency for our clients. 2. This funding aligns with the strategic priority to ensure safe, healthy and secure communities by addressing transportation needs for seniors, persons with disabilities and low income job seekers.
<b>Counsel Review</b>	County Counsel reviewed and approved this document on 7/22/2020
<b>Procurement Review</b>	This was not processed through Procurement. Item is an IGA.
<b>Contact Person</b>	Brenda Durbin, Director, Social Services Division 503-655-8641
<b>Contract No.</b>	H3S 9836

The Social Services Division of the Health, Housing, and Human Services Department requests approval of an agreement with Oregon Department of Transportation, Rail and Public Transit Division for Federal Transit Administration 5339 Bus and Bus Infrastructure Investment Program funds to purchase three replacement vehicles. Two buses will allow the Mt Hood Express to continue to provide accessible public transportation in the Mt Hood area and one van will allow the Transportation Reaching People program to provide essential transportation services to seniors and persons with disabilities county-wide.

The Mt. Hood Express (formerly the Mountain Express) provides public transit service from the City of Sandy along the Highway 26 corridor including stops in Welches, Rhododendron, Government Camp

and Timberline Lodge. The service connects to Sandy's bus service to provide regional public transit access to employees, local residents and persons who desire to access recreational opportunities year round on Mt. Hood. The Villages Shuttle service provides point-deviated bus service to the Villages at Mt. Hood Communities on weekdays, allowing seniors, persons with disabilities and others who need extra stops and route deviations bus service to access work, medical appointments and other needs. The Mt Hood Express cannot function without safe, reliable vehicles.

The Transportation Reaching People program provides rides to seniors and persons with disabilities throughout Clackamas County who have limited transportation options to get to medical appointments and other needed services. This agreement provides funding for a replacement van.

The agreement for \$304,300 was approved by County Counsel on 7/22/20. The match will be provided by State Transportation Funds, State Transportation Improvement Fund and public-private partnership with businesses in the Mt. Hood area. No County General Funds are involved.

**RECOMMENDATION:**

We recommend the Board approves of this agreement and that Richard Swift, H3S Director, be authorized to sign on behalf of Clackamas County.

Respectfully submitted

Handwritten signature in blue ink that reads "Gary A. Cook, H3S Deputy / For".

Richard Swift, Director  
Health, Housing and Human Services

## RAIL AND PUBLIC TRANSIT DIVISION OREGON DEPARTMENT OF TRANSPORTATION

This Agreement is made and entered into by and between the **State of Oregon**, acting by and through its Department of Transportation, Rail and Public Transit Division, hereinafter referred to as "State," and **Clackamas County**, hereinafter referred to as "Recipient," and collectively referred to as the "Parties."

### AGREEMENT

1. **Effective Date.** This Agreement shall become effective on the later of **July 1, 2020** or the date when this Agreement is fully executed and approved as required by applicable law. Unless otherwise terminated or extended, Grant Funds under this Agreement shall be available for Project Costs incurred on or before **June 30, 2022** (Expiration Date). No Grant Funds are available for any expenditures after the Expiration Date. State's obligation to disburse Grant Funds under this Agreement shall end as provided in Section 10 of this Agreement.
2. **Agreement Documents.** This Agreement consists of this document and the following documents, all of which are attached hereto and incorporated herein by reference:

**Exhibit A: Project Description and Budget**

**Exhibit B: Financial Information**

**Exhibit C: Subcontractor Insurance**

**Exhibit D: Summary of Federal Requirements, incorporating by reference Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements ("Certifications and Assurances") and Federal Transit Administration Master Agreement**

**Exhibit E: Information required by 2 CFR 200.331(a), may be accessed at <http://www.oregon.gov/odot/pt/>, Oregon Public Transit Information System (OPTIS), as the information becomes available**

In the event of a conflict between two or more of the documents comprising this Agreement, the language in the document with the highest precedence shall control. The precedence of each of the documents comprising this Agreement is as follows, listed from highest precedence to lowest precedence: Exhibit D; Exhibit E; this Agreement without Exhibits; Exhibit A; Exhibit B; Exhibit C.

3. **Project Cost; Grant Funds; Match.** The total project cost is estimated at **\$358,000.00**. In accordance with the terms and conditions of this Agreement, State shall provide Recipient an amount not to exceed **\$304,300.00** in Grant Funds for eligible costs described in Section 6.a. hereof. Recipient shall provide matching funds for all Project Costs as described in Exhibit A.
4. **Project.** The Grant Funds shall be used solely for the Project described in Exhibit A and shall not be used for any other purpose. No Grant Funds will be disbursed for any changes to the Project unless such changes are approved by State by amendment pursuant to Section 11.d hereof.
5. **Progress Reports.** Recipient shall submit quarterly progress reports to State no later than 45 days after the close of each quarterly reporting period. Reporting periods are July through September, October through December, January through March, and April through June. Reports must be in a format acceptable to State and must be entered into the Oregon Public Transit Information System (OPTIS), which may be accessed at <http://www.oregon.gov/odot/pt/>. If Recipient is unable to access OPTIS, reports must be delivered to [ODOTPTDReporting@odot.state.or.us](mailto:ODOTPTDReporting@odot.state.or.us). Reports shall include a statement of revenues and expenditures for each quarter, including documentation of local match contributions and expenditures. State reserves the right to request such additional information as may be

necessary to comply with federal or state reporting requirements.

**6. Disbursement and Recovery of Grant Funds.**

- a. **Disbursement Generally.** State shall reimburse eligible costs incurred in carrying out the Project, up to the Grant Fund amount provided in Section 3. Reimbursements shall be made by State within 30 days of State's approval of a request for reimbursement from Recipient using a format that is acceptable to State. Requests for reimbursement must be entered into OPTIS or sent to [ODOTPTDReporting@odot.state.or.us](mailto:ODOTPTDReporting@odot.state.or.us). Eligible costs are the reasonable and necessary costs incurred by Recipient, or under a subagreement described in Section 9.a. of this Agreement, in performance of the Project and that are not excluded from reimbursement by State, either by this Agreement or by exclusion as a result of financial review or audit.
- b. **Conditions Precedent to Disbursement.** State's obligation to disburse Grant Funds to Recipient is subject to satisfaction, with respect to each disbursement, of each of the following conditions precedent:
  - i. State has received funding, appropriations, limitations, allotments or other expenditure authority sufficient to allow State, in the exercise of its reasonable administrative discretion, to make the disbursement.
  - ii. Recipient is in compliance with the terms of this Agreement including, without limitation, Exhibit D and the requirements incorporated by reference in Exhibit D.
  - iii. Recipient's representations and warranties set forth in Section 7 hereof are true and correct on the date of disbursement with the same effect as though made on the date of disbursement.
  - iv. Recipient has provided to State a request for reimbursement using a format that is acceptable to and approved by State. Recipient must submit its final request for reimbursement following completion of the Project and no later than 60 days after the Expiration Date. Failure to submit the final request for reimbursement within 60 days after the Expiration Date could result in non-payment.
- c. **Recovery of Grant Funds.** Any funds disbursed to Recipient under this Agreement that are expended in violation or contravention of one or more of the provisions of this Agreement ("Misexpended Funds") or that remain unexpended on the earlier of termination or expiration of this Agreement must be returned to State. Recipient shall return all Misexpended Funds to State promptly after State's written demand and no later than 15 days after State's written demand. Recipient shall return all Unexpended Funds to State within 14 days after the earlier of expiration or termination of this Agreement.

**7. Representations and Warranties of Recipient.** Recipient represents and warrants to State as follows:

- a. **Organization and Authority.** Recipient is duly organized and validly existing under the laws of the State of Oregon and is eligible to receive the Grant Funds. Recipient has full power, authority, and legal right to make this Agreement and to incur and perform its obligations hereunder, and the making and performance by Recipient of this Agreement (1) have been duly authorized by all necessary action of Recipient and (2) do not and will not violate any provision of any applicable law, rule, regulation, or order of any court, regulatory commission, board, or other administrative agency or any provision of Recipient's Articles of Incorporation or Bylaws, if applicable, (3) do not and will not result in the breach of, or constitute a default or require any consent under any other agreement or instrument to which Recipient is a party or by which Recipient or any of its properties may be bound or affected. No authorization, consent, license, approval of, filing or registration with or notification to any governmental body or regulatory or supervisory authority is required for the execution, delivery or performance by Recipient of this Agreement.
- b. **Binding Obligation.** This Agreement has been duly executed and delivered by Recipient and constitutes a legal, valid and binding obligation of Recipient, enforceable in accordance with its terms subject to the laws of bankruptcy, insolvency, or other similar laws affecting the enforcement of creditors' rights generally.
- c. **No Solicitation.** Recipient's officers, employees, and agents shall neither solicit nor

accept gratuities, favors, or any item of monetary value from contractors, potential contractors, or parties to subagreements, except as permitted by applicable law. No member or delegate to the Congress of the United States or State of Oregon employee shall be admitted to any share or part of this Agreement or any benefit arising therefrom.

- d. **No Debarment.** Neither Recipient nor its principals is presently debarred, suspended, or voluntarily excluded from this federally-assisted transaction, or proposed for debarment, declared ineligible or voluntarily excluded from participating in this Agreement by any state or federal agency. Recipient agrees to notify State immediately if it is debarred, suspended or otherwise excluded from this federally-assisted transaction for any reason or if circumstances change that may affect this status, including without limitation upon any relevant indictments or convictions of crimes.

The warranties set in this section are in addition to, and not in lieu of, any other warranties set forth in this Agreement or implied by law.

8. **Records Maintenance and Access; Audit.**

- a. **Records, Access to Records and Facilities.** Recipient shall make and retain proper and complete books of record and account and maintain all fiscal records related to this Agreement and the Project in accordance with all applicable generally accepted accounting principles, generally accepted governmental auditing standards and state minimum standards for audits of municipal corporations. Recipient shall require that each of its subrecipients and subcontractors complies with these requirements. State, the Secretary of State of the State of Oregon (Secretary), the United States Department of Transportation (USDOT), the Federal Transit Administration (FTA) and their duly authorized representatives shall have access to the books, documents, papers and records of Recipient that are directly related to this Agreement, the funds provided hereunder, or the Project for the purpose of making audits and examinations. In addition, State, the Secretary, USDOT, FTA and their duly authorized representatives may make and retain excerpts, copies, and transcriptions of the foregoing books, documents, papers, and records. Recipient shall permit authorized representatives of State, the Secretary, USDOT and FTA to perform site reviews of the Project, and to inspect all vehicles, real property, facilities and equipment purchased by Recipient as part of the Project, and any transportation services rendered by Recipient.
- b. **Retention of Records.** Recipient shall retain and keep accessible all books, documents, papers, and records that are directly related to this Agreement, the Grant Funds or the Project for a minimum of six (6) years, or such longer period as may be required by other provisions of this Agreement or applicable law, following the Expiration Date. If there are unresolved audit questions at the end of the six-year period, Recipient shall retain the records until the questions are resolved.
- c. **Expenditure Records.** Recipient shall document the expenditure of all Grant Funds disbursed by State under this Agreement. Recipient shall create and maintain all expenditure records in accordance with generally accepted accounting principles and in sufficient detail to permit State to verify how the Grant Funds were expended.
- d. **Audit Requirements.**
  - i. Recipients receiving federal funds in excess of \$750,000 are subject to audit conducted in accordance with the provisions of 2 CFR part 200, subpart F. Recipient, if subject to this requirement, shall at Recipient's own expense submit to State, Rail and Public Transit Division, 555 13th Street NE, Suite 3, Salem, Oregon, 97301-4179 or to [ODOTPTDReporting@odot.state.or.us](mailto:ODOTPTDReporting@odot.state.or.us), a copy of, or electronic link to, its annual audit subject to this requirement covering the funds expended under this Agreement and shall submit or cause to be submitted, the annual audit of any subrecipient(s), contractor(s), or subcontractor(s) of Recipient responsible for the financial management of funds received under this Agreement.
  - ii. Recipient shall save, protect and hold harmless State from the cost of any audits or special investigations performed by the Secretary with respect to the funds expended under this Agreement. Recipient acknowledges and agrees that any audit costs incurred by Recipient as a result of allegations of fraud, waste or abuse are ineligible for reimbursement under this or any other agreement between Recipient and State.

## 9. Recipient Subagreements and Procurements

- a. **Subagreements.** Recipient may enter into agreements with sub-recipients, contractors or subcontractors (collectively, "subagreements") for performance of the Project.
  - i. All subagreements must be in writing executed by Recipient and must incorporate and pass through all of the applicable requirements of this Agreement to the other party or parties to the subagreement(s). Use of a subagreement does not relieve Recipient of its responsibilities under this Agreement.
  - ii. Recipient agrees to provide State with a copy of any signed subagreement upon request by State. Any substantial breach of a term or condition of a subagreement relating to funds covered by this Agreement must be reported by Recipient to State within ten (10) days of its being discovered.
- b. Recipient shall review the *Best Practices Procurement Manual*, a technical assistance manual prepared by the FTA, available on the FTA website: [www.fta.dot.gov/grants/13054\\_6037.html](http://www.fta.dot.gov/grants/13054_6037.html)
- c. **Subagreement indemnity; insurance**

***Recipient's subagreement(s) shall require the other party to such subagreements(s) that is not a unit of local government as defined in ORS 190.003, if any, to indemnify, defend, save and hold harmless State and its officers, employees and agents from and against any and all claims, actions, liabilities, damages, losses, or expenses, including attorneys' fees, arising from a tort, as now or hereafter defined in ORS 30.260, caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of the other party to Recipient's subagreement or any of such party's officers, agents, employees or subcontractors ("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 State, be indemnified by the other party to Recipient's subagreement(s) from and against any and all Claims.***

Any such indemnification shall also provide that neither Recipient's subrecipient(s), contractor(s) nor subcontractor(s) (collectively "Subrecipients"), nor any attorney engaged by Recipient's Subrecipient(s), shall defend any claim in the name of the State or any agency of the State of Oregon, nor purport to act as legal representative of the State of Oregon or any of its agencies, without the prior written consent of the Oregon Attorney General. The State may, at any time at its election, assume its own defense and settlement in the event that it determines that Recipient's Subrecipient is prohibited from defending State or that Recipient's Subrecipient is not adequately defending State's interests, or that an important governmental principle is at issue or that it is in the best interests of State to do so. State reserves all rights to pursue claims it may have against Recipient's Subrecipient if State elects to assume its own defense.

Recipient shall require the other party, or parties, to each of its subagreements that are not units of local government as defined in ORS 190.003 to obtain and maintain insurance of the types and in the amounts provided in Exhibit C to this Agreement. Any insurance obtained by the other party to Recipient's subagreements, if any, shall not relieve Recipient of the requirements of Section 11 of this Agreement. The other party to any subagreement with Recipient, if the other party employs subject workers as defined in ORS 657.027, must obtain Workers Compensation Coverage as described in Exhibit C.

- d. **Procurements.** Recipient shall make purchases of any equipment, materials, or services for the Project under procedures that comply with Oregon law, as applicable, including all applicable provisions of the Oregon Public Contracting Code and rules, and in conformance to FTA Circular 4220.1F, Third Party Contracting Requirements including:
  - i. all applicable clauses required by federal statute, executive orders and their implementing regulations are included in each competitive procurement;
  - ii. all procurement transactions are conducted in a manner providing full and open competition;



- iii. procurements exclude the use of statutorily or administratively imposed in-state or geographic preference in the evaluation of bids or proposals (with exception of locally controlled licensing requirements);
- iv. construction, architectural and engineering procurements are based on Brooks Act procedures unless the procurement is subject to ORS 279C.100 to 279C.125.

#### 10. Termination

- a. **Termination by State.** State may terminate this Agreement effective upon delivery of written notice of termination to Recipient, or at such later date as may be established by State in such written notice, if:
  - i. Recipient fails to perform the Project within the time specified herein or any extension thereof or commencement, continuation or timely completion of the Project by Recipient is, for any reason, rendered improbable, impossible, or illegal; or
  - ii. 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; or
  - iii. Federal or state laws, rules, regulations or guidelines are modified or interpreted in such a way that the Project is no longer allowable or no longer eligible for funding under this Agreement; or
  - iv. The Project would not produce results commensurate with the further expenditure of funds; or
  - v. Recipient takes any action pertaining to this Agreement without the approval of State and which under the provisions of this Agreement would have required the approval of State.
- b. **Termination by Recipient.** Recipient may terminate this Agreement effective upon delivery of written notice of termination to State, or at such later date as may be established by Recipient in such written notice, if:
  - i. The requisite local funding to continue the Project becomes unavailable to Recipient; or
  - ii. Federal or state laws, rules, regulations or guidelines are modified or interpreted in such a way that the Project is no longer allowable or no longer eligible for funding under this Agreement.
- c. **Termination by Either Party.** Either Party may terminate this Agreement upon at least ten days notice to the other Party and failure of the other Party to cure within the period provided in the notice, if the other Party fails to comply with any of the terms of this Agreement.

#### 11. General Provisions

- a. **Dispute Resolution.** The Parties shall attempt in good faith to resolve any dispute arising out of this Agreement. In addition, the Parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation.
- b. **Responsibility for Grant Funds.** Any recipient of Grant Funds, pursuant to this Agreement with State, shall assume sole liability for that recipient's breach of the conditions of this Agreement, and shall, upon recipient's breach of conditions that requires State to return funds to the FTA, hold harmless and indemnify State for an amount equal to the funds received under this Agreement; or if legal limitations apply to the indemnification ability of the recipient of Grant Funds, the indemnification amount shall be the maximum amount of funds available for expenditure, including any available contingency funds or other available non-appropriated funds, up to the amount received under this Agreement.
- c. **Amendments.** This Agreement may be amended or extended only by a written

instrument signed by both Parties and approved as required by applicable law.

- d. **Duplicate Payment.** Recipient is not entitled to compensation or any other form of duplicate, overlapping or multiple payments for the same work performed under this Agreement from any agency of the State of Oregon or the United States of America or any other party, organization or individual.
- e. **No Third Party Beneficiaries.** State and Recipient are the only Parties to this Agreement and are the only Parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly or indirectly, to a third person unless such a third person is individually identified by name herein and expressly described as an intended beneficiary of the terms of this Agreement.

Recipient acknowledges and agrees that the Federal Government, absent express written consent by the Federal Government, is not a party to this Agreement and shall not be subject to any obligations or liabilities to the Recipient, contractor or any other party (whether or not a party to the Agreement) pertaining to any matter resulting from the this Agreement.

- f. **Notices.** Except as otherwise expressly provided in this Agreement, any communications between the Parties hereto or notices to be given hereunder shall be given in writing by personal delivery, facsimile, email, or mailing the same, postage prepaid, to Recipient Contact or State Contact at the address or number set forth on the signature page of this Agreement, or to such other addresses or numbers as either Party may hereafter indicate pursuant to this Section 11.g. Any communication or notice personally delivered shall be deemed to be given when actually delivered. Any communication or notice delivered by facsimile shall be deemed to be given when receipt of the transmission is generated by the transmitting machine, and to be effective against State, such facsimile transmission must be confirmed by telephone notice to State Contact. Any communication by email shall be deemed to be given when the recipient of the email acknowledges receipt of the email. Any communication or notice mailed shall be deemed to be given when received.
- g. **Governing Law, Consent to Jurisdiction.** This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively, "Claim") between State (or any other agency or department of the State of Oregon) and Recipient that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Marion County in the State of Oregon. In no event shall this section be construed as a waiver by the State of Oregon of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the eleventh amendment to the Constitution of the United States or otherwise, from any Claim or from the jurisdiction of any court. EACH PARTY HEREBY CONSENTS TO THE EXCLUSIVE JURISDICTION OF SUCH COURT, WAIVES ANY OBJECTION TO VENUE, AND WAIVES ANY CLAIM THAT SUCH FORUM IS AN INCONVENIENT FORUM.
- h. **Compliance with Law.** Recipient shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to the Agreement or to the implementation of the Project, as applicable to Recipient, including without limitation as described in Exhibit D. Without limiting the generality of the foregoing, Recipient 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.
- i. **Insurance; Workers' Compensation.** All employers, including Recipient, that employ subject workers who provide services in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. Employer's liability insurance with coverage limits of not less than \$500,000 must be included. Recipient shall ensure that each of its subrecipient(s), contractor(s), and subcontractor(s) complies with these requirements.
- j. **Independent Contractor.** Recipient shall perform the Project as an independent

contractor and not as an agent or employee of State. Recipient has no right or authority to incur or create any obligation for or legally bind State in any way. State cannot and will not control the means or manner by which Recipient performs the Project, except as specifically set forth in this Agreement. Recipient is responsible for determining the appropriate means and manner of performing the Project. Recipient acknowledges and agrees that Recipient is not an "officer", "employee", or "agent" of State, as those terms are used in ORS 30.265, and shall not make representations to third parties to the contrary.

- k. **Severability.** If any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if this Agreement did not contain the particular term or provision held to be invalid.
- l. **Counterparts.** This Agreement may be executed in two or more counterparts (by facsimile or otherwise), each of which is an original and all of which together are deemed one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart.
- m. **Integration and Waiver.** This Agreement, including all Exhibits, constitutes the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. The delay or failure of either Party to enforce any provision of this Agreement shall not constitute a waiver by that Party of that or any other provision. Recipient, by the signature below of its authorized representative, hereby acknowledges that it has read this Agreement, understands it, and agrees to be bound by its terms and conditions.

Clackamas County/State of Oregon  
Agreement No. 34218

**The Parties**, by execution of this Agreement, hereby acknowledge that each Party has read this Agreement, understands it, and agrees to be bound by its terms and conditions.

The Oregon Transportation Commission on October 20, 2010, approved Delegation Order Number OTC-01, which authorizes the Director of the Oregon Department of Transportation to administer programs related to public transit.

On March 1, 2012, the Director approved Delegation Order Number DIR-04, which delegates the authority to approve this Agreement to the Rail and Public Transit Division Administrator.

**SIGNATURE PAGE TO FOLLOW**

**Clackamas County**, by and through its

\_\_\_\_\_

By \_\_\_\_\_  
(Legally designated representative)

Name \_\_\_\_\_  
(printed)

Date \_\_\_\_\_

By \_\_\_\_\_

Name \_\_\_\_\_  
(printed)

Date \_\_\_\_\_

**APPROVED AS TO LEGAL SUFFICIENCY**

(If required in local process)

By \_\_\_\_\_  
Recipient's Legal Counsel

Date \_\_\_\_\_

**Recipient Contact:**

Teresa Christopherson  
Social Services Department  
Oregon City, OR 97045  
1 (503) 650-5718  
teresachr@co.clackamas.or.us

**State Contact:**

Jason Kelly  
555 13th Street NE  
Salem, OR 97301  
1 (503) 731-3320  
Jason.d.kelly@odot.state.or.us

**State of Oregon**, by and through its  
Department of Transportation

By \_\_\_\_\_  
Karyn Criswell  
Rail and Public Transit Division Administrator

Date \_\_\_\_\_

**APPROVAL RECOMMENDED**

By \_\_\_\_\_ Jason Kelly

Date \_\_\_\_\_ 06/07/2020

**APPROVED AS TO LEGAL SUFFICIENCY**

(For funding over \$150,000)

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

Name \_\_\_\_\_ Marvin Fjordbeck by email  
(printed)

Date \_\_\_\_\_ 03/13/2017

**EXHIBIT A**

**Project Description and Budget**

**Project Description/Statement of Work**

<b>Project Title: 5339 Clackamas County 34218</b>				
<i>Vehicle Replacement</i>				
<b>Item #1: Vans</b>				
	Total	Grant Amount	Local Match	Match Type(s)
	\$80,000.00	\$68,000.00	\$12,000.00	Local
<b>Item #1: Bus &lt; 30ft</b>				
	Total	Grant Amount	Local Match	Match Type(s)
	\$100,000.00	\$85,000.00	\$15,000.00	Local
<b>Item #1: Bus STD 35ft</b>				
	Total	Grant Amount	Local Match	Match Type(s)
	\$178,000.00	\$151,300.00	\$26,700.00	Local
<b>Sub Total</b>	\$358,000.00	\$304,300.00	\$53,700.00	
<b>Grand Total</b>	<b>\$358,000.00</b>	<b>\$304,300.00</b>	<b>\$53,700.00</b>	

*Clackamas County  
 5339 Vehicle Replacement*

**1. PROJECT DESCRIPTION**

*Purchase 1 transit vehicle as follows: useful life - 10 years or 350,000 miles; approximate length - greater than or equal to 30 feet; estimated number of seats - 25-35; estimated number of ADA securement stations - 2; fuel type - diesel.*

*Purchase 1 transit vehicle as follows: useful life - 5 years or 150,000 miles; approximate length - greater than or equal to 22 feet; estimated number of seats - 12 to 16; estimated number of ADA securement stations - 2; fuel type - gasoline.*

*Purchase 1 transit vehicle as follows: useful life - 4 years or 100,000 miles; approximate length - 20 to 22 feet; estimated number of seats - 10; estimated number of ADA securement stations - 1; fuel type - gasoline.*

*Purchase includes all equipment and supplies necessary to put the vehicles into service including but not limited to radios, ski boxes, bike racks, and trailers.*

*The following vehicles have been approved for replacement in this Agreement:*

- 1. OPTIS No. V001469 2014 Ford Aerotech; VIN 1FDFE4FS3EDA26731*
- 2. 2016 Ford Aerotech; VIN 1FDFE4FS5GDC11446*
- 3. 2016 Freightliner Defender; VIN 1FVACWDT4GHHL5392*

**2. PROJECT DELIVERABLES, SCHEDULE and USE**

*All purchases and installations must be completed prior to the expiration date of this Agreement.*

*Expected order date: July 1, 2020.  
 Expected delivery date: June 30, 2022.*

*For vehicles procured using State Price Agreement contracts managed by the Oregon Department of Administrative Services, all vehicle orders will be reviewed and approved by State prior to submission to selected vendor. State is responsible for submitting vehicle orders to selected vendor. If Recipient does not purchase from the State Price Agreement contracts managed by the Oregon Department of Administrative Services, Requests for Proposals to procure the vehicles must be reviewed by State prior to solicitation for bids. All vehicle orders will be reviewed by State prior to submission to the selected vendor.*

*This Agreement provides funding to purchase a passenger transportation vehicles to be used to provide public transportation service. Public transportation service is defined as service to the general public or special populations such as seniors and individuals with disabilities. Recipient may use the vehicles to coordinate public and human service transportation services with other agencies. Recipient will not lease the vehicles to another agency without the permission of State.*

*State will retain title to the vehicles as primary security interest holder as long as the vehicles remain in public transportation service. Recipient must request permission from State to release title for disposal when planning to sell or transfer a vehicle which has exceeded the minimum useful standard for age or mileage, and must notify State when actual disposal has been completed. Recipient must request permission from State in advance to transfer or otherwise dispose of a vehicle prior to its meeting federal useful life standards. Recipient must request permission from State to release title for changes.*

*Recipient will create and maintain a vehicle maintenance plan that utilizes the original equipment manufacturer (OEM) maintenance requirements for each vehicle and meets FTA transit asset management requirements in 49 CFR 625. Recipient will provide State a copy of the maintenance plan upon request.*

### **3. PROJECT ACCOUNTING and MATCHING FUNDING**

*Eligible expenses that may be charged to this Agreement include grant administration, the cost of the procurement process, delivery charges and post-delivery inspections. Aftermarket equipment, graphics and other items directly associated with these vehicles and required to put the vehicles into service are eligible. Purchase of an extended warranty is an eligible expense; however, the eligible warranty shall not exceed the defined useful life of the vehicles. Licensing and other post-delivery expenses are not eligible for reimbursement.*

*Recipient will provide matching funding from non-federal source(s). Sources of funding that may be used as matching funding for this Agreement include State grant funds, local funds, service contract revenue, advertisement income, other earned income, cash donations, and other verifiable in-kind contributions that are integral to the project budget. Recipient may not use passenger fares as matching funding.*

*Recipient will subtract income from fares, tickets, and passes whether pre-paid or post-paid, from the gross operating expenses of the service. Under this Agreement, State will bear the sum remaining after the amount of Recipient's required share of local matching funds is subtracted from the total project expenses. Recipient may not count the same costs twice if they have multiple agreements for which these costs may be eligible.*

### **4. REPORTING and INVOICING REQUIREMENTS**

*Recipient will provide reporting information as prescribed by State on the vehicles purchased under this Agreement as long as the vehicles remains in public transportation service. Recipient will submit a request for reimbursement in a format provided by State. Reimbursement requests must include the following: a cover letter, copies of all invoices associated with expenses identified for reimbursement, and pre-award and post-delivery certification forms documenting compliance to Altoona bus testing, Federal Motor Vehicle Safety Standards, Buy America, and Disadvantaged Business Enterprise requirements.*

**EXHIBIT B**  
**FINANCIAL INFORMATION**

The information below will assist auditors to prepare a report in compliance with the requirements of 2 CFR part 200, subpart F.

This Agreement is financed by the funding source indicated below:

<b>Federal Program</b>	<b>Federal Funding Agency</b>	<b>CFDA Number</b>	<b>Total Federal Funding</b>
9300.1A	U.S. Department of Transportation Federal Transit Administration 915 Second Avenue, Suite 3142 Seattle, WA 98174	<b>20.526 (5339)</b>	<b>\$304,300.00</b>

<b>Administered By</b> Public Transportation Division 555 13th Street NE Salem, OR 97301
---



## EXHIBIT C

### Insurance Requirements

#### GENERAL - SUBRECIPIENT.

Recipient shall require in its first tier subagreements with entities that are not units of local government as defined in ORS 190.003, if any, to: i) obtain insurance specified under TYPES AND AMOUNTS and meeting the requirements under ADDITIONAL INSURED, "TAIL" COVERAGE, NOTICE OF CANCELLATION OR CHANGE, and CERTIFICATES OF INSURANCE before performance under the subagreement commences, and ii) maintain the insurance in full force throughout the duration of the subagreement. The insurance must be provided by insurance companies or entities that are authorized to transact the business of insurance and issue coverage in the State of Oregon and that are acceptable to State. Recipient shall not authorize work to begin under subagreements until the insurance is in full force. Thereafter, Recipient shall monitor continued compliance with the insurance requirements on an annual or more frequent basis. Recipient shall incorporate appropriate provisions in the subagreement permitting it to enforce compliance with the insurance requirements and shall take all reasonable steps to enforce such compliance. In no event shall Recipient permit work under a subagreement when Recipient is aware that the contractor is not in compliance with the insurance requirements. As used in this section, "first tier" means a subagreement in which the Recipient is a Party.

#### TYPES AND AMOUNTS.

i. **WORKERS COMPENSATION.** Insurance in compliance with ORS 656.017, which requires all employers that employ subject workers, as defined in ORS 656.027, to provide workers' compensation coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). Employers liability insurance with coverage limits of not less than \$500,000 must be included.

ii. **COMMERCIAL GENERAL LIABILITY.** Commercial General Liability Insurance covering bodily injury, death, and property damage in a form and with coverages that are satisfactory to State. This insurance shall include personal injury liability, products and completed operations. Coverage shall be written on an occurrence form basis, with not less than the following amounts as determined by State:

Bodily Injury, Death and Property Damage:

\$1,000,000 per occurrence (for all claimants for claims arising out of a single accident or occurrence).

iii. **AUTOMOBILE Liability Insurance: Automobile Liability.** Automobile Liability Insurance covering all owned, non-owned and hired vehicles. This coverage may be written in combination with the Commercial General Liability Insurance (with separate limits for "Commercial General Liability" and "Automobile Liability"). Automobile Liability Insurance must be in not less than the following amounts as determined by State:

Bodily Injury, Death and Property Damage:

\$1,000,000 per occurrence (for all claimants for claims arising out of a single accident or occurrence).

**ADDITIONAL INSURED.** The Commercial General Liability Insurance and Automobile Liability insurance must include State, its officers, employees and agents as Additional Insureds but only with respect to the contractor's activities to be performed under the Subcontract. Coverage must be primary and non-contributory with any other insurance and self-insurance.

**"TAIL" COVERAGE.** If any of the required insurance policies is on a "claims made" basis, such as professional liability insurance, the contractor shall maintain either "tail" coverage or continuous

"claims made" liability coverage, provided the effective date of the continuous "claims made" coverage is on or before the effective date of the Subcontract, for a minimum of 24 months following the later of: (i) the contractor's completion and Recipient's acceptance of all Services required under the Subcontract or, (ii) the expiration of all warranty periods provided under the Subcontract. Notwithstanding the foregoing 24-month requirement, if the contractor elects to maintain "tail" coverage and if the maximum time period "tail" coverage reasonably available in the marketplace is less than the 24-month period described above, then the contractor may request and State may grant approval of the maximum "tail" coverage period reasonably available in the marketplace. If State approval is granted, the contractor shall maintain "tail" coverage for the maximum time period that "tail" coverage is reasonably available in the marketplace.

**NOTICE OF CANCELLATION OR CHANGE.** The contractor or its insurer must provide 30 days' written notice to Recipient before cancellation of, material change to, potential exhaustion of aggregate limits of, or non-renewal of the required insurance coverage(s).

**CERTIFICATE(S) OF INSURANCE.** Recipient shall obtain from the contractor a certificate(s) of insurance for all required insurance before the contractor performs under the Subcontract. The certificate(s) or an attached endorsement must specify: i) all entities and individuals who are endorsed on the policy as Additional Insured and ii) for insurance on a "claims made" basis, the extended reporting period applicable to "tail" or continuous "claims made" coverage.

#### **GENERAL - RECIPIENT.**

Recipient shall: i) obtain insurance specified under TYPES AND AMOUNTS (except TYPES AND AMOUNTS paragraph I applies only to Recipient's subcontractors who employ subject workers) and meeting the requirements under ADDITIONAL INSURED, "TAIL" COVERAGE, NOTICE OF CANCELLATION OR CHANGE, and CERTIFICATES OF INSURANCE before performance under this Agreement commences, and ii) maintain the insurance in full force throughout the duration of this Agreement. The insurance must be provided by insurance companies or entities that are authorized to transact the business of insurance and issue coverage in the State of Oregon and that are acceptable to State.

#### **TYPES AND AMOUNTS.**

i. **WORKERS COMPENSATION.** Insurance in compliance with ORS 656.017, which requires all employers that employ subject workers, as defined in ORS 656.027, to provide Workers' Compensation coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). Employers liability insurance with coverage limits of not less than \$500,000 must be included.

ii. **COMMERCIAL GENERAL LIABILITY.** Commercial General Liability Insurance covering bodily injury, death, and property damage in a form and with coverages that are satisfactory to State. This insurance shall include personal injury liability, products and completed operations. Coverage shall be written on an occurrence form basis, with not less than the following amounts as determined by State:

**Bodily Injury, Death and Property Damage:**

\$1,000,000 per occurrence (for all claimants for claims arising out of a single accident or occurrence).

iii. **AUTOMOBILE Liability Insurance:** Automobile Liability. Automobile Liability Insurance covering all owned, non-owned and hired vehicles. This coverage may be written in combination with the Commercial General Liability Insurance (with separate limits for "Commercial General Liability" and "Automobile Liability"). Automobile Liability Insurance must be in not less than the following amounts as determined by State:

**Bodily Injury, Death and Property Damage:**

\$1,000,000 per occurrence (for all claimants for claims arising out of a single accident or occurrence).

**ADDITIONAL INSURED.** The Commercial General Liability Insurance and Automobile Liability insurance must include State, its officers, employees and agents as Additional Insureds but only with respect to the Recipient's activities to be performed under this Agreement. Coverage must be primary and non-contributory with any other insurance and self-insurance.

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

**NOTICE OF CANCELLATION OR CHANGE.** Recipient or its insurer must provide 30 days' written notice to State before cancellation of, material change to, potential exhaustion of aggregate limits of, or non-renewal of the required insurance coverage(s).

**CERTIFICATE(S) OF INSURANCE.** State shall obtain from Recipient a certificate(s) of insurance for all required insurance before the effective date of this Agreement. The certificate(s) or an attached endorsement must specify: i) all entities and individuals who are endorsed on the policy as Additional Insured and ii) for insurance on a "claims made" basis, the extended reporting period applicable to "tail" or continuous "claims made" coverage.

**EXHIBIT D**

**Summary of Federal Requirements and Incorporating by Reference  
Annual List of Certifications and Assurances for FTA Grants and  
Cooperative Agreements ("Certifications and Assurances") and Federal  
Transit Administration Master Agreement ("Master Agreement")**

Recipient and Recipient's subrecipient(s), contractor(s), or subcontractor(s), at any tier, if any, must comply with all applicable federal requirements contained in the Certifications and Assurances available at [www.transit.dot.gov](http://www.transit.dot.gov). The Certifications and Assurances, including as they may be changed during the term of this Agreement, are by this reference incorporated herein.

Recipient further agrees to comply with all applicable requirements included in the Master Agreement that is signed and attested to by State. This Master Agreement is incorporated by reference and made part of this Agreement. Said Master Agreement is available upon request from State by calling (503) 986-3300, or at [www.transit.dot.gov](http://www.transit.dot.gov). Without limiting the foregoing, the following is a summary of some requirements applicable to transactions covered by this Agreement and the funds described in Exhibit A:

1. Recipient shall comply with Title VI of the Civil Rights Act of 1964 (78 Stat 252, 42 U.S.C. § 2000d) and the regulations of the United States Department of Transportation (49 CFR 21, Subtitle A). Recipient shall exclude no person on the grounds of race, religion, color, sex, age, national origin, or disability from the benefits of aid received under this Agreement. Recipient will report to State on at least an annual basis the following information: any active lawsuits or complaints, including dates, summary of allegation, status of lawsuit or complaint including whether the Parties entered into a consent decree.
2. Recipient shall comply with FTA regulations in Title 49 CFR 27 Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance which implements the Rehabilitation Act of 1973, as amended, the Americans with Disabilities Act of 1990, 49 CFR 37, and 49 CFR 38.
3. Recipient shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any USDOT-assisted contract or in the administration of its DBE program or the requirements of 49 CFR Part 26. Recipient shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of USDOT-assisted contracts. Recipient's DBE program, if applicable, as required by 49 CFR part 26 and as approved by USDOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to State of its failure to carry out its approved program, the Department may impose sanctions as provided for under part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).
4. Recipient must include the following language in each subagreement Recipient signs with a subcontractor or subrecipient:

*The contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. The contractor, subrecipient, or subcontractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of USDOT-assisted contracts. Failure by the contractor, subrecipient, or subcontractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as Recipient deems appropriate.*

5. By executing the Agreement, Recipient and contractors receiving in excess of \$100,000 in federal funds, other than Indian tribes, certify to State that they have not and will not use federal funds to pay for influencing or attempting to influence an officer or employee of any federal department or Agency, a member of Congress, or an employee of a member of Congress in connection with obtaining any federal grant, cooperative agreement or any other

federal award as well as the extension, continuation, renewal, amendment or modification of any federal contract, grant, loan, cooperative agreement, or other federal award. This certification is a material representation of fact upon which reliance was placed when this Agreement was made or entered into. Submission of this certification is a prerequisite for making or entering into this Agreement imposed by Section 1352, Title 31 of the U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure. If non-federal funds have been used to support lobbying activities in connection with the Project, Recipient shall complete Standard Form LLL, Disclosure Form to Report Lobbying and submit the form to State at the end of each calendar quarter in which there occurs an event that requires disclosure. Restrictions on lobbying do not apply to influencing policy decisions. Examples of prohibited activities include seeking support for a particular application or bid and seeking a congressional earmark.



**COPY**

February 27, 2020

Board of Commissioners  
Clackamas County

Members of the Board:

**Approval to Apply for a Capital Grant for Federal Transit Administration  
Bus and Bus Infrastructure Investment Program Funds through Oregon Department  
of Transportation for Mt Hood Express Vehicle Replacements**

<b>Purpose/Outcomes</b>	Agreement with Oregon Department of Transportation to provide funding for the purchase of three buses for the Mt Hood Express.
<b>Dollar Amount and Fiscal Impact</b>	The maximum grant award is \$460,000. The contract is funded through the Oregon Department of Transportation.
<b>Funding Source</b>	FTA 5339- Bus and Bus Infrastructure Investment Program funds- no County General Funds are involved.
<b>Duration</b>	N/A- one time capital purchase
<b>Previous Board Action</b>	None
<b>County Counsel</b>	N/A
<b>Strategic Plan Alignment</b>	1. This funding aligns with the strategic priority to increase self-sufficiency for our clients. 2. This funding aligns with the strategic priority to ensure safe, healthy and secure communities by addressing transportation needs for seniors, persons with disabilities and low income job seekers.
<b>Contact Person</b>	Brenda Durbin, Director, Social Services Division 503-655-8641
<b>Contract No.</b>	N/A

The Social Services Division of the Health, Housing, and Human Services Department requests approval to apply for a capital purchases grant for Federal Transit Administration Bus and Bus Infrastructure Investment Program funds through the Oregon Department of Transportation to purchase three replacement buses to continue to provide public transit services in the Hoodland area of Clackamas County, especially for seniors and persons with disabilities. The grant application will be for a one time amount of \$460,000. The grant, if awarded, would have no effect on staffing. No County General Funds are involved.

The Mt. Hood Express (formerly the Mountain Express) provides public transit service from the City of Sandy along the Highway 26 corridor including stops in Welches, Rhododendron, Government Camp and Timberline Lodge. The service connects to Sandy's bus service to provide regional public transit access to employees, local residents and persons who desire to access recreational opportunities year round on Mt. Hood. The Villages Shuttle service provides point-deviated bus service to the Villages at Mt. Hood Communities on weekdays, allowing seniors, persons with disabilities and others

# Grant Application Lifecycle Form

Use this form to track your potential grant from conception to submission.

Sections of this form are designed to be completed in collaboration between department program and fiscal staff.

## \*\* CONCEPTION \*\*

Note: The processes outlined in this form are not applicable to disaster recovery grants.

### Section I: Funding Opportunity Information - To be completed by Requester

Lead Department: H3S -Social Services Division Application for:  Subrecipient funds  Direct Grant  
Grant Renewal?  Yes  No

Name of Funding Opportunity: 5339 Bus and Bus Facilities Infrastructure Investment Program

Funding Source:  Federal  State  Local: \_\_\_\_\_

Requestor Information (Name of staff person initiating form): Teresa Christopherson

Requestor Contact Information: x5718

Department Fiscal Representative: Jennifer Snook

Program Name or Number (please specify): Mt Hood Express

Brief Description of Project:

ODOT is submitting an application on behalf of transit providers throughout the state of Oregon for the purchase of vehicles and other infrastructure needs. The Mt Hood Express needs three replacement vehicles- two 37 passenger buses and one 16 passenger cutaway- in order to continue to maintain transit services in the Mt Hood area.

Name of Funding (Granting) Agency: \_\_\_\_\_ FTA

Agency's Web Address for Grant Guidelines and Contact Information:  
\_\_\_\_\_

OR

Application Packet Attached:  Yes  No

Completed By: Kristina Babcock Date: 2/20/2020

## \*\* NOW READY FOR SUBMISSION TO DEPARTMENT FISCAL REPRESENTATIVE \*\*

### Section II: Funding Opportunity Information - To be completed by Department Fiscal Rep

Competitive Grant  Non-Competing Grant/Renewal  Other Notification Date: 8/9/2017

CFDA(s), if applicable: 20.526

Announcement Date: 11/18/2019 Announcement/Opportunity #: \_\_\_\_\_

Grant Category/Title: BBBFIP Max Award Value: \$460,000

Allows Indirect/Rate: N/A Match Requirement: 15%

Application Deadline: N/A Other Deadlines: \_\_\_\_\_

Grant Start Date: Not stated Other Deadline Description: \_\_\_\_\_

Grant End Date: Not stated Application to be completed by ODOT by 3/3/2020

Completed By: Teresa Christopherson

Pre-Application Meeting Schedule: 2/25/2020



**Section III: Funding Opportunity Information - To be completed at Pre-Application Meeting by Dept Program and Fiscal Staff**

**Mission/Purpose:**

1. How does the grant support the Department's Mission/Purpose/Goals?

The Mt Hood Express provides general public transportation to the Mt Hood area, providing a key transportation link for low income households without other transportation options, seniors and persons with disabilities and job seekers. Vehicle replacement is essential for the service to continue operating.

2. How does the grant support the Division's Mission/Purpose/Goals? (If applicable)

See #1

3. What, if any, are the community partners who might be better suited to perform this work?

None

4. What are the objectives of this grant? How will we meet these objectives?

The grant provides funding to replace buses on fixed route systems in order to ensure safety, connections between communities and ADA compliance. The replacement of the Mt Hood Express buses meets that objective.

5. Does the grant proposal fund an existing program? If yes, which program? If no, what should the program be called and what is its purpose?

Yes- the Mt Hood Express

**Organizational Capacity:**

1. Does the organization have adequate and qualified staff? If yes, what types of staff are required? If no, can staff be hired within the grant timeframe?

Yes. The Mt Hood Express Operations are currently run by the City of Sandy. The City of Sandy is staffed appropriately to handle operations. The City of Sandy and Clackamas County have an IGA regarding operation cost and performance expectations.

2. Is there partnership efforts required? If yes, who are we partnering with, what are their roles and responsibilities, and are they committed to the same goals?

We will be partnering with Oregon Department of Transportation that is actually submitting the application to the FTA to provide them with information about anticipated vehicle replacement needs.

3. If this is a pilot project, what is the plan for sunseting the program or staff if it does not continue (e.g. making staff positions temporary or limited duration, etc.)?

N/A

4. If funding creates a new program, does the department intend that the program continue after initial funding is exhausted? If so, how will the department ensure funding (e.g. request new funding during the budget process, discontinue or supplant a different program, etc.)?

N/A

**Collaboration**

1. List County departments that will collaborate on this award, if any.

N/A

**Reporting Requirements**

1. What are the program reporting requirements for this grant?

Fleet asset reporting to ODOT on a quarterly basis (currently being done)

2. What is the plan to evaluate grant performance? Are we using existing data sources? If yes, what are they and where are they housed? If not, is it feasible to develop a data source within the grant timeframe?

N/A- capital purchase

3. What are the fiscal reporting requirements for this grant?

Follow vehicle purchase documentation requirements through ODOT

**Fiscal**

1. Will we realize more benefit than this grant will cost to administer?

Yes- capital purchases of this magnitude are beyond the resources of our existing funding. Without this grant, these vehicles would not be replaced.

2. What other revenue sources are required? Have they already been secured?

None

3. Is there a match requirement? If yes, how much and what type of funding (CGF, Inkind, Local Grant, etc.)?

There is a 15% match requirement which will be met through the use of STIF funds. These match funds will be included in the FY 21-23 STIF application.

4. Is this continuous or one-time funding? If one-time funding, how will program funding be sustained?

One time funding for capital purchases so no sustainability issues involved.

5. Does this grant cover indirect costs? If yes, is there a rate cap? If no, can additional funds be obtained to support indirect expenses and what are they?

N/A

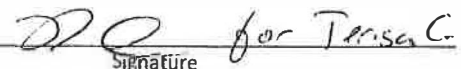
Program Approval:

Teresa Christopherson

8/16/2017

Name (Typed/Printed)

Date

 for Teresa C.

Signature

**\*\* NOW READY FOR PROGRAM MANAGER SUBMISSION TO DIVISION DIRECTOR \*\***

**Section IV: Approvals**

DIVISION DIRECTOR OR ASSISTANT DIRECTOR (or designee, if applicable)		
Brenda Durbin	Brenda Durbin	2-19-2020
Name (Typed/Printed)	Date	Signature

DEPARTMENT DIRECTOR		
Richard Swift	RODNEY A. COOK	2/19/20
Name (Typed/Printed)	Date	Signature

HSS Deputy / FSR  
RICHARD SWIFT

IF APPLICATION IS FOR FEDERAL FUNDS, PLEASE SEND COPY OF THIS DOCUMENT BY EMAIL TO FINANCE (FinanceGrants@clackamas.us). ROUTE ORIGINAL OR SCANNED VERSION TO COUNTY ADMIN.

**Section V: Board of County Commissioners/County Administration**

*(Required for all grant applications. All grant awards must be approved by the Board on their weekly consent agenda regardless of amount per local budget law 294.338.)*

**For applications less than \$150,000:**

COUNTY ADMINISTRATOR	Approved: <input checked="" type="checkbox"/>	Denied: <input type="checkbox"/>
Gary Schmidt	2/27/2020	Gary Schmidt
Name (Typed/Printed)	Date	Signature

**For applications greater than \$150,000 or which otherwise require BCC approval:**

BCC Agenda Item #: A-5      Date: 2-27-2020

OR

Policy Session Date: [Redacted]

Gary Schmidt  
County Administration Attestation

County Administration: re-route to department contact when fully approved.  
Department: keep original with your grant file.





**Richard Swift**  
*Director*

October 01, 2020

Board of County Commissioners  
Clackamas County

Members of the Board:

Approval of Intra-Agency Agreement with Clackamas County Health Centers Division for School Based Health Centers (SBHC) operating funds

<b>Purpose/ Outcomes</b>	This Agreement provides the basis for a cooperative working relationship for SBHC primary care services at the Rex Putnam, Oregon City, and Sandy SBHC's.
<b>Dollar Amount and Fiscal Impact</b>	The maximum Agreement value is \$162,000.
<b>Funding Source</b>	Public Health is receiving grant funds from the State Public Health Authority – No County General Funds will be used.
<b>Duration</b>	Effective July 01, 2020 and terminates on June 30, 2021
<b>Previous Board Action</b>	No previous Board actions
<b>Strategic Plan Alignment</b>	1. Improved Community Safety and Health 2. Ensure safe, healthy and secure communities
<b>Counsel Review</b>	County counsel has reviewed and approved this document on September 21, 2020
<b>Procurement Review</b>	Was the item processed through Procurement? NO This is grant funded and Health Centers is a named party in the grant.
<b>Contact Person</b>	Kim La Croix, Access to Care Program Manager (503) 742-5982
<b>Contract No.</b>	9867

**BACKGROUND:**

The Clackamas County Public Health Division (CCPHD) of the Health, Housing & Human Services Department requests the approval of an Intra-Agency Agreement with Clackamas County Health Centers Division (CCHCD) for primary care services at the Rex Putnam, Oregon City, and Sandy SBHC's. This will provide the basis for a cooperative working relationship and the provision of primary care services at the SBHC's. This agreement is funded with grant money received through the Local Public Health Authority (LPHA).

This contract is effective July 1, 2020 and continues through June 30, 2021.

*Healthy Families. Strong Communities.*

2051 Kaen Road, Oregon City, OR 97045 • Phone: (503) 742-5300 • Fax: (503) 742-5352  
[www.clackamas.us/community\\_health](http://www.clackamas.us/community_health)

**Page 2**

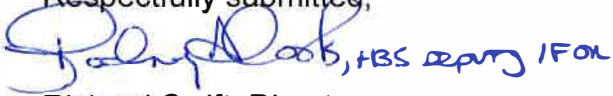
**BCC Meeting October 1, 2020**

Agreement # 9867

**RECOMMENDATION:**

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

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Richard Swift, H3S Deputy / FOA".

Richard Swift, Director  
Health, Housing, and Human Services

# Contract Transmittal Form

## Health, Housing & Human Services Department

<b>H3S Contract #:</b> 9867	<b>Division:</b> PH	<input type="checkbox"/> Subrecipient
<b>Board Order #:</b>	<b>Contact:</b> Weber, Jeanne	<input type="checkbox"/> Revenue
	<b>Program Contact:</b> La Croix, Kim	<input type="checkbox"/> Amend # \$
		<input checked="" type="checkbox"/> Procurement Verified
		<input checked="" type="checkbox"/> Aggregate Total Verified

Non BCC Item     BCC Agenda    **Date:** Thursday, October 1, 2020

**CONTRACT WITH:** Clackamas Health Centers

**CONTRACT AMOUNT:** \$162,000.00

**TYPE OF CONTRACT**

- |  |  |
|--|--|
| <input type="checkbox"/> Agency Service Contract                   | <input type="checkbox"/> Memo of Understanding/Agreement             |
| <input type="checkbox"/> Construction Agreement                    | <input type="checkbox"/> Professional, Technical & Personal Services |
| <input type="checkbox"/> Intergovernmental Agreement               | <input type="checkbox"/> Property/Rental/Lease                       |
| <input checked="" type="checkbox"/> Interagency Services Agreement | <input type="checkbox"/> One Off                                     |

**DATE RANGE**

- |   |   |
|---|---|
| <input type="checkbox"/> Full Fiscal Year _____ - _____ | <input type="checkbox"/> 4 or 5 Year _____ - _____                            |
| <input type="checkbox"/> Upon Signature _____ - _____   | <input type="checkbox"/> Biennium _____ - _____                               |
| <input type="checkbox"/> Other _____ - _____            | <input checked="" type="checkbox"/> Retroactive Request? 7/1/2020 - 6/30/2021 |

**INSURANCE** What insurance language is required?

Checked Off     N/A

**Commercial General Liability:**     Yes     No, not applicable     No, waived

If no, explain why:

**Business Automobile Liability:**     Yes     No, not applicable     No, waived

If no, explain why:

**Professional Liability:**     Yes     No, not applicable     No, waived

If no, explain why:

Approved by Risk Mgr \_\_\_\_\_

Risk Mgr's Initials and Date

**BOILER PLATE CHANGE**

Has contract boilerplate language been altered, added, or deleted?

No     Yes (must have CC approval-next box)     N/A (Not a County boilerplate - must have CC approval)

If yes, what language has been altered, added, or deleted and why: \_\_\_\_\_

**COUNTY COUNSEL**

Yes by: Kathleen Rastetter \_\_\_\_\_ Date Approved: Monday, September 21, 2020

OR

This contract is in the format approved by County Counsel as part of the H3S contract standardization project.

**SIGNATURE OF DIVISION REPRESENTATIVE:** \_\_\_\_\_

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

<b>H3S Admin Only</b>	Date Received: _____
	Date Signed: _____
	Date Sent: _____

## AGREEMENTS/CONTRACTS

X  New Agreement/Contract  
 Amendment/Change Order Original Number \_\_\_\_\_

**ORIGINATING COUNTY**

**DEPARTMENT:** Health, Housing Human Services  
Public Health

**PURCHASING FOR:** Contracted Services \_\_\_\_\_

**OTHER PARTY TO**

**CONTRACT/AGREEMENT:** Clackamas Health Centers \_\_\_\_\_

**BOARD AGENDA ITEM**

**NUMBER/DATE:** \_\_\_\_\_

**DATE:** 10/1/2020 \_\_\_\_\_

**PURPOSE OF**

**CONTRACT/AGREEMENT:** CCHC will provide Oregon City and Sandy School based health center primary healthcare according to SBHC protocols and certification requirements CCHC policies and procedures.

**H3S CONTRACT NUMBER:** 9867 \_\_\_\_\_



**INTRA-AGENCY AGREEMENT  
BETWEEN  
CLACKAMAS COUNTY PUBLIC HEALTH DIVISION  
AND  
CLACKAMAS HEALTH CENTERS DIVISION**

**Contract # 9867**

I. Purpose

This agreement provides the basis for a cooperative working relationship between the Clackamas County Public Health Division herein referred to as "CCPHD," and the Clackamas Health Centers Division, herein referred to as "CHCD," with the common goal of successfully operating a School Based Health Center (SBHC) program. The funds provided under this agreement shall only be used to support activities related to oversight, maintenance, administration, operation, and delivery of services within the SBHC.

II. Scope of Work and Cooperation

A. CHCD agrees to:

1. Provide primary healthcare to students within Oregon City High School, Rex Putnam High School, and Sandy High School according to Oregon Health Authority SBHC protocols and certification requirements and CHCD Policies.
2. All primary healthcare services must be delivered in accordance with the guidelines set forth in the 2017 Standards for Certification. The Standards for Certification includes administrative, operations and reporting guidance, and minimum standards and/or requirements in the areas of: certification process, sponsoring agency/facility, operations/staffing, laboratory, clinical services, data collection/reporting and quality assurance.
3. Maintain an operations agreement with Oregon City High School, Rex Putnam High School, and Sandy High School for the delivery of SBHC services by Clackamas County Health Centers. Provide a copy of the operations agreements with the CCPHD annually.
4. Prepare SBHC facilities and staff for recertification site visits with Oregon Health Authority (OHA). Appoint SBHC leadership to participate in site visit and address items identified by OHA.
5. Participate in quarterly OHA SBHC meetings.
6. Designate a staff person to maintain the State Operational Profile (online portal) and submit data in accordance with OHA requirements.
7. Participate in OHA sponsored trainings and webinars.
8. Collaborate with CCPHD on grant proposals to support the SBHC when funding opportunities arise that align with the SBHC mission or improve population health that align with the SBHC and Health Centers mission and SBHC Strategic Plan.

9. Write and submit narrative and financial reports required by the grant funder. Share the narrative and financial reports with CCPHD.
10. Facilitate School district wide collaboration with SBHC staff, school district staff, public health services, other county departments, and community agencies in order to develop, implement, and maintain SBHC services for school-age children as opportunities arise.
11. Upon request, share de-identified electronic health record (EPIC) data with CCPHD.
12. Conduct communication activities (e.g. website) that promote Oregon City, Rex Putnam, and Sandy SBHC clinics.

B. CCPHD agrees to:

1. Upon request, provide the oversight and technical assistance so that each SBHC in its jurisdiction meet the 2017 Standards for Certification for SBHC.
2. Assure to the OHA State Program Office (SPO) that all certification documentation and subsequent follow-up items are completed by the requested date(s) in accordance with the certification review cycle.
3. Connect with leadership team at least two times per year to facilitate communication and program development.
4. Upon receipt of proper invoice, distribute SBHC funding on behalf of the OHA to CHCD for provision of healthcare services between July 1, 2020 and June 30, 2021.
5. Develop and distribute updated SBHC agreements as needed.
6. Analyze school based health center related data, from a population health perspective, and share with CHCD annually.
7. Conduct county-wide communications regarding SBHC services. CCPHD will notify and collaborate with CHCD about communications related to the SBHCs where CHCD is the medical sponsor.
8. Monitor fiscal and programmatic compliance, of CHCD with this contract, by regularly reviewing invoices and participating in biennial state certification exit interviews.

III. Liaison Responsibility

Aria Baker will act as liaison from CCPHD:

[ABaker@clackamas.us](mailto:ABaker@clackamas.us)

Erin DeArmond-Reid will act as liaison from CHCD:

[Ereid@clackamas.us](mailto:Ereid@clackamas.us)

IV. Compensation

CCPHD's obligations under this agreement are subject to receipt of grant funds from the State of Oregon for Program Element #44: School Based Health Centers.

The maximum amount available for CHCD under this agreement shall not exceed \$162,000. The funds shall be distributed as follows:

Up to \$54,000 for Oregon City SBHC  
Up to \$54,000 for Rex Putnam SBHC  
Up to \$54,000 for Sandy SBHC

CHCD shall submit monthly expenditure reimbursement interfund transfer request invoices by the tenth day of the month following that in which service was performed for true and verifiable costs and expenses related to implementation of the services outlined in this agreement. The invoice must be itemized and reference contract # 9867, dates of service, number of hours billed, and the total amount due for all service provided during the month. Invoices shall be submitted to:

Clackamas County Public Health Division  
Attn: Accounts Payable  
2051 Kaen Road, # 367  
Oregon City, Oregon 97045  
[PublicHealthFiscalAP@clackamas.us](mailto:PublicHealthFiscalAP@clackamas.us)

When submitting electronically, designate CHCD name and contract # 9867 in the subject of the e-mail.

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

Withholding of Contract Payments: Notwithstanding any other payment provision of this agreement, should CHCD fail to submit required reports when due, or submit reports which appear patently inaccurate or inadequate on their face, or fail to perform or document the performance of contracted services, CCPHD shall immediately withhold payments hereunder. Such withholding of payment for cause may continue until CHCD submits required reports, performs required services, or establishes to CCPHD's satisfaction that such failure arose out of causes beyond the control, and without the fault or negligence, of CHCD.

V. Reporting Requirements

A. Fiscal Reports

1. CHCD shall submit year to date expense reports to CCPHD on January 15th and July 15th.
2. Reports will be itemized and will include all operational expenses to include, but not limited to: staff, supplies, lease, and maintenance.
3. Based on year end reconciliation, all monies not allocated by expense reports shall be returned to CCPHD.
4. CHCD will submit Fiscal Reports to:

Clackamas County Public Health Division  
Attn: Sherry Olson  
2051 Kaen Road, #367  
Oregon City, Oregon 97045

OR

[SOlson4@clackamas.us](mailto:SOlson4@clackamas.us)

B. Performance Reporting

1. Submit annual Client encounter data in a form acceptable to the OHA SPO and in accordance with the 2017 Certification Standards at two times during the year, no later than January 31, 2021 for the previous calendar year (July 1, 2020 – December 31, 2020) and no later than July 15, 2021 for the preceding service year (July 1, 2020 – June 30, 2021).
2. Submit annual SBHC Key Performance Measure (KPM) data in a form acceptable to the OHA SPO and in accordance with the certification standards no later than October 1, 2021 for the preceding service year (July 1, 2020 – June 30, 2021).
3. Submit annual SBHC Billing, Revenue and Funding data in the form acceptable to the OHA SPO no later than October 1, 2021 for the preceding service year (July 1, 2020 – June 30, 2021).
4. Submit annual SBHC hours of operation and staffing in the form acceptable to the OHA SPO no later than October 1, 2021 for the current service year (July 1, 2020 – June 30, 2021).
5. Submit completed annual patient satisfaction survey data no later than January 31, 2021 and June 30, 2021.
6. Complete online national census survey every year.
7. CHCD will submit Performance Reports to:

Clackamas County Public Health Division  
Attn: Aria Baker  
999 Library Ct  
Oregon City, OR 97045  
[ABaker@clackamas.us](mailto:ABaker@clackamas.us)

And

School-Based Health Center Program  
800 NE Oregon, Suite 805  
Portland, OR 97232  
E-mail: [SBHC.program@state.or.us](mailto:SBHC.program@state.or.us)  
Phone: (971) 673-0871

VI. Amendments

This agreement may be amended at any time with the concurrence of both parties. Amendments become a part of this agreement only after the written amendment has been signed by both parties and the Department Director.

VII. Term of Agreement

This agreement becomes effective July 1, 2020 and is scheduled to terminate June 30, 2021.

This agreement is subject to cancellation by either of the parties when thirty (30) days' written notice has been provided.

Termination. This contract may be terminated by mutual consent of both parties, or by either party, upon 30 days' notice, in writing and delivered by certified mail or in person.

If sufficient funds are not provided in future approved budgets of County (or from applicable federal, state, or other sources) to permit County in the exercise of its reasonable administrative discretion to continue this Contract, or if the program for which this Contract was executed is abolished, County may terminate this Contract without further liability by giving Contractor not less than thirty (30) days' notice.

This agreement consists of seven (7) sections.

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

**CLACKAMAS HEALTH CENTERS DIVISION**

Deborah  
Cockrell

Digitally signed by Deborah  
Cockrell  
Date: 2020.09.17 13:10:53  
-07'00'

Deborah Cockrell, Director

9/17/2020

Date

**CLACKAMAS COUNTY PUBLIC HEALTH DIVISION**

Philip Mason-  
Joyner

Digitally signed by Philip  
Mason-Joyner  
Date: 2020.09.18 11:57:32  
-07'00'

Philip Mason-Joyner, Director

9/18/2020

Date

**HEALTH, HOUSING AND HUMAN SERVICES DEPARTMENT**

Richard Swift, Director

Date

DRAFT

Approval of Previous Business Meeting Minutes:

August 6, 2020

August 13, 2020

September 10, 2020

## **BOARD OF COUNTY COMMISSIONERS BUSINESS MEETING MINUTES**

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

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

**Thursday, August 6, 2020 - 10:00 AM**

Virtual Meeting Via Zoom

**PRESENT: Chair Jim Bernard  
Commissioner Sonya Fischer  
Commissioner Ken Humberston  
Commissioner Paul Savas  
Commissioner Martha Schrader  
Housing Authority Commissioner Ann Leenstra**

### **CALL TO ORDER**

- Roll Call
- Pledge of Allegiance

Chair Bernard:

- We are holding this meeting virtually. If you've joined us on the Zoom app for this meeting, and you are interested in providing public comment, we will prompt you regarding how to do that when the time is right.
- You will have the option of providing your comments to us live.
- Alternatively, anyone can send in a comment to be read during the public Communication portion of our meeting over email. Just send it in at any time during the meeting by emailing [ClackCoNews@clackamas.us](mailto:ClackCoNews@clackamas.us).
- Be sure to include your name and area when you email.

### **\*\*\*COVID-19 Update**

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

Nancy Bush, Disaster Mgmt. and Dr. Sarah Present gave a COVID-19 update.

*~Board Discussion~* <https://www.clackamas.us/meetings/bcc/business>

Administrator Schmidt wanted to correct the record that there was no outbreak at the Clackamas Town Center

*~Board Discussion~*

**Chair Bernard announced the Board will recess as the Board of County Commissioners and convene as the Housing Authority Board for the next item.**

### **I. HOUSING AUTHORITY CONSENT AGENDA**

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

#### **MOTION:**

Commissioner Leenstra: I move we approve the Housing Authority Consent Agenda.

Commissioner Humberston: Second.

Clerk call the poll:

Commissioner Leenstra: Aye.

Commissioner Fischer: Aye.

Commissioner Humberston: Aye.

Commissioner Savas: Aye.

Commissioner Schrader: Aye.

Chair Bernard: Aye – the Ayes have it, the motion carries 6-0.

1. Resolution No. 1949 authorizing the Housing Authority of Clackamas County to Execute Documents to Transfer Ownership of Arbor Terrace to Farmworker Housing Development Corporation

Chair Bernard announced the Board would adjourn as the Housing Authority Board

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

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

1. Approval of a Local Subrecipient Grant Agreement with Lifeworks Northwest to Provide Evidence-based Parenting Education Classes - *CFCC*
2. Approval of a Subrecipient Grant Amendment No. 2 with Northwest Family Services for Youth Marijuana and Substance Abuse Prevention Efforts in North Clackamas - *CFCC*
- \*3. Approval of a Subrecipient Grant Agreement with Ant Farm, Inc., to Provide CARES Funded Rent Assistance Services – *Disaster Mgmt.*

**B. Elected Officials**

1. Approval of Previous Business Meeting Minutes – *BCC*
2. Request by the Clackamas County Sheriff's Office to enter into an Intergovernmental Agreement with Washington County, Oregon for Maintenance of the Clackamas County Sheriff's Office Motors Unit Motorcycles - *CCSO*

**C. Community Corrections**

1. Approval of an Intergovernmental Agreement between Clackamas County Community Corrections and Sunrise Water Authority to provide Work Crew Services for Fiscal Year 2020-2021

**D. Public & Government Affairs**

1. Approval of Amendment No. 1 to Intergovernmental Agreement with Multnomah County for Use of Videography Services of Clackamas County On-Call Videographers
2. **Board Order No. 2020-61** Approving the Renewal of the Cable Television Franchise Agreement for Use of the County Rights-of-Way by Canby Telecom d/b/a DirectLink

**E. Public & Government Affairs**

- \*1. Approval of the Amendment to the DAS Grant No.1003 with the State of Oregon Department of Administrative Service (DAS) for Coronavirus Relief Fund

**MOTION TO APPROVE CONSENT AGENDA:**

Commissioner Humberston: I move we approve the Consent Agenda.

Commissioner Schrader: Second.

Clerk call the poll:



Commissioner Fischer: Aye.  
Commissioner Humberston: Aye.  
Commissioner Savas: Aye.  
Commissioner Schrader: Aye.  
Chair Bernard: Aye – the Ayes have it, the motion carries 5-0.

**III. PUBLIC COMMUNICATION** - <https://www.clackamas.us/meetings/bcc/business>

Kimberlee Dinwiddie-WebbPGA will moderate this portion

1. Tonia Hunt – Unincorporated Clackamas County, spoke in support of Children’s Levy
2. Kristin Winnie Eaton - Clackamas County, spoke in support of Children’s Levy
3. Esther Nelson - Clackamas County, spoke in support of Children’s Levy
4. Samantha Furlow – Molalla, spoke in support of Children’s Levy
5. Angela Nylund - Clackamas County, wants to get separated from Multnomah and Washington Counties
6. Mark Shull – Sandy (email) wants to get separated from Multnomah and Washington Counties

**IV. COUNTY ADMINISTRATOR UPDATE** - <https://www.clackamas.us/meetings/bcc/business>

**V. COMMISSIONERS COMMUNICATION** - <https://www.clackamas.us/meetings/bcc/business>

**MEETING ADJOURNED – 11:26 AM**

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

# BOARD OF COUNTY COMMISSIONERS BUSINESS MEETING MINUTES

A complete video copy and packet including staff reports of this meeting can be viewed at <https://www.clackamas.us/meetings/bcc/business>

**Thursday, August 13, 2020 - 10:00 AM**

**BOARD OF COUNTY COMMISSIONERS**

Virtual Meeting via Zoom

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

## CALL TO ORDER

- Roll Call
- Pledge of Allegiance

Chair Bernard:

- We are holding this meeting virtually. If you've joined us on the Zoom app for this meeting, and you are interested in providing public comment, we will prompt you regarding how to do that when the time is right.
- You will have the option of providing your comments to us live.
- Alternatively, anyone can send in a comment to be read during the Public Communication portion of our meeting over email. Just send it in at any time during the meeting by emailing [ClackCoNews@clackamas.us](mailto:ClackCoNews@clackamas.us). Be sure to include your name and area when you email.

## \*\*\*COVID-19 Update

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

Nancy Bush, Disaster Management, and Dr. Sarah Present gave an update regarding COVID-19.

~Board Discussion~

## I. **PUBLIC HEARINGS** <https://www.clackamas.us/meetings/bcc/business>

1. First Reading of an **Ordinance No. 07-2020** Amending Appendix C – Local Contract Review Board Rules, of the Clackamas County Code *Second reading September 10<sup>th</sup>, 2020*  
(Andrew Naylor, County Counsel)

Chair Bernard opened the public hearing and turned this portion to Dylan Blaylock, PGA. With no public comment, Chair Bernard closed the public hearing and asked for a motion.

### **MOTION to read the ordinance by title only.**

Commissioner Humberston: So Moved

Commissioner Fischer: Second.

the Clerk called the Poll

Commissioner Fischer: Aye.

Commissioner Humberston: Aye.

Commissioner Savas: Aye.

Commissioner Schrader: Aye.

Chair Bernard: Aye –the motion carries 5-0.

2. **Resolution No. 2020-63** for Referral of a Ballot Measure to the Voters of Clackamas County for a Five-Year Property Tax Levy to Fund Children’s Safety Services (Stephen Madkour, County Counsel)

*~Board Discussion~*

Chair Bernard opened the public hearing and turned this portion to Dylan Blaylock, PGA.

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

1. Robin Christian – CASA Exec Director, in support of Levy
2. Charles Galia – Carver, in support of Levy
3. Jory Monroe – NW Family Services, in support of Levy
4. John Wentworth – DA Elect, in support of Levy
5. Simon Fulford – Parrot Creek, in support of Levy
6. Cole Merkel – Oak Grove, in support of Levy
7. Catherine Koch – Childrens Services, in support of Levy
8. Simon Fuford – Parrot Creek , in support of Levy - Email

Chair Bernard closed the public hearing and asked for a motion.

*~Board Discussion~*

**MOTION: referral to the ballot**

Chair Bernard: I move we refer this to the ballot

Commissioner Humberston and Commissioner Schrader: Second.

the Clerk called the Poll

Commissioner Fischer: Aye.

Commissioner Humberston: Aye.

Commissioner Savas: Aye.

Commissioner Schrader: Aye.

Chair Bernard: Aye – the Ayes have it, the motion carries 5-0.

**II. BOARD DISCUSSION ITEM** <https://www.clackamas.us/meetings/bcc/business>

**Health, Housing & Human Services**

1. **Board Order 2020-62** Approval of a Resolution declaring a state of emergency and emergency measures to address housing crisis (Vahid Brown, H3S)

*~Board Discussion~*

**MOTION:**

Commissioner Humberston: We move to approve the resolution declaring a state of emergency and emergency measures to address housing crisis.

Commissioner Schrader: Second.

Clerk call the poll:

Commissioner Fischer: Aye.

Commissioner Humberston: Aye.

Commissioner Savas: Aye.

Commissioner Schrader: Aye.

Chair Bernard: Aye – the Ayes have it, the motion carries 5-0.

**III. CONSENT AGENDA** <https://www.clackamas.us/meetings/bcc/business>

Chair Bernard asked for the Clerk to read the consent agenda by title only

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

1. Approval of a Subrecipient Grant Amendment #2 with Todos Juntos for Youth Marijuana and Substance Prevention in Rural Clackamas County
2. Approval of a Local Subrecipient Grant Agreement with Todos Juntos to Provide Evidence-based Parenting Education Classes in Rural Clackamas County
3. Approval of Amendment #4, to Intergovernmental Subrecipient Agreement with City of Lake Oswego – Lake Oswego Adult Community Center to Provide Social Services for Clackamas County Residents
4. Approval of an Intergovernmental Agreement (IGA) with South Metro Area Regional Transit (SMART), a Department of the City of Wilsonville for Transportation Services to Residents Living in Villebois Community Housing Site
5. Approval for Agreement #9741 a Lease Agreement between Clackamas County Health Centers Division (CCHCD) and Quest Center for Integrative Health (Quest Care), for Rental of Clinical Space

**B. Department of Transportation & Development**

1. Approval of 2019-2021 HB 2001 & HB 2003 Planning Assistance Grant Agreement with Department of Land Conservation and Development Grant Number: TA-21-277
2. Approval of a Contract with Jim Turin & Sons, Inc. for the Salmon River Road Pavement Preservation Project - *Procurement*

**MOTION:**

Commissioner Humberston: I move we approve the consent agenda as amended.

Commissioner Schrader: Second.

Clerk call the Poll:

Commissioner Fischer: Aye.

Commissioner Humberston: Aye.

Commissioner Savas: Aye.

Commissioner Schrader: Aye

Chair Bernard Aye – the Ayes have it, the motion carries 5-0

**IV. PUBLIC 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. Testimony is limited to three (3) minutes. Comments shall be respectful and courteous to all.*

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

1. Mark Shull – Nitrate Fertilizer – Email
2. Less Poole – Parks - Email

**V. COUNTY ADMINISTRATOR UPDATE**

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

**VI. COMMISSIONERS COMMUNICATION**

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

**MEETING ADJOURNED – 12:07 PM**

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## BOARD OF COUNTY COMMISSIONERS BUSINESS MEETING MINUTES

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

### Thursday September 10, 2020 - 10:00 AM BOARD OF COUNTY COMMISSIONERS

Virtual Meeting via Zoom

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

#### CALL TO ORDER

- Roll Call
- Pledge of Allegiance

Chair Bernard:

- We are holding this meeting virtually. If you've joined us on the Zoom app for this meeting, and you are interested in providing public comment, we will prompt you regarding how to do that when the time is right.
- You will have the option of providing your comments to us live.
- Alternatively, anyone can send in a comment to be read during the Public Communication portion of our meeting over email. Just send it in at any time during the meeting by emailing [ClackCoNews@clackamas.us](mailto:ClackCoNews@clackamas.us). Be sure to include your name and area when you email.

#### **\*\*\* Wildfire Update**

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

Nancy Bush, Disaster Management gave an update regarding the Wild Fires.

*~Board Discussion~*

#### **\*\*\* COVID-19 Update**

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

Nancy Bush, Disaster Management, Phillip Mason-Joiner, Disaster Management, and Dr. Sarah Present gave an update regarding COVID-19.

*~Board Discussion~*

1. \*Approval of an Addendum No 5 to **Resolution No. 2020-14** Declaring a Local State of Emergency Regarding the COVID-19 (Stephen Madkour, County Counsel)

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

#### **MOTION to approve Addendum No 5 to Resolution No. 2020-14 Declaring a Local State of Emergency Regarding the COVID-19.**

Commissioner Humberston: Move to approve

Commissioner Schrader: Second.

the Clerk called the Poll

Commissioner Fischer: Aye.

Commissioner Humberston: Aye.

Commissioner Savas: Aye.

Commissioner Schrader: Aye.

Chair Bernard: Aye –the motion carries 5-0.

## **I. READING AND ADOPTION OF PREVIOUSLY APPROVED LAND USE ORDINANCE**

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

1. Adoption of Previously Approved Comprehensive Plan and Zoning and Development Ordinance Amendments ZDO-276-Minor and Time Sensitive Comprehensive Plan and Zoning and Development Ordinance Amendments (Nate Boderman, County Counsel) – *Previously approved at the August 5, 2020 land use hearing*

### **MOTION: To read ZDO-276 by Title only**

Commissioner Humberston: Motion

Commissioner Fischer: Second.

the Clerk called the Poll

Commissioner Fischer: Aye.

Commissioner Humberston: Aye.

Commissioner Savas: Aye.

Commissioner Schrader: Aye.

Chair Bernard: Aye –the motion carries 5-0.

Clerk to read ZDO by title.

### **MOTION: To adopt**

Commissioner Savas: Motion

Commissioner Schrader: Second.

the Clerk called the Poll

Commissioner Fischer: Aye.

Commissioner Humberston: Aye.

Commissioner Savas: Aye.

Commissioner Schrader: Aye.

Chair Bernard: Aye –the motion carries 5-0.

## **II. PUBLIC HEARINGS**

1. Second Reading of Ordinance Number 07-2020 Amending Appendix C – Local Contract Review Board Rules of the Clackamas County Code (Andrew Naylor, County Counsel) – *1<sup>st</sup> reading was 8/13/2020*

*Commissioner Savas commented*

Chair Bernard opened the public hearing and turned this portion to Christina Terwilliger.

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

No discussion, No emails.

Chair Bernard closed the public hearing and asked for a motion.

### **MOTION: To read ordinance by Title only**

Commissioner Humberston: Motion

Commissioner Savas: Second.

the Clerk called the Poll

Commissioner Fischer: Aye.

Commissioner Humberston: Aye.

Commissioner Savas: Aye.

Commissioner Schrader: Aye.

Chair Bernard: Aye –the motion carries 5-0.

**Clerk read by title only**

### **MOTION: To approve the ordinance**

Commissioner Humberston: Motion

Commissioner Schrader: Second.

Chair to recommend Commissioner Savas's request

Administrator Schmidt asked for clarification.

Ask the Clerk called the Poll  
Commissioner Fischer: Aye.  
Commissioner Humberston: Aye.  
Commissioner Savas: Aye.  
Commissioner Schrader: Aye.  
Chair Bernard: Aye –the motion carries 5-0.

**III. CONSENT AGENDA** <https://www.clackamas.us/meetings/bcc/business>

Chair Bernard asked for the Clerk to read the consent agenda by title only

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

1. Approval of a Local Subrecipient Grant Agreement with Clackamas County Children's Commission to provide Evidence-based Parenting Education Classes – *CFCC*
2. Approval of a Subrecipient Grant Amendment #2 with Oregon City Together for youth marijuana and substance abuse prevention efforts in Clackamas County – *CFCC*
3. Approval of a Local Subrecipient Grant Amendment #3 with Northwest Family Services for Student Resource Coordination – *CFCC*
4. Approval of Intergovernmental Revenue Agreement with State of Oregon, Department of Human Services (DHS), for the operation of the Supplemental Nutrition Assistance Program (SNAP) Employment & Training – *CFCC*
5. Approval of Change Order #3 between Clackamas County and Banlin Construction, LLC for Clackamas County Children's Commission Health Start New Classroom Building Project – *Community Development*
6. Approval of Lease Agreement with Genoa Healthcare and Clackamas Health Centers Division (CHCD) for Pharmacy Space inside the New Sandy Health Clinic – Health Centers
7. Approval to Apply to Oregon Department of Veterans Affairs for FY 2021 Distribution of Funds – *Social Services*

**B. Department of Transportation & Development**

1. Approval of an Intergovernmental Agreement with the Department of Environmental Quality for a two-day Household Hazardous Waste Collection event
2. Approval of a Contract with Colton Homes, Inc. dba Colton Construction Co. for the ADA Ramp Improvements on Oak Grove Boulevard – *Procurement*

**C. Finance Department**



1. Approval of a FY 20/21 Work and Financial Plan with United States Department of Agriculture (USDA), Animal and Plant Health Inspection Services (APHIS), Wildlife Services (WS) for Predator Management

**D. Elected Officials**

1. Approval of Previous Business Meeting Minutes– *BCC*
2. Approval of FY 2020-2021 Local Subrecipient Grant Agreement between the District Attorney's Office and The Children's Center of Clackamas County to benefit Child Abuse Victims and their Families – *District Attorney*
3. Approval of Intergovernmental Agreement between Clackamas County Behalf of the Clackamas County Sheriff's Office and the State of Oregon, acting by and through the Oregon Liquor Control Commission for fingerprinting services - *Clackamas County Sheriff's Office*

**E. Community Corrections**

1. Approval of Grant Award between Oregon Criminal Justice Commission and Clackamas County to Provide Treatment Option for High Utilizers of Mental Health and Criminal Justice Resources.
2. Approval of Grant Award between Oregon Criminal Justice Commission and Clackamas County to Assist in Preventing, Preparing for, and Responding to the Coronavirus.

**F. Juvenile Department**

1. Approval of Intergovernmental Agreement with Clackamas Education Service District (ESD) to Provide Education and Vocational Opportunities for At-Risk Youth

**IV. WATER ENVIRONMENT SERVICES**

1. One year extension of the Intergovernmental Agreement between Water Environment Services and the Clackamas River Water Providers for Clackamas River Watershed Activities

**MOTION:**

Commissioner Humberston: I move we approve the consent agenda.

Commissioner Schrader: Second.

Clerk call the Poll:

Commissioner Fischer: Aye.

Commissioner Humberston: Aye.

Commissioner Savas: Aye.

Commissioner Schrader: Aye

Chair Bernard Aye – the Ayes have it, the motion carries 5-0

**V. PUBLIC COMMUNICATION** <https://www.clackamas.us/meetings/bcc/business>

1. Valarie Lee – Asked about getting severed from Multnomah and Washington. Email

**VI. COUNTY ADMINISTRATOR UPDATE** <https://www.clackamas.us/meetings/bcc/business>

**VII. COMMISSIONERS COMMUNICATION**<https://www.clackamas.us/meetings/bcc/business>

**MEETING ADJOURNED – 11:33 AM**

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



## OFFICE OF COUNTY COUNSEL

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

**Stephen L. Madkour**  
County Counsel

**Kathleen Rastetter**  
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**Amanda Keller**  
**Nathan K. Boderman**  
**Shawn Lillegren**  
**Jeffrey D. Munns**  
**Andrew R. Naylor**  
**Andrew Narus**  
**Sarah Foreman**  
Assistants

October 1, 2020

Board of County Commissioners  
Clackamas County

Members of the Board:

**Resolution Related to the Concurrence of a  
Minor Revision to the Molalla Urban Renewal Plan**

<b>Purpose/Outcomes</b>	<i>To formally concur with the proposed changes to Molalla's urban renewal plan.</i>
<b>Dollar Amount and Fiscal Impact</b>	<ul style="list-style-type: none"> <li><i>The urban renewal amendment proposes to extend the timeframe for taking division of tax revenues an additional 5 years, to 2034. The fiscal impact to the County is anticipated to be \$1.32 million beyond what the District currently projects to collect.</i></li> </ul>
<b>Funding Source</b>	<i>Impact to the General Fund</i>
<b>Duration</b>	<i>The division of tax revenues would be extended to 2034.</i>
<b>Previous Board Action</b>	<i>Policy Sessions: September 22, 2020</i>
<b>Strategic Plan Alignment</b>	<i>Build public trust through good government.</i>
<b>Counsel Review</b>	<i>September 22, 2020 (NB)</i>
<b>Procurement Review</b>	<ol style="list-style-type: none"> <li><i>Was the item processed through Procurement? yes <input type="checkbox"/> no <input checked="" type="checkbox"/></i></li> <li><i>If no, provide brief explanation: The item requests concurrence with amendments to Molalla's urban renewal plan and does not involve any procurement activities.</i></li> </ol>
<b>Contact Person</b>	<i>Nate Boderman, Assistant County Counsel; 503-655-8364</i>
<b>Contract No.</b>	<i>N/A</i>

**BACKGROUND:**

The City of Molalla is in the process of preparing an amendment to its Urban Renewal Plan to update the Plan's project list, which would cause a corresponding extension to the anticipated duration of the Plan by five years. Of particular note is the addition of a project that would authorize the urban renewal district to use urban renewal funds for the acquisition of property

and frontage improvements associated with a new police station. Attached to this report are materials provided by the City of Molalla that provide details around the amendment to the Plan, and a more in depth summary of the specific proposal.

Clackamas County is a taxing district affected by the City's Urban Renewal Plan. Accordingly, ORS 457.089(2)(a) requires the City to provide the proposed amendments and accompanying report to the County, and to "consult and confer" with the County prior to final approval of the amendment. Additionally, since the amendment includes the addition of a public building (police station), ORS 457.089(3) requires the concurrence of "... at least three of the four taxing districts that are estimated to forego the most property tax revenue as computed in the report accompanying the proposed plan." The City has identified the City of Molalla, Clackamas County, the Molalla Rural Fire District and the Molalla River School District as the four taxing districts that it anticipates will forego the most property tax revenue because of this amendment.

The City has summarized the potential financial impact to the County related to the proposed amendment in Table 2 of the "Report on Molalla Urban Renewal Plan Minor Amendment and Concurrence for Public Building Project" which is attached as Exhibit B to the City's Resolution amending the City's Urban Renewal Plan. Assuming the net effect of the amendments is to extend the duration of the Plan by five years, the report shows that the urban renewal district would collect approximately \$1.32 million beyond what the District currently projects to collect. The City notes that, without the amendment, the current list of projects use a relatively small portion of the maximum indebtedness authorized by the Plan. Even with the inclusion of the additional projects identified in the amendment, the City would still be well within the overall maximum indebtedness amount authorized by the Plan.

ORS 457.089(3)(c) requires the County to, by written resolution, concur or decline to concur to the inclusion of the public building project in the proposed plan. The resolution attached to this report was drafted at the direction of the Board provided at the September 22, 2020 policy session.

**RECOMMENDATION:**

Consistent with the Board's direction at the September 22, 2020 policy session, staff respectfully requests that the Board adopt the attached resolution.

Respectfully submitted,



Nate Boderman  
Assistant County Counsel

Attachments:

Resolution with Exhibit A and Exhibit B  
Letter from City of Molalla requesting concurrence dated August 7, 2020  
Response from County Administrator Schmidt dated September 14, 2020  
Molalla Staff Report related to the Urban Renewal Plan Minor Amendment  
Resolution Amending the Molalla Urban Renewal Plan  
Molalla Urban Renewal Plan  
Report on the Molalla Urban Renewal Plan  
Molalla Urban Renewal District Boundary Map

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

In the Matter of A Resolution to  
concur with Amendments to the  
Molalla Urban Renewal Plan



Resolution No. \_\_\_\_\_

**WHEREAS**, the City of Molalla is in the process of preparing an amendment to its Urban Renewal Plan to update the Plan's project list, which would, among other things, cause a corresponding extension to the anticipated duration of the Plan by five years and would add a project authorizing use urban renewal funds for the acquisition of property and frontage improvements associated with a new police station; and,

**WHEREAS**, ORS 457.089(3) requires the concurrence of "... at least three of the four taxing districts that are estimated to forego the most property tax revenue as computed in the report accompanying the proposed plan" where an urban renewal plan is amended to include the addition of a public building project; and,

**WHEREAS**, the City of Molalla, Clackamas County, the Molalla Rural Fire District and the Molalla River School District are the four taxing districts that are anticipated to forego the most property tax revenue because of this amendment; and,

**WHEREAS**, ORS 457.089(3)(c) requires the County to, by written resolution, concur or decline to concur to the inclusion of the public building project in the proposed plan; and

**WHEREAS**, at its September 22, 2020 policy session, the Board directed staff to draft a resolution concurring with the proposed plan amendment and the inclusion of the public building project in Molalla's Urban Renewal Plan;

**NOW, THEREFORE, the Clackamas County Board of Commissions do hereby resolve:**

**Section 1.** By enactment of this resolution, Clackamas County hereby concurs with the City of Molalla's proposed plan amendment and the inclusion of the public building project in Molalla's Urban Renewal Plan, as set forth in **Exhibit A** (Molalla Urban Renewal Plan Amendment) and as further described in **Exhibit B** (Report on Molalla Urban Renewal Minor Plan Amendment and Concurrence for Public Building Project).

**Section 2.** This resolution takes effect upon its adoption.

**DATED** this 1<sup>st</sup> day of October, 2020.

**BOARD OF COUNTY COMMISSIONERS**

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Chair

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Recording Secretary

Exhibit A

Molalla Urban Renewal Plan Amendment

New wording is shown in *italics*, deletions are shown in ~~crossout~~.

The Molalla Urban Renewal Plan ("Plan") is amended as follows:

**700. DESCRIPTION OF PROJECTS TO BE UNDERTAKEN**

To achieve the objectives of this Urban Renewal Plan, the following activities will be undertaken by the Urban Renewal Agency in accordance with applicable federal, state, county, and county laws, policies, and procedures, and will be coordinated with the Downtown Master Plan. Renewal Agency may fund these activities in full, in part, or it may seek other sources of funding for them. The Renewal Agency may prepare a Design Plan which will better define project locations. **The listing of projects is not an order of priority.** Priorities will be decided as funds become available, and opportunities arise.

**1. PUBLIC IMPROVEMENTS**

**Definition** - Public improvements include the construction, repair, or replacement of curbs, sidewalks, streets, parking, parks and open spaces, pedestrian and bicycle amenities, water, sanitary sewer and storm sewer facilities, utilities, and other public facilities necessary to carry out the goals and objectives of this Plan.

**A. Public Parks and Open Spaces**

The Renewal Agency may participate in funding the design, acquisition, construction or rehabilitation of public spaces, parks or public recreation facilities within the Urban Renewal Area. Projects that may be undertaken include:

- Develop a pedestrian/bicycle trail along abandoned railroad line.

**B. Street, Curb, and Sidewalk Improvements**

The Renewal Agency may participate in funding sidewalk and roadway improvements including design, redesign, construction, resurfacing, repair and acquisition of right-of way for *frontage improvements including but not limited to* curbs, streets, and sidewalks. Street, curb, and sidewalk improvements may include:

- Make streetscape improvements identified in the Downtown Master Plan.
- Install, and repair deficiencies in sidewalks in downtown Molalla.

- Install crosswalks and curb extensions in downtown Molalla.
- Participate in widening of Oregon Highways 211 and 213.
- Commercial Parkway extension to South Road and OR Highway 213.
- Molalla Forest Road improvements, including but not limited to
  - ❖ Improve Molalla Forest Road from Mathias to OR Highway 213.
  - ❖ Improve Mathias Road/Main Street Connection.
  - ❖ Widen Mathias Road.
- *Toliver Road (Sawyer Trucking)*
- *Industrial Way*
- *OR 213 Sidewalk*
- *Various other public utility improvements as designated by the Agency.*

### **C. Public Utilities**

The Renewal Agency is authorized to participate in funding improvements to water, storm, and sanitary sewer facilities in the area. Utility improvements that may include:

- Place utilities underground throughout project area as funds permit.
- Provide water, sewer, and storm services as necessary to treat blighting conditions in renewal area, and to meet future development needs in renewal area.
- *Improve W Ross Street (Molalla Avenue to Kennel Avenue) and Kennel Avenue (W Ross to OR 211)*
- *Various other public utility improvements as designated by the Agency.*

### **D. Streetscape and Neighborhood Beautification Projects**

The Renewal Agency is authorized to participate in activities improving the visual appearance of the project area. These improvements may include *frontage improvements*, street furniture, special lighting fixtures, landscaping, street trees, irrigation, decorative pavers, signs, and other fixtures and improvements. Areas for streetscape improvements include:

- Streetscape improvements along Highway 211.



- Streetscape improvements in downtown Molalla.
- *Center Avenue (Main Street to Ross Street)*
- *Center Avenue (E Ross to Robbins Street)*
- *Center Avenue (Robbins Street to Heintz Street)*
- *E. Ross Street (Molalla Avenue to Center Street)*
- *Ross/Center Alleys Improve W Ross Street (Molalla Avenue to Kennel Avenue) and Kennel Avenue (W Ross to OR 211)*

## **E. Public Safety Improvements**

The Renewal Agency may participate in funding improvements needed for public safety purposes. Public safety improvements may include:

- Participate in funding traffic signals and signage at
  - ❖ ~~OR Highway 211 and Thelander.~~
  - ❖ The intersection of Main and Molalla.
  - ❖ ~~OR211 and Ridings.~~
  - ❖ *Molalla Avenue-OR211 Signal*
  - ❖ *OR 211 – Leroy Avenue Signal*

## **F. Public Buildings and Facilities**

The Renewal Agency may participate in development of public facilities in the Renewal Area. The extent of the Renewal Agency’s participation in funding public facilities will be based upon a Renewal Agency finding on the proportional benefit of that project to the Urban Renewal Area, and the importance of the project in carrying out Plan objectives.

Potential public facilities to be funded may include:

- Assist in improvements to fire station and public safety training facility
- Develop new public parking facilities.
- Assist in improvements to, or construction of public facilities, including city hall, and a conference/community center.
- *Acquisition of property for a Police Station and frontage improvements for the Police Station.*
  - ❖ *The Police Station will serve and benefit the urban renewal area by providing improved facilities for the police and establishing a public safety presence in the*

*urban renewal area.*

**800. PROPERTY ACQUISITION AND DISPOSITION PROCEDURES**

C. Properties to be acquired.

*Property will be acquired for a future Police Station and frontage improvements associated with the Police Station.<sup>1</sup>*

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<sup>1</sup> *This action was taken in the 2020 amendment and concurrence was received by the required taxing districts.*

## Exhibit B

### Report on Molalla Urban Renewal Plan Minor Amendment and Concurrence for Public Building Project

This Report provides information on the estimated project costs, share of those costs to undertaken with urban renewal funds and the estimated impacts on the overlapping taxing districts. The original Report to the Molalla Urban Renewal Plan (“Plan”) anticipated the full maximum indebtedness (“MI”) of \$26.2 million to be used by FYE 2029. However, analysis by Tiberius Solutions, LLC in April of 2020 indicates the amount of MI to be used through FYE 2029 would only be up to \$12.6M of the \$26.2M maximum indebtedness. This would allow for \$8M of projects between 2020 and 2029.

The Plan language suggests that the FYE 2029 duration is not a hard and fast limit, but was only the estimated completion date. There is no specific duration provision in the Plan. If the duration of the URA is extended five years through FYE 2034, Tiberius projected it would have capacity to fund an additional \$6.7M of projects, using up a total of \$19.4M of the maximum indebtedness, for a total of \$14.7M in projects through FYE 2020 to FYE 2034. It is anticipated that two of the projects will receive developer repayments, OR 211-Leroy Avenue Signal and Toliver Road. The total project costs include the repayment of those funds and re-using them on other future projects. This total anticipated repayment amount is \$1,225,000, for a total amount of \$15,925,000 to be spent on projects.

This amendment proposes to extend the timeframe for taking division of tax revenues to FYE 2034. The financial analysis predicts that approximately \$19.4M of the MI will be used during this timeframe and estimates that the debt will be retired in FYE 2034. The extension of the duration of the Plan estimates that approximately \$6.9 M of the \$26.2 MI will not be used even in the extended timeframe. Expenditure of the program income does not count against the maximum indebtedness. The overall impacts to taxing districts as projected in the original urban renewal plan have not changed as a result of this proposed amendment as the MI of the Molalla Urban Renewal Plan is not being changed. In fact, the overall impacts to the taxing districts are estimated to be smaller than the original estimates as the full MI will not be reached.

Table 1 identifies the proposed projects and project allocations. Table 1a is Phase I and Table 1b is Phase 2. The financial projections prepared by Tiberius Solutions LLC indicate a capacity for \$14.7M of projects in \$2020 dollars. Table 1 indicates the project costs and the anticipated urban renewal share of those costs.

Tables 2 and 3 show the estimated taxing district impacts during the extended timeframe, including FYE 2020. The difference between the dollars for projects and

impacts on taxing districts is due to the inflationary costs of projects over time (the projects table is in FYE 2020 dollars) and the costs of interest payments. By statutory definition, maximum indebtedness includes the principal amount of maximum indebtedness, not the interest paid on debt.

The Molalla River School District and the Clackamas Education Service District are not *directly* affected by the tax increment financing, but the amounts of their taxes divided for the Plan are shown in the following tables. Under current school funding law, property tax revenues are combined with State School Fund revenues to achieve per-student funding targets. Under this system, property taxes foregone, due to the use of tax increment financing, are substantially replaced with State School Fund revenues, as determined by a funding formula at the state level. If new school aged students move into these units and attend the local schools, the funding through the State School Fund would increase.

Table 1a - Projects to be Undertaken - Phase I

	<b>PROJECT COST</b>	<b>MURD SHARE</b>	<b>DEVELOPER REPAYMENT/PROGRAM INCOME</b>
<b>Project</b>			
<b>Phase I</b>			
<b>Police Station - Property Acquisition</b>			
Police Station Property Acquisition	\$250,000	\$100,000	
<b>Downtown Streetscape/Public Infrastructure Participation</b>			
Toliver Road (Sawyer Trucking)	\$200,000	\$200,000	\$200,000
Industrial Way	\$13,000	\$13,000	
W Ross St	\$650,000	\$500,000	
Kennel Avenue (W Ross to OR 211)	\$360,000	\$360,000	
Various	\$327,000	\$327,000	
<b>State Highway Local Contribution</b>			
Molalla Ave-OR 211 Signal	\$1,000,000	\$1,000,000	\$1,000,000
<b>Subtotal Phase I</b>		<b>\$2,500,000</b>	<b>\$1,200,000</b>

Source: City of Molalla

Table 1b - Projects to be Undertaken - Phase II

<b>Project</b>	<b>PROJECT COST</b>	<b>MURD SHARE</b>	<b>DEVELOPER REPAYMENT/PROGRAM INCOME</b>
<b>Phase II</b>			
<b>Downtown Streetscape/Public Infrastructure Participation</b>			
Center Avenue (Main St to Ross St)	\$720,000	\$720,000	
Center Avenue (E Ross to Robbins St)	\$1,312,000	\$1,312,000	
Center Avenue (Robbins St to Heintz St)	\$514,000	\$514,000	
E Ross St (Molalla Ave to Center St)	\$869,000	\$869,000	
Ross/Center Alleys	\$361,000	\$361,000	
<b>State Highway Local Contribution</b>			
OR 211-Leroy Avenue Signal	\$1,025,000	\$1,025,000	\$1,025,000
<b>Local Streets-</b>			
Molalla Forest Road	\$13,240,000	\$8,299,000	
<b>Subtotal Phase II</b>		<b>\$13,100,000</b>	<b>\$1,025,000</b>
<b>Total</b>	<b>\$20,591,000</b>	<b>\$15,600,000</b>	<b>\$2,225,000</b>

Source: City of Molalla

Table 2 – Projected Impacts to Taxing Districts – General Government Source: Tiberius Solutions Note: FYE is fiscal year end

FYE	City of Molalla	Clackamas County City	Clackamas County Rural	County Extension & 4H	County Library	County Soil Conservation	FD 73 Molalla	PK Molalla Aquatic	Port of Portland	Vector Control	Subtotal
	Permanent	Permanent	Permanent	Permanent	Permanent	Permanent	Permanent	Permanent	Permanent	Permanent	Gen. Govt.
2020	\$ (210,263)	\$ (95,276)	\$ (864)	\$ (1,996)	\$ (15,864)	\$ (1,996)	\$ (31,269)	\$ (11,577)	\$ (2,798)	\$ (259)	\$ (372,162)
2021	\$ (222,719)	\$ (100,920)	\$ (931)	\$ (2,114)	\$ (16,806)	\$ (2,114)	\$ (33,125)	\$ (12,264)	\$ (2,964)	\$ (275)	\$ (394,232)
2022	\$ (238,832)	\$ (108,221)	\$ (1,000)	\$ (2,267)	\$ (18,022)	\$ (2,267)	\$ (35,522)	\$ (13,151)	\$ (3,179)	\$ (295)	\$ (422,758)
2023	\$ (253,982)	\$ (115,086)	\$ (1,072)	\$ (2,411)	\$ (19,166)	\$ (2,411)	\$ (37,778)	\$ (13,986)	\$ (3,381)	\$ (313)	\$ (449,587)
2024	\$ (336,168)	\$ (152,327)	\$ (1,146)	\$ (3,187)	\$ (25,332)	\$ (3,187)	\$ (49,930)	\$ (18,486)	\$ (4,468)	\$ (414)	\$ (594,646)
2025	\$ (431,928)	\$ (195,718)	\$ (1,223)	\$ (4,091)	\$ (32,514)	\$ (4,091)	\$ (64,088)	\$ (23,727)	\$ (5,735)	\$ (532)	\$ (763,646)
2026	\$ (452,534)	\$ (205,055)	\$ (1,301)	\$ (4,286)	\$ (34,068)	\$ (4,286)	\$ (67,150)	\$ (24,861)	\$ (6,010)	\$ (557)	\$ (800,109)
2027	\$ (472,585)	\$ (214,141)	\$ (1,382)	\$ (4,477)	\$ (35,581)	\$ (4,477)	\$ (70,132)	\$ (25,965)	\$ (6,276)	\$ (582)	\$ (835,598)
2028	\$ (493,238)	\$ (223,499)	\$ (1,466)	\$ (4,673)	\$ (37,139)	\$ (4,673)	\$ (73,203)	\$ (27,102)	\$ (6,551)	\$ (607)	\$ (872,151)
2029	\$ (514,511)	\$ (233,139)	\$ (1,552)	\$ (4,875)	\$ (38,744)	\$ (4,875)	\$ (76,366)	\$ (28,273)	\$ (6,834)	\$ (634)	\$ (909,801)
2030	\$ (536,422)	\$ (243,067)	\$ (1,640)	\$ (5,083)	\$ (40,397)	\$ (5,083)	\$ (79,624)	\$ (29,479)	\$ (7,126)	\$ (661)	\$ (948,581)
2031	\$ (558,990)	\$ (253,293)	\$ (1,732)	\$ (5,297)	\$ (42,099)	\$ (5,297)	\$ (82,980)	\$ (30,722)	\$ (7,426)	\$ (689)	\$ (988,523)
2032	\$ (582,235)	\$ (263,826)	\$ (1,826)	\$ (5,517)	\$ (43,853)	\$ (5,517)	\$ (86,436)	\$ (32,001)	\$ (7,735)	\$ (717)	\$ (1,029,665)
2033	\$ (606,178)	\$ (274,675)	\$ (1,922)	\$ (5,745)	\$ (45,659)	\$ (5,745)	\$ (89,996)	\$ (33,319)	\$ (8,054)	\$ (747)	\$ (1,072,040)
2034	\$ (630,838)	\$ (285,850)	\$ (2,022)	\$ (5,979)	\$ (47,519)	\$ (5,979)	\$ (93,663)	\$ (34,677)	\$ (8,382)	\$ (777)	\$ (1,115,686)
<b>Total</b>	\$ (6,541,422)	\$ (2,964,093)	\$ (21,079)	\$ (61,998)	\$ (492,761)	\$ (61,998)	\$ (971,263)	\$ (359,589)	\$ (86,921)	\$ (8,060)	\$ (11,569,186)

Source: Tiberius Solutions

Table 3 – Projected Impacts to Taxing Districts – Education

FYE	Clackamas Community College Permanent	Clackamas ESD Permanent	Molalla River SD Permanent	Subtotal Education	Total All
2020	\$ (22,283)	\$ (14,718)	\$ (187,624)	\$ (224,625)	\$ (596,787)
2021	\$ (23,606)	\$ (15,592)	\$ (198,763)	\$ (237,961)	\$ (632,192)
2022	\$ (25,314)	\$ (16,720)	\$ (213,147)	\$ (255,182)	\$ (677,940)
2023	\$ (26,921)	\$ (17,782)	\$ (226,681)	\$ (271,384)	\$ (720,971)
2024	\$ (35,582)	\$ (23,502)	\$ (299,602)	\$ (358,686)	\$ (953,332)
2025	\$ (45,671)	\$ (30,166)	\$ (384,550)	\$ (460,387)	\$ (1,224,033)
2026	\$ (47,853)	\$ (31,608)	\$ (402,928)	\$ (482,389)	\$ (1,282,498)
2027	\$ (49,978)	\$ (33,011)	\$ (420,819)	\$ (503,808)	\$ (1,339,406)
2028	\$ (52,166)	\$ (34,457)	\$ (439,246)	\$ (525,869)	\$ (1,398,020)
2029	\$ (54,420)	\$ (35,946)	\$ (458,226)	\$ (548,592)	\$ (1,458,393)
2030	\$ (56,742)	\$ (37,479)	\$ (477,775)	\$ (571,996)	\$ (1,520,577)
2031	\$ (59,134)	\$ (39,059)	\$ (497,911)	\$ (596,103)	\$ (1,584,627)
2032	\$ (61,597)	\$ (40,686)	\$ (518,651)	\$ (620,933)	\$ (1,650,598)
2033	\$ (64,134)	\$ (42,361)	\$ (540,013)	\$ (646,508)	\$ (1,718,548)
2034	\$ (66,747)	\$ (44,087)	\$ (562,016)	\$ (672,850)	\$ (1,788,537)
Total	\$ (692,147)	\$ (457,174)	\$ (5,827,951)	\$ (6,977,272)	\$ (18,546,459)

Source: Tiberius Solutions Note: FYE is fiscal year end





City of Molalla – Administration Office  
117 N Molalla Avenue, PO Box 248, Molalla, Oregon 97038  
Phone: (503) 829-6855 Fax: (503) 829-3676

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August 7, 2020

Clackamas County Board of Commissioners  
C/O Gary Schmidt, County Administrator  
2051 Kaen Road  
Oregon City, OR 97045

**RE: Molalla Urban Renewal Plan Amendment and Public Building Project**

Dear Mr. Schmidt:

The Molalla Urban Renewal Agency is considering a minor amendment to the Molalla Urban Renewal Plan to update the project list. Our updated project list is paired with completion of updated financial projections with assumptions of terminating the division of tax revenue after FYE 2034. This would allow the Agency to undertake an additional \$15,925,000 of projects, \$14,700,000 of that money coming from division of taxes and \$1,225,000 from program income. The full project list is attached in the proposed amendment and is primarily comprised of infrastructure projects.

In addition to the infrastructure projects, one of the projects being proposed is the acquisition of property for and construction of a Police Station. Pursuant to recent legislation adopted in 2019, the addition of a public building project to an urban renewal plan requires concurrence of 3 of the top 4 taxing districts that are estimated to forgo the most property tax revenue as computed in the report accompanying the proposed plan (amendment) (ORS 457.089). Clackamas County is one of those taxing districts. The estimate for the project is \$5,000,000, with approximately 30% percent of that coming from urban renewal revenues. The exact location of the project is still under negotiation, but we hope for construction to commence in late 2021.

Addressing the need for adequate Police Department facilities for the Molalla community has been an ongoing goal for the City for at least seven years. Our officers are cramped, without adequate interview space, training space and restroom/locker room facilities. We will be acquiring property within the District to site a future structure that will include a community room for not only the community's periodic needs, but also training and emergency management. We have prided ourselves in the professional growth of our department and we expect that growth from our staff. The Molalla community is fully behind this project.

We would be happy to meet with your Board or Staff to describe this project more fully if needed. We are asking the Board to pass a resolution in concurrence of adding the public building project to the urban renewal plan. Our urban renewal agency will be considering the amendment, including the public building project and other projects, at their August 12, 2020 meeting. The Molalla City Council will consider the public building project resolution at their August 12, 2020 meeting as well. We ask you to respond to our request within 45 days after receipt of this proposed amendment. We have attached a draft resolution, knowing you might need to add to this or put it into a different format.

Please let us know if we can provide any additional information.

Sincerely,

A handwritten signature in blue ink, appearing to read "Dan Huff". The signature is stylized and cursive.

Dan Huff  
City Manager  
City of Molalla  
503-829-6855



SEPTEMBER 14, 2020

**VIA FIRST CLASS MAIL AND E-MAIL: DHUFF@CITYOFMOLALLA.COM**

Dan Huff  
City of Molalla  
PO Box 248  
Molalla, OR 97038

Re: Molalla Urban Renewal Plan and Public Building Project

Dear Mr. Huff:

The County is in receipt of your letter dated August 7, 2020 related to the proposed minor amendments to Molalla's Urban Renewal Plan. Your proposal requests that the County pass a resolution that concurs with the proposed addition to your urban renewal plan of a public building project.

State law requires, and your letter requests, that the County respond to you within 45 days of receipt of the plan materials. Given the timing of your request and the Board's schedule, notably a two-week recess at the end of August, the soonest we can have the Board of County Commissioners consider your request is at a policy session on September 22, 2020. If the Board is supportive of your proposal, it could adopt the requested resolution at its October 1, 2020 Business Meeting.

I understand that you have been coordinating with County Counsel's office and are amenable to this schedule even though it exceeds the 45 days set forth in your request and in state law. If you have any questions, or if the City objects to this schedule, please let me know.

Sincerely,

A handwritten signature in blue ink that reads "Gary Schmidt".

Gary Schmidt  
County Administrator

cc:



City of Molalla – Administration Office  
117 N Molalla Avenue, PO Box 248, Molalla, Oregon 97038  
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DATE: August 12, 2020  
TO: Mayor and City Council  
FROM: City Manager  
Subject: **Resolution – Molalla Urban Renewal Plan Minor Amendment**

The City of Molalla staff has been reviewing decisions about the Molalla Urban Renewal Plan (Plan) including updating the financial analysis of the Plan, considering what future projects to undertake and analyzing if there is an impact on any of the decisions about projects that would impact the duration of the Plan. Elaine Howard Consulting, LLC and Tiberius Solutions LLC have been assisting staff in providing background information to enable staff to make recommendations on Plan changes. As a result of this review, staff has prepared a Minor Amendment to the Plan to update the project list incorporating information from Tiberius Solutions on the financial capacity of the Molalla Urban Renewal Area (Area). This Minor Amendment would include a new project list and as a result of that, would extend the anticipated duration of the Plan by 5 years.

**Financial Update:**

The 2020 financial analysis by Tiberius Solutions projected that if the Area terminated in FYE 2029 as shown in the original forecasts, there would be capacity to complete approximately \$8 million in projects, using only \$12.6 million of the \$26,175,000 Maximum Indebtedness (MI). The Area has the capacity to fund \$14.7 million of projects by operating through FYE 2034, an extension of 5 years. The forecasts indicate that the Plan would not reach the full MI of \$26,175,000 million, but would reach about \$19.4 million of MI if it operated through FYE 2034. The Tiberius Solutions forecasts do not guarantee tax increment revenue but provide estimates of future generation of tax increment revenues based on historical revenue generation and projections on future tax increment revenue.

**Duration:**

In Oregon, urban renewal plans are constrained by a MI amount. Some urban renewal plans also have a duration provision. However, there is not a duration provision in the Molalla Plan. A duration provision is typically a section of its own or duration provisions are sometimes

addressed in the Financing Methods section of the Plan. The consultant reviewed the Plan and did not see a duration provision.

The initial financial projections of the Report on the Molalla Urban Renewal Plan (Report) estimate the Plan would terminate in fiscal year end (FYE) 2029. The Report refers to an end date, but that is typical of all Reports, and it uses the terminology "estimated" (Section 500C). All Plans are required, at the point of adoption, to have a financial analysis that shows the Plan is feasible. The analysis in the Report met that requirement. However, changes in the economy, especially the "Great Recession" impacted tax increment proceeds of a number of urban renewal areas across the state. Given the lower than projected tax increment projections, the timeline for meeting the MI of the Plan is lengthened. This may make some changes to the initial impacts to taxing district projections, but generally those overall impacts remain about the same, but the timeline for the impacts is lengthened. There is no requirement to make an amendment to your Plan in order to continue to operate past FYE 2029.

### **Project Changes:**

The City/Agency may change the projects in the Plan. Section 1100 Plan Amendments of the Plan deals with how to make amendments. Sections B and C cover changes to projects in the Plan.

Section 1100 B of the Plan states: Council Approved Amendments are amendments that include the "addition of improvements or activities which represent a substantial change in the purpose and objectives of this Plan, **and** which cost more than \$750,000.

The consultant, Elaine Howard Consulting, recommends that the projects to be undertaken as a result of the amendment do not represent a substantial change in the purpose and objectives of the Plan, so the amendment is not a Council Approved Amendment.

Section 1000 C of the Plan covers Minor Amendments. Minor Amendments may be approved by the Agency in resolution form. This amendment is considered a Minor Amendment.

Another consideration for the City/Agency when reviewing the proposed project list that includes a public building (Police Station) is the recent changes to ORS 457 by HB 2174. These changes made the implementation of a project involving a public building a more strenuous review and approval process. The changes state the new provisions apply to "(a) The addition on or after the effective date of this 2019 Act of a public building project to an urban renewal plan that is not included in the plan before the effective date of this 2019 Act.(b) An amendment proposed on or after the effective date of this 2019 Act to an urban renewal plan that significantly increases the scope of work for a public building project to be paid for with division of taxes pursuant to ORS 457.420 to 457.460."

The new process requires “(3)(a) An urban renewal plan proposed on or after the effective date of this 2019 Act that includes a public building project requires the concurrence of at least three of the four taxing districts that are estimated to forgo the most property tax revenue as computed in the report accompanying the proposed plan. The question of concurrence shall be determined by a vote of the governing body of each of the four taxing districts.

(b) The urban renewal agency shall include with the urban renewal plan and accompanying report provided pursuant to subsection (2) of this section a request for concurrence in the inclusion of the public building project in the proposed plan.

(c) The governing body of each taxing district described in paragraph (a) of this subsection shall, by written resolution, concur or decline to concur in the inclusion of the public building project in the proposed plan.

(d)(A) If at least three of the four taxing districts described in paragraph (a) of this subsection concur, the public building project may be included in the proposed plan.

(B) If at least two of the four taxing districts described in paragraph (a) of this subsection do not concur, the public building project may not be included in the proposed plan.

(e) If the governing body of a taxing district described in paragraph (a) of this subsection does not respond within 45 days after receiving the plan and report under subsection (2) of this section, the taxing district shall be deemed to have concurred in the inclusion of all public building projects included in the plan.”

The four top taxing districts for the Plan are the City of Molalla, Clackamas County, the Molalla Rural Fire District and the Molalla River School District. If the Agency approves this minor amendment, the public building project for the Police Station will need to be considered through the new public review process. If concurrence of 3 of the 4 taxing districts is not received, the remainder of the Minor Amendment is still in force, it is only the public building project that would be impacted.

If the public building project is approved through this process, and acquisition of property by the Agency is required, the City will need to ratify a Minor Amendment to the Plan to specify the property to be acquired (Plan Section 800(A)(1)). This is typically completed once negotiations for the property acquisition are completed.



Dan Huff  
City Manager



RESOLUTION NUMBER 2020-\_\_

**A RESOLUTION OF THE MOLALLA URBAN RENEWAL AGENCY,  
OREGON, AMENDING THE MOLALLA URBAN RENEWAL PLAN.**

**WHEREAS**, the Molalla Urban Renewal Agency (“Agency”) is an urban renewal agency formed under ORS Chapter 457; and

**WHEREAS**, the Molalla City Council (“City Council”) adopted the Molalla Urban Renewal Plan (“Plan”) on July 24, 2003; and

**WHEREAS**, the Agency desires to amend the Plan to revise Section 700. Description of Projects to be Undertaken; and

**WHEREAS**, the Agency desires to amend the Plan to revise Section 800. Property Acquisition and Disposition Procedures; and

**WHEREAS**, these amendments are show in Exhibit A, Plan Amendment and in Exhibit B Report on the Plan Amendment; and

**WHEREAS**, the updated project list and estimated impacts to the taxing districts are attached hereto as Exhibit B;

**WHEREAS**, the Agency has consulted with impacted taxing districts regarding the projects to be undertaken including requesting concurrence for the Police Station project; and

**Now, Therefore, the Molalla Urban Renewal Agency Resolves as follows:**

Section 1. Findings. The above-stated findings contained in this Resolution are hereby adopted.

Section 2. Purpose. The purpose of this Resolution is to amend the Molalla Urban Renewal Plan to update the project list including adding a public building.

Section 3. Adoption. In accordance with the amendment section of the Molalla Urban Renewal Plan, this is a minor amendment to be adopted by resolution of the Molalla Urban Renewal Agency.

Section 4. Miscellaneous. All pronouns contained in this Resolution and any variations thereof will be deemed to refer to the masculine, feminine, or neutral, singular or plural, as the identity of the parties may require. The singular includes the plural and the plural includes the singular. The word “or” is not exclusive. The words “include,” “includes,” and

“including” are not limiting. Any reference to a particular law, statute, rule, regulation, code, or ordinance includes the law, statute, rule, regulation, code, or ordinance as now in force and hereafter amended. If any section, subsection, sentence, clause, and/or portion of this Resolution is for any reason held invalid, unenforceable, and/or unconstitutional, such invalid, unenforceable, and/or unconstitutional section, subsection, sentence, clause, and/or portion will (a) yield to a construction permitting enforcement to the maximum extent permitted by applicable law, and (b) not affect the validity, enforceability, and/or constitutionality of the remaining portion of this Resolution. This Resolution may be corrected by order of the Board to cure editorial and/or clerical errors.

Section 5. The addition of the public building project must receive concurrence of the taxing districts as stipulated in ORS 457.089. Concurrence has been requested from taxing districts. The public building project will be approved as part of this amendment only after concurrence by the taxing districts as stipulated in ORS 457.089,

Adopted this \_\_\_\_\_ day of \_\_\_\_\_, 2020

\_\_\_\_\_  
Keith Swigart, Chair

ATTEST:

\_\_\_\_\_  
Christie DeSantis, City Recorder



**Exhibit A**

# **The Molalla Urban Renewal Plan**

**Prepared for:  
The Molalla City Council**

**July, 2008**

## **MOLALLA URBAN RENEWAL PLAN**

### **ACKNOWLEDGEMENTS**

The Molalla City Council appointed a citizen advisory body to direct the public involvement and management efforts for preparation of this renewal plan. Members of the advisory committee and City of Molalla staff gave generously of their time in providing direction and assistance on all key issues involved in preparing the plan.

### **Members of the Advisory Committee**

<b>Name</b>		<b>Affiliation</b>
Bill	Avison	Avison Rock
Gary	Deardorff	Doubletrees Land & Timber
Todd	Gary	Molalla Fire Dist. No. 73
Jamie	Johnk	Clackamas County
Wayne	Kostur	Molalla River School District
Steve	Loutzenhiser	Molalla Communications
Mitch	Magenheimer	Edward Jones
Steve	Morris	Chamber of Commerce
Gary	Musgrove	Prudential Northwest Properties
Linda	Ohta	Inkbrary
Jim	Needham	City Council
Shane	Potter	City of Molalla
Beth	Smith	PGE
Pattie	Smith	Mill Barn
Ed	Stafford	Windermere Realty
Jim	Taylor	Champion Raceway
Kristine	Wheeler	Citizen

### **Staff Assistance**

John Atkins, City Manager  
Shane Potter, Planning Director  
Zach Pelz, Assistant Planner

### **Urban Renewal Consultants**

Charles Kupper, Spencer & Kupper

**MOLALLA URBAN RENEWAL PLAN**

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## **100. INTRODUCTION**

The Molalla Urban Renewal Plan consists of Part One: Text, and Part Two: Exhibits. This plan has been prepared pursuant to Oregon Revised Statute (ORS) Chapter 457, the Oregon Constitution, and all applicable laws and ordinances of the State of Oregon and City of Molalla respectively. All such applicable laws and ordinances are made a part of this Plan, whether expressly referred to in the text or not.

This urban renewal plan for the Molalla Urban Renewal Area was approved by the City Council of City of Molalla on \_\_\_ by Ordinance No. \_\_\_.

## **200. CITIZEN PARTICIPATION**

The Molalla urban renewal plan was developed in an extensive series of public meetings. Renewal planning was initiated in September, 2007 with a renewal feasibility study. The feasibility study included three public work session meetings with a committee consisting of Council members and citizens. The feasibility report was presented at a meeting of the Molalla City Council in February, 2008. After discussion of the feasibility report, the City Council approved proceeding with preparation of an urban renewal plan.

Work on a renewal plan started in April, 2008. Four public meetings were held during the preparation of the renewal plan. Each meeting was built around discussion and public input on key elements of the urban renewal plan. Meeting topics included basic information on urban renewal and tax increment financing, development of project goals and objectives, development of a list of project activities, and a thorough review of the revenues, costs, and tax impacts of carrying out the project.

The City of Molalla Planning Commission met to review the Plan on July 29, 2008 at 7 p.m. in City Hall. The City Council scheduled a public hearing on adoption of this Plan on Aug. 13, 2008 at 7 p.m. in the Molalla Adult Center, 315 Kennel St. Additional notice for the City Council's hearing on adoption of the Plan was provided, as required by ORS 457.120.

## **300. BOUNDARY DESCRIPTION**

The boundary of the renewal area is shown in Exhibit 1, attached to this plan. A legal description of the project boundary is included as Attachment "A" of this plan. If inconsistencies exist between Exhibit 1 and Attachment A, Attachment A governs.

## **400. RELATIONSHIP TO LOCAL OBJECTIVES: GOALS**

The purpose of this Renewal plan is to eliminate blighting influences found in the Renewal Area, to implement goals and objectives of the City of Molalla Comprehensive Plan, the Molalla Downtown Development Plan, and the Oregon Highway 211 Streetscape Plan.

In addition, the renewal plan committee developed a set of renewal plan goals and objectives in its public meetings on the plan. Those goals are:

- Carry out public improvements, pursue acquisitions and provide incentives to attract economic investment and redevelopment in Molalla.
- Encourage creation and expansion of enterprises that will provide goods and services the community needs.
- Provide more family wage jobs in Molalla.
- Increase property values in Molalla.
- Enhance overall community appearance and livability.
- Help diversify the city’s economic base.
- Help implement the city’s comprehensive plan, downtown master plan, and enhance recreational opportunities in the community.

**500. PROPOSED LAND USES**

**A. Land Use Plan**

The use and development of land in the Renewal Area shall be in accordance with the regulations prescribed in the City’s Comprehensive Plan, Zoning Ordinance, Sign Ordinance, Subdivision Ordinance, City Charter, or any other applicable local, county, state or federal laws regulating the use of property in the Urban Renewal Area.

**Zoning Classifications in the Renewal Area**

Zoning in the renewal area is shown in the boundary map attached as Exhibit 1 of this plan. Zoning classifications in the area are:

<b>ZONING DISTRICT</b>	<b>DESCRIPTION</b>
C1 Central Commercial	The CI Central Commercial district allows for a broad range of uses in keeping with Molalla's historic commercial area and central business districts. Development in the CI district is intended to be characterized by high building coverage and close placement of buildings. Development is also to be pedestrian-oriented with a strong emphasis on a pleasant streetscape.
C2 General Commercial	The C2 district is intended to provide for those types of retail, wholesale, transportation, and service uses which because of traffic, size and other requirements depend upon particular

locations to serve the needs of the community and its trading area. Thus, the zone allows a full range of retail and service businesses with a local or regional market, and is to be characterized by attractive development, an open and pleasant street appearance, and compatibility with adjacent residential areas. Development is expected to be generally auto-oriented, and intended to be aesthetically pleasing for motorists, pedestrians, and the businesses themselves.

M1 Light Industrial

Light Industrial areas are designated for non-polluting industries, which are generally compatible with residential and commercial activities. In the M1, Light Industrial district, attention is given to the protection of surrounding areas from off-site impacts.

M2 Heavy Industrial

This M2 District is designated for uses that have a strong industrial orientation. Specific regulations protect the health, safety and welfare of the public, address the character of the area and provide certainty to property owners, developers and neighbors about the limits of what is allowed.

R1 Residential

The R1 District is primarily intended for single-family detached dwellings and manufactured homes on lots consisting of not less than six thousand, three hundred (6,300) square feet.

R2 Residential

The R2 District is primarily intended for single-family detached dwellings on lots of not less than six thousand, three hundred (6,300) square feet or duplex/two-family dwellings on lots of not less than seven thousand, five hundred (7,500) square feet.

R3 Residential

The R3 District is primarily intended for duplex and multi-family dwelling structures on lots consisting of seven thousand, five hundred (7,500) square feet but also allows for single-family detached structures on lots consisting of six thousand, three hundred (6,300) square feet.

Public/Semi-public

The purpose and function of this district is for the siting of public or semi-public facilities. The regulations in this chapter are to ensure that these facilities are properly located and that they are compatible with surrounding neighborhoods.

## **B. Plan and Design Review**

The Urban Renewal Agency shall be notified of any Comprehensive Plan/Zoning amendment application, building permit, conditional use or other development permits requested within the Area.

### **600. OUTLINE OF DEVELOPMENT**

The Urban Renewal project consists of activities and actions which treat the causes of blight and deterioration in the Molalla Urban Renewal Area. Project activities further are intended to implement the goals in Section 400 of this plan. Project activities to treat blighting conditions and to implement community and comprehensive plan goals include:

- Making improvements to streets, sidewalks, and crossings in the renewal area
- Making improvements to deficient water, sewer and storm drainage in the area
- Contributing to funding improvements to public facilities and in the renewal area
- Improving the physical appearance of the renewal area
- Improving parking availability in the renewal area.
- Providing incentives for the repair and rehabilitation of substandard structures in the project area.
- Providing incentives to new public and private building investments in the renewal area.
- Section 700 of this plan provides further description of each urban renewal project to be undertaken within the Urban Renewal Area.

### **700. DESCRIPTION OF PROJECTS TO BE UNDERTAKEN**

To achieve the objectives of this Urban Renewal Plan, the following activities will be undertaken by the Urban Renewal Agency in accordance with applicable federal, state, county, and county laws, policies, and procedures, and will be coordinated with the Downtown Master Plan. Renewal Agency may fund these activities in full, in part, or it may seek other sources of funding for them. The Renewal Agency may prepare a Design Plan which will better define project locations. **The listing of projects is not an order of priority.** Priorities will be decided as funds become available, and opportunities arise.

#### **1. PUBLIC IMPROVEMENTS**

**Definition** - Public improvements include the construction, repair, or replacement of curbs, sidewalks, streets, parking, parks and open spaces, pedestrian and bicycle amenities, water, sanitary sewer and storm sewer facilities, utilities, and other public facilities necessary to carry out the goals and objectives of this Plan.

##### **A. Public Parks and Open Spaces**

The Renewal Agency may participate in funding the design, acquisition, construction or rehabilitation of public spaces, parks or public recreation facilities within the Urban Renewal Area. Projects that may be undertaken include:

- Develop a pedestrian/bicycle trail along abandoned railroad line.

### **B. Street, Curb, and Sidewalk Improvements**

The Renewal Agency may participate in funding sidewalk and roadway improvements including design, redesign, construction, resurfacing, repair and acquisition of right-of way for curbs, streets, and sidewalks. Street, curb, and sidewalk improvements may include:

- Make streetscape improvements identified in the Downtown Master Plan.
- Install, and repair deficiencies in sidewalks in downtown Molalla.
- Install crosswalks and curb extensions in downtown Molalla.
- Participate in widening of Oregon Highways 211 and 213.
- Commercial Parkway extension to South Road and OR Highway 213.
- Molalla Forest Road improvements, including
  - ❖ Improve Molalla Forest Road from Mathias to OR Highway 213.
  - ❖ Improve Mathias Road/Main Street Connection.
  - ❖ Widen Mathias Road.

### **C. Public Utilities**

The Renewal Agency is authorized to participate in funding improvements to water, storm, and sanitary sewer facilities in the area. Utility improvements that may include:

- Place utilities underground throughout project area as funds permit.
- Provide water, sewer, and storm services as necessary to treat blighting conditions in renewal area, and to meet future development needs in renewal area.

### **D. Streetscape and Neighborhood Beautification Projects**

The Renewal Agency is authorized to participate in activities improving the visual appearance of the project area. These improvements may include street furniture, special lighting fixtures, landscaping, street trees, irrigation, decorative pavers, signs, and other fixtures and improvements. Areas for streetscape improvements include:

- Streetscape improvements along Highway 211.
- Streetscape improvements in downtown Molalla.

### **E. Public Safety Improvements**

The Renewal Agency may participate in funding improvements needed for public safety purposes. Public safety improvements may include:

- Participate in funding traffic signals and signage at
  - ❖ OR Highway 211 and Thelander.
  - ❖ The intersection of Main and Molalla.
  - ❖ OR211 and Ridings.



## **F. Public Buildings and Facilities**

The Renewal Agency may participate in development of public facilities in the Renewal Area. The extent of the Renewal Agency's participation in funding public facilities will be based upon a Renewal Agency finding on the proportional benefit of that project to the Urban Renewal Area, and the importance of the project in carrying out Plan objectives.

Potential public facilities to be funded may include:

- Assist in improvements to fire station and public safety training facility
- Develop new public parking facilities.
- Assist in improvements to, or construction of public facilities, including city hall, and a conference/community center.

## **2. PRESERVATION AND REHABILITATION**

This activity will help improve the condition and appearance of buildings in the project area, and encourage infill and reuse in the Urban Renewal Area. The Renewal Agency may participate, through loans, grants, or both, in maintaining and improving exterior and interior conditions of public and private buildings or properties within the Urban Renewal Area.

## **3. DEVELOPMENT AND REDEVELOPMENT**

The Renewal Agency also is authorized to provide loans or other forms of financial assistance to parties wishing to develop or redevelop land or buildings within the Urban Renewal Area. The Agency may make this assistance available as it deems necessary to achieve the objectives of this Plan. Examples of such assistance include, but are not limited to:

- Grants, and below market interest rate loans.
- Write down of land acquisition costs.
- Provision of public parking to assist development.
- Assistance in providing utilities and other infrastructure.
- Technical assistance, including architectural assistance, and zoning change work.
- Transfer of assembled sites at fair reuse value.

## **4. PROPERTY ACQUISITION AND DISPOSITION**

In order to carry out the objectives of this Plan, the Renewal Agency is authorized to acquire land or buildings for public and private development purposes. The procedures for acquiring and disposing of property are described in Sections 800 of this Plan.

## **5. PLAN ADMINISTRATION**

Tax increment funds may be utilized to pay indebtedness associated with preparation of this Plan, to carry out design plans, miscellaneous land use and public facility studies, engineering, market, and other technical studies as may be needed during the course of the

Plan. Project funds also may be used to pay for personnel and other administrative costs incurred in management of the Plan.

## **800. PROPERTY ACQUISITION AND DISPOSITION PROCEDURES**

The Renewal Agency is authorized to acquire property within the Area, if necessary, by any legal means to achieve the objectives of this Plan. Property acquisition is hereby made a part of this Plan and may be used to achieve the objectives of this Plan. The use of eminent domain is allowed for all public purposes of this plan. However, private property within the Renewal District shall not be taken by eminent domain for the purpose of conveying ownership interest in all or part of the property to a private party for economic development by or the commercial benefit of the private party. All authorized uses of eminent domain will require approval by the City Council. All acquisitions of property will require an amendment to the plan as set forth in Section 1100.

### **A. Acquisition requiring City Council approval.**

Acquisitions described in Section 800 A1, and A2 of this plan will require an amendment as set forth in Section 1100C4. City Council ratification is required for Renewal Agency acquisitions for the following purposes:

1. Acquisition of land for development by the public or private sector.
2. Acquisition for any purpose that requires the use of the Agency's powers of eminent domain.

### **B. Acquisition not requiring City Council approval.**

Land acquisition not requiring City Council ratification requires a minor amendment to this Plan as set forth in Section 1100C5. The minor amendment to the Renewal Plan may be adopted by the Renewal Agency by Resolution. The Agency may acquire land without Council ratification where the following conditions exist:

Where it is determined that the property can be acquired without condemnation and is needed to provide public improvements and facilities as follows:

1. Right-of-way acquisition for streets, alleys or pedestrian ways.
2. Right of way and easement acquisition for water, sewer, and other utilities.
3. Where the owner of real property within the boundaries of the Area wishes to convey title of such property by any means, including by gift.

### **C. Properties to be acquired**

At the time this Plan is prepared, no properties are identified for acquisition. If plan amendments to acquire property are approved, a map exhibit shall be prepared showing the properties to be acquired and the property will be added to the list of properties to be

acquired. The list of properties acquired will be shown in this section of the Plan. The map exhibit shall be appropriately numbered and shall be included in Part Two as an official part of this Urban Renewal Plan.

**D. Property Disposition Policies and Procedures**

The Renewal Agency is authorized to sell, lease, exchange, subdivide, transfer, assign, pledge, encumber by mortgage or deed of trust, or otherwise dispose of any interest in real property which has been acquired, in accordance with the provisions of this Plan.

All real property acquired by the Renewal Agency for redevelopment in the Urban Renewal Area shall be disposed of for development for the uses permitted in the Plan at its fair re-use value. All persons and entities obtaining property from the Renewal Agency shall use the property for the purposes designated in this Plan, and shall commence and complete development of the property within a period of time which the Renewal Agency fixes as reasonable, and shall comply with other conditions which the Renewal Agency deems necessary to carry out the purposes of this Plan.

To provide adequate safeguards to insure that the provisions of this Plan will be carried out to prevent the recurrence of blight, all real property disposed of by the Renewal Agency, as well as all other real property the development of which is assisted financially by the Renewal Agency, shall be made subject to this Plan. Leases, deeds, contracts, agreements, and declarations of restrictions by the Renewal Agency may contain restrictions, covenants, and conditions running with the land, rights of reverter, conditions subsequent, equitable servitudes, or any other provisions necessary to carry out this Plan.

No property acquisition is under consideration at the time this plan is adopted, therefore no specific disposition schedule is included. It is anticipated that any property acquired by the renewal agency will be disposed of within five years of its acquisition.

**900. REDEVELOPER'S OBLIGATIONS**

A Redeveloper is any individual or group acquiring property from the Urban Renewal Agency or receiving financial assistance for the physical improvement of privately or publicly held structures and land. Redevelopers within the Urban Renewal Area will be subject to controls and obligations imposed by the provisions of this Plan. Redevelopers also will be obligated by the following requirements:

1. The Redeveloper shall develop or redevelop property in accordance with the land-use provisions and other requirements specified in this Plan.
2. The Renewal Agency may require the redeveloper to execute a development agreement acceptable to the Renewal Agency as a condition of any form of assistance by the Renewal Agency. The Redeveloper shall accept all conditions and agreements as may be required by the Renewal Agency.
3. The Renewal Agency may require the Redeveloper to submit plans and specifications for the property as a condition of Renewal Agency assistance. The

Redeveloper shall submit all plans and specifications for construction of improvements on the land to the Renewal Agency or its designated agent, for review and approval prior to distribution of these plans to any additional zoning, planning, or design review bodies required by the City.

4. The Redeveloper shall commence and complete the development of such property for the use provided in this Plan within a reasonable period of time as determined by the Agency.
5. The Redeveloper shall not effect any instrument whereby the sale, lease, or occupancy of the real property, or any part thereof, is restricted upon the basis of age, race, color, religion, sex, marital status, or national origin.

#### **1000. RELOCATION**

The Renewal Agency will provide relocation assistance to all persons or businesses displaced by project activities. Those displaced will be given assistance in finding replacement facilities. All persons or businesses which may be displaced will be contacted to determine such relocation needs. They will be provided information on available space and will be given assistance in moving. All relocation activities will be undertaken and payments made, in accordance with the requirements of Chapter 35 of the Oregon Revised Statutes, and any other applicable laws or regulations. The Renewal Agency may contract with Oregon Department of Transportation (ODOT), or other appropriate agencies or parties for assistance in administering its relocation program.

#### **1100. PLAN AMENDMENTS**

It is anticipated that this renewal plan will be reviewed periodically during the execution of the Project. The plan may be changed, modified, or amended as future conditions warrant. Types of plan amendments are:

- A. Substantial Amendments per ORS Chapter 457**
  1. Increasing the maximum amount of indebtedness that can be issued or incurred under the Plan.
  2. Adding land to the urban renewal area that is in excess of one percent of the existing area of the Plan.

Substantial Amendments shall require the same notice, hearing and approval procedure required of the original Plan, including public involvement, consultation with taxing districts, presentation to the Planning Commission and adoption by the City Council by non-emergency ordinance after a hearing requiring “special notice” per ORS 457. 120.

#### **B. Other Amendments Requiring Approval by Ordinance of City Council**

The following types of amendments will require adoption by a non-emergency Ordinance of the City Council, and require consultation with taxing districts, and presentation to the

Planning Commission, but will not require the special notice prescribed in ORS 457.120.

1. The addition of improvements or activities which represent a substantial change in the purpose and objectives of this Plan, and which cost more than \$750,000. The \$750,000 amount will be adjusted annually from the year 2008 according to the “Engineering News Record” construction cost index for the Northwest area.

### **C. Minor Amendments.**

Minor amendments may be approved by the Renewal Agency in resolution form. Such amendments are defined as:

1. Amendments to clarify language, add graphic exhibits, make minor modifications in the scope or location of improvements authorized by this Plan, or other such modifications which do not change the basic planning or engineering principles of the Plan.
2. Addition of a project substantially different from those identified in Sections 700 of the Plan or substantial modification of a project identified in Section 700 if the addition or modification of the project costs less than \$750,000. The \$750,000 amount will be adjusted annually from the year 2008 according to the “Engineering News Record” construction cost index for the Northwest area.
2. Increases in the Urban Renewal Area boundary that are less than one percent of the existing area of the Plan.
3. Acquisition of property for purposes specified in Section 800A1 and 800A2 of this Plan. **Note** – Minor amendments to the plan to acquire properties specified in Sections 800A1 and A2 must be ratified by the City Council. The City Council approval may be in the form of a resolution.
4. Acquisition of properties for purposes specified in Section 800B of this plan. These acquisitions do not require approval by the City Council.

### **1200. MAXIMUM INDEBTEDNESS**

The maximum indebtedness authorized under this plan is Twenty-Six million, one hundred and seventy-five thousand dollars (\$26,175,000). This amount is the principal of indebtedness, and does not include interest on indebtedness.

### **1300. FINANCING METHODS**

#### **A. General**

The Urban Renewal Agency may borrow money and accept advances, loans, grants and other forms of financial assistance from the federal government, the state, city, county or other public body, or from any sources, public or private for the purposes of undertaking and carrying out this Plan. In addition, the Agency may borrow money from, or lend money to a public agency in conjunction with a joint undertaking of a project authorized by this Plan. If such funds are loaned, the Agency may promulgate rules and procedures for the methods and conditions of payment of such loans. The funds obtained by the Agency

shall be used to pay or repay any costs, expenses, advances and indebtedness incurred in planning or undertaking project activities or in otherwise exercising any of the powers granted by ORS Chapter 457.

### **B. Tax Increment Financing**

This urban renewal plan will be financed in whole, or in part, by tax increment revenues. The ad valorem taxes levied by all taxing districts in which all or a portion of the Molalla is located shall be divided as provided in section 1c, Article IX of the Oregon Constitution and ORS 457.420 to 457.460.

### **C. Prior Indebtedness**

Any indebtedness permitted by law and incurred by the Urban Renewal Agency or the City in connection with preplanning for this Urban renewal plan shall be repaid from tax increment proceeds generated pursuant to this section.

## **1400. DEFINITIONS**

The following definitions will govern the construction of this Plan unless the context otherwise requires:

**“Area”** means the area included within the boundaries of the Molalla Urban Renewal Area.

**“Bonded Indebtedness”** means any formally executed written agreement representing a promise by a unit of government to pay to another a specified sum of money, at a specified date or dates at least one year in the future.

**“County”** means Clackamas County, Oregon.

**“City Council”** means the City Council of City of Molalla, Oregon.

**“Comprehensive Plan”** means the City's Comprehensive Land Use Plan and its implementing Ordinances, policies and development standards.

**“Displaced”** person or business means any person or business who is required to relocate as a result of action by the Urban Renewal Agency to vacate a property for public use or purpose.

**“Disposition and Development Agreement”** means an agreement between the Urban Renewal Agency and a private developer which sets forth the terms and conditions under which will govern the disposition of land to a private developer.

**“Exhibit”** means an attachment, either narrative or map, to the Urban renewal plan for the Molalla Urban Renewal Area, Part Two - Exhibits.

**“ORS”** means Oregon Revised Statute (State Law) and specifically Chapter 457 thereof.

**“Plan”** means the Urban renewal plan for the Molalla Urban Renewal Area, Parts One and Two.

**“Planning Commission”** means the Planning Commission of the City of Molalla, Oregon.

**“Project, Activity or Project Activity”** means any undertaking or activity within the Renewal Area, such as a public improvement, street project or other activity which is authorized and for which implementing provisions are set forth in the Urban renewal plan.

**“Report”** refers to the report accompanying the urban renewal plan, as provided in ORS 457.085 (3)

**“Redeveloper”** means any individual or group acquiring property from the Urban Renewal Agency or receiving financial assistance for the physical improvement of privately or publicly held structures and land.

**“Rehabilitation Loans and Grants”** – Funds provided by the Renewal Agency to owners of existing properties within the urban renewal area for the purpose of rehabilitation, renovation, repair, or historic preservation of the property. Loan and grant policies and procedures will be developed by the Renewal Agency, to carry out the Rehabilitation and Conservation activities of this Plan

**“Redevelopment Assistance”** – Financial assistance provided by the Renewal Agency to private or public developers of property within the urban renewal area. This assistance is intended to make development within the renewal area financially feasible and competitive with other locations, and carry out the redevelopment through new construction activities of this Plan. Redevelopment Assistance may take the form of participation in financing public improvements such as parking, infrastructure, landscaping, and public places, providing technical information and assistance to potential redevelopers, re-sale of land at written down prices, and such other assistance as the Agency determines is within its authority, and necessary.

**“State”** means the State of Oregon.

**“Text”** means the Urban renewal plan for the Molalla Urban Renewal Area, Part One - Text.

**“Urban Renewal Agency”** means the Urban Renewal Agency of City of Molalla, Oregon.

**“Urban Renewal Area”, “Molalla Urban Renewal Area”, or “Renewal Area”** means the geographic area for which this Urban renewal plan has been approved. The boundary of the Renewal Area is described in Exhibits made a part of this plan.

**Molalla Urban Renewal Plan**

**City of Molalla, Oregon**

**Part Two: Exhibits**

EXHIBITS

Exhibit 1 .....Map of Plan Boundary and Zoning

ATTACHMENTS

Attachment A ..... Boundary Description



CITY OF MOLALLA  
PLANNING DEPARTMENT

PO Box 248 Molalla, OR 97038

phone: (503) 829-7526 fax: (503) 829-6872

[planner@molalla.net](mailto:planner@molalla.net)/[planner2@molalla.net](mailto:planner2@molalla.net)

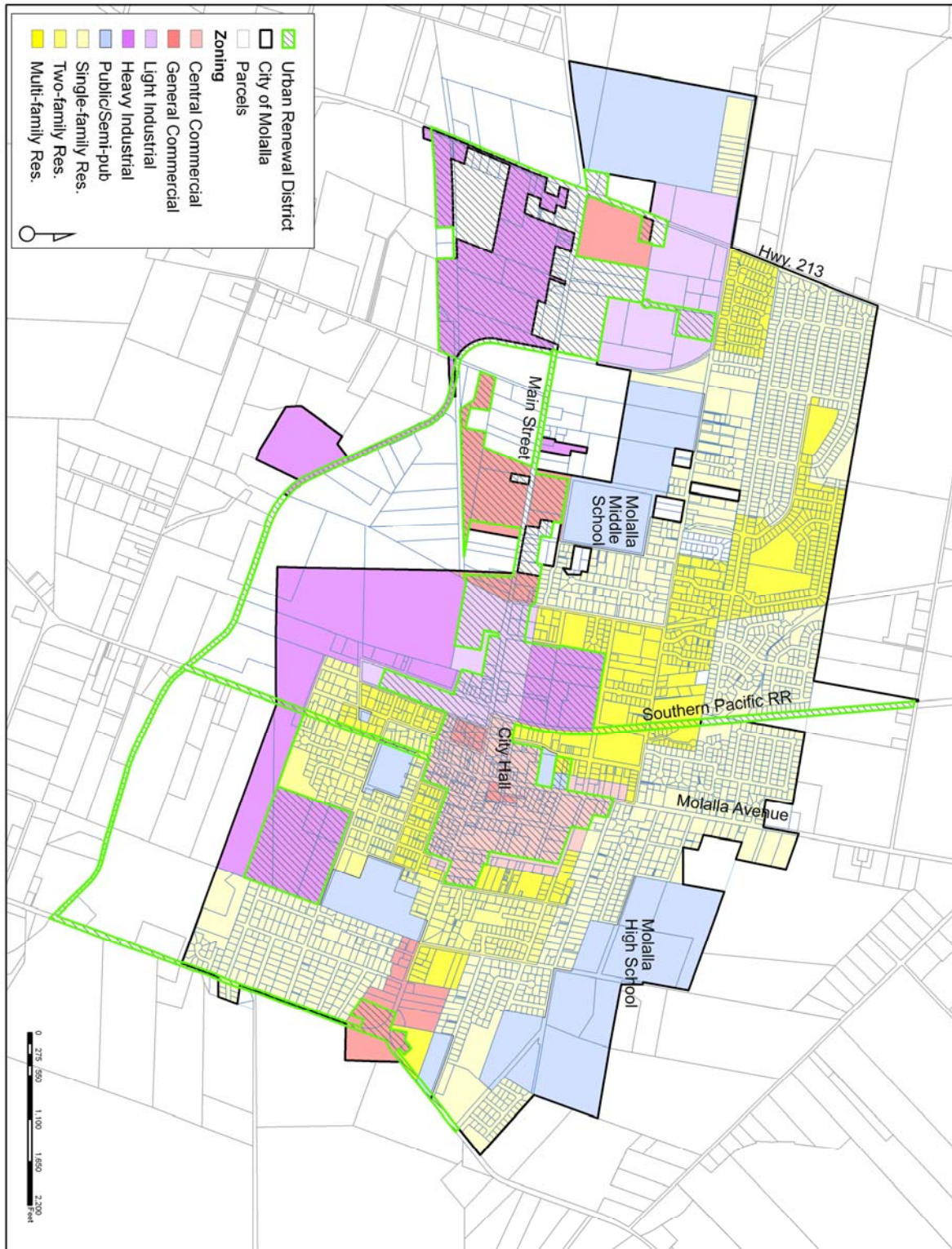


EXHIBIT 1 – BOUNDARY AND ZONING MAP OF MOLALLA URBAN RENEWAL AREA

**ATTACHMENT 1 – BOUNDARY DESCRIPTION**

July 14, 2008

**Legal Description**  
**2008 City of Molalla Urban Renewal District**  
 Clackamas County Assessor's Maps:

5 2E 16	5 2E 9CA	5 2E 8AA
5 2E 16AB	5 2E 9CB	5 2E 8A
5 2E 17A	5 2E 9CC	5 2E 8AC
5 2E 17AA	5 2E 9BC	5 2E 8B
5 2E 16AC	5 2E 5	5 2E 8C
5 2E 9D	5 2E 7A	5 2E 8DB
5 2E 9DC	5 2E 7AA	5 2E 8DD
5 2E 9DA	5 2E 7D	

An urban renewal district situated in the Northwest one-quarter of Township 5 South, Range 2 East, of the Willamette Meridian, in the County of Clackamas and State of Oregon, more particularly described as follows:

Beginning at the Southeast corner of Parcel 2, Partition Plat 1997-147, said Clackamas County Plat Records; thence North 10.13° East, a distance of 405.1 feet; thence North 70° West, a distance of 330 feet; thence North 10.14° East, a distance of 47 feet; thence North 80.01° West, a distance of 173.4 feet to a point along the West line of the Grange Ave. right-of-way, South 16.54° West, a distance of 604.8 feet from the Southwest Corner of Parcel 2, Partition Plat 2000-101, said Clackamas County Plat Records; thence North 10.08° East, a distance of 891.7 feet; thence North 69.76° West, a distance of 500 feet; thence North 10.16° East, a distance of 215.1 feet to a point at the Southeast corner of Parcel 2 of Partition Plat 2003-102, said Clackamas County Plat Records; thence North 70.03° West, a distance of 200 feet; thence North 10.14° East, a distance of 174.6 feet; thence North 70.04° West, a distance of 202.3 feet; thence North 77.18° West, a distance of 58.1 feet to a point along the West edge of the right-of-way of Molalla Ave.; thence South 10.10° West, a distance of 604.6 feet; thence North 79.95° West, a distance of 401.1 feet; thence South 9.82° West, a distance of 200.5 feet; thence South 80.06° East, a distance of 400 feet; thence South 10.13° West, a distance of 200 feet; thence North 80.08° West, a distance of 459 feet; thence South 21.90° West, a distance of 74.6 feet; thence South 9.70° West, a distance of 307 feet; thence South 83.27° West, a distance of 62.6 feet to a point along the West boundary of the Kennel Ave. right-of-way; map 5 2E 8AD missing; thence North 80.30° West, a distance of 180 feet to a point along the East line of the right-of-way of the Southern Pacific R.R. at the intersection of the East line of the Southern Pacific R.R. right-of-way and the South line of the Toliver Rd. right-of-way, North 83.07° East, a distance of 1173.5 feet from the Northeast Corner of Rachel Larkins D.L.C. No. 43, said Clackamas County Plat Records; thence 1699.4 feet North then Northwest following a line coinciding with the East line of the Southern Pacific R.R. right-of-way, South 79.49° East, a distance of 85.7 feet from the Northeast corner of Parcel 1, Partition Plat 1999-62, said Clackamas County Plat Records; thence North 4.90° West, a distance of 3448.2 feet; thence North 79.80° West, a distance of 74.5 feet; thence South 4.74° East, a distance of 4134.5 feet; thence North 80.29° West, a distance of 966.9 feet; thence South 10.11° West, a distance of 600 feet; thence South 80.29° East, a distance of 30 feet; thence South 10.15° West, a distance of 452.5 feet; thence North 81.17° West, a distance of 460.1 feet; thence North 34.43° West, a distance of 76.7 feet to point at the Southeast corner of Clark Estates 3934, said Clackamas County Plat Records; thence North 80.40° West, a distance of 505.1 feet; thence South 9.93° West, a distance of 69.5 feet; thence North 80.21° West, a distance of 350 feet; thence North 9.74° East, a distance of 123 feet along the East edge of the S. Leroy Avenue right-of-way; thence North 80.04° West, a distance of 215 feet; thence North 9.74° East, a distance of 97.5 feet; thence North 80.04° West, a distance of 560.1 feet; thence South 10.19° West, a distance of 424.5 feet; thence North 89.93° West, a distance of 58.9 feet; thence North 79.94° West, a distance of 1527.7 feet along the north right-of-way line of State Hwy 211; thence South 23.79° West, a distance of 56.5 feet; thence South 79.70° East, a distance of 1518.5 feet along the South right-of-way line of State Hwy

211; thence South 22.10° West, a distance of 669 feet; thence North 80.01° West, a distance of 200 feet; thence South 10.16° West, a distance of 266 feet; thence North 76.33° West, a distance of 263.9 feet; thence North 8.72° East, a distance of 249.1 feet; thence north 80.01° West, a distance of 437 feet; thence South 22.10° West, a distance of 209 feet; thence South 77.47° East, a distance of 380.5 feet; thence South 34.05° East, a distance of 211 feet; thence North 88.62° East, a distance of 1891.7 feet; thence North 80.01° West, a distance of 484.1 feet; thence North 10.05° East, a distance of 655.6 feet; thence South 80.06° East, a distance of 616.5 feet along the South right-of-way line of Hwy 211;

thence South 0.73° East, a distance of 590.8 feet; thence South 89.78° East, a distance of 40.2 feet; thence South 79.96° East, a distance of 857.1 feet along the South line of Parcel 1, Partition Plat 2000-62, said Clackamas County Plat Records; thence North 10.12° East, a distance of 336.1 feet; thence North 79.88° West, a distance of 253.3 feet; thence North 10.71° East, a distance of 172.5 feet; thence South 81.44° East, a distance of 18.7 feet; thence North 10.56° East, a distance of 23.9 feet; thence South 83.57° East, a distance of 28.4 feet; thence South 10.99° West, a distance of 125.3 feet; thence South 79.90° East, a distance of 535.6 feet; thence South 17.97° West, a distance of 258.8; thence South 70.35° East, a distance of 335 feet to a point along the east line of the S. Shaver Avenue right-of-way; thence South 20.19° West, a distance of 934.7 feet along the east line of the S. Shaver Avenue right-of-way; thence South 70.29° East, a distance of 240 feet; thence North 20.20° East, a distance of 930.2 feet; thence South 69.71° East, a distance of 367.6 feet; thence South 20.46° West, a distance of 64.5 feet; thence South 79.54° East, a distance of 240 feet; thence South 20.37° West, a distance of 3269.8 feet, to a point at the intersection of the West line of the Molalla Ave. right-of-way and the North line of the Molalla Forest Rd. right-of-way; thence Northeast coinciding with the north line of the Molalla Forest Rd. right-of-way, a distance of approximately 6850 feet to a point at the intersection of the East line of the Molalla Forest Rd. right-of-way and the South line of the State Hwy 211 right-of-way; thence North 78.65° West, a distance of 60.7 feet;

thence North 24.75° East, a distance of 56.9 feet; thence North 10.17° East, a distance of 281.8 feet; thence North 15.11° East, a distance of 250.9 feet; thence North 80.01° West, a distance of 835.5 feet to a point at the Northwest corner of Parcel 3, Partition Plat 1993-141, said Clackamas County Plat Records; thence North 10.09° East, a distance of 436.5 feet; thence South 80.30° East, a distance of 30 feet; thence North along the East line of the Industrial Way right-of-way, a distance of approximately 509 feet to a point South 49.98° East, a distance of 67.6 feet from the Southeast corner of Parcel 4, Partition Plat 2000-05, said Clackamas County Plat Records; thence South 80.17° East, a distance of 309.6 feet; thence North 10.11° East, a distance of 470.9 feet to a point along the South line of the Toliver Rd. right-of-way; thence North 80.39° West, a distance of 368 feet; thence South along the West line of the Industrial Way right-of-way to a point South 10.13° West, a distance of approximately 977 feet, to a point a distance of 522 feet from the Southeast corner of Parcel 4, Partition Plat 2000-05, said Clackamas County Plat Records; thence North 80.60° West, a distance of 409.2 feet; thence South 10.21° West, a distance of 933 feet to a point along the North line of the State Hwy 211 right-of-way; thence North 79.82° West, a distance of 733.1 feet; thence North 42.56° West, a distance of 62.7 feet to a point along the East line of the State Hwy 213 right-of-way; thence North 20.35° East, a distance of 717.8 feet; thence South 80.34° East, a distance of 320.7 feet; thence North 9.66° East, a distance of 182.5 feet; thence South 80.34° East, a distance of 17.8 Feet; thence North 10.05° East a distance of 150 feet; thence North 80.66° West, a distance of 337.9 feet; thence South 20.61° West, a distance of 843.6 feet; thence North 84.32° West, a distance of 304.7 feet; thence South 9.75° West, a distance of 341.3 feet;

thence North 81.26° East, a distance of 272.7 feet; thence South 21.98° West along the West line of the State Hwy 213 right-of way, a distance of 2163.7 feet; thence North 85.31° East, a distance of 524.9 feet; thence North 87.34° East, a distance of 150.8 feet; thence North 88.61° East, a distance of 613.4 feet; thence North 0.89° East, a distance of 231 feet; thence North 88.89° East, a distance of 404.5 feet; thence South 1.36° East a distance of 220 feet; thence 89.19° East, a distance of 1179.3 feet to a point along the East line of the Ona Way right-of-way; thence North 22.14° East, a distance of 236.8 feet to a point at the intersection of the South line of the Molalla Forest Rd. right-of-way and the West line of the Ona Way right-of-way, South 22.14° East, a distance of 236.805 feet from the Northwest corner of D.L.C No.43, said Clackamas County Plat Records; thence coinciding with the South line of the Molalla Forest Rd. right-of-way

Southeast, a distance of approximately 5707 feet to a point at the intersection of the South line of the Molalla Forest Rd. right-of-way and the East line of the Molalla Ave. right-of-way, North 20.01° East, a distance of 1727.77 feet from the Southeast corner of the John Larkins CL., said Clackamas County Plat Records; thence continuing along the South line of the Molalla Forest Rd. right-of-way Southeast, a distance of approximately 3676.7 feet to a point at the intersection of the South line of the Molalla Forest Rd. right-of-way and the East line of the Mathias Rd. right-of-way, North 14.72° East, a distance of 1316.6 feet from the Southwest Corner of D.L.C No. 39, said Clackamas County Plat Records; thence North 20.12° East, a distance of 4597.8 feet coinciding with the East line of the Mathias Rd. right-of-way to a point North 68.51° East, a distance of 75.453 feet from the Northeast Corner of the W.M. Engle D.L.C. No. 44, said Clackamas County Plat Records;

thence continuing Northeast along the South line of the State Hwy 213 right-of-way, a distance of approximately 1468.1 feet to a point South 76.96° West, a distance of 448.7 feet of the Northwest Corner of D.L.C No. 53, said Clackamas County Plat Records; thence North 47.45° West, a distance of 60.3 feet to a point along the East line of the State Hwy 213 right-of-way; thence South 51.66° West, a distance of 1273.3 feet to a point South 38.32° East, a distance of 39.1 feet from the Southeast Corner of Parcel 2, Partition Plat 1995-31, said Clackamas County Plat Records; thence North 38.32° West, a distance of 39.1 feet to a point at the Southeast Corner of Parcel 2, Partition Plat 1995-31, said Clackamas County Plat Records; thence North 51.71° East, a distance of 98.6 feet to a point at the Northeast Corner of Parcel 2, Partition Plat 1995-31, said Clackamas County Plat Records; thence North 40.50° West, a distance of 120 feet to a point at the Northwest Corner of Parcel 2, Partition Plat 1995-31, said Clackamas County Plat Records; thence South 51.72° West, a distance of 131.3 feet to a point at the Southwest Corner of Parcel 2, Partition Plat 1995-31, said Clackamas County Plat Records; thence North 78.35° West, a distance of 101.2 feet; thence South 8.32° West, a distance of 220 feet; thence North 70.35° West, a distance of 221.3 feet to a point along the North line of the State Hwy 211 right-of-way North 69.86° West, a distance of 143.2 feet from the Southeast Corner of Parcel 1, Partition Plat 2000-01, said Clackamas County Plat Records; thence South 23.67° West, a distance of 484.2 feet to a point at the Southeast Corner of Parcel 2, Partition Plat 1995-146; thence South 56.36° East, a distance of 257 feet; thence North 20.12° East, a distance of 177 feet; thence South 69.90° East, a distance of 105 feet to a point along the West line of the Co. Rd. No. 925 right-of-way; thence South 21.25° West, a distance of 4129.6 feet to a point at the intersection of the West line of the Mathias Rd. right-of-way and the North line of the Molalla Forest Rd. right-of-way North 12.63° East, a distance of 1416.8 feet from the Southwest Corner of D.L.C. No. 39, said Clackamas County Plat Records; thence Northwest along a line coinciding with the North line of the Molalla Forest Rd. right-of-way, a distance of approximately 3626.6 feet to a point at the intersection of the North line of the Molalla Forest Rd. right-of-way and the East line of the Molalla Ave. right-of-way North 48.45° West, a distance of 627.8 feet from the Northwest corner of Parcel 1, Partition Plat 1194-116, said Clackamas County Plat Records; thence North 20.21° East along the East line of the Molalla Ave. right-of-way, a distance of 1612.8 feet;

thence South 69.94° East, a distance of 2231.1 feet; thence North 20.78° East, a distance of 995.5 feet; thence North 70.77° West, a distance of 1256.5 feet; thence South 20.52° West, a distance of 975.4 feet; thence North 69.81° West, a distance of 987.3 feet to a point along the East line of the Molalla Ave. right-of-way; thence North 20.42° East 1711.2 feet to a point at the intersection of the East line of the Molalla Ave. right-of-way and the North line of the 3<sup>rd</sup> St. right-of-way South 17.71° West, a distance of 680.1 feet from the Northwest Corner of Wm. Engle D.L.C. No. 44, said Clackamas County Plat Records; thence South 70.04° East, a distance of 254.5 feet; thence North 20.46° East, a distance of 350 feet; thence South 70.04° East, a distance of 851.5 feet; thence North 19.87° East, a distance of 359.6 feet to a point along the North line of the State Hwy 211 right-of-way, North 70.02° West, a distance of 200 feet from the Southwest Corner of Parcel 2, Partition Plat 1997-147, said Clackamas County Plat Records; thence South 70.02° East, a distance of 296.6 feet to the point of Beginning.

Said urban renewal district containing 363.95 acres, more or less. Subject to easements of record.

Exhibit B

**Report**

**On**

**The Molalla Urban Renewal Plan**

**Prepared for:  
The Molalla City Council**

**July, 2008**

## **REPORT ON THE MOLALLA URBAN RENEWAL PLAN**

### **MOLALLA URBAN RENEWAL PLAN**

#### **ACKNOWLEDGEMENTS**

The Molalla City Council appointed a citizen advisory body to direct the public involvement and management efforts for preparation of this renewal plan. Members of the advisory committee and City of Molalla staff gave generously of their time in providing direction and assistance on all key issues involved in preparing the plan.

#### **Members of the Advisory Committee**

<b>Name</b>		<b>Affiliation</b>
Bill	Avison	Avison Rock
Gary	Deardorff	Doubletrees Land & Timber
Todd	Gary	Molalla Fire Dist. No. 73
Jamie	Johnk	Clackamas County
Wayne	Kostur	Molalla River School District
Steve	Loutzenhiser	Molalla Communications
Mitch	Magenheimer	Edward Jones
Steve	Morris	Chamber of Commerce
Gary	Musgrove	Prudential Northwest Properties
Linda	Ohta	Inkbrary
Jim	Needham	City Council
Shane	Potter	City of Molalla
Beth	Smith	PGE
Pattie	Smith	Mill Barn
Ed	Stafford	Windermere Realty
Jim	Taylor	Champion Raceway
Kristine	Wheeler	Citizen

#### **Staff Assistance**

John Atkins, City Manager  
Shane Potter, Planning Director  
Zach Pelz, Assistant Planner

#### **Urban Renewal Consultants**

Charles Kupper, Spencer & Kupper

# REPORT ON THE MOLALLA URBAN RENEWAL PLAN

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## **REPORT ON THE MOLALLA URBAN RENEWAL PLAN**

### **Public Involvement in the Report on the Plan.**

Work on a renewal plan and report started in April, 2008. Four public meetings were held during the preparation of the renewal plan. Each meeting was built around discussion and public input on key elements of the urban renewal plan. Meeting topics included basic information on urban renewal and tax increment financing, development of project goals and objectives, development of a list of project activities, and a thorough review of the revenues, costs, and tax impacts of carrying out the project.

The City of Molalla Planning Commission met to review the Plan on July 29, 2008. The City Council held a public hearing and approved an ordinance adopting this Plan on Aug. 13, 2008. Additional notice for the City Council' hearing on adoption of the Plan was provided, as required by ORS 457.120.

## **100. DESCRIPTION OF THE PHYSICAL, SOCIAL AND ECONOMIC CONDITIONS IN THE RENEWAL AREA**

### **Definition of Blighting Conditions**

ORS 457.010 defines "blight" as follows: (underlining is added for emphasis)

"Blighted areas mean areas which, by reason of deterioration, faulty planning, inadequate or improper facilities, deleterious land use or the existence of unsafe structures, or any combination of these factors, are detrimental to the safety, health or welfare of the community. A blighted area is characterized by the existence of one or more of the following conditions:

"The existence of buildings and structures, used or intended to be used for living, commercial, industrial or other purposes, or any combination of those uses, which are unfit or unsafe to occupy for those purposes because of any one or a combination of the following conditions:

"Defective design and quality of physical construction;

"Faulty interior arrangement and exterior spacing;

"Overcrowding and a high density of population;

"Inadequate provision for ventilation, light, sanitation, open spaces and recreation facilities; or

"Obsolescence, deterioration, dilapidation, mixed character or shifting of uses."

"An economic dislocation, deterioration or disuse of property resulting from faulty planning;



“The division or subdivision and sale of property or lots of irregular form and shape and inadequate size or dimensions for property usefulness and development;

“The laying out of property or lots in disregard of contours, drainage and other physical characteristics of the terrain and surrounding conditions;

“The existence of inadequate streets and other rights-of-way, open spaces and utilities;

“The existence of property or lots or other areas which are subject to inundation by water;

“A prevalence of depreciated values, impaired investments and social and economic maladjustments to such an extent that the capacity to pay taxes is reduced and tax receipts are inadequate for the cost of public services rendered;

“A growing or total lack of proper utilization of areas, resulting in a stagnant and unproductive condition of land potentially useful and valuable for contributing to the public health, safety, and welfare; or

“A loss of population and reduction of proper utilization of the area, resulting in its further deterioration and added costs to the taxpayer for the creation of new public facilities and services elsewhere.”

Note that it is not necessary for each of the cited conditions to be present in the renewal area, or that these conditions be prevalent in each and every sector of the urban renewal area.

## **100A. PHYSICAL CONDITIONS**

### ***1. Land Area and Conformance with 25 % limit on acreage***

Oregon urban renewal law limits the total acreage in urban renewal areas to 25% of the total acreage within a city. City staff advises that Molalla contains approximately 1,474 acres within its City limits. This would allow the City of Molalla to have approximately 368.5 acres in renewal areas. Staff estimates the total acreage in the boundary at 364 acres. The acreage in the proposed renewal area represents 24.7% of the total acreage in Molalla.

### ***2. Existing Land Use and Development***

The Molalla Urban Renewal area encompasses the downtown commercial district of Molalla, and some adjacent areas. Assessor’s data shows that of a total of 313 tax accounts in the renewal area, 153 are commercial, 111 are single family residential, and 38 are industrial, with 10 accounts miscellaneous or tax exempt.

### **3. Blighting Conditions in Renewal Area**

**A. Depreciated values and reduced utilization of the area:** Clackamas County assessor records indicate there are 316 real property accounts in the renewal study area. Of those accounts, 65 show no building value at all. This unutilized land represents approximately 20% of property within the study area. That is a significant percentage of taxable property that currently is producing little property tax for taxing bodies. 60% of the property in the area has real market building values less than \$100,000. The overall taxable value in the area is quite low, considering that the area includes the downtown commercial core of Molalla.

Another measure of the utilization and productivity of land is the ratio of building value to land value. For example, the ratio for a property with a building value of \$100,000, and a land value of \$50,000 would be 2 to 1. High building to land value ratios therefore indicate good utilization of land, while low ratios usually indicate the land is not producing adequate taxable values for the community. The overall ratio of building to land in the proposed study area boundary is just 1.2 to 1. 170 of the property accounts show ratios of 1 to 1 or less. Only 60 accounts show ratios of 2 to 1 or better. In all, the low improvement ratios indicate the proposed renewal area is currently under-utilized.

A preponderance of low value property can lead to service problems for the City and other service providers in Molalla. The low level of property values and lack of proper utilization of the area for tax producing purposes meets the ORS definition of blight.

**B. Obsolete and Deteriorated Buildings:** A windshield survey of exterior building conditions shows the overall condition of property as fair to good. There are some properties that could benefit from exterior maintenance and repair. Renewal programs typically allocate fund for this purpose.

#### **C. Infrastructure Deficiencies:**

Molalla's public works director and city manager surveyed the project area with the consultant in November, 2007, and provided the following list of infrastructure deficiencies in the project area:

##### ***Deficiencies in Streets, Curbs, and Sidewalks***

- Ross Street is failed, curb and sidewalk missing.
- Kennel Street between Main and Toliver is failed.
- Heintz Street is failed. This collector street also is discontinuous for two blocks, has curb and sidewalk missing.
- Grange Avenue between Main and Heintz is failed, has curb and sidewalk missing.

- All streets in downtown core area are at, or nearing failure.

#### ***Deficiencies in Water, Sanitary and Storm Sewer Service***

- Ross Street: storm sewer inadequate or missing.
- Kennel Street: storm and sanitary inadequate or leaking, replace or reline.
- Heintz Street: portions lack storm or sanitary sewer.
- Grange Avenue: Storm and sanitary sewer inadequate, need replacement or relining.
- East Main Street: Sewer needs replacement or relining.
- Most streets in downtown core need storm and sewer upgrades or repairs
- Hwy 211: Portions lack curb and sidewalk, portions have open drainage ditches for storm, portions lack sanitary sewer.

#### ***Other***

- The layout of streets in Molalla results in numerous offset intersections, which can be both confusing and hazardous to motorists.

#### ***7. Conformance with 25% limit on Assessed Values Land and Building values***

It is assumed the adoption date of the renewal plan will establish January 1, 2007 as the frozen base date for the plan. The assessed value of real, personal and utility property in the renewal area is estimated at \$40,576,676 for the 2007-08 tax year. The total assessed valuation of the City of Molalla for that year is \$384,173,177. The assessed value within the renewal area represents 10.56 % of the total assessed value of property within Molalla. Total assessed value within the renewal area therefore will be well within the maximum 25% of total valuation allowed by urban renewal law.

#### **100B. SOCIAL AND ECONOMIC CONDITIONS**

No current census data is available for the residential population of the renewal plan area. Economic conditions, as measured by overall property values, and new investment are reflected in the data in section 100 A.6. above.

#### **200. ANTICIPATED FISCAL, SERVICE AND POPULATION IMPACTS OF PLAN**

Urban renewal plan activities are intended to assist in attracting new investment and increases in property values and taxes for taxing bodies in Molalla. Renewal activities to improve infrastructure, streets, curbs, sidewalks, parking, public safety, public buildings, and making streetscape improvements, and providing funds for building rehabilitation will make the renewal area more attractive and accessible to the general public.

The public and private investments made in the renewal area are likely to encourage new investment in areas adjacent to the renewal area. There are other positive effects of a renewal program that are quality of life issues. Retaining Molalla's small town atmosphere, maintaining the downtown core as the heart of the city, and improving housing, employment and shopping opportunities; all reflect Molalla's community values.

All the above elements of the Plan are expected to result in positive fiscal and service impacts for residents of Molalla. The Plan is not expected to result in a need for any additional police, fire, or other emergency services beyond those already contemplated by the City and other service providers.

The expenditure of tax increment funds is expected to produce increased property values for Molalla. The renewal project is estimated to be completed by 2029. During that period, assessed property values in the renewal area are expected to increase by approximately \$184.4 million. At tax rates expected to prevail at the termination of this plan, the new property values anticipated in the renewal area will contribute approximately \$2.72 million in property tax revenues to all taxing bodies in the first year after tax increment collection is ended.

### **300. REASONS FOR SELECTING THE URBAN RENEWAL AREA**

The Urban Renewal Plan Area was selected based on the existence of blighting conditions within the area, goals developed in the Planning process, and taken from other relevant City studies and documents, including Molalla' Comprehensive Plan. The project area evidences the following characteristics of blight:

- Deficient utilities in the renewal area.
- Deficient streets, curbs and sidewalks in the renewal area.
- Buildings in need of repair and rehabilitation.
- Safety issues arising from offset intersections in the area.
- A lack of proper utilization of land planned for tax producing purposes.
- Low property values in the project area, resulting in reduced tax receipts.

This Report on the Plan concludes that conditions exist within the Renewal area that meet the definitions of blight in ORS457.010. Treating these conditions is the reason for selecting this renewal area

#### **400. RELATIONSHIP BETWEEN EACH PROJECT ACTIVITY AND EXISTING CONDITIONS IN THE PROJECT AREA**

All project activities described in Section 700 of the Plan are intended to correct the deficiencies described in Section 100 of this Report and summarized in Section 300 of this Report.

1. Improvements to streets serving undeveloped industrial and commercial land will help those lands to develop, and provide property taxes and employment.
2. Assistance for rehabilitation and new development will attract new investment to the area, and improve the building conditions and blighted appearance of the area.
3. Curb, street, and sidewalk improvements will provide better public safety in the area.
4. Signalization and signage improvements will also benefit public safety in the area
5. Streetscape activities in downtown and Highway 211 and will improve the visual appearance of the area, and provide a better climate for new investment in the project area.
6. Improvements to public buildings, will help increase public usage of the area, and improve the climate for new investment in the area.
7. Parking improvements will help maintain and increase commercial investment in the renewal area.

#### **500. FINANCIAL ANALYSIS OF PLAN**

##### **500A. ESTIMATED PROJECT COST AND REVENUE SOURCES**

Table 1 shows the estimated Renewal Agency share of total costs of the Molalla Urban Renewal Plan. These costs reflect anticipated inflation, and are the basis for the maximum indebtedness of the Plan. It is anticipated that there will be long and short-term borrowings to carry out project activities, and that other sources of public and private funds will be pursued and applied to covering project casts. The costs shown in Table 1 do not include interest on indebtedness undertaken to carry out project activities.

The costs shown in Table 1 are referenced to sections of the urban renewal plan document. Costs of property acquisition authorized in Section 700 (4) are assumed to be covered in the project cost shown in Table 1. No property acquisition is contemplated at the time this plan is prepared.

<b>Table 1</b>		
<b>Molalla Urban Renewal Plan</b>		
<b>Estimated Urban Renewal Cost of Projects</b>		
<b>Authorizations and Projects in Renewal Plan</b>	<b>Percentage</b>	<b>Dollars</b>
Street/Sidewalk Improvements and Public Utilities <i>(This sum is the allocation for projects in Sections 700 1B, C, D, and E of the Urban Renewal Plan)</i>	60.0%	\$15,705,000
Parks/Open Spaces and Public buildings <i>(This sum is the allocation for projects in Sections 700 1A and F of the Urban Renewal Plan)</i>	15.0%	\$3,926,250
Building Preservation/Redevelopment <i>(This sum is the allocation for projects in Sections 700 2 and 700 3 of the Urban Renewal Plan)</i>	15.0%	\$3,926,250
Plan Administration <i>(This sum is the allocation for projects in Section 700 5 of the Urban Renewal Plan)</i>	10.0%	\$2,617,500
<b>Totals</b>	<b>100.00%</b>	<b>\$26,175,000</b>

The principal method of funding the renewal share of costs will be through use of tax increment financing as authorized by ORS 457. Revenues are obtained from anticipated proceeds of long-and-short term urban renewal indebtedness.

Anticipated annual revenues are shown in Table 2 of this Report. The Agency may make use of short-term indebtedness to carry out project activities not covered by issue of long-term debt. Long-term indebtedness may be issued as revenues, project requirements, and overall bond market conditions dictate. In addition, the Renewal Agency will apply for, and make use of funding from other federal, state, local, or private sources as such funds become available.

**500B. ANTICIPATED START & FINISH DATES OF PROJECT ACTIVITIES**

The project activities shown in Table 1 will begin in 2009, and be completed by 2028-29. The sequencing and prioritization of individual project activities shown in Table 1 will be done by the Urban Renewal Agency, and any citizen advisory bodies that the Agency calls upon to assist in this process. The priority of projects and annual funding will be as established in the annual budget process. Completion dates for individual activities may be affected by changes to local economic and market conditions, changes in the availability of tax increment funds, and changes in priorities for carrying out project activities.

It is estimated that all activities proposed in this plan will be completed, and project indebtedness paid off by 2028-29. At that time, the tax increment provisions of this plan can be ended.

**500C. ESTIMATED EXPENDITURES AND YEAR OF DEBT RETIREMENT**

It is estimated that the project will collect tax increment revenue between the 2009-10 and 2028-29 tax years. The amount of tax increment revenue needed to carry out project activities and interest on debt is estimated at \$28,747,450

It is anticipated that available project revenues, and funds accumulated in a special fund for debt redemption will be sufficient to retire outstanding bonded indebtedness in the 2028-29 tax year, and terminate the tax increment financing provisions of the project. After all project debt is retired, and the project closed out, it is estimated that there will be surplus tax increment funds of approximately \$146,000. These funds will be distributed to taxing bodies affected by this plan, as provided in ORS 457. Table 2 of this Report shows the anticipated tax increment receipts and project requirements for each year of the project. Table 2 follows on the next page.

<b>Table 2</b>										
<b>Molalla Urban Renewal Plan</b>										
<b>Resources and Requirements</b>										
<b>a. Resources</b>	2009-10	2010-11	2011-12	2012-13	2013-14	2014-15	2015-16	2016-17	2017-18	2018-19
<b>Beginning Balance</b>	\$0	\$14,453	\$31,245	\$25,566	\$17,906	\$11,663	\$9,442	\$33,813	\$10,932	\$34,805
Resources										
A. Tax increment Revenue	\$48,964	\$186,241	\$327,293	\$517,728	\$622,393	\$744,992	\$897,834	\$1,028,645	\$1,195,847	\$1,425,124
B. Bond Proceeds										
long term	\$0	\$1,126,873	\$0	\$0	\$3,768,362	\$0	\$0	\$0	\$0	\$4,543,845
C. Interest	\$490	\$13,131	\$3,273	\$5,177	\$43,908	\$7,450	\$8,978	\$10,286	\$11,958	\$59,690
<b>Total Resources</b>	\$49,453	\$1,326,245	\$330,566	\$522,906	\$4,434,663	\$752,442	\$906,813	\$1,038,932	\$1,207,805	\$6,028,659
<b>b. Project Requirements</b>										
To Long term Debt Service	\$0	\$155,000	\$155,000	\$155,000	\$673,000	\$673,000	\$673,000	\$673,000	\$673,000	\$1,298,000
Projects funded long and short debt	\$35,000	\$1,140,000	\$150,000	\$350,000	\$3,750,000	\$70,000	\$200,000	\$355,000	\$500,000	\$4,700,000
Total, projects and Debt Service	\$35,000	\$1,295,000	\$305,000	\$505,000	\$4,423,000	\$743,000	\$873,000	\$1,028,000	\$1,173,000	\$5,998,000
<b>Ending Balance</b>	\$14,453	\$31,245	\$25,566	\$17,906	\$11,663	\$9,442	\$33,813	\$10,932	\$34,805	\$30,659
<b>Table 2 (continued)</b>										
<b>Resources and Requirements</b>										
<b>a. Resources</b>	2019-20	2020-21	2021-22	2022-23	2023-24	2024-25	2025-26	2026-27	2027-28	2028-29
<b>Beginning Balance</b>	\$30,659	\$34,313	\$37,621	\$12,025	\$32,849	\$15,498	\$85,525	\$78,045	\$73,108	\$45,786
Resources										
A. Tax increment Revenue	\$1,660,706	\$1,812,496	\$1,935,668	\$2,062,227	\$2,148,992	\$2,238,144	\$2,329,747	\$2,423,869	\$2,520,580	\$2,619,950
B. Bond Proceeds										
long term	\$0	\$0	\$0	\$0	\$5,019,818	\$0	\$0	\$0	\$0	\$0
C. Interest	\$16,607	\$18,125	\$19,357	\$20,622	\$71,688	\$22,381	\$23,297	\$24,239	\$25,206	\$26,200
<b>Total Resources</b>	\$1,677,313	\$1,830,621	\$1,955,025	\$2,082,849	\$7,240,498	\$2,260,525	\$2,353,045	\$2,448,108	\$2,545,786	\$2,646,150
<b>b. Project Requirements</b>										
To Long term Debt Service	\$1,143,000	\$1,143,000	\$1,143,000	\$625,000	\$1,875,000	\$1,875,000	\$1,875,000	\$1,875,000	\$0	\$0
Projects funded long and short debt	\$500,000	\$650,000	\$800,000	\$1,425,000	\$5,350,000	\$300,000	\$400,000	\$500,000	\$2,500,000	\$2,500,000
Total, projects and Debt Service	\$1,643,000	\$1,793,000	\$1,943,000	\$2,050,000	\$7,225,000	\$2,175,000	\$2,275,000	\$2,375,000	\$2,500,000	\$2,500,000
<b>Ending Balance</b>	\$34,313	\$37,621	\$12,025	\$32,849	\$15,498	\$85,525	\$78,045	\$73,108	\$45,786	\$146,150

(a) In 2028-29, all project debt is paid off, all projects are assumed completed, and an estimated \$146,150 can be distributed to affected taxing bodies



#### **500D. IMPACT OF TAX INCREMENT FINANCING**

The passage of Ballot Measure 50 (BM50) changed Oregon's property tax system, and the impacts of urban renewal on taxpayers, and other taxing bodies. Prior to BM50, collection of tax increment revenues for a renewal agency resulted in an increase in the taxpayer's property tax rate. Taxing bodies suffered no revenue losses, unless there was overall compression of property tax revenues. Under Ballot Measure 50, the taxpayers' permanent rates will not change. However, collection of tax increment revenue will impact the potential property tax revenues received by overlapping tax bodies. These taxing bodies will not be able to apply their permanent BM50 tax rates against the new values added within the urban renewal area. As a result, the taxing bodies will forego revenue they otherwise might have had if there was no renewal plan in effect.

Table 3 shows the anticipated cumulative incremental values in the Renewal Area over the life of the Plan, and the anticipated property tax revenues foregone as a result of taxing bodies not being able to apply their permanent BM50 tax rates to those values. Table 3 actually presents a worst case picture of revenue foregone, for it assumes that all the estimated new values in the Molalla Renewal Area would occur, even without the investment of urban renewal funds. However, it is more realistic to assume that the public expenditures on renewal activities will have some positive effect on the growth of values within and immediately adjacent to the urban renewal area. Table 3 does not make this adjustment

More important, Table 3 expresses all revenue foregone in 2008 dollars. It therefore does not take into account the fact that a dollar in the future is not as valuable as today's dollar. A present value calculation of the revenues foregone, using just a 3.5 % rate would substantially reduce the revenue foregone total. Evidence of that reduction is shown in the bottom row of Table 3.

Also, during the plan period, overall values in Molalla will increase, and those value increases outside the renewal area will reduce the tax foregone impact on the budgets of taxing bodies.

Under the current method of funding K-12 level education, the urban renewal program will not result in revenue losses for those educational units of government. The level of funding per student is not dependent on the amount of property tax raised locally.

When the project is completed, an estimated \$184.4 million in assessed values will be placed back on the tax roll. In the following year, the permanent rates of the overlapping taxing bodies will generate property tax revenues estimated at

approximately \$2.72 million. Given a 4% inflation of assessed values in the area, the revenues foregone by the overlapping taxing bodies will be repaid in a period of 10 years after the project is completed.

#### **500E. FINANCIAL FEASIBILITY OF PLAN**

The total capital costs (i.e., exclusive of interest on indebtedness) to implement the project activities shown in Table 1 are estimated at \$26,175,000. The principal source of revenue to implement project activities will be annual tax increment revenues of the Renewal Agency. Anticipated tax increment revenues are shown in Table 2. The tax increment revenues shown in Table 2 are based on the following assumptions:

- Indexed growth in total assessed value at 2.75% annually, AND
- Exception values (i.e., new construction) as shown in Table 4 of this report
- Exception values of \$1 million annually in the period 2023 to 2028.

The maximum indebtedness and project costs undertaken in the plan is derived from assumptions on project values. To the extent those assumptions do not materialize as projected, projects will be delayed, cut back, or dropped. It therefore is financially feasible to carry out this urban renewal plan.

**Table 3****Molalla Urban Renewal Plan****Revenue Foregone by Taxing Bodies**

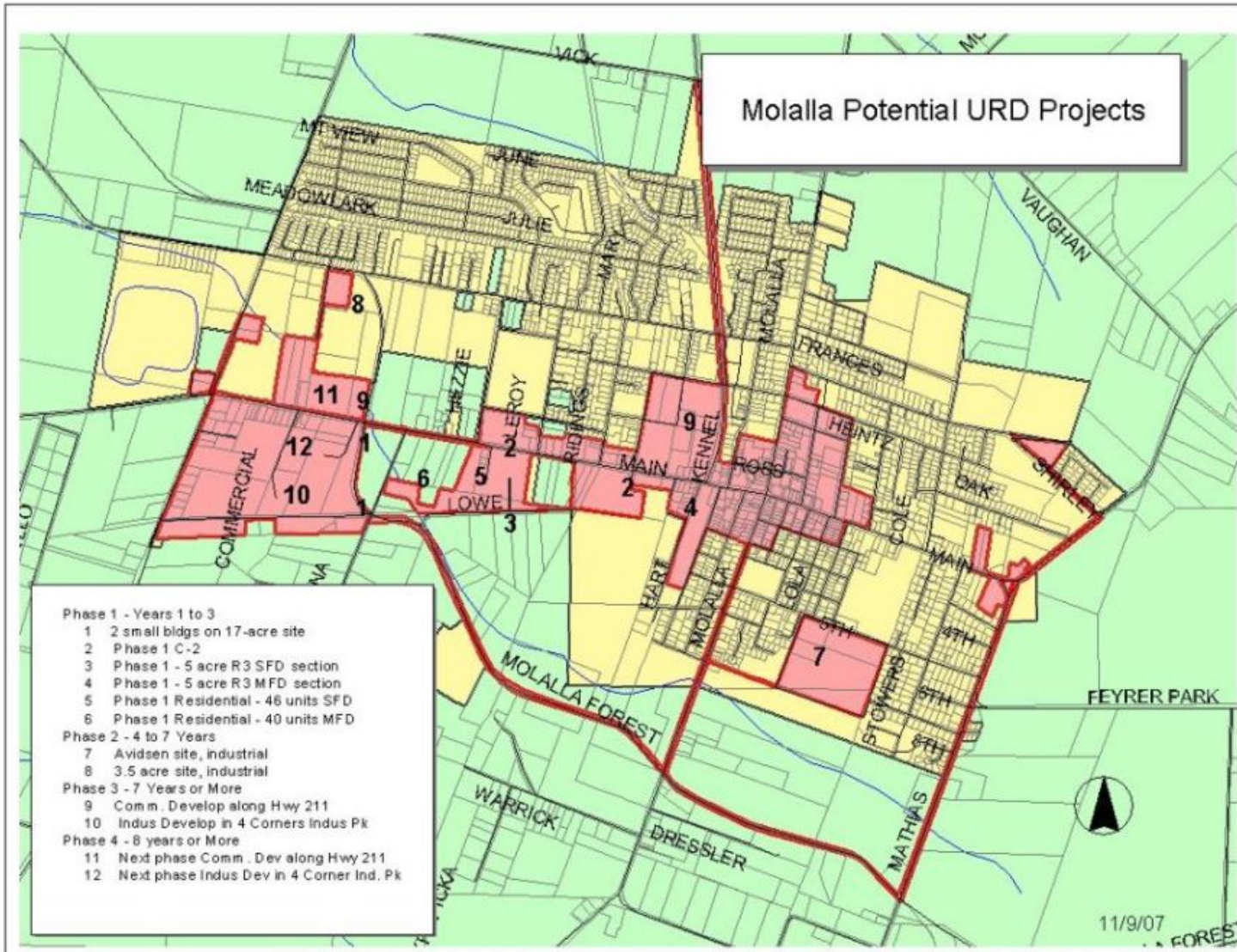
		<u>Clack County tax rate</u>	<u>Molalla Tax Rate</u>	<u>Fire Dist 73</u>	<u>Port of PDX</u>	<u>Vector Control</u>	<u>Soil Conserv.</u>	<u>Molalla Schools</u>	<u>ESD</u>	<u>Clack. CC</u>
		<b>2.4042</b>	<b>5.3058</b>	<b>0.7833</b>	<b>0.069</b>	<b>0.0065</b>	<b>0.0493</b>	<b>4.7001</b>	<b>0.3624</b>	<b>0.5481</b>
	Cumulative New									
	Incremental	foregone on	foregone on	foregone on	foregone on	foregone on	foregone on	foregone on	foregone on	foregone on
Year	Values in area	new values	new values	new values	new values	new values	new values	new values	new values	new values
2009	\$3,447,090	\$8,287	\$18,290	\$2,700	\$238	\$22	\$170	\$16,202	\$1,249	\$1,889
2010	\$13,111,493	\$31,523	\$69,567	\$10,270	\$905	\$85	\$646	\$61,625	\$4,752	\$7,186
2011	\$23,041,667	\$55,397	\$122,254	\$18,049	\$1,590	\$150	\$1,136	\$108,298	\$8,350	\$12,629
2012	\$36,448,447	\$87,629	\$193,388	\$28,550	\$2,515	\$237	\$1,797	\$171,311	\$13,209	\$19,977
2013	\$43,816,946	\$105,345	\$232,484	\$34,322	\$3,023	\$285	\$2,160	\$205,944	\$15,879	\$24,016
2014	\$52,447,995	\$126,095	\$278,279	\$41,083	\$3,619	\$341	\$2,586	\$246,511	\$19,007	\$28,747
2015	\$63,208,187	\$151,965	\$335,370	\$49,511	\$4,361	\$411	\$3,116	\$297,085	\$22,907	\$34,644
2016	\$72,417,384	\$174,106	\$384,232	\$56,725	\$4,997	\$471	\$3,570	\$340,369	\$26,244	\$39,692
2017	\$84,188,459	\$202,406	\$446,687	\$65,945	\$5,809	\$547	\$4,150	\$395,694	\$30,510	\$46,144
2018	\$100,329,745	\$241,213	\$532,330	\$78,588	\$6,923	\$652	\$4,946	\$471,560	\$36,359	\$54,991
2019	\$116,914,917	\$281,087	\$620,327	\$91,579	\$8,067	\$760	\$5,764	\$549,512	\$42,370	\$64,081
2020	\$127,601,049	\$306,778	\$677,026	\$99,950	\$8,804	\$829	\$6,291	\$599,738	\$46,243	\$69,938
2021	\$136,272,424	\$327,626	\$723,034	\$106,742	\$9,403	\$886	\$6,718	\$640,494	\$49,385	\$74,691
2022	\$145,182,262	\$349,047	\$770,308	\$113,721	\$10,018	\$944	\$7,157	\$682,371	\$52,614	\$79,574
2023	\$151,290,614	\$363,733	\$802,718	\$118,506	\$10,439	\$983	\$7,459	\$711,081	\$54,828	\$82,922
2024	\$157,566,946	\$378,822	\$836,019	\$123,422	\$10,872	\$1,024	\$7,768	\$740,580	\$57,102	\$86,362
2025	\$164,015,877	\$394,327	\$870,235	\$128,474	\$11,317	\$1,066	\$8,086	\$770,891	\$59,439	\$89,897
2026	\$170,642,153	\$410,258	\$905,393	\$133,664	\$11,774	\$1,109	\$8,413	\$802,035	\$61,841	\$93,529
2027	\$177,450,652	\$426,627	\$941,518	\$138,997	\$12,244	\$1,153	\$8,748	\$834,036	\$64,308	\$97,261
2028	\$184,446,385	\$443,446	\$978,636	\$144,477	\$12,727	\$1,199	\$9,093	\$866,916	\$66,843	\$101,095
	<b>Total</b>	<b>\$4,865,718</b>	<b>\$10,738,094</b>	<b>\$1,585,274</b>	<b>\$139,645</b>	<b>\$13,155</b>	<b>\$99,775</b>	<b>\$9,512,254</b>	<b>\$733,440</b>	<b>\$1,109,267</b>
	<b>PV @3.5%</b>	<b>\$3,067,821</b>	<b>\$6,770,337</b>	<b>\$999,511</b>	<b>\$88,046</b>	<b>\$8,294</b>	<b>\$62,858</b>	<b>\$5,997,448</b>	<b>\$462,432</b>	<b>\$699,390</b>

**Note:** School and ESD revenue foregone is replaced dollar-for-dollar by State funds, and does not affect per student funding.

PV = Present value of the revenue foregone. This adjusts future dollars to 2007 dollar totals.

<b>Table 4</b>						
<b>Molalla Urban Renewal Plan</b>						
<b>Estimates of Assessed Values added by New Construction in Renewal Area</b>						
<b>PHASE 1 – Values one to four yrs. away</b>	Begin Year	Years phasing	Total RMV	Change Prop. Ratio**	Total AV	Annual AV
2 small buildings on 17 acre site	2007	1	\$1,750,000	0.563	\$985,250	\$985,250
Phase 1 C-2	2008	3	\$34,140,150	0.563	\$19,220,904	\$6,406,968
Phase 1 - 5 acre R3 SFD section	2008	2	\$3,500,000	0.544	\$1,904,000	\$952,000
Phase 1 - 5 acre R3 MFD section	2007	1	\$2,000,000	0.673	\$1,346,000	\$1,346,000
Phase 1 Residential - 46 units SFD	2008	4	\$8,050,000	0.544	\$4,379,200	\$1,094,800
Phase 1 residential - 40 units MFD	2009	3	\$2,000,000	0.673	\$1,346,000	\$448,667
<b>PHASE 2 - Values four to seven yrs. away</b>						
Avison site, industrial	2010	4	\$24,698,520	0.673	\$16,622,104	\$4,155,526
3.5 acre site, industrial	2012	1	\$3,201,660	0.673	\$2,154,717	\$2,154,717
<b>PHASE 3 - Values seven or more yrs. away</b>						
Comm. Develop along Hwy 211	2013	5	\$35,937,000	0.563	\$20,232,531	\$4,046,506
Indus Develop in 4 Corners Ind Park	2014	4	\$13,721,400	0.673	\$9,234,502	\$2,308,626
<b>PHASE 4 - Values eight or more yrs. away</b>						
Next phase Comm. Develop along Hwy 211	2016	5	\$35,937,000	0.563	\$20,232,531	\$4,046,506
Next phase Indus Develop in 4 Corners Ind Park	2015	4	\$13,721,400	0.673	\$9,234,502	\$2,308,626

\*\* The change property ratio is an assessor's conversion of real market value to assessed value (AV). AV is the basis for tax increment revenue



## **600. RELOCATION**

### **A. PROPERTIES REQUIRING RELOCATION**

No relocation is anticipated at the adoption of this plan.

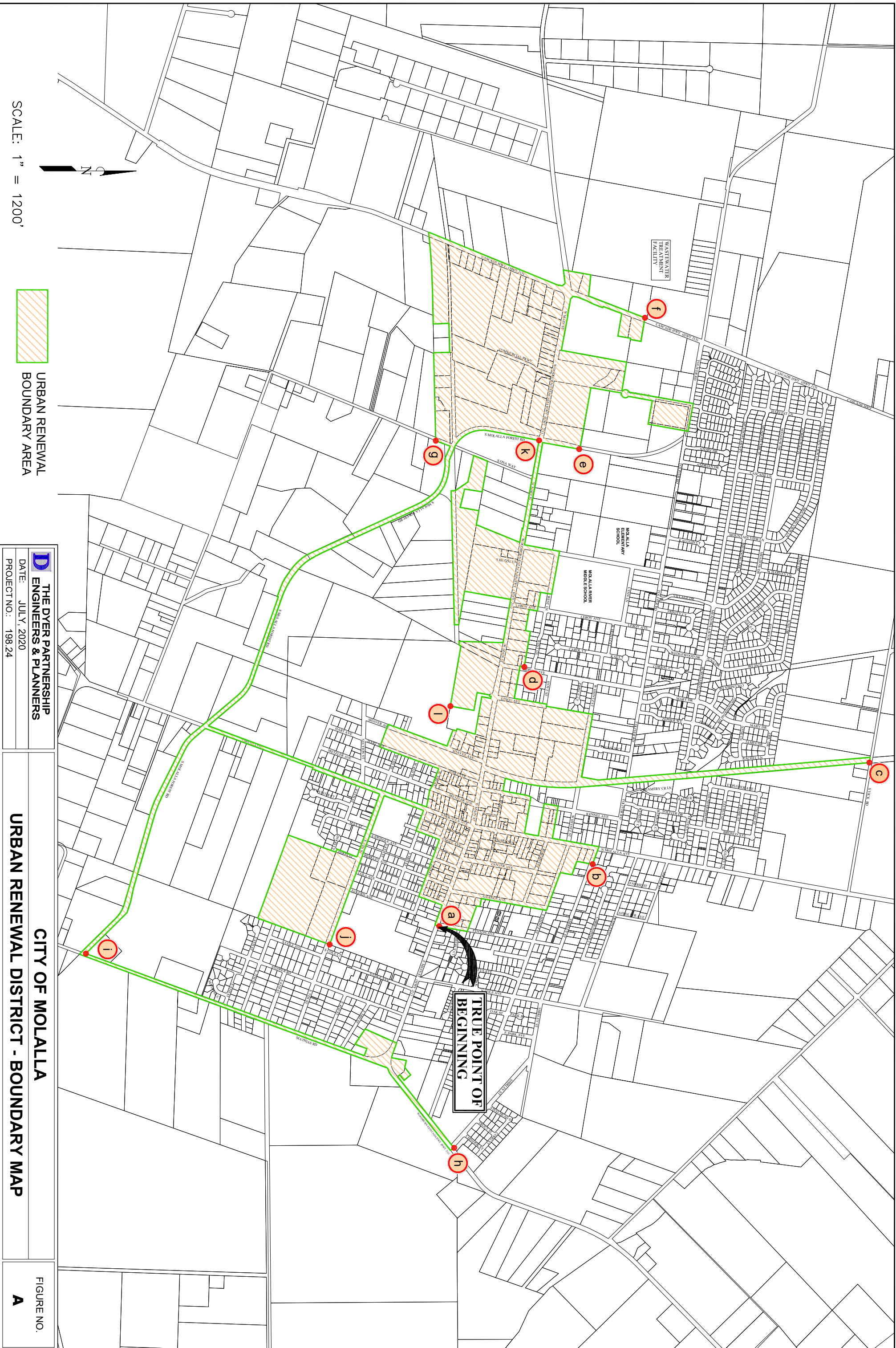
### **B. RELOCATION METHODS**

If in the implementation of this Plan, persons or businesses should be displaced by action of the Agency, the Agency shall provide assistance to such persons or businesses to be displaced. Such displaces will be contacted to determine their individual relocation needs. They will be provided information on available space and will be given assistance in moving.

No relocation of businesses or residents is anticipated in this plan.

### **C. HOUSING COST ENUMERATION**

No housing units are scheduled for removal under this plan. It is anticipated that the renewal plan will produce new housing units via rehabilitation and new construction. It is expected that housing units will cover a wide range of unit types and affordability.



SCALE: 1" = 1200'

URBAN RENEWAL  
BOUNDARY AREA

**D** THE DYER PARTNERSHIP  
ENGINEERS & PLANNERS  
DATE: JULY, 2020  
PROJECT NO.: 198.24

CITY OF MOLALLA  
URBAN RENEWAL DISTRICT - BOUNDARY MAP

FIGURE NO.  
**A**



Dave Cummings  
Chief Information Officer

## Technology Services

121 Library Court Oregon City, OR 97045

October 01, 2020

Board of County Commissioners  
Clackamas County

Members of the Board:

Approval for a Service Level Agreement between Clackamas Broadband  
eXchange and Colton School District for a dark fiber connection

<b>Purpose/Outcomes</b>	Clackamas Broadband eXchange (CBX) is looking for approval for a Service Level Agreement (SLA) with the Colton School District for a dark fiber connection.
<b>Dollar Amount and Fiscal Impact</b>	Colton School District will pay a recurring annual fee of \$3,060.00.
<b>Funding Source</b>	Colton School District will pay the annual lease fee at the beginning of each fiscal year.
<b>Duration</b>	Effective upon signature by the board, the SLA is effective for five (5) years with a possibility of 5 one year renewals. Total contract not to exceed ten (10) years.
<b>Previous Board Action</b>	Board previously approved CBX to build and maintain a dark fiber network for Estacada School District.
<b>Strategic Plan Alignment</b>	<ol style="list-style-type: none"> <li>1. Build a strong infrastructure.</li> <li>2. Build public trust through good government.</li> </ol>
<b>Counsel Review</b>	Andrew Naylor, February 11, 2020
<b>Contact Person</b>	Dave Devore (503)723-4996
<b>Contract No.</b>	N/A

**BACKGROUND:**

CBX is looking for approval to continue providing 1 dark fiber connections for the Colton School District. Due to reimbursement rules from the federal government, each school district has to go out for a competitive bid for any telecommunication service periodically to ensure the school district is receiving the best deal for their services. The Colton School District just completed such a bid and CBX is the best deal.

**RECOMMENDATION:**

Staff respectfully recommends approval to enter into this fiber agreement with the Colton School District. Staff further recommends the Board delegate authority to the Technology Services Director to sign agreements necessary in the performance of this agreement.

Sincerely,

Dave Cummings  
CIO Technology Services



# Clackamas County

## FIBER OPTIC SERVICE LEVEL AGREEMENT

Colton School District

(Customer Name)

### 1. Recitals

**WHEREAS**, Clackamas County (County) desires to provide to Colton School District(Customer) the services set forth in this Agreement (the "Services"), between the specified Customer sites listed in Appendix A, and at the price contained in Appendix A; and

**WHEREAS**, Customer desires to use the Services; and

**WHEREAS**, the Parties desire to set forth herein their respective rights and obligations with respect to the provision of Services,

**NOW, THEREFORE**, in consideration of the foregoing, and the mutual covenants and promises set forth herein, intending to be legally bound, the Parties agree as follows.

### 2. Fiber Optic Network Description

County will provide Customer with point-to-point single mode fiber optic network connectivity, including a termination panel for the fiber optic cables, at each Customer site on a path designated by the County.

### 3. Service Description

Services provided to Customer by County are physical connectivity of one (or more) strands of optical fiber ("Fiber"), between sites specifically identified in Appendix A for the exclusive use of the Customer's internal communication needs. Each site listed in Appendix A will have a single mode fiber termination. The Fiber is and shall remain property of the County.

### 4. Construction and Installation Requirements

- a. County, when installing Fiber on the property of Customer, shall do so in a neat and professional manner. Routing and location of these cables shall be mutually agreed upon between the parties.
- b. Customer shall secure any easements, leases, permits or other agreements necessary to allow County to use existing pathways to, into and within each site to the demarcation point for service. Customer shall provide a path for the Fiber from the point of entry into the site to the termination panel that complies with all applicable building, electrical, fire and related codes.

- c. Subject to the terms of this Agreement, and at no cost to County, Customer shall provide adequate environmentally controlled space and electricity required for installation, operation, and maintenance of the Fiber used to provision the service within each site.
- d. Customer shall provide a clean, secure, relatively dry and cool location (consistent with environmental requirements for fiber optic network connectivity equipment) at each of its sites for necessary equipment, as determined by the County in its sole discretion.
- e. Customer will provide or arrange for County and its employees, agents, lessees, officers and its authorized vendors, upon reasonable notice, to have ingress and egress into and out of Customer properties and buildings in connection with the provision of Service.
- f. If the presence of asbestos or other hazardous materials exists or is detected, Customer must have such hazardous materials removed immediately at Customer's expense or notify County to install the applicable portion of the Fiber in areas of the site that do not containing hazardous material. Any additional expense incurred as a result of encountering hazardous materials, including but not limited to, any additional equipment that may be required, shall be paid by Customer.
- g. County has no obligation to install, operate, or maintain Customer-provided facilities or equipment.
- h. County shall construct Fiber into each Customer building enumerated herein; splice fiber into existing County fiber optic resources; terminate County's optical fiber in each Customer building; test and certify appropriate Fiber performance at each Customer location; and provide the appropriate fiber patch panel ("hand-off's") at each location for Customer utilization. Test results for physical connection will be made available to Customer upon request.

## **5. Term of Agreement**

At such time as County completes installation and connection of the necessary facilities and equipment to provide service herein, County shall then certify and notify Customer in writing that the service is available for use, and the date of such notice shall be called the "Service Start Date." Unless terminated as herein provided, this Agreement shall continue for a period of five (5) years following the Service Start Date and shall be automatically renew for successive one-year renewal terms, at the County's then-current rate schedule, unless either party terminates the Agreement pursuant to the terms herein. Provided, however, that the total Agreement term length, including any renewal, shall not exceed ten (10) years.

## **6. Rates**

In return for County providing the Services described in Appendix A for the term indicated herein, Customer shall pay County both nonrecurring

construction/installation charges and recurring charges for Services described in Appendix A, as amended from time to time.

**7. Payment**

County shall provide an invoice for twelve months of service (July 1 through June 30), or prorated weekly for any portion thereof, to Customer at the beginning of the service period. The annual charge shall be payable within thirty (30) days of receipt of invoice. Interest charges shall be assessed for late payments in accordance with Appendix A. If the Customer fails to pay within sixty (60) days of receipt of an invoice it shall constitute grounds for County to terminate the Agreement upon appropriate advance written notice to Customer.

**8. Fiber Maintenance**

County shall maintain the structural aspects of the Fiber in good operating condition, utilizing commercially reasonable practices in accordance with Appendix B, throughout the Agreement Term. In the event the Fiber fails at any time to meet the specifications outlined in Appendix C, County shall endeavor to restore the Fiber to meet the specification standards in as timely and expedited a manner as reasonably possible.

County may subcontract for testing, maintenance, repair, restoration, relocation, or other operational and technical services it is obligated to provide hereunder.

Customer shall promptly notify County of any matters pertaining to any damage or impending damage to or loss of the use of the Fiber that are known to it and that could reasonably be expected to adversely affect the Fiber. County shall promptly notify Customer of any matters pertaining to any damage or impending damage to or loss of the Fiber that are known to it and that could reasonably be expected to adversely affect the Fiber and/or Customer's use thereof.

**9. Confidentiality**

All Customer data, voice, or video transmission using County Fiber shall be treated by County as confidential information, to the extent allowable by law. Customer expressly acknowledges and agrees that County's confidentiality obligations under this Agreement are subject to, and only enforceable to the extent permitted by, the Oregon Public Records Law, Oregon Revised Statutes ("ORS") Chapter 192 *et. seq.*, and any other applicable state or federal law

**10. Content Control and Privacy**

Customer shall have full and complete control of, and responsibility and liability for, the content of any and all communications transmissions sent or received using the Fiber.

**11. Assignment and Successors**

Either party may assign this Agreement upon prior written consent of the other party. Such consent shall not be unreasonably withheld. Upon such assignment, all rights and obligations of County and Customer under this Agreement shall pass in total without modification to any successor(s) regardless of the manner in which the succession may occur.

**12. Damage**

County shall be responsible for restoring, or otherwise repairing to its prior condition, any portion of the Customer's premises or facilities, which are damaged by the negligent acts or omissions of County. Customer shall be responsible for restoring, or otherwise repairing to its prior condition, any portion of County's connectivity equipment or other facilities, located at Customer premises, which are damaged by Customer or its agents.

Customer will reimburse all related Costs associated with damage to the Fiber caused by the negligence acts or omissions of Customer, its affiliates, employees, agents, contractors or customers. As used herein, "Costs" includes the following: (a) labor costs, including wages, salaries, and benefits together with overhead allocable to such labor costs; and (b) other direct costs and out-of-pocket expenses on a pass-through basis (such as equipment, materials, supplies, contract services, sales, use or similar taxes, etc.).

**13. Force Majeure**

Neither party hereto shall be deemed to be in default of any provision of this Agreement, for any failure in performance resulting from acts or events beyond the reasonable control of such party. For purposes of this Agreement, such acts shall include, but shall not be limited to, acts of nature, civil or military authority, civil disturbance, war, strikes, fires, power failure, other catastrophes or other force majeure events beyond the parties' reasonable control, provided however that the provisions of this paragraph and article shall not preclude Customer from cancelling or terminating this Agreement as otherwise permitted hereunder, regardless of any force majeure event occurring to County.

**14. Consequential Damages**

NOTWITHSTANDING ANY PROVISION OF THIS AGREEMENT TO THE CONTRARY, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL, OR PUNITIVE DAMAGES, WHETHER FORSEEABLE OR NOT, ARISING OUT OF, OR IN CONNECTION WITH, TRANSMISSION INTERRUPTIONS OR DEGRADATION, INCLUDING BUT NOT LIMITED TO DAMAGE OR LOSS OF PROFITS OR EQUIPMENT, LOSS OF PROFITS OR REVENUE, COST OF CAPITAL, COST OF REPLACEMENT SERVICES OR CLAIMS OF CUSTOMERS, WHETHER OCCASIONED BY ANY REPAIR OR MAINTENANCE PERFORMED BY OR FAILED TO BE PERFORMED BY A PARTY, OR ANY OTHER CAUSE WHATSOEVER, INCLUDING WITHOUT LIMITATION BREACH OF CONTRACT, BREACH OF

WARRANTY, NEGLIGENCE OR STRICT LIABILITY.

**15. Public Contracting Provisions**

The provisions of Oregon public contracting law, ORS 279B.020 through 279B.235, to the extent applicable, are incorporated herein by this reference.

**16. Non-Appropriation or Change in Law**

Notwithstanding any other provisions of this Agreement, the parties hereby agree and understand that if County fails to receive expenditure authority sufficient to allow the County, in the exercise of its reasonable administrative discretion, to perform under this Agreement, or if federal or state laws, regulations or guidelines are modified or interpreted in such a way that County is prohibited from performing under this Agreement, the Agreement shall terminate and Customer shall pay County any remaining pro rata fees for services due to the date of such termination payable pursuant to Section 7 of this Agreement.

**17. Compliance with Laws**

Customer shall comply with all applicable federal, state, county and city laws, ordinances and regulations, including regulations of any administrative agency thereof, heretofore or hereafter adopted or established, during the entire term of this Agreement.

**18. Taxes and Assessments**

- a. Customer agrees to pay any and all applicable national, federal, state, county and local taxes, fees, assessments or surcharges, and all other similar or related charges, which are imposed or levied on the Fiber, or because of Customers use of the Services under this Agreement (collectively, "Taxes), whether or not the Taxes are imposed or levied directly on the Customer, or imposed or levied on the County because of or arising out of the use of the Services either by the Customer, or its affiliates, or anyone to whom Customer has sold or otherwise granted access to the Services. Customer agrees to pay these Taxes in addition to all other fees and charges as set forth elsewhere in this Agreement.
- b. "Taxes" include, but are not limited to, business and occupation, commercial, district, excise, franchise fee, gross receipts, license, occupational, privilege, property, Public Utility Commission, right-of-ways, utility user, or other similar taxes, fees surcharges and assessments as may be levied against Customer, or against County and passed through to Customer.

**19. Termination**

- a. Either party may terminate this Agreement for convenience following 90 day's written notice to the other party.
- b. Pursuant to Section 20 of this Agreement, either party may terminate this

Agreement in the event of default of the Agreement by the other party. Neither the County nor the Customer shall be deemed to have waived any breach of this Agreement by the other party except by an express waiver in writing. An express written waiver as to one breach shall not be deemed a waiver of any other breach not expressly identified, even though the other breach is of the same nature as that waived.

- d. If Customer terminates this Agreement for any reason other than County's default or failure to perform, County shall be entitled to 5% of the remaining contract amount for the unexpired term of this Agreement.

## **20. Default**

1. Either of the following events shall constitute a default:
  - a. Failure to perform or comply with any material obligation or condition of this Agreement; or
  - b. Failure to pay any sums due under this Agreement.
2. Any defaulting party shall have thirty (30) days in which to cure following written notice of default by the non-defaulting party.

## **21. Remedies**

If this Agreement is terminated by the County due to a breach by the Customer, then the County shall have any remedy available to it in law or equity. If this Agreement is terminated for any other reason, Customer's sole remedy is reimbursement of the pro rata amounts paid to County on the unexpired term of this Agreement, less any setoff to which the County is entitled.

## **22. Amendment**

Any amendments to this Agreement shall be in writing and shall be signed by all parties.

## **23. No recourse Against the Grantor**

Customer shall have no recourse whatsoever against County or its officials, boards, commissions, or employees for any loss, costs, expense, or damage arising out of any provision or requirement contained herein, or in the event this Agreement or any part thereof is determined to be invalid.

## **24. Notice**

Any notice hereunder shall be in writing and shall be delivered by personal service or by United States certified or registered mail, with postage prepaid, or by facsimile addressed as follows:

**Notice to the County**

Manager, Clackamas Broadband Express  
Clackamas County Technology Services  
121 Library Court  
Oregon City, Oregon 97045  
Fax Number (503) 655-8255

with a copy to

Chief Information Officer  
Clackamas County Technology Services  
121 Library Court  
Oregon City, Oregon 97045  
Fax Number: (503) 655-8255

**Notice to the Customer**

Superintendent  
Colton School District  
30429 S Grays Hill Rd  
Colton, Oregon 97017  
(503) 824-3530  
with a copy to

Executive Director of Operations  
Colton School District  
30429 S Grays Hill Rd  
Colton, OreQon 97017  
(503) 824-3530

Either Party, by similar written notice, may change the address to which notices shall be sent.

**25. Debt Limitations**

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

**26. No Attorney Fees**

No attorney fees shall be paid for or awarded to either party in the course of any dispute or other recovery under this Agreement. It is the intent of the parties that each shall bear the costs of its own legal counsel.

**27. Governing Law**

This Agreement shall be governed and construed in accordance with the laws of the

State of Oregon without regard to principles of conflicts of law. Any claim, action, or suit between County and Customer that arises out of or relates to the performance of this Agreement shall be brought and conducted solely and exclusively within the Circuit Court for Clackamas County, for the State of Oregon. Provided, however, that if any such claim, action, or suit must be brought in a federal forum, it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon.

**28. Survival**

All rights and obligations shall cease upon termination or expiration of this Agreement, except for the rights and obligations set forth in Sections 9, 12, 14, 21, 23, 25, 26, 27, and 28, and all other rights and obligations which by their context are intended to survive.

**29. Severability**

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

**30. Whole Contract**

THIS CONTRACT CONSTITUTES THE COMPLETE AND EXCLUSIVE STATEMENT OF THE CONTRACT BETWEEN THE PARTIES RELEVANT TO THE PURPOSE DESCRIBED HEREIN AND SUPERSEDES ALL PRIOR AGREEMENTS OF PROPOSALS, ORAL OR WRITTEN, AND ALL OTHER COMMUNICATION BETWEEN THE PARTIES RELATING TO THE SUBJECT MATTER OF THIS CONTRACT. NO WAIVER, CONSENT, MODIFICATION, OR CHANGE OF TERMS OF THIS CONTRACT WILL BE BINDING ON EITHER PARTY EXCEPT AS A WRITTEN ADDENDUM SIGNED BY AUTHORIZED AGENTS OF BOTH PARTIES.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement the date and year first above written.

**Clackamas County**

By (signature): \_\_\_\_\_

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

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

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



**Customer**

Colton School District  
(Customer Name)

By (signature): <sup>DocuSigned by:</sup> Koreen N. Barreras-Brown  
748D5C74C146413...

Name (print): Dr. Koreen N. Barreras-Brown

Title: Superintendent

Date: 9/16/2020

**APPENDIX A****SERVICE AND RATE SCHEDULE****1. Specified Services and Rates**

The following are the sites, services, and rates agreed to by County and Customer at which Customer shall be provided services on the fiber optic network during the term of the Agreement. It is understood by both parties that service to these sites shall be provided for the rates below, subject to any rate increases otherwise applicable in accordance with terms herein. It is further understood that, during the term of the Agreement, Customer may add services to existing or new locations, or change services and/or locations, but that such changes are subject to the rates for such additional services.

**2. Construction, Installation and Activation**

For construction, installation and activation work and provision of fiber optic network components, the County shall charge Customer nonrecurring charge(s) as specified in Section 5 of Appendix A. All facilities constructed under this Agreement and Appendix A shall be owned, operated, and maintained by the County.

**3. Service Changes and Conversions**

Both parties agree that Customer may add or change services during the term of the Agreement, but that such changes are subject to applicable rates, and upgrade and downgrade charges.

**4. Monthly Recurring Charges**

	<b>From</b> (Connecting Point A:Site Name & Address)	<b>To</b> (Connecting Point B:Site Name & Address)	<b>Service</b>	<b>Monthly Rate (\$)</b>
1	Clackamas ESD 13455 SE 97 <sup>th</sup> Ave Clackamas, OR 97015	Colton High School 30205 S Wall St. Colton, Oregon 97017	One Pair (two) dark fibers	\$255.00

**5. Nonrecurring Charges**

	<b>From</b> (Connecting Point A:Site Name & Address)	<b>To</b> (Connecting Point B:Site Name & Address)	<b>Service</b>	<b>Amount (\$)</b>
1	Clackamas ESD 13455 SE 97 <sup>th</sup> Ave Clackamas, OR 97015	Colton High School 30205 S Wall St. Colton, Oregon 97017	Construction	\$0.00

**6. Late Payment Interest**

Customer will be charged interest for any payment made after its due date (thirty (30) days after receipt of invoice). Interest is charged at a rate of one and a half percent (1.5%) per month, or eighteen percent (18%) annually, on any installment not paid when due.

**7. Annual Consumer Price Index (CPI) Adjustments**

All fees and minimum charges are subject to Consumer Price Index (CPI) adjustments, to be applied annually. The amount of the fees and charges specified herein may increase annually by a percentage up to the change in the West Region (West City Size B/C 2.5 Million or less) Consumer Price Index of the US Dept. of Labor, Bureau of Labor Statistics (<https://www.bls.gov/regions/west/data/xg-tables/ro9xg01.htm>), based upon the rate of change as stated from the last month reported to the same month of the preceding year. In the event such Consumer Price Index (or a successor or substitute index) is not available, a reliable governmental or other nonpartisan publication evaluating the information theretofore used in determining the Consumer Price Index shall be used in lieu of such Consumer Price Index.

***Remainder of this page intentionally left blank.***

## APPENDIX B

### MAINTENANCE AND OPERATIONS SPECIFICATIONS AND PROCEDURES

#### 1. Defined Terms

- a. "Routine Maintenance" is all preventive maintenance activities and repairs.
- b. "Non-Routine Maintenance" is all efforts and activities in response to an emergency circumstance which requires restoration of service.

#### 2. General

- a. County shall operate and maintain a Network Control and Management Center (NCAM) staffed twenty-four (24) hours a day, seven (7) days a week, by trained and qualified personnel. County shall maintain telephone number (503) 742-4219 to contact personnel and NCAM. County's NCAM personnel shall dispatch maintenance and repair personnel along the fiber optic network to repair problems detected through the NCAM's remote surveillance equipment, by the Customer, or otherwise.
- b. In the event Customer identifies a circumstance which requires restoration of service, Customer shall provide NCAM personnel the name and address of the facility with the problem, the identification number of the Fiber circuits in question, and the name and telephone numbers of Customer's personnel to contact for site access and status updates. NCAM personnel shall immediately contact a County technician and provide the Customer contact information. County technician shall contact Customer within one (1) hour of initial call.
- c. If the County's technician cannot repair the service interruption by telephone, County shall use commercially reasonable efforts to have its first maintenance employee or contractor at the site requiring repair within four (4) hours of the initial call to the NCAM. County will then work continuously until service has been restored.
- d. County shall use commercially reasonable efforts to notify Customer twenty one (21) days prior to the date of any planned non-emergency maintenance activity. In the event that a County planned activity is canceled or delayed for any reason as previously notified, County shall notify Customer as soon as reasonably possible and will comply with the provisions of the previous sentence to reschedule any delayed activity.

**3. Fiber Optic Network**

- a. County shall maintain the fiber optic network in good and operable condition and shall repair the fiber in a manner consistent with industry standards and using commercially reasonable efforts.
- b. County shall perform appropriate routine maintenance on the fiber optic network in accordance with County's then current preventive maintenance procedures. County's maintenance procedures shall not substantially deviate from industry practice.

**4. Restoration**

- a. When restoring damaged fiber, the Parties agree to work together to restore all traffic as quickly as possible. County, immediately upon arriving on the site of the damage, shall determine the best course of action to be taken to restore the fiber and shall begin restoration efforts.
- b. It will be the responsibility of County and Customer to report to one another respectively any known environmental or safety hazards which would restrict or jeopardize any maintenance work.
- c. Upon notification of interruption of fiber optic network service, disrepair, impairment or other need for repair or restoration of the fiber and the location of the damaged fiber, County shall pursue commercially reasonable efforts to mobilize technicians to achieve necessary repair or restoration, including, but without limitation, having maintenance personnel at the affected site within four (4) hours after receipt of such notice with the required restoration material and equipment.
- d. In the event that Customer's use of the fiber optic network is interrupted due to an occurrence of a force majeure event, repairs and restoration shall be made as expeditiously as reasonably possible. Customer recognizes that four (4) hour response time represents optimal conditions, and may be impossible to achieve when emergency restoration of fiber optic network integrity is required or when responding to certain remote locations. Actual response times will be influenced by such factors as terrain, weather conditions present at the time the request is made and actual mileage to the fault site.
- e. For purposes of this section, "commercially reasonable efforts" means activities and performances consistent with prudent utility practice, existing contract provisions for County technicians and/or employees, practices required for preserving the integrity of the fiber optic network, and response times that do not jeopardize the health and safety of the employees, contractors and agents of County and Customer.

5. Customer shall be responsible for paying County standard maintenance rates and charges for any calls to County for maintenance issues related to the Fiber that County later confirms as resulting from another source other than functionality of the Fibers.

***Remainder of this page intentionally left blank.***

## APPENDIX C

### FIBER SPLICING AND TESTING STANDARDS AND PROCEDURES

#### 1. Fiber and Connector Standards

##### a. **Connector Standards**

The loss value of any pigtail connector and any associated fiber jumper or pigtail with matching mode field diameters will not exceed .5dB at 1550 nm. The loss value of a connector and its associated jumper with mismatched mode field diameters should not exceed .8 dB.

##### b. **Field Splice Standards**

The objective for each splice is an averaged loss value of 0.1 dB or less when measured bi-directionally with an OTDR at 1550 nm. In the event of damage and subsequent restoration of the Fibers, commercially reasonable efforts will be made to restore the Fibers to this standard. If after 3 restoration splicing attempts, County is not able to produce a loss value of 0.1 dB or less bi-directionally at 1550 nm, then 0.5 dB or less bi-directionally at 1550 nm will be acceptable. Fibers not meeting the 0.1 dB or less specification will be identified as Out Of Specification (OOS). Documentation of the three attempts (re-burns) to bring the OOS fiber within specification will be provided.

##### c. **Span Loss**

It is County's responsibility to insure proper continuity of all fibers at the fiber level, not just the pigtail level. Any "frogs" or fibers that cross in the route will be remedied by County. The following span loss calculation will be used:

$$(A * L) + (0.1 * N) + C = \text{Acceptable Span Loss}$$

A = Attenuation per KM at 1550 nm

L = Optical length of cable measured in kilometers (from OTDR Trace)

N = Number of splices in a span

C = Connector loss. The connector loss will not exceed .5dB. The section test will have (2) pigtail connectors/splices under test, so 1.0dB will be allowed for this loss.

*Remainder of this page intentionally left blank.*



Capt. Malcolm McDonald  
Director

**CLACKAMAS COUNTY COMMUNITY CORRECTIONS**  
1024 MAIN STREET • OREGON CITY • OREGON • 97045  
TELEPHONE 503-655-8603 • • • FAX 503-650-8942

October 1, 2020

Board of County Commissioners  
Clackamas County

Members of the Board:

Approval of Subgrant Application, Acceptance, and Agreement between State of Oregon, Dept.  
of Corrections and Clackamas County  
to Provide Emergency Housing of Indigent, Non-COVID Positive Clients

<b>Purpose/Outcome</b>	To provide emergency housing of indigent, non-COVID positive clients.
<b>Dollar Amount and Fiscal Impact</b>	\$22,066.50
<b>Funding Source</b>	State of Oregon, Department of Corrections
<b>Duration</b>	Funding period January 20, 2020 through January 19, 2022
<b>Previous Board Action/Review</b>	No previous action
<b>Strategic Plan Alignment</b>	Provide supervision, resources, intervention, and treatment services. Ensure Safe, Healthy and Secure Communities
<b>County Counsel Review</b>	This Subgrant Agreement has been reviewed and approved by County Counsel on 9/17/2020; JM
<b>Procurement Review</b>	Was the item processed through Procurement? No This item is a Subgrant Award.
<b>Contact Person</b>	Captain Malcolm McDonald, Director, Community Corrections – 503-655-8717

**BACKGROUND:** Oregon Department of Corrections (DOC) applied for and was awarded a Coronavirus Emergency Supplemental Funding (CESF) grant from US Department of Justice. The goal of this grant is to provide funding to prevent, prepare for, and respond to the coronavirus. This CESF grant is limited to the housing needs of non-COVID positive adults-in-custody releasing to, or currently on supervision with Community Corrections departments in Oregon.

DOC has now allocated funds and issued subgrant agreements to each Community Corrections department in the state to provide emergency housing for eligible clients supervised in each county. Clackamas County has been allocated \$22,066.50 for this purpose. The Agreement specifies that the funds will be available for eligible costs beginning on January 20, 2020-January 19, 2022.

Given the fact that Community Corrections did not apply for this grant but is now in the position to receive these funds, we would like to follow the federal grant procedures of Clackamas County as much as possible. We have notified the County Administrator of the grant applied for and awarded on our behalf and have received his approval.

**RECOMMENDATION:** Community Corrections respectfully requests that the Board of County Commissioners approve Subgrant Application and Acceptance on behalf of Clackamas County by Oregon Department of Corrections and Subgrant Agreement #6034 from Oregon Department of Corrections to assist in preventing, preparing for, and responding to the coronavirus by providing housing to non-COVID positive adults on supervision with Community Corrections.



Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Malcom McDonald", written in a cursive style.

Captain Malcom McDonald  
Director, Community Corrections

OREGON DEPARTMENT OF CORRECTIONS  
CORONAVIRUS EMERGENCY SUPPLEMENTAL FUNDING  
SUBGRANT AGREEMENT #6034

2575 Center St. NE  
Salem, OR 97301

This Subgrant Agreement (“Agreement”) is made and entered into by and between the **State of Oregon**, acting by and through its Department of Corrections, hereafter referred to as “DOC,” and **Clackamas County**, hereinafter referred to as “Subgrantee,” and collectively referred to as the “Parties.” This Agreement shall become effective on the date when it is fully executed and approved as required by applicable law.

**1. Grant.** In accordance with the terms and conditions of this Agreement, DOC shall provide Subgrantee an amount not to exceed **\$22,066.50** (the “Grant Funds”) to assist Subgrantee in implementing the project described in Exhibit A (the “Project”) during the period beginning on the Project Start Date and ending on the Project End Date (the “Project Period”), as those dates are specified in Exhibit A. The Grant Funds may be used by Subgrantee solely for Eligible Costs (as described in Section 4.a) incurred by Subgrantee as outlined in Exhibit A during the Project Period. DOC’s obligation to disburse Grant Funds under this Agreement shall end on the Project End Date. The Grant Funds provided under this Agreement are a subaward of federal funds received by DOC under a Federal award. Additional information on the Federal award and subaward are set forth in Exhibit C.

**2. Agreement Documents.** This Agreement consists of this document and the following documents, all of which are attached hereto and incorporated herein by reference:

- Exhibit A: **Project Description**
- Exhibit B: **Federal Terms and Conditions**
- Exhibit C: **Federal Award and Subaward Information**

In the event of a conflict between two or more of the documents comprising this Agreement, the language in the document with the highest precedence shall control. The precedence of each of the documents comprising this Agreement is as follows, listed from highest precedence to lowest precedence: Exhibit C, Exhibit B, this Agreement without Exhibits; Exhibit A.

**3. Reports.** Subgrantee shall submit the reports required by this section.

**a. Progress Reports.** Subgrantee shall submit to DOC a progress report, together with such other Project information as DOC may reasonably request, (collectively, a “Progress Report”) every 6 months during the Project Period. Progress Reports must be received by DOC no later than January 11 and July 11, in each case reporting for the prior calendar 6-month period. Additionally, Subgrantee shall submit to DOC, no later than January 8, an annual Progress Report for the prior year that describes, in a narrative fashion, Subgrantee’s

progress in meeting the Project's objectives and any remedial actions necessary if those objectives have not been met in any respect. Progress Reports must be submitted by email to DOC's Contact identified on the signature page and contain all of the requested data. Subgrantee must receive prior approval from DOC to submit a Progress Report after its due date.

**b. Financial Reports.** Subgrantee shall submit to DOC a Financial Report each quarter to detail expenditures of Grant Funds during the prior calendar quarter. Financial Reports must be received by DOC no later than October 11, January 11, April 11, and July 11 for the prior calendar quarter; provided, however, that the final Financial Report must be submitted no later than the earlier of 30 days after completion of the Project or 30 days after the Project End Date. Subgrantee must receive prior approval from DOC to submit a Financial Report after its due date.

#### **4. Disbursement and Recovery of Grant Funds.**

**a. Disbursement Generally.** Subject to Section 4.b, DOC shall disburse the Grant Funds in a single installment of \$22,066.50. DOC shall disburse the Grant Funds within 30 days of the execution of this Agreement. The Grant Funds may be used solely for Eligible Costs incurred in carrying out the Project. "Eligible Costs" are the reasonable costs incurred by Subgrantee during the Project Period in implementation of the Project, and that are not excluded by DOC, either by this Agreement or by exclusion as a result of financial review or audit.

**b. Conditions Precedent to Disbursement.** DOC's obligation to disburse Grant Funds to Subgrantee is subject to satisfaction, with respect to each disbursement, of each of the following conditions precedent:

- i.** DOC has received funding, appropriations, limitations, allotments or other expenditure authority sufficient to allow DOC, in the exercise of its reasonable administrative discretion, to make the disbursement.
- ii.** Subgrantee is in compliance with the terms of this Agreement.
- iii.** Subgrantee's representations and warranties set forth in Section 6 are true and correct on the date of disbursement with the same effect as though made on the date of disbursement.

**5. Recovery of Unexpended Grant Funds.** Any Grant Funds disbursed to Subgrantee under this Agreement that remain unexpended ("Unexpended Funds") on the earlier of termination of this Agreement, completion of the Project, or the Project End Date, must be returned to DOC. Subgrantee shall return all Unexpended Funds to DOC within 30 days after the earlier of termination of this Agreement, completion of the Project, or the Project End Date.

**6. Representations and Warranties of Subgrantee.** Subgrantee represents and warrants to DOC as follows:

**a. Organization and Authority.** Subgrantee is duly organized and validly existing under the laws of the State of Oregon and is eligible to receive the Grant Funds. Subgrantee has full power, authority, and legal right to make this Agreement and to incur and perform its obligations hereunder, and the making and performance by Subgrantee of this Agreement (1) have been duly authorized by all necessary action of Subgrantee and (2) do not and will not violate any provision of any applicable law, rule, regulation, or order of any court, regulatory commission, board, or other administrative agency or any provision of Subgrantee's charter or other governing documents, (3) do not and will not result in the breach of, or constitute a default or require any consent under any other agreement or instrument to which Subgrantee is a party or by which Subgrantee or any of its properties may be bound or affected. No authorization, consent, license, approval of, filing or registration with or notification to any governmental body or regulatory or supervisory authority is required for the execution, delivery or performance by Subgrantee of this Agreement.

**b. Binding Obligation.** This Agreement has been duly executed and delivered by Subgrantee and constitutes a legal, valid and binding obligation of Subgrantee, enforceable in accordance with its terms subject to the laws of bankruptcy, insolvency, or other similar laws affecting the enforcement of creditors' rights generally.

**c. No Solicitation.** Subgrantee's officers, employees, and agents shall neither solicit nor accept gratuities, favors, or any item of monetary value from contractors, potential contractors, or parties to subagreements. No member or delegate to the Congress of the United States or State of Oregon employee shall be admitted to any share or part of this Agreement or any benefit arising therefrom.

**d. No Debarment.** Neither Subgrantee nor its principals is presently debarred, suspended, or voluntarily excluded from any federally-assisted transaction, or proposed for debarment, declared ineligible or voluntarily excluded from participating in this Agreement by any state or federal agency. Subgrantee agrees to notify DOC immediately if it is debarred, suspended or otherwise excluded by any state or federal agency or if circumstances change that may affect this status, including without limitation upon any relevant indictments or convictions of crimes.

The warranties set in this section are in addition to, and not in lieu of, any other warranties set forth in this Agreement or implied by law.

**7. Records Maintenance and Access; Audit.**

**a. Records, Access to Records and Facilities.** Subgrantee shall make and retain proper and complete books of record and account and maintain all fiscal records related to this Agreement and the Project in accordance with all applicable generally accepted accounting principles, generally accepted governmental auditing standards, state minimum standards for audits of municipal corporations, and in accordance with 2 CFR Part 200, Subpart F.

Subgrantee shall ensure that each of its subgrantees and subrecipients complies with these requirements. DOC, the Secretary of State of the State of Oregon (the "Secretary"), the United States Department of Justice Office of Special Programs, Bureau of Justice Assistance ("USDOJ"), and their duly authorized representatives shall have access to the books, documents, papers and records of Subgrantee that are directly related to this Agreement, the funds provided hereunder, or the Project for the purpose of making audits and examinations. In addition, DOC, the Secretary, USDOJ and their duly authorized representatives may make and retain excerpts, copies, and transcriptions of the foregoing books, documents, papers, and records. Subgrantee shall permit authorized representatives of DOC, the Secretary and USDOJ to perform site reviews of the Project, and to inspect all vehicles, real property, facilities and equipment purchased by Subgrantee as part of the Project, and any transportation services rendered by Subgrantee.

**b. Retention of Records.** Subgrantee shall retain and keep accessible all books, documents, papers, and records that are directly related to this Agreement, the Grant Funds or the Project for a minimum of six (6) years, or such longer period as may be required by other provisions of this Agreement or applicable law, following the Project End Date. If there are unresolved audit questions at the end of the six-year period, Subgrantee shall retain the records until the questions are resolved.

**c. Expenditure Records.** Subgrantee shall document the expenditure of all funds disbursed by DOC under this Agreement. Subgrantee shall create and maintain all expenditure records in accordance with generally accepted accounting principles and in sufficient detail to permit DOC to verify how the moneys were expended.

**d. Audits.** If Subgrantee expends \$750,000 or more in Federal funds (from all sources) in its fiscal year, Subgrantee shall have a single organization-wide audit conducted in accordance with the 2 CFR Part 200, Subpart F (Audit Requirements). Copies of all audits must be submitted to DOC within 30 days of completion. If Subgrantee expends less than \$750,000 in its fiscal year in Federal funds, Subgrantee is exempt from Federal audit requirements for that year. Records must be available for review or audit by appropriate officials as provided in Section 7.a herein.

**e. Audit Costs.** Audit costs for audits not required in accordance with 2 CFR Part 200, Subpart F, are unallowable. If Subgrantee did not expend \$750,000 or more in Federal funds in its fiscal year, but contracted with a certified public accountant to perform an audit, costs for performance of that audit are not Eligible Costs and may not be charged to Grant Funds.

## **8. Subgrantee Procurements.**

**a.** Subgrantee shall make purchases of any housing for the Project under procedures that comply with Oregon law, including all applicable provisions of the Oregon Public Contracting Code and rules, as well as the requirements of 2 CFR §§ 200.317-326, as applicable.

b. All procurement transactions, whether negotiated or competitively bid and without regard to dollar value, shall be conducted in a manner so as to provide maximum open and free competition. Justification must be provided to DOC for any non-competitive or sole-source procurement. Justification should include a description of the housing procured, an explanation of why it was necessary to procure noncompetitively, time constraints and any other pertinent information. All sole source procurements in excess of \$100,000 must receive prior written approval from DOC in addition to any other approvals required by law applicable to Subgrantee. Intergovernmental agreements between units of government are excluded from this requirement to obtain DOC approval of sole source procurements.

c. The Subgrantee shall be alert to organizational conflicts of interest or non-competitive practices among vendors that may restrict or eliminate competition or otherwise restrain trade. A vendor that develops or drafts specifications, requirements, statements of work, or Requests for Proposals (RFP) for a proposed procurement shall be excluded from bidding or submitting a proposal to compete for the award in such procurement. A request for a waiver of this restriction must be submitted to and approved by DOC in advance and in writing.

9. **Default.** Subgrantee shall be in default under this Agreement upon the occurrence of any of the following events:

a. Subgrantee fails to perform, observe or discharge any of its covenants, agreements or obligations set forth herein; or

b. Any representation, warranty or statement made by Subgrantee herein or in any documents or reports relied upon by DOC to monitor implementation of the Project, the use of the Grant Funds or the performance by Subgrantee is untrue in any material respect when made.

10. **Remedies upon Default.** If Subgrantee's default is not cured within 30 calendar days of written notice thereof to Subgrantee from DOC or such longer period as DOC may authorize in its sole discretion, DOC may pursue any remedies available under this Agreement, at law or in equity. Such remedies include, but are not limited to, termination of this Agreement as provided in Section 11.a.ii, suspension of further disbursements of Grant Funds, recovery of Grant Funds, and declaration of ineligibility for the receipt of future awards from DOC.

## 11. **Termination**

a. **Termination by DOC.** DOC may terminate this Agreement upon thirty (30) days advance written notice of termination to Subgrantee. In addition, DOC may terminate this Agreement effective upon delivery of written notice of termination to Subgrantee, or at such later date as may be established by DOC in such written notice, if:

i. Subgrantee fails to implement the Project during the Project Period or commencement or continuation of the Project by Subgrantee is, for any reason, rendered improbable, impossible, or illegal; or

- ii. Subgrantee is in default under this Agreement and has failed to cure the default within the time period specified in Section 10; or
- iii. Subgrantee takes an action without the approval of DOC that, under the provisions of this Agreement, requires the approval of DOC; or
- iv. DOC fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow DOC, in the exercise of its reasonable administrative discretion, to continue to make payments under this Agreement; or
- v. Federal or state laws, rules, regulations or guidelines are modified or interpreted in such a way that the Project is no longer allowable or no longer eligible for funding under this Agreement; or
- vi. The Project would not produce results commensurate with the further expenditure of funds.

**b. Termination by Subgrantee.** Subgrantee may terminate this Agreement effective upon delivery of written notice of termination to DOC, or at such later date as may be established by Subgrantee in such written notice, if:

- i. After conferring with DOC, Subgrantee has determined that the requisite local funding to continue the Project is unavailable to Subgrantee or Subgrantee is unable to continue implementation of the Project as a result of circumstances not reasonably anticipated by Subgrantee at the time it executed this Agreement and that are beyond Subgrantee's reasonable control; or
- ii. Federal or state laws, rules, regulations or guidelines are modified or interpreted in such a way that the Project is no longer allowable or no longer eligible for funding under this Agreement.

**c. Effect of Termination.** Upon termination of this Agreement, DOC may end all further disbursements of Grant Funds; provided, however, that if this Agreement is terminated under Sections 11.a.iv, 11.a.v, 11.a.vi, or 11.b, DOC will disburse Grant Funds to cover Eligible Costs incurred by Subgrantee prior to termination that DOC would otherwise be required to reimburse under the terms and conditions of this Agreement had the Agreement not been terminated. Termination of this Agreement shall not affect Subgrantee's obligations under this Agreement or DOC's right to enforce this Agreement against Subgrantee in accordance with its terms, with respect to Grant Funds actually received by Subgrantee or with respect to portions of the Project actually implemented. Specifically, but without limiting the generality of the preceding sentence, Sections 7 and 12 shall survive termination of this Agreement.

## 12. GENERAL PROVISIONS

**a. Contribution.** 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 DOC or Subgrantee relating to this Agreement or the Project and 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 contribution obligation with respect to the Third Party Claim.

With respect to a Third Party Claim for which DOC is jointly liable with Subgrantee (or would be if joined in the Third Party Claim ), DOC 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 Subgrantee in such proportion as is appropriate to reflect the relative fault of the DOC on the one hand and of the Subgrantee 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 DOC on the one hand and of Subgrantee 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. DOC'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 DOC had sole liability in the proceeding.

With respect to a Third Party Claim for which Subgrantee is jointly liable with DOC (or would be if joined in the Third Party Claim), Subgrantee 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 DOC in such proportion as is appropriate to reflect the relative fault of Subgrantee on the one hand and of DOC 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 Subgrantee on the one hand and of DOC 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. Subgrantee'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.

**b. Dispute Resolution.** The Parties shall attempt in good faith to resolve any dispute arising out of this Agreement. In addition, the Parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation.

**c. Amendments.** This Agreement may be amended only by a written instrument signed by both Parties and approved as required by applicable law.



**d. Duplicate Payment.** Subgrantee is not entitled to compensation or any other form of duplicate, overlapping or multiple payments for costs reimbursed under this Agreement from any agency of the State of Oregon or the United States of America or any other party, organization or individual.

**e. No Third Party Beneficiaries.** DOC and Subgrantee are the only Parties to this Agreement and are the only Parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly or indirectly, to a third person unless such a third person is individually identified by name herein and expressly described as an intended beneficiary of the terms of this Agreement.

Subgrantee acknowledges and agrees that the Federal Government, absent express written consent by the Federal Government, is not a party to this Agreement and shall not be subject to any obligations or liabilities to the Subgrantee or any other person pertaining to any matter resulting from this Agreement.

**f. Notices.** Except as otherwise expressly provided in this Agreement, any notices to be given by a Party to the other Party hereunder shall be given in writing by personal delivery, facsimile, email, or mailing the same by registered or certified mail, postage prepaid, to Subgrantee Contact or DOC Contact at the address or number set forth on the signature page of this Agreement, or to such other addresses or numbers as either Party may hereafter indicate pursuant to this Section 12.f. Any notice personally delivered shall be deemed to be given when actually delivered. Any notice delivered by facsimile shall be deemed to be given when receipt of the transmission is generated by the transmitting machine, and to be effective against DOC, such facsimile transmission must be confirmed by telephone notice to DOC Contact. Any notice by email shall be deemed to be given when the recipient of the email acknowledges receipt of the email. Any notice by registered or certified mail shall be deemed to be given three (3) days after mailing. The parties also may communicate by telephone, regular mail or other means, but such communications shall not be deemed notices under this Section unless receipt by the other Party is expressly acknowledged in writing by the receiving party.

**g. Work Product.** To the extent it has the necessary rights, Subgrantee hereby grants to DOC a non-exclusive, irrevocable, perpetual, royalty-free, license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display for governmental purposes, all documents, reports and works of authorship created, produced or obtained as part of or in connection with the Project ("Work Product"). Subgrantee shall deliver copies of Work Product to DOC upon request. In addition, if applicable law requires that DOC or Subgrantee grant to the United States a license to any intellectual property created, produced or obtained as part of or in connection with the Project, or if applicable law requires that the DOC or the United States own such intellectual property, then Subgrantee shall execute such further documents and instruments as DOC may reasonably request in order to make any such grant or to assign ownership in the intellectual property to the United States or DOC.

**h. Governing Law, Consent to Jurisdiction.**

i. This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law.

ii. Any claim, action, suit or proceeding (collectively, "Claim") between DOC (and/or any other agency or department of the State of Oregon) and Subgrantee that arises from or relates to this Agreement must be brought and conducted solely and exclusively within the Circuit Court of Marion County for the State of Oregon (unless Oregon law requires that it be brought and conducted in another Oregon county). Subgrantee hereby consents to the exclusive jurisdiction of such court, waives any objection to venue, and waives any claim that such form is an inconvenient forum.

iii. Notwithstanding Section 12.h.ii above, if a Claim must be brought in a federal forum, then it must be brought and adjudicated solely and exclusively within the United States District Court for the District of Oregon. This Section 12.h.iii applies to a Claim brought against DOC or any other agency or department of the State of Oregon only to the extent Congress has appropriately abrogated the State of Oregon's sovereign immunity and is not consent by the State of Oregon to be sued in federal court. This Section 12.h.iii is also not a waiver by the State of Oregon of any form of defense or immunity, including but not limited to sovereign immunity and immunity based on the Eleventh Amendment to the Constitution of the United States.

i. **Compliance with Law.** Subgrantee shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to the Agreement or to the implementation of the Project, including without limitation 2 CFR Part 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards) and the federal laws, rules and regulations described in Exhibit B, as applicable. Without limiting the generality of the foregoing, Subgrantee 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.

j. **Insurance; Workers' Compensation.** All employers, including Subgrantee, that employ subject workers who provide services in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. Employer's liability insurance with coverage limits of not less than \$500,000 must be included. Subgrantee shall ensure that each of its subgrantees and subrecipients complies with these requirements.

k. **Independent Contractor.** Subgrantee shall implement the Project as an independent contractor and not as an agent or employee of DOC. Subgrantee has no right or authority to incur or create any obligation for or legally bind DOC in any way. DOC cannot and will not control the means or manner by which Subgrantee implements the Project, except as specifically set forth in this Agreement. Subgrantee is responsible for determining the

appropriate means and manner of implementing the Project. Subgrantee acknowledges and agrees that Subgrantee is not an “officer”, “employee”, or “agent” of DOC, as those terms are used in ORS 30.265, and shall not make representations to third parties to the contrary.

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

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

**n. Integration and Waiver.** This Agreement, including all Exhibits, constitutes the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. The delay or failure of either Party to enforce any provision of this Agreement shall not constitute a waiver by that Party of that or any other provision.

*The signatures of the parties follow on the next page.*

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

**Approved by Subgrantee – Clackamas County Board of Commissioners**

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Signature of Subgrantee

Date

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Name/Title

**Approved by Department of Corrections**

---

Eric McDowell, Contracts Officer

Date

**Approved for Legal Sufficiency**

---

Approved for Legal Sufficiency by AAG Sam Zeigler by email dated August 28, 2020

DOC Contact  
Denise Sitler  
2575 Center Street NE  
Salem, OR 97301  
denise.sitler@doc.state.or.us  
(503) 945-9051

Subgrantee Contact  
Malcolm McDonald  
1024 Main Street  
Oregon City, 97045  
malcolmmcd@co.clacamas.or.us  
(503) 655-8603

## EXHIBIT A

### Project Description

The goal of the Coronavirus Emergency Supplemental Funding grant is to provide funding to assist eligible states, local units of government, and tribes in preventing, preparing for, and responding to the coronavirus. The CESF Program is authorized by Division B of H.R. 748, Pub. L. No. 116-136 (Emergency Appropriations for Coronavirus Health Response and Agency Operations); 28 U.S.C. 530C. Allowable projects and purposes under this Agreement are limited to the housing needs of non-COVID positive clients under the Subgrantee's supervision where those needs are associated with the preparation for, response to, and prevention of the spread of COVID-19.

Subgrantee will use Grant Funds only for client housing.

Project Start Date: January 20, 2020  
GRANT #: CESF-20-25  
GRANTEE PROGRAM CONTACT: Malcolm  
McDonald  
EMAIL: malcolmmcd@clackamas.us  
TELEPHONE: 503-655-8717

Project End Date: January 19, 2022  
CFDA #: 16.034  
GRANTEE FISCAL CONTACT: Nora  
Jones  
EMAIL: norajon@clackamas.us  
TELEPHONE: office 503-655-8780; cell  
503-348-0728

## EXHIBIT B

### Federal Terms and Conditions

- I. Debarment, Suspension, Ineligibility and Voluntary Exclusion. The Subgrantee certifies by accepting grant funds that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, nor voluntarily excluded from participation in this transaction by any Federal department or agency. (This certification is required by regulations published May 26, 1988, implementing Executive Order 12549, Debarment and Suspension, 28 CFR Part 69 and 28 CFR Part 67.)
- II. No Supplanting. The Subgrantee certifies that Federal funds will not be used to supplant State or local funds, but will be used to increase the amount of funds that, in the absence of Federal aid, would be made available for law enforcement activities.
- III. Compliance with Applicable Law. The Subgrantee shall comply with all applicable laws, regulations, and guidelines as written or as amended, of the State of Oregon, the Federal Government and DOC in the performance of this Agreement. Without limiting the generality of the foregoing, Subgrantee shall comply with all laws, rules and guidelines set forth in the most recent version of the *Grant Management Handbook* published by the Oregon Criminal Justice Commission, including but not limited to:
  - A. The provisions of 28 CFR applicable to grants and cooperative agreements including Part 18, Administrative Review Procedure; Part 20, Criminal Justice Information Systems; Part 22, Confidentiality of Identifiable Research and Statistical Information; Part 23, Criminal Intelligence Operating Policies; Part 30, Intergovernmental Review of Department of Justice Programs and Activities; Part 38, Equal Treatment Regulations; Part 42, Non-Discrimination/Equal Employment Opportunity Policies and Procedures; Part 46, Protection of Human Subjects; Part 54, Title IX Regulations; Part 61, Procedures for Implementing the National Environmental Policy Act; Part 63, Floodplain Management and Wetland Protection Procedures, and Federal laws or regulations applicable to Federal assistance programs.
  - B. Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 (P.L. 91-646).
  - C. Section 102(a) of the Flood Disaster Protection Act of 1973, P.L. 93-234, 87 Stat.97, approved December 31, 1976.
  - D. Section 106 of the National Historic Preservation Act of 1966 as amended (16 USC 470), Executive Order 11593, and the Archeological and Historical Preservation Act of 1966 (16 USC 569a-1 et seq.).
  - E. National Environmental Policy Act of 1969, 42 USC 4321 et seq.
  - F. Flood Disaster Protection Act of 1973, 42 USC 4001 et seq.
  - G. Clean Air Act, 42 USC 7401 et seq.
  - H. Clean Water Act, 33 USC 1368 et seq.
  - I. Federal Water Pollution Control Act of 1948, as amended, 33 USC 1251 et seq.
  - J. Safe Drinking Water Act of 1974, 42 USC 300f et seq.
  - K. Endangered Species Act of 1973, 16 USC 1531 et seq.
  - L. Wild and Scenic Rivers Act of 1968, as amended, 16 USC 1271 et seq.

- M. Historical and Archaeological Data Preservation Act of 1960, as amended, 16 USC 469 et seq.
- N. Coastal Zone Management Act of 1972, 16 USC 1451 et seq.
- O. Coastal Barrier Resources Act of 1982, 16 USC 3501 et seq.
- P. Indian Self-Determination Act, 25 USC 450f.
- Q. Hatch Political Activity Act of 1940, as amended, 5 USC 1501 et seq.
- R. Animal Welfare Act of 1970, 7 USC 2131 et seq.
- S. Demonstration Cities and Metropolitan Development Act of 1966, 42 USC 3301 et seq.
- T. Federal Fair Labor Standards Act of 1938 (as appropriate), as amended, 29 USC 201 et seq.
- U. 28 CFR Part 46 and all USDOJ Office of Justice Programs policies and procedures regarding the protection of human research subjects, including obtainment of Institutional Review Board approval, if appropriate, and subject informed consent.

IV. Standard Assurances and Certifications Regarding Lobbying.

- A. No federal appropriated funds have been paid or will be paid, by or on behalf of the Grantee, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or any employee of a member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- B. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the Subgrantee agrees to complete and submit Standard Form-LLL "Disclosure Form to Report Lobbying", in accordance with its instructions.
- C. The DOC will require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subgrantees will certify and disclose accordingly.
- D. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification will be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

V. Certification of Non-discrimination.

The Grantee, and all its contractors and subcontractors, certifies that no person shall

be excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in connection with any activity funded under this Agreement on the basis of race, color, age, religion, national origin, disability, or gender. Subgrantee shall comply with any applicable federal nondiscrimination requirements, which may include the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3789d); the Victims of Crime Act (42 U.S.C. 10604(e)); the Juvenile Justice and Delinquency Prevention Act of 2002 (42 U.S.C. 5672(b)); Title VI the Civil Rights Act of 1964 (42 U.S.C. § 2000d); the Rehabilitation Act of 1973 (29 U.S.C. 794); the Americans with Disabilities Act of 1990 (42 U.S.C. 12131-34); the Education Amendments of 1972 (20 U.S.C. 1681, 1683, 1685-86); the Age Discrimination Act of 1975 (42 U.S.C. 6101-07); 28 C.F.R. pt. 42 (U.S. Department of Justice Regulations – OJJDP Grant Programs); 28 C.F.R. pt. 42, Subparts C, D, E, G, and I, and pt. 54 (U.S. Department of Justice Regulations – Nondiscrimination; Equal Employment Opportunity; Policies and Procedures); Exec. Order No. 13279 (equal protection of the laws for faith-based and community organizations); Exec. Order No. 13559 (fundamental principles and policymaking criteria for partnerships with faith-based and neighborhood organizations); and 28 C.F.R. pt. 38 (U.S. Department of Justice Regulations – Equal Treatment for Faith-Based Organizations).

**In accordance with Federal civil rights laws, the Subgrantee shall not retaliate against individuals for taking action or participating in action to secure rights protected by these laws.**

In the event that a Federal or State court or administrative agency, such as BOLI, makes a finding of discrimination after a due process hearing on the grounds of race, color, age, religion, national origin, disability or gender against the Subgrantee or any of its contractors or subcontractors, the Subgrantee or any of its contractors or subcontractors will forward a copy of the finding to DOC. DOC will forward a copy of the finding to the Office for Civil Rights, Office of Justice Programs.

The addresses for DOC and OCR are as follows:

Oregon Department of Corrections  
2575 Center St NE  
Salem, Oregon 97301

Office for Civil Rights  
Office of Justice Programs  
U.S. Department of Justice  
810 7th Street, NW  
Washington, DC 20531

VI. Systems Requirements.

- A. In order to promote information sharing and enable interoperability among disparate systems across the justice and public safety community, the Office of Justice Programs (OJP) requires the Subgrantee to comply with DOJ's Global Justice Information Sharing Initiative (DOJ's Global) guidelines and recommendations for this particular grant. Subgrantee shall conform to the Global Standards Package (GSP) and all constituent elements, where applicable, as described at: [http://www.it.ojp.gov.gsp\\_grantcondition](http://www.it.ojp.gov.gsp_grantcondition). Subgrantee shall document planned approaches to information sharing and describe compliance to the GSP and



appropriate privacy policy that protects shared information, or provide detailed justification for why an alternative approach is recommended.

- B. Any information technology system funded or supported by OJP funds will comply with 28 C.F.R. Part 23, Criminal Intelligence Systems Operating Policies, if OJP determines this regulation to be applicable. Should OJP determine 28 C.F.R. Part 23 to be applicable, OJP may, at its discretion, perform audits of the system, as per the regulation. Should any violation of 28 C.F.R. Part 23 occur, Subgrantee may be fined as per 42 U.S.C 3789g(c)-(d). Subgrantee may not satisfy such a fine with federal funds.
- C. Subgrantee understands and agrees that – (a) No award funds may be used to maintain or establish a computer network unless such network blocks the viewing, downloading, and exchanging of pornography, and (b) Nothing in subsection (a) limits the use of funds necessary for any Federal, State, tribal or local law enforcement agency or any other entity carrying out criminal investigations, prosecution, or adjudication activities.
- D. To avoid duplicating existing networks or information technology systems in any initiatives funded by OJP, Bureau of Justice Assistance (BJA) for law enforcement information sharing systems which involve interstate connectivity between jurisdictions, such systems shall employ, to the extent possible, existing networks as the communication backbone to achieve interstate connectivity, unless the Subgrantee can demonstrate to the satisfaction of BJA that this requirement would not be cost effective or would impair the functionality of an existing or proposed information technology system.

VII. Services to Limited-English-Proficient (LEP) Persons.

National origin discrimination includes discrimination on the basis of limited English proficiency (LEP). To ensure compliance with Title VI and the Safe Streets Act, the DOC and grantees are required to take reasonable steps to ensure that LEP persons have meaningful access to their programs. Meaningful access may entail providing language assistance services, including interpretation and translation services, where necessary. Grantees are encouraged to consider the need for language services for LEP persons served or encountered both in developing their proposals and budgets and in conducting their programs and activities. Reasonable costs associated with providing meaningful access for LEP individuals are considered allowable program costs. The U.S. Department of Justice has issued guidance for grantees to assist them in complying with Title VI requirements. The guidance document can be accessed on the Internet at [www.lep.gov](http://www.lep.gov).

- VIII. Equal Employment Opportunity Plan (EEOP). The Subgrantee will provide an Equal Employment Opportunity Plan (EEOP) to the Office for Civil Rights, Office of Justice Programs (OCR) and the DJCS, if it has received a single award of \$500,000 or more. If the Subgrantee receives \$25,000 or more and has 50 or more employees, it will maintain a current EEOP on file and submit an EEOP Certification Form to the OCR, certifying that its EEOP is on file. For public Subgrantee agencies receiving less than \$25,000, or public Subgrantee agencies with fewer than 50 employees, regardless of the amount of the award, the

Subgrantee will provide an EEOP Certification Form to the OCR certifying it is not required to submit or maintain an EEOP. EEOP Certification Forms are available at: <http://www.ojp.usdoj.gov/about/ocr/pdfs/cert.pdf>:

If required to formulate an EEOP, the Subgrantee must maintain a current copy on file which meets the applicable requirements. **The Subgrantee must complete the EEOP certification and submit the Certification or the EEOP document (as applicable) within 60 days of contract execution.**

IX. National Environmental Policy Act (NEPA); Special Condition for U.S. Department of Justice Grant Programs.

A. Prior to obligating grant funds, Subgrantee agrees to first determine if any of the following activities will be related to the use of the grant funds. Subgrantee understands that this special condition applies to its following new activities whether or not they are being specifically funded with these grant funds. That is, as long as the activity is being conducted by the Subgrantee, a contractor, subcontractor or any third party and the activity needs to be undertaken in order to use these grant funds, this special condition must first be met. The activities covered by this special condition are:

1. new construction;
2. minor renovation or remodeling of a property either (a) listed on or eligible for listing on the National Register of Historic Places or (b) located within a 100-year floodplain;
3. a renovation, lease, or any other proposed use of a building or facility that will either (a) result in a change in its basic prior use or (b) significantly change its size; and
4. implementation of a new program involving the use of chemicals other than chemicals that are (a) purchased as an incidental component of a funded activity and (b) traditionally used, for example, in office, household, recreational, or educational environments.

B. Application of This Special Condition to Grantee's Existing Programs or Activities: For any of the Grantee's or its contractors' or subcontractors' existing programs or activities that will be funded by these grant funds, the Grantee, upon specific request from the Bureau of Justice Assistance, agrees to cooperate with the Bureau of Justice Assistance in any preparation by the Bureau of Justice Assistance of a national or program environmental assessment of that funded program or activity.

X.. Certification Regarding Drug Free Workplace Requirements. Subgrantee certifies that it will provide a drug-free workplace by:

A. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in

the Grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

- B. Establishing a drug-free awareness program to inform employees about:
    - 1. The dangers of drug abuse in the workplace;
    - 2. The Grantee's policy of maintaining a drug-free workplace;
    - 3. Any available drug counseling, rehabilitation, and employee assistance programs; and
    - 4. The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace.
  - C. Requiring that each employee engaged in the performance of the grant be given a copy of the employer's statement required by paragraph (1).
  - D. Notifying the employee that, as a condition of employment under the award, the employee will:
    - 1. Abide by the terms of the statement; and
    - 2. Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace not later than five days after such conviction.
  - E. Notifying the Subgrantee within ten days after receiving notice from an employee or otherwise receiving actual notice of such conviction.
  - F. Taking one of the following actions, within 30 days of receiving notice, with respect to any employee who is so convicted:
    - 1. Taking appropriate personnel action against such an employee, up to and including termination; or
    - 2. Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by Federal, State, or local health, law enforcement, or other appropriate agency.
  - G. Making a good faith effort to continue to maintain a drug-free workplace.
- XI. No Text Messaging While Driving. Pursuant to Executive Order 13513, "Federal Leadership on Reducing Text Messaging While Driving," Subgrantee is encouraged to adopt and enforce policies banning employees from text messaging while driving any vehicle during the course of performing work funded by this Agreement and to establish workplace safety policies and conduct education, awareness and other outreach to decrease crashes caused by distracted drivers.

## EXHIBIT C

### Federal Award and Subaward Information Information required by 2 CFR § 200.331(a)(1)\*

#### Federal Award Identification:

1. Subrecipient name (which must match registered name in DUNS): Clackamas County
2. Subrecipient's unique entity identifier (e.g. DUNS number): 096992656
3. Federal Award Identification Number (FAIN): 2020-VD-BX-0540
4. Federal Award Date: May 14, 2020
5. Sub-award Period of Performance Start and End Date: From January 20, 2020 to January 19, 2022
6. Total Amount of Federal Funds Obligated by this Agreement: \$22,066.50
7. Total Amount of Federal Funds Obligated to the Subrecipient by the pass-through entity including this Agreement\*\*: \$22,066.50
8. Total Amount of Federal Award committed to the Subrecipient by the pass-through entity: \$22,066.50
9. Federal award project description: CESF for housing non-COVID positive clients
10. Name of Federal awarding agency, pass-through entity, and contact information for awarding official of the pass-through entity:
  - (a) Name of Federal awarding agency: Bureau of Justice Assistance
  - (b) Name of pass-through entity: State of Oregon acting by and through its Department of Corrections
  - (c) Contact information for awarding official of the pass-through entity: Denise Sitler 2575 Center Street NE, Salem, OR 97301, denise.sitler@doc.state.or.us (503) 945-9051
11. CFDA Number and Name: 16.034 Coronavirus Emergency Supplemental Funding Program  
Amount: \$22,066.50
12. Is Award Research and Development?  Yes  No
13. Indirect cost rate for the Federal award: 10 %

\*For the purposes of this Exhibit, the term "Subrecipient" refers to Grantee, and the term "pass-through entity" refers to DOC.

\*\*The Total Amount of Federal Funds Obligated to the Subrecipient by the pass-through entity is the Total Amount of Federal Funds Obligated to the Subrecipient by the pass-through entity during the current fiscal year.

**COUNTY COUNSEL  
DOCUMENT REVIEW - TRANSMITTAL FORM**

**DATE:** 09/15/2020

**TO COUNTY COUNSEL ATTORNEY:** Jeff Munns

**FROM:** Nora Jones

**EXTENSION:** 8780      **DEPARTMENT/DIVISION:** Community Corrections

**BILL TO** 219 1320 06240 431420

**TYPE OF DOCUMENTS:** Subgrant Agreement #6034

**NAME OF DOCUMENTS:** Corona Virus Emergency Supplemental Funding (CESF) Grant Agreement

**REQUESTED RETURN DATE:** 09/21/2020

**Requestor Comments:** This is a subgrant from DOC to provide emergency housing for non-COVID positive clients.

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**APPROVED AS TO FORM:**

**County Counsel:** \_\_\_\_\_  


**Date:** 9/16/2020 \_\_\_\_\_

**Counsel Comments:**  
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