

AGENDA

Thursday July 12, 2018 - 10:00 AM
BOARD OF COUNTY COMMISSIONERS

Beginning Board Order No. 2018-69

CALL TO ORDER

- Roll Call
- Pledge of Allegiance

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

II. BOARD DISCUSSION ITEM *(The following item will be individually discussed by the Board, followed by Board action.)*

Public & Government Affairs

1. Resolution No. _____ Supporting Efforts and Policies to Assist those Dealing with Drug and Opioid Abuse Addiction (Gary Schmidt, PGA)

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 for an Intergovernmental Agreement with the City of Lake Oswego for Medical Direction for the Lake Oswego Fire Department and Communications Center – *Public Health*
2. Approval for a Renewal Intergovernmental Agreement with Oregon Health & Science University for Emergency Medical Services – *Public Health*
3. Approval of Amendment No. 5 to the Intergovernmental Agreement with Multnomah County, for a Public Health Officer – *Public Health*
4. Approval to Apply for Opioid Affected Youth Initiative Funding through the Office of Juvenile Justice and Delinquency Prevention – *Children, Youth & Families*
5. Approval to Sign an Inter-Governmental Agreement for a Grant to Provide Free Birth Certificates for Homeless Persons through the Oregon Health Authority – *Social Services*

6. Approval of Intergovernmental Agreement No. 154433, Amendment No. 3 with the State of Oregon Department of Human Services, Aging and People with Disabilities Division for the Provision of Services to Clackamas County Residents age 60 and over– *Social Services*
7. Approval of a Construction Contract with Kerr Contractors Oregon, Inc. for the Fenton Avenue Improvements Project in Molalla – *Housing & Community Development*
8. Approval of an Amendment to the Agency Service Contract with Cascadia Behavioral Healthcare for Assertive Community Treatment Programs – *Behavioral Health*
9. Approval of an Agency Services Contract with Cascadia Behavioral Healthcare for Outpatient Substance Abuse Services for Uninsured and Indigent Clackamas County Residents – *Behavioral Health*
10. Approval of an Agency Services Contract with Cascadia Behavioral Healthcare for Outpatient Mental Health Services for Uninsured and Indigent Residents of Clackamas County – *Behavioral Health*
11. Approval of an Agency Services Contract No. 8850 with Lifeworks Northwest for Intensive Case Management Services – *Behavioral Health*
12. Approval of an Agency Services Contract with LifeWorks Northwest for Outpatient Substance Abuse Services for Uninsured and Indigent Clackamas County Residents – *Behavioral Health*
13. Approval of the Intergovernmental Agreement (IGA) with Multnomah County for Psychiatric Consultation and Expert Opinion on Cases Involving Health Share Clackamas Clients – *Behavioral Health*
14. Approval of an Agreement with Four Seasons Heating and Air Conditioning, Inc. for Weatherization Specialty Contractors – *Procurement*

B. Department of Transportation & Development

1. Approval of a Supplemental Project Agreement No. 32533 with Oregon Department of Transportation for the 232nd Drive at MP 0.3 Project
2. Board Order No. _____ Adopting a Vacation of a Portion of 80th Avenue
3. Approval of a Contract with Ennis Paint, Inc. DBA Ennis-Flint For White and Yellow Lead-Free Paint and ThermoPlastic – *Procurement*
4. Approval of a Contract with Potters Industries, LLC for Visibead Plus II for Road Striping on County Roads – *Procurement*
5. Approval of a Contract with Potters Industries, LLC for Visilok Drying Agent for Road Striping on County Roads - *Procurement*
6. Approval of a Contract with PCR, Inc. for Dickey Prairie Road Pavement Distress Mitigation - *Procurement*
7. Approval to Apply for the BUILD Discretionary Transportation Grant to Replace the Bridge Across the Bull Run River

C. Elected Officials

1. Approval of Previous Business Meeting Minutes – *BCC*
2. Approval of an Intergovernmental Agreement between the Clackamas County Sheriff's Office and the State of Oregon Department of Transportation for Participation in the Oregon Motor Carrier Safety Action Plan - *CCSO*
3. Approval of the Office for Violence Against Women 2018-2020 Sub-recipient Grant Award for the District Attorney's Office, Victim Assistance Program – *District Attorney*

D. Disaster Management

1. Approval of FY15-16 Urban Area Security Initiative (UASI) Sub-recipient Grant Agreement with South Fork Water Board

E. Juvenile Department

1. Approval of Intergovernmental Agreement with City of West Linn for Youth Work Crews for the Project Payback Program
2. Approval of Intergovernmental Agreement with Clackamas Education Service District (ESD) to Provide Education and Vocational Opportunities for At-Risk Youth

F. Business & Community Services

1. Approval of an Intergovernmental Agreement with the City of Gladstone to provide Library Director Services

G. Technology Services

1. Approval of ORMAP Intergovernmental Agreement Contract # 3712-18 with the Oregon Department of Revenue for Digital GIS Tax Lot Conversion

IV. NORTH CLACKAMAS PARKS & RECREATION DISTRICT

1. Approval of a Grant Agreement with the Oregon State Marine Board (OSMB) as part of the Maintenance Assistance Program (MAP) for FY 2018-19
2. Approval of Amendment No. 3 to a Lease Agreement with Phoenix Investment Group

V. DEVELOPMENT AGENCY

1. Approval of an Amendment to the Intergovernmental Agreement with Water Environment Services and Transfer of Easements for Wetland Mitigation Services and Option to Purchase Property

VI. WATER ENVIRONMENT SERVICES

1. Approval of an Amendment to the Intergovernmental Agreement with Clackamas County Development Agency and Transfer of Easements for Wetland Mitigation Services and Option to Purchase Property
2. Approval of a Public Improvement Contract between Water Environment Services and James W. Fowler Co. For Tri-City Water Resource Recovery Facility (WRRF) Solids Handling Improvements Project

VII. COUNTY ADMINISTRATOR UPDATE

VIII. COMMISSIONERS COMMUNICATION

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

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



Board of County Commissioners
Clackamas County

Members of the Board:

Approval of Resolution Supporting Efforts and Policies to Assist
Those Dealing with Drug and Opioid Abuse Addiction

Purpose/Outcome	Resolution #_____ acknowledges the will of the Board of County Commissioners to support efforts to assist those dealing with drug and opioid abuse addiction.
Dollar Amount and Fiscal Impact	N/A
Funding Source	N/A
Duration	Effective July 12, 2018
Strategic Plan Alignment	Ensure safe, healthy and secure communities.
Previous Board Action	At a policy session on June 19, 2018, the Board directed staff to present this resolution at a Board Business Meeting for approval.
Contact Person	Gary Schmidt, Director, Public and Government Affairs, 503-742-5908
Contract No.	N/A

BACKGROUND:

On June 19, 2018, the Clackamas County Board of Commissioners requested consideration of a resolution supporting efforts and policies to assist those dealing with drug and opioid abuse addiction. The City of Milwaukie approved a similar resolution earlier this year.

Clackamas County Public Health currently uses data driven programming and interventions to enhance community-based opioid prevention, treatment, and recovery efforts. This data driven approach helps to identify areas in the county at greatest risk for opioid addiction and designs and implements programming to decrease harms and overdose deaths caused by opioids.

Clackamas County actively supported HB 4143 during the 2018 State Legislative Session, which advanced policy recommendations by the Governor’s Opioid Task Force and now requires the state to study and report on the existing barriers to effective treatment, requires all prescribing health practitioners to register with Oregon’s Prescription Drug Monitoring Program, and establishes a pilot project in four Oregon counties to determine the effectiveness of establishing immediate access to treatment for persons suffering from opiate overdoses.

Clackamas County has been identified as having the highest prescription rates in the Portland Metro Region, higher than state average in Oregon.

RECOMMENDATION:

Staff recommends the Board approve this resolution. Passing this resolution reinforces the Board's commitment to continue supporting efforts that curb drug and opioid abuse in Clackamas County, establish standards for appropriate prescription guidelines, educating the public on the dangers and stigmas surrounding drug and opioid addiction, and expanding treatment and recovery options to people in need.

Respectfully submitted,

Gary Schmidt
Director, Public and Government Affairs

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

**In the Matter of Supporting
Efforts and Policies to Assist
Those Dealing With Opioid
Abuse and Addiction**



Resolution No. _____

Page 1 of 2

Whereas, an unprecedented drug abuse and opioid epidemic is ravaging communities across the United States, with an estimated 64,000 people dying in 2016 from drug overdoses – nearly double the number from a decade earlier; and

Whereas, Clackamas County’s opioid prescribing rates are the highest in the Portland region and above the state average; and

Whereas, In 2015 pharmacies dispensed more than 417,000 opioid prescriptions in Clackamas County, which is more than the 401,000 residents of Clackamas County; and

Whereas, Clackamas County has joined Multnomah and Lane Counties in a lawsuit against opioid manufacturers, alleging they maximized profits by “waging a campaign of falsehoods” to addict chronic-pain patients to opioids; and

Whereas, states and communities across the nation are overwhelmed by the current epidemic of opioid abuse and addiction and are struggling to respond to and ameliorate the problem; and

Whereas, addiction should be treated as a chronic illness rather than a criminal act, removing the negative stigma and opening the door for treatment and recovery; and

Whereas, the most important factors to support recovery include safe housing, stable employment, and peer support services;

Whereas, millions of patients suffering from addiction are unable to access the care they need due to a lack of treatment providers, funding, and options, including medication-assisted treatment and inpatient services.

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

**In the Matter of Supporting
Efforts and Policies to Assist
Those Dealing With Opioid
Abuse and Addiction**



Board Order No. _____

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**NOW THEREFORE, the Clackamas County Board of County
Commissioners resolves as follows:**

1. To support and implement policies and practices that prevent opioid addiction and to assist those with addiction in obtaining access to quality, affordable services and will support policies that:
 - Focus on education and prevention of opioid misuse and abuse;
 - Expand and fund treatment and recovery options through federal and state funding;
 - Encourage collaboration among officials and institutions representing public health, behavioral health, public safety, education, and healthcare;
 - Reduce risks to patients by making pain treatment safer and more accessible, emphasizing the use of non-opioid treatments for pain;
 - Ensure timely access to behavioral health interventions and enforce mental health parity laws;
 - Support safe disposal of unused or expired prescription opioids;
 - Support harm reduction through access to syringe exchange services and distribution of naloxone to those most at-risk of overdose; and
 - Encourage and support innovative public safety approaches such as the Behavioral Health Unit, Law Enforcement Assisted Diversion, and Community Paramedics.

DATED this 12th day of July, 2018

BOARD OF COUNTY COMMISSIONERS

Chair

Recording Secretary

July 12, 2018

Board of County Commissioner
 Clackamas County

Members of the Board:

Approval for an Intergovernmental Agreement with The City of Lake Oswego for Medical Direction for the Lake Oswego Fire Department and Communications Center

Purpose/Outcomes	This Agreement provides the basis for a cooperative working relationship for the provision of medical direction for the Lake Oswego Fire Department (LOFD) and Lake Oswego Communications Center (LOCOM).
Dollar Amount and Fiscal Impact	Maximum contract value is \$12,000.
Funding Source	Emergency Medical Services Coordination – No General Funds are used.
Duration	Effective July 1, 2018 and terminates on June 30, 2019
Previous Board Action	The Board of County Commissioners previously reviewed this agreement on June 26, 2013 agenda item 062913-A10 ,June 05, 2015 agenda item 060514-A2, June 25, 2015 agenda item 062515-A4, July 7, 2016 agenda item 070716-A1, and June 29, 2017 agenda item 062917-A1
Strategic Plan Alignment	1. Improved community safety and health 2. Ensure safe, healthy and secure communities
Contact Person	Dawn Emerick 503-655-8479
Contract No.	8768

Background

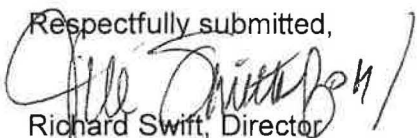
The Clackamas County Public Health Division (CCPHD) of the Health, Housing & Human Services Department requests the approval of an Agreement with the City of Lake Oswego to provide Medical Direction for the Fire Department and Communications Center. This Agreement provides the basis for a cooperative working relationship for the provision of medical direction for the Lake Oswego Fire Department (LOFD) and Lake Oswego Communications Center (LOCOM) such as, developing a program to ensure LOFD meets the state requirements and to establish performance standards. This agreement will ensure that LOFD first responders meet requirements and protocols for the provision of EMS care.

The maximum contract value is \$12,000. This agreement is effective July 1, 2018 and expires on June 30, 2019. County Counsel reviewed this Agreement on June 20, 2018.

RECOMMENDATION:

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

Respectfully submitted,



Richard Swift, Director
 Health, Housing, and Human Services

**INTERGOVERNMENTAL AGREEMENT
BETWEEN
CLACKAMAS COUNTY
AND
THE CITY OF LAKE OSWEGO**

Contract # 8768

I. Purpose

- A. This Agreement is entered into between the Clackamas County (County) and the City of Lake Oswego (City) for the cooperation of units of local government under the authority of ORS 190.010.
- B. This Agreement provides the basis for a cooperative working relationship for the provision of medical direction for the Lake Oswego Fire Department (LOFD) and Lake Oswego Communications Center (LOCOM) and Lake Oswego Police Department (LOPD).

II. Scope of Cooperation

A. County agrees to:

- 1. Assign a mutually agreed upon physician to provide Medical Director Services to LOFD and LOCOM.
- 2. Meet with LOFD personnel on a mutually agreed upon schedule to develop a program to:
 - a. Ensure that LOFD EMS providers meet Oregon State requirements for licensure and have the knowledge, skills and abilities to perform at the standards determined jointly by County and LOFD.
 - b. Evaluate each EMS Provider's skill performance annually.
 - c. Provide case reviews.
 - d. Oversee and direct training courses.
 - e. Oversee and direct a quality improvement program.
- 3. Provide medical direction and approval of Priority Dispatch Cards and case reviews for LOCOM dispatchers.
- 4. Oversee the maintenance, use, and documentation of all Automatic External Defibrillators (AEDs) provided for use by the City of Lake Oswego, in accordance with Federal and State regulations.
- 5. Provide contact information so that LOFD personnel can contact assigned Medical Director (or designee) in a timely manner.

B. City agrees to:

- 1. Meet with County personnel on a mutually agreed upon schedule to develop and maintain a program to:
 - a. Ensure that LOFD EMS providers meet Oregon State requirements for licensure and have the knowledge, skills and abilities to perform at the standards determined jointly by County and LOFD.
 - b. Evaluate each EMS Provider's skill performance annually.

- c. Provide case reviews.
 - d. Oversee and direct training courses.
 - e. Oversee and direct a quality improvement program.
2. Provide an EMS Coordinator to:
 - a. Coordinate training exercises and skill monitoring.
 - b. Maintain a computerized CQI database of all procedures and relevant training for all EMS providers.
 - c. Coordinate case reviews and necessary training for LOCOM dispatchers.
 - d. Provide periodic reports to guide training efforts.
 - e. Organize the classes and locations, obtain instructors, and will notify Medical Director at least two (2) months in advance of the class as to Medical Director's role in said courses.
3. City further agrees to the following regarding the authority of the Medical Director:
 - a. The City will not permit its EMS Providers to practice at a level other than that approved by Medical Director.
 - b. LOFD personnel will not practice under the medical direction or protocol of any physician other than the one assigned by mutual agreement with the exception of on-line medical control or direct in-person physician supervision provided during patient encounters.
 - c. As per ORS 682.245, Medical Director has the final decision with respect to the standing orders and written authorization to provide EMS care by LOFD Department personnel.
 - d. Medical Director may require specific remedial action to correct deficiencies noted in the continuous quality improvement process, or identified violations of federal, state and local laws or regulations.
 - e. County is not an employer of its EMTs, and City acknowledges that no employment relationship exists between County and the EMTs employed by the City.

III. Compensation

- A. City will pay to County an amount not to exceed \$ 12,000.00 for services described in section 2A. Payments shall be requested and made as follows:

Payment of \$1,000.00 will be requested monthly by invoice from County. Payment will be made by City within 30 days of receipt of invoice.

- B. All checks shall be made payable to Clackamas County and mailed to the following address:

Clackamas County Finance
Attn: Cheryl Bowen, Accounts Receivable
2051 Kaen Road
Oregon City, OR 97045

IV. Liaison Responsibility

Liaison from City will be:

Larry Goff, Chief, Lake Oswego Fire Department
PO Box 369, Lake Oswego, OR 97034
(503) 697-7410
lgoff@ci.oswego.or.us

Liaison from County will be:

Philip Mason
2051 Kaen Road, Suite 367, Oregon City, OR 97045
(503) 742-5956
PMason@clackamas.us

V. Other Terms

- A. Compliance with Laws. County and City agree to comply with all applicable local, state, and federal ordinances, statutes, laws and regulations.
- B. No Assignment. This agreement may not be subcontracted, assigned or transferred by either party without the express written consent of the other party.
- C. Entire Agreement; Amendment. This agreement constitutes the entire agreement between the parties, and may be modified only in writing signed by both parties. This agreement may be amended at any time with the written agreement of both parties.
- D. Indemnification and Hold Harmless. Subject to the limitations of liability for public bodies set forth in the Oregon Tort Claims Act, ORS 30.260 to 30.300, and the Oregon Constitution, each party agrees to hold harmless, defend, and indemnify each other, including its officers, agents, and employees, against all claims, demands, actions and suits (including all attorney fees and costs) arising from the indemnitor's performance of this Agreement where the loss or claim is attributable to the negligent acts or omissions of that party.
- E. Notice of Litigation. Each party shall give the other immediate written notice of any action or suit filed or any claim made against that party that may result in litigation in any way related to this Agreement.
- F. Insurance. Each party agrees to maintain insurance levels or self-insurance in accordance with ORS 30.282, for the duration of this Agreement at levels necessary to protect against public body liability as specified in ORS 30.269 through 30.274.

VI. Term of Agreement

- A. The term of this agreement is a period beginning July 1, 2018 and ending June 30, 2019. City may elect to renew this Agreement upon the same terms and conditions for additional one-year periods. Renewal shall occur upon written notice to County not sooner than 120 days nor later than 60 days prior to the completion date stated above, and the same date of each year thereafter for which the Agreement is renewed.

VII. Termination

- A. This agreement may be terminated by either party upon 30 days written notice.
- B. This agreement may be terminated at any time for nonperformance of any material term of this agreement.
- C. This agreement may be terminated at any time by mutual agreement of the County and the City.

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.

CITY OF LAKE OSWEGO

Authorized Signature

Date

Street Address

City/State/ZIP

Phone Number / Email

CLACKAMAS COUNTY

Commissioner: Jim Bernard, Chair

Commissioner: Sonya Fischer

Commissioner: Ken Humberston

Commissioner: Paul Savas

Commissioner: Martha Schrader

Signing on Behalf of the Board:

Richard Swift, Director
Health, Housing, and Human Services

Date

July 12, 2018

Board of County Commissioner
Clackamas County

Members of the Board:

Approval for a renewal Intergovernmental Agreement with Oregon Health & Science University for Emergency Medical Services

Purpose/Outcomes	This agreement provides on-line medical direction, trauma communications coordination, and central data collection for Emergency Medical Services in Clackamas County by Oregon Health & Science University.
Dollar Amount and Fiscal Impact	Maximum contract value is \$101,778.
Funding Source	Emergency Medical Services Coordination – No General Funds are used.
Duration	Effective July 1, 2018 and terminates on June 30, 2021
Previous Board Action	The Board of County Commissioners last reviewed and approved on July 9, 2015 agenda item 070915-A6, May 31, 2012 agenda item 053112-A7
Strategic Plan Alignment	1. Improved community safety and health 2. Ensure safe, healthy and secure communities
Contact Person	Dawn Emerick 503-655-8479
Contract No.	8919

Background

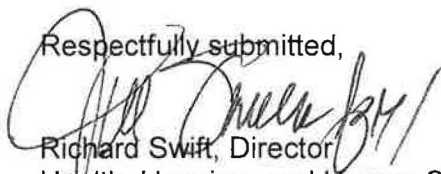
The Clackamas County Public Health Division (CCPHD) of the Health, Housing & Human Services Department requests the approval of an Agreement with Oregon Health & Science University (OHSU), Department of Emergency Medicine for the continuation of consultation for Emergency Medical Services. OHSU provides on-line medical direction, trauma communications coordination, and central data collection.

The maximum contract value is \$101,778. This Agreement is effective July 1, 2018 and expires on June 30, 2021. County Counsel reviewed this Agreement on June 26, 2018.

RECOMMENDATION:

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

Respectfully submitted,



Richard Swift, Director
Health, Housing, and Human Services

AGREEMENT BETWEEN
CLACKAMAS COUNTY
AND
OREGON HEALTH & SCIENCE UNIVERSITY
FOR EMERGENCY MEDICAL SERVICES

This is an Agreement between Clackamas County ("COUNTY") and Oregon Health & Science University ("OHSU"), an Oregon public corporation on behalf of the Department of Emergency Medicine ("CONSULTANT") for provision of Emergency Medical Services.

WHEREAS, OHSU is a public corporation organized for the purpose of improving human health through its four-part mission of education, patient care, research and public service; and

WHEREAS, PHYSICIAN, is an employee of OHSU and a member of the OHSU Practice Plan; and

WHEREAS, COUNTY requires Emergency Medical Services which CONSULTANT(s) are willing and able to provide;

NOW, THEREFORE, the parties agree to enter into the following agreement:

1. TERM OF AGREEMENT

This agreement will be effective upon the date of the last signature and will be for the period beginning June 30, 2018 and ending June 30, 2021.

2. SCOPE OF WORK

a. CONSULTANT Responsibilities:

i. ONLINE MEDICAL DIRECTION. OHSU shall furnish on-line medical direction and comply with the following performance indicators:

1. Calls requesting on-line medical direction shall be answered by a physician within sixty (60) seconds at least ninety percent (90%) of the time.
2. OHSU shall provide a process to assure that physicians are knowledgeable of the protocols. This process may include but not be limited to educational sessions, tests, and in-service training for protocol updates.
3. OHSU shall develop a process for adoption of Standard Operating Procedures (SOPs) which govern online medical direction. OHSU shall adhere to the SOPs at all times.
4. OHSU shall provide a plan, which details a problem-solving process for any complaint or issue presented to OHSU's Medical Resource Hospital (MRH) medical director or communications coordinator. This plan shall assure a compliant resolution which must be furnished to COUNTY no more than thirty (30) days from date of complaint filing.
5. OHSU shall implement a quality assurance/quality improvement process which reviews standards, operations, and performance, identifying problems and their solutions.
6. OHSU shall participate in COUNTY's quality assurance process by providing a staff member, when requested, and by providing medical resource hospital data and information on a timely basis as requested by the Quality Assurance Subcommittee.

7. OHSU will, through COUNTY, provide real-time EMS patient disposition management assistance in the setting of a mass-casualty incident (MCI). Management protocols will be compliant with County and ATAB I MSCI protocols.
 - ii. TRAUMA COMMUNICATIONS COORDINATION. OHSU shall provide trauma communications coordination and comply with the following performance indicators. The trauma communications coordination function is being provided at the request of the Area Trauma Advisory Board (ATAB).
 1. Trauma communication coordination requests shall be answered within ten (10) seconds ninety percent (90%) of the time.
 2. OHSU shall develop a process for adoption of Standard Operating Procedures (SOPs) which govern trauma communications coordination. OHSU shall adhere to the SOPs at all times.
 3. OHSU shall provide a plan which details a problem-solving process for any complaint. This plan shall assure a compliant resolution which must be furnished to COUNTY no more than thirty (30) days from date of complaint filing.
 - iii. CENTRAL DATA COLLECTION. OHSU shall be responsible for central data collection for on-line medical direction and trauma communication coordination activities. OHSU shall comply with the following performance indicators:
 1. OHSU shall collect this data from emergency medical technicians when they contact OHSU for on-line medical direction or trauma communication coordination functions.
 2. MRH calls shall be tape recorded.
 3. Voice tapes shall be retained for a period of not less than twelve (12) months.
 4. OHSU shall also provide COUNTY with proof of accreditation by DNV GL Healthcare USA, Inc. on NIAHO Hospital Accreditation Program and proof that it meets or exceeds all requirements of MCC 6.31.060 (A-6) and rules adopted pursuant thereto.
- b. COUNTY Responsibilities:
- i. COUNTY shall pay OHSU according to Section 3 of this agreement. This compensation is guaranteed through June 30, 2021. OHSU shall retain the right, upon sixty (60) days prior written notice to COUNTY, to adjust the compensation for each year thereafter. If the parties cannot mutually agree on a new compensation schedule, the Agreement may be terminated under the provisions hereof.

3. COMPENSATION

- a. Compensation for CONSULTANT services will be as follows:

The parties agree to increase the payment provided to OHSU for services provided under this agreement by three percent per year beginning June 30, 2018. The compensation rate for this agreement shall be as follows:

July 1, 2018-June 30th 2019: \$32,929 per year
July 1, 2019-June 30th 2020: \$33,916 per year
July 1, 2020-June 30th 2021: \$34,933 per year

- b. OHSU will send invoices within 180 days of the date of service to:
 - Clackamas County
 - Public Services Building
 - Attn: Jenyfer Smith
 - 2051 Kaen Road
 - Oregon City, OR 97045
 - (503) 742-5945

- c. COUNTY will reimburse OHSU quarterly upon receipt of an invoice and make checks payable to "OHSU" and mail to:
 - Oregon Health & Science University
 - Attn: Cashier's Office
 - Mail Code: L002
 - 3181 SW Sam Jackson Park Road
 - Portland, OR 97201-3098

4. CONSULTANT AND OFF CAMPUS AUTHORIZATION

- a. The CONSULTANT(s) performing work under this agreement are from the OHSU Department of Emergency Medicine.
- b. CONSULTANTS providing clinical consultation at non-OHSU locations are required to obtain authorization from the President of OHSU or a representative of the President.
- c. Off campus authorization for the service to be provided under this agreement is for the Term of this agreement.
- d. If this contract continues beyond June 30, 2021, then off campus authorization must be obtained by the CONSULTANT for the period following. If authorization is not approved for the additional period, then the contract will automatically terminate as of June 30, 2021.
- e. This Agreement constitutes express authorization from the President of OHSU for the CONSULTANT to provide the services outlined in Section 2a of this Agreement at COUNTY.

5. CONTACT INFORMATION

- a. OHSU DEPARTMENT
 - Mirjana Kasap Trifunovic, JD
 - Oregon Health & Science University
 - Department Administrator
 - Department of Emergency Medicine
 - 745 SW Gaines Road, Mail Code: CDWEM
 - Portland, OR 97239
 - Phone: 503-494-4322
 - Email: kasaptri@ohsu.edu

- b. OHSU CONTRACTING & NOTICES ADDRESS
 - Erin K Blume
 - Managed Care Contracting
 - 3181 SW Sam Jackson Park Road, Mail Code L326
 - Portland, OR 97239
 - Phone: 503-494-4073
 - Fax: 503-494-1293
 - Email: blumee@ohsu.edu

c. COUNTY CONTACT INFORMATION

Jeanne Weber
Contract Specialist
2051 Kaen Rd Ste 367
Oregon City, OR 97045
PHONE 503-742-5350
FAX 503-742-5352
EMAIL: jweber2@clackamas.us

d. OHSU RISK MANAGEMENT

Tamara Goldsmith
Risk Management Coordinator
goldsmta@ohsu.edu

6. RELATIONSHIPS

OHSU and COUNTY intend that the relationship between OHSU and COUNTY is at all times and for all purposes under this contract that of independent contractors. Neither COUNTY nor any of COUNTY's employees or agents is to be considered an agent or employee of OHSU for any purpose, and neither COUNTY nor any of COUNTY's agents or employees is entitled to any of the benefits that OHSU provides for its employees. COUNTY is not an officer, employee or agent of OHSU as those terms are used in ORS 30.265. Neither OHSU nor any of their respective agents or employees is to be considered an agent or employee of COUNTY for any purpose, and neither OHSU nor any of their respective agents or employees is entitled to any of the benefits that COUNTY provides for its employees. Each party is solely and entirely responsible for its acts and the acts of its agents or employees during the performance of this contract. Nothing contained in this Agreement shall be construed to create a relationship of agency, representation, joint venture, brokerage, partnership, ownership, control or employment between the parties other than that of independent parties contracting for the purpose of effectuating this agreement.

7. ASSIGNMENT

No party shall assign or transfer its right nor delegate its obligations under this Agreement, in whole or in part, without the prior written consent of the other party.

8. TERMINATION

The Agreement may be terminated at any time by mutual consent of all parties; or by any party upon providing 60 days written notice to the other parties. Such notice is to be delivered by certified mail or in person to the addresses specified in the CONTACT INFORMATION section.

9. INDEMNIFICATION

OHSU shall save, defend, indemnify, and hold harmless COUNTY, its officers, employees and agents from and against any third-party liability which may arise under this agreement, subject to the limitations and conditions of the Oregon Tort Claims Act (ORS 30.260 through 30.300) and to the extent of liabilities arising out of the tortious acts of the CONSULTANTS. OHSU shall not be required to indemnify or defend COUNTY for any liability arising out of the tortious acts of employees or agents of COUNTY.

COUNTY is responsible for the care of its patients and under this Agreement is engaging CONSULTANT to provide services at COUNTY as a part of the delivery of that care. COUNTY shall save, defend, indemnify, and hold harmless OHSU and its Boards of Directors, officers, employees, and agents from all claims, suits,

and actions of any nature resulting from or arising out of the activities or omissions of COUNTY or its employees, subcontractors, or agents acting under this Agreement.

DEBT LIMITATION

This Agreement 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.

10. INSURANCE

OHSU shall provide professional liability coverage consistent with the Oregon Tort Claims Act, ORS 30.260 through 30.300, and subject to the limits of the Act, for all services provided by CONSULTANTS acting within the scope of their employment pursuant to this agreement. In addition, OHSU shall keep and maintain insurance coverage in the amount of one million dollars for tort liability, including personal injury and property damage. OHSU shall furnish to COUNTY a certificate of insurance as evidence of the insurance coverage required by this contract. The certificates shall be addressed or hand delivered to the address identified in the CONTACT INFORMATION section, COUNTY CONTACT sub-section.

COUNTY shall secure at its own expense and keep in effect during the term of this contract general liability insurance with a minimum limit of \$2,000,000 (two million dollars) per occurrence and \$4,000,000 (four million dollars) annual aggregate. Unless COUNTY is insured under a self-insurance program acceptable to OHSU, insurance policies are to be issued by an insurance company authorized to do business in the State of Oregon that has an A.M. Best rating of A or better. Before work under this contract is commenced, the COUNTY shall furnish to OHSU, certificates of insurance as evidence of the insurance coverage required by this contract. The certificates shall be addressed or hand delivered to the address identified in the CONTACT INFORMATION section, OHSU CONTRACTING AND NOTICES sub-section.

11. GOVERNING LAW

This contract shall be governed by and construed in accordance with the laws of the State of Oregon. Any claim, action, or suit between OHSU and COUNTY that arises out of or relates to 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 only in a federal forum, it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon.

12. COMPLIANCE WITH APPLICABLE LAW

OHSU and COUNTY shall comply with all federal, state, county and local laws, ordinances, and regulations applicable to this contract. Unless exempted under the rules, regulations and relevant orders of the Secretary of Labor, 41 CFR, Ch. 60, the parties agree to comply with all provisions of Executive Order No. 11246 as amended by Executive Order No. 11375 of the President of the United States dated September 24, 1965, Title VI of the Civil Rights Act of 1964 and Section 504 of the Rehabilitation Act of 1973 as implemented by 45 CFR 84.4, which states, "No qualified person shall, on the basis of handicap, be excluded from participation in, be denied benefits of, or otherwise be subjected to discrimination under any program or activity which received or benefits from Federal financial assistance." Both parties will also comply with all applicable rules, regulations and orders of the Secretary of Labor concerning equal opportunity in employment and the provisions of ORS Chapter 659.

13. EXCUSE FOR NONPERFORMANCE

Neither party shall be held responsible for delay or default caused by labor disputes, riots, fires, floods, epidemics, embargoes, acts of civil or military authorities, acts of God or war, legal acts of public entities, or unusually long delays by public carriers which are beyond the affected party's reasonable control. The affected party shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall, upon the cessation of the cause, diligently pursue performance of its obligations under the contract.

14. FEDERAL AND STATE PROGRAM ELIGIBILITY

COUNTY represents and warrants that it is not excluded from participation, and is not otherwise ineligible to participate in a Federal health care program, as defined in 42 U.S.C. Section 1320a-7b (f) or in any other government payment program. In the event COUNTY is excluded from participation, or becomes otherwise ineligible to participate in any such program during the term, COUNTY will notify OHSU in writing within three (3) days after such event, and upon the occurrence of such event. Whether or not such a notice is given to OHSU, OHSU may immediately terminate this Agreement upon written notice to the COUNTY.

15. ENTIRE AGREEMENT

THIS AGREEMENT CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PARTIES. THERE ARE NO UNDERSTANDINGS, AGREEMENTS, OR REPRESENTATIONS, ORAL OR WRITTEN, NOT SPECIFIED HEREIN REGARDING THIS AGREEMENT. NO AMENDMENT, CONSENT, OR WAIVER OF TERMS OF THIS AGREEMENT SHALL BIND A 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. BY THE SIGNATURE BELOW OF THEIR AUTHORIZED REPRESENTATIVES, EACH PARTY ACKNOWLEDGES HAVING READ AND UNDERSTOOD THE AGREEMENT AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

Oregon Health & Science University
3181 SW Sam Jackson Park Road
Portland Oregon 97239-3098

Clackamas County

Anthony R. Masciotra, Jr.

Anthony R. Masciotra, Jr.
CEO, OHSU Practice Plan
Sr. Associate Dean, Clinical Practice

By
Title

6/27/2018 | 8:45:32 PM PDT

Date

Date

July 12, 2018

Board of County Commissioner
Clackamas County

Members of the Board:

Approval of Amendment #5 to the Intergovernmental Agreement with
Multnomah County, for a Public Health Officer

Purpose/Outcomes	Amendment #5 extends the term of the agreement one year and adds funding. The Health Officer provides health and medical consultation and leadership services and will serve as the Health Officer of record for Clackamas County.
Dollar Amount and Fiscal Impact	The amendment adds \$184,259 for a new total of \$ \$873,923.
Funding Source	Local Public Health Authority grant funds through the Oregon Health Authority. No County General Funds are involved.
Duration	Effective July 01, 2018 and terminates on June 30, 2019
Previous Board Action	The Original contract was approved by the BCC. June 26, 2014 Agenda item 062614-A15, Amendment #1 July 9, 2015 Agenda item 070915-A7, Amendment #3 July 7, 2017 Agenda item 070716-A2, Amendment #4 July 6, 2017 Agenda item 070617-A6
Strategic Plan Alignment	1. Efficient and effective Services 2. Build a strong infrastructure
Contact Person	Dawn Emerick, Public Health Director – 503-655-8479
Contract No.	6836-5

BACKGROUND:

The Clackamas County Public Health Division (CCPHD) of the Health, Housing & Human Services Department requests the approval of Amendment #5 to the Intergovernmental Agreement with Multnomah County. The Health Officer provides health and medical consultation and leadership services and will serve as the Health Officer of record for Clackamas County.

Amendment #1: added \$165,300, extended the term through June 30, 2016 and was approved by the BCC on July 9, 2015.

Amendment #2 removed language from the monthly payment scale and reduced the number of FTE's. This did not require BCC approval.

Amendment #3 adds 169,426, bringing the contract total to \$504,226. Amendment #3 extends the term of the agreement through June 30, 2017. Amendment #3 is effective July 01, 2016 through June 30, 2017. Amendment #3 was reviewed by County Counsel on June 28, 2016.

Amendment #4 added \$185,438, bringing the contract total to \$ \$689,664. Amendment #4 extends the term of the agreement for one year. Amendment #4 is effective July 01, 2017 through June 30, 2018. Amendment #4 was reviewed by County Counsel on June 08, 2017.

Amendment #5 added \$184,259, bringing the contract total to \$873,923. Amendment #5 extends the term of the agreement for one year. Amendment #5 is effective July 01, 2018 through June 30, 2019. Amendment #4 was reviewed by County Counsel on June 26, 2018.

RECOMMENDATION:

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

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Richard Swift", is written over the typed name below.

Richard Swift, Director
Health, Housing, and Human Services

**MULTNOMAH COUNTY
INTERGOVERNMENTAL AGREEMENT AMENDMENT**
(Amendment to change Contract provisions during contract term.)

Contract Number 201403
Amendment: 5

This is an amendment to Multnomah County's Contract referenced above effective July 1, 2018 between Multnomah County, Oregon, hereinafter referred to as County, and Clackamas County, hereinafter referred to as Contractor.

The parties agree:

1. The following changes are made to Contract No. 201403:
 - a. The renewal term of this contract is July 1, 2018 to June 30, 2019
 - b. Attachment B is replaced in its entirety by the attached Attachment B.
 - c. Any funding adjustment of more than ten percent (10%) between major budget categories (Personnel and Internal Services) shall require the Contractor's prior written approval. Invoices will include a breakdown of current and year-to-date totals for individual personnel and each overall major budget category.
 - d. \$184,259 in funding is added to this contract for the above referenced renewal term.

2. All other terms and conditions of the contract shall remain the same.

MULTNOMAH COUNTY, OREGON:

County Chair or Designee: N/A
Date: N/A
Dept Director or Designee: Wendy Lee/m
Date: 6/29/2018

REVIEWED:

JENNY M. MADKOUR
COUNTY ATTORNEY FOR MULTNOMAH COUNTY

By Assistant County Attorney Bernadette Nunley/SSL
Date: 05/13/2018

CONTRACTOR:

Signature: _____
Print Name: _____
Title: _____
Date: _____

Approved as to form by: _____
Date: _____

July 12, 2018

Board of Commissioners
Clackamas County

Members of the Board:

Approval to apply for Opioid Affected Youth Initiative funding through the
Office of Juvenile Justice and Delinquency Prevention

Purpose/Outcomes	A three year grant to address opioid use by youth. The first year is to plan and gather data. During second and third years, programming and strategies will be implemented based upon the results of planning activities.
Dollar Amount and Fiscal Impact	\$1,000,000 (approximately \$333,000 per year through 2021) Catalogue of Federal Domestic Assistance (CFDA) #16.842 No County General Funds are involved and no match is required.
Funding Source	Office of Juvenile Justice and Delinquency Prevention
Duration	October 1, 2018 through September 30, 2021
Previous Board Action	N/A
Strategic Plan Alignment	<ul style="list-style-type: none"> • Individuals and families in need are healthy and safe • Ensure safe, healthy and secure communities
Contact Person	Rodney A. Cook x 5677
Contract No.	N/A

BACKGROUND:


The Children, Youth & Families Division of the Health, Housing and Human Services Department requests the approval to apply for a grant from the Office of Juvenile Justice and Delinquency Prevention to address youth opioid use in Clackamas County. Funding on this opportunity spans three years, activities during the first year will be spent planning and gathering data to determine effective strategies and programming based upon Clackamas County's unique needs around the issue of youth opioid access and use. Implementation will take place in years two and three.

If awarded, the funding involved is federal (CFDA #16.842) and there is no match requirement. A limited duration position may be created to fulfil the grant requirements.

RECOMMENDATION:

Staff recommends the Board approval of this request to apply and authorization for Richard Swift, H3S Director to sign all documents necessary to accomplish this action on behalf of the Board of Commissioners.

Respectfully submitted,


Richard Swift, Director
Health, Housing & 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 - CYF Application for: Subrecipient funds Direct Grant
Grant Renewal? Yes No

Name of Funding Opportunity: OJJDP FY 2018 Opiod Affected Youth Initiative
Funding Source: Federal State Local: _____
Requestor Information (Name of staff person initiating form): Rodney Cook
Requestor Contact Information: rodcoo@clackamas.us x5677
Department Fiscal Representative: Bryant Scott
Program Name or Number (please specify): Youth OPPS
Brief Description of Project:

The purpose of the grant is to build capacity within CYF's infrastructure to implement data-driven strategies and programs through strategic partnerships. Initiative targeted at children, youth at-risk juveniles and their families who have been impacted by the opioid crisis and drug addiction.

Name of Funding (Granting) Agency: U.S DOJ, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prev.

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

www.ojjdp.gov/grants/solicitations/FY2018/FAQ/Opiod

OR

Application Packet Attached: Yes No

Completed By: Rod Cook 6/21/2018
Date

**** 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: _____
CFDA(s), if applicable: 1/16/1900
Announcement Date: 6/1/2018 Opportunity #: OJJDP-2018-14727
Grant Category/Title: Opioid Affected Youth Initiative Max Award Value: \$ 1,000,000.00
Allows Indirect/Rate: No - will charge staff time directly Match Requirement: none
Application Deadline: 7/2/2018 Other Deadlines: SAM
Grant Start Date: 10/1/2018 Other Deadline Description:
Grant End Date: 9/30/2021 must be registered 24 hours before
Completed By: Bryant Scott
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 support the Department's Mission/Purpose/Goals?

H3S's mission is to remove barriers for vulnerable individuals and families on their path to improved health, wellness, prosperity and inclusion. These funds support the youth drug prevention efforts in CYF.

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

CYF provides Alcohol and Other Drugs services to multiple children and youth. CYF administers the prevention portion of the Marijuana funds and coordinates the existing Drug Prevention Coalition.

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

No other local entity provides the backbone support (infrastructure) for the County's Drug Prevention Coalition. We have the foundation for what this funder is trying to support.

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

Phase 1: Develop Effective data driven response to improve public safety of children, youth , and families impacted by opioid crisis;

Phase 2: Implement Strategies and coordinated responses and programs to improve public safety and reduce opioid abuse in youth and family members, youth and family member opioid related deaths, child and youth involvement in the child welfare and juvenile justice systems, and child and youth victimization.

5. What is its purpose?

Purpose is to develop a collaborative of key stakeholders who use data to support strategic investments that will get us to the goals stated earlier.

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?

No specific type of staff are required. However, most CYF staff members are in the program planner classification and several hold a certification in Prevention Science. All staff are highly skilled at facilitating meetings that guide vision and strategies leading to shared measurements and effective programs.

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?

Yes, CYF will partner with law enforcement, school, media, parents, practitioners, city administrators, health, code enforcement, etc., with the same goal of preventing youth opioid use.

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

FTE and programming funded through this grant will be sustained through Marijuana initiative funding after grant end in 2021.

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.)?

These grant funds are intended to develop partnerships to strategize and create effective data collection and sharing processes, and then implement strategies to combat opioid use among youth. The most effective programming involves establishing policies that reduce access, rather than traditional services to individuals. Our intent is to use Marijuana initiative funds to continue this effort after grant funding expires.

Collaboration

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

None at this time.

Reporting Requirements

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

Semi-annual progress reports that include performance data

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?

Process measures will be used to capture system changes. Once implementation starts, client data will be collected on number served and % reaching desired goals.

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

Quarterly financial reports and an annual audit report in accordance with the Part 200 uniform requirements, report to FAPIIS

Fiscal

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

Yes, CYF will be able to recover administrative and program FTE charged to the grant. It will also put Clackamas County in a position to begin dealing with an emerging opioid crisis.

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.)?

No

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

This grant offers 3-year funding with ongoing sustainability through Marijuana initiative funds.

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?

Indirect costs are not covered, however administrative FTE will be charged directly.

Program Approval:

Korene Mather

6/12/2018




Name (Typed/Printed)

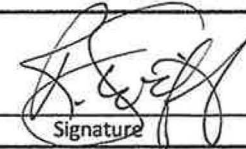
Date

Signature

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

Section IV: Approvals

DIVISION DIRECTOR OR ASSISTANT DIRECTOR (or designee, if applicable)		
Rodney A. Cook	6/12/2018	
Name (Typed/Printed)	Date	Signature

DEPARTMENT DIRECTOR		
Richard Swift	6.13.18	
Name (Typed/Printed)	Date	Signature

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 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:

County Administration Attestation

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

COPY

July 12, 2018

Board of County Commissioners
Clackamas County

Members of the Board:

Approval to Sign an Inter-Governmental Agreement for a
Grant to Provide Free Birth Certificates for Homeless Persons through the
Oregon Health Authority (OHA)

Purpose/Outcomes	The purpose of the grant project is to allow homeless persons to obtain a free birth certificate via payment of the birth certificate fee by the Social Services Division (SSD) to the Center for Health Statistics (CHS).
Dollar Amount and Fiscal Impact	\$7,525 revenue
Funding Source	Oregon Health Authority. No match requirements. County General Funds are not involved.
Duration	July 1, 2018 through June 30, 2019
Previous Board Action	None.
Strategic Plan Alignment	1. This aligns with the Social Service Division's strategic priority to provide housing stabilization and supportive services to people who are homeless or at risk of becoming homeless so they can obtain and maintain permanent housing. 2. This funding aligns with the County's strategic priority to ensure safe, healthy and secure communities.
Contact Person	Brenda Durbin, Director – Social Services Division – (503) 655-8641
Contract No.	8902

BACKGROUND:

The Social Services Division (SSD) of the Health, Housing and Human Services Department requests approval to sign an Inter-Governmental Agreement with Oregon Health Authority (OHA). The purpose of the funding is to allow homeless persons to apply for a free birth certificate via payment of the birth certificate fee by SSD to the Center for Health Statistics (CHS).

Individuals experiencing homelessness often need an identification card (ID) to apply for a job or obtain prescription medication, but they need a birth certificate to obtain the ID. This grant will help to secure the birth certificate at no cost. It is anticipated that this program will easily be incorporated into existing work flow of public facing Social Services staff. If demand becomes higher than anticipated, community partner assistance will be enlisted.

There is no match requirement, but quarterly reporting to OHA is required, as well as development of internal policies relating to the program. This Inter-Governmental Agreement was approved by County Counsel on 6-26-18.

Healthy Families. Strong Communities.


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

www.clackamas.us

RECOMMENDATION:

Staff recommends approval of the agreement and that Richard Swift, Director of Health, Housing and Human Services, be authorized to sign all documents on behalf of Clackamas County.

Respectfully submitted,



Richard Swift, Director
Health, Housing and Human Services Department



Grant Agreement Number 157511

**STATE OF OREGON
INTERGOVERNMENTAL GRANT AGREEMENT**

In compliance with the Americans with Disabilities Act, this document is available in alternate formats such as Braille, large print, audio recordings, Web-based communications and other electronic formats. To request an alternate format, please send an e-mail to dhs-oha.publicationrequest@state.or.us or call 503-378-3486 (voice) or 503-378-3523 (TTY) to arrange for the alternative format.

This Agreement is between the State of Oregon, acting by and through its Oregon Health Authority, hereinafter referred to as "OHA," and

**Clackamas County acting by and through its Health, Housing and Human Services
Department, Social Services Division
2051 Kaen Road
Oregon City, Oregon 97045
Attn: Jessica Diridoni, Contracts and Grants Administration
Telephone: 503-655-8640
Facsimile: 503-650-5722
E-mail address: jdiridoni@clackamas.us**

hereinafter referred to as "Recipient."

The Program to be supported under this Agreement relates principally to OHA's

**Health Systems
Adult Behavioral Health
500 Summer Street NE E86
Salem, Oregon 97301-1118
Agreement Administrator: Wanda Davis or delegate
Telephone: 503-945-6579
Facsimile: 503-378-8467
E-mail address: WANDA.DAVIS@dhsaha.state.or.us**

1. Effective Date and Duration.

This Agreement, when fully executed by every party, shall be effective on the later of: (i) **July 1, 2018** or, (ii) when required, the date this Agreement is approved by Department of Justice, regardless of the date it is actually signed by all other parties, per the authority under OAR 125-247-0288(1)(b).

Unless extended or terminated earlier in accordance with its terms, this Agreement shall expire on the earlier of (i) **June 30, 2019**. Agreement termination shall not extinguish or prejudice Agency's right to enforce this Agreement with respect to any default by Recipient that has not been cured.

2. Agreement Documents.

a. This Agreement consists of this document and includes the following listed exhibits which are incorporated into this Agreement:

- (1) Exhibit A, Part 1: Program Description
- (2) Exhibit A, Part 2: Payment and Financial Reporting
- (3) Exhibit B: Standard Terms and Conditions
- (4) Exhibit C: SubRecipient Insurance Requirements

There are no other Agreement documents unless specifically referenced and incorporated in this Agreement.

b. 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 documents comprising this Agreement shall be in the following descending order of precedence: this Agreement less all exhibits, Exhibits B, A, and C.

3. Grant Disbursement Generally.

The maximum not-to-exceed amount payable to Recipient under this Agreement, which includes any allowable expenses, is **\$7,525.00**. OHA will not disburse grant to Recipient in excess of the not-to-exceed amount and will not disburse grant until this Agreement has been signed by all parties. OHA will disburse the grant to Recipient as described in Exhibit A.

4. Vendor or Subrecipient Determination.

In accordance with the State Controller's Oregon Accounting Manual, policy 30.40.00.102, OHA's determination is that:

Recipient is a subrecipient Recipient is a vendor Not applicable

Catalog of Federal Domestic Assistance (CFDA) #(s) of federal funds to be paid through this Agreement: Not Applicable

5. Recipient Data and Certification.

a. Recipient Information. Recipient shall provide the information set forth below.

PLEASE PRINT OR TYPE THE FOLLOWING INFORMATION

Recipient Name (exactly as filed with the IRS): County of Clackamas

Street address: 2051 Kaen Road

City, state, zip code: Oregon City, OR 97045

Email address: jdiridoni@clackamas.us

Telephone: (503) 655-8646 Facsimile: (503) 650-5722

Proof of Insurance: Recipient shall provide the following information upon submission of the signed Agreement. All insurance listed herein and required by Exhibit C, must be in effect prior to Agreement execution.

If Contractor is self-insured for any of the Insurance Requirements specified in Exhibit C of this Contract, Contractor may so indicate by: (i) writing "Self-Insured" on the appropriate line(s); and (ii) submitting a certificate of insurance as required in Exhibit C.

Workers' Compensation Insurance Company: Self-Insured

Policy #: _____ Expiration Date: _____

b. Certification. Without limiting the generality of the foregoing, by signature on this Agreement, the undersigned hereby certifies under penalty of perjury that:

(1) Recipient is in compliance with all insurance requirements in Exhibit C of this Agreement and notwithstanding any provision to the contrary, Recipient shall deliver to the OHA Contract Administrator (see page 1 of this Agreement) the required Certificate(s) of Insurance within 30 days of execution of this Agreement. By certifying compliance with all insurance as required by this Agreement, Recipient acknowledges it may be found in breach of the Agreement for failure to obtain required insurance. Recipient may also be in breach of the Agreement for failure to provide Certificate(s) of Insurance as required and to maintain required coverage for the duration of the Agreement;

(2) Recipient acknowledges that the Oregon False Claims Act, ORS 180.750 to 180.785, applies to any "claim" (as defined by ORS 180.750) that is made by (or caused by) the Recipient and that pertains to this Agreement or to the project for which the grant activities are being performed. Recipient certifies that no claim described in the previous sentence is or will be a "false claim" (as defined by ORS 180.750) or an act prohibited by ORS 180.755. Recipient further acknowledges that in addition to the remedies under this Agreement, if it makes (or causes to be made) a false claim or performs (or causes to be performed) an act prohibited under the Oregon False Claims Act, the Oregon Attorney General may enforce the liabilities and penalties provided by the Oregon False Claims Act

against the Recipient;

(3) The information shown in this Section 5a. "Recipient Information", is Recipient's true, accurate and correct information;

(4) To the best of the undersigned's knowledge, Recipient has not discriminated against and will not discriminate against minority, women or emerging small business enterprises certified under ORS 200.055 in obtaining any required subcontracts;

(5) Recipient and Recipient's employees and agents are not included on the list titled "Specially Designated Nationals" maintained by the Office of Foreign Assets Control of the United States Department of the Treasury and currently found at: <https://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx>;

(6) Recipient is not listed on the non-procurement portion of the General Service Administration's "List of Parties Excluded from Federal procurement or Non-procurement Programs" found at: <https://www.sam.gov/portal/public/SAM/>;

(7) Recipient is not subject to backup withholding because:

(a) Recipient is exempt from backup withholding;

(b) Recipient has not been notified by the IRS that Recipient is subject to backup withholding as a result of a failure to report all interest or dividends; or

(c) The IRS has notified Recipient that Recipient is no longer subject to backup withholding; and

(8) Recipient Federal Employer Identification Number (FEIN) or Social Security Number (SSN) provided is true and accurate. If this information changes, Recipient is required to provide OHA with the new FEIN within 10 days.

RECIPIENT, BY EXECUTION OF THIS AGREEMENT, HEREBY ACKNOWLEDGES THAT RECIPIENT HAS READ THIS AGREEMENT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

6. **Signatures.** This Agreement and any subsequent amendments may be executed in several counterparts, all of which when taken together shall constitute one agreement binding on all parties, notwithstanding that all parties are not signatories to the same counterpart. Each copy of the Agreement and any amendments so executed shall constitute an original.

Clackamas County acting by and through its Health, Housing and Human Services Department, Social Services Division
By: Signing on behalf of the Board:

Richard Swift, Director
Health, Housing & Human Services Department

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

Date
CLACKAMAS COUNTY - APPROVED AS TO
FORM

By: 

Name: Kathleen Rastetter
Title: Assistant County Counsel

Date: 6/26/18

State of Oregon acting by and through its Oregon Health Authority
By:

Authorized Signature

Printed Name

Title

Date

Approved for Legal Sufficiency:

Not required per OAR 137-045-0030(1)(a)

Department of Justice

Date

OHA

Approved via email by Wanda Davis on June 18, 2018. Email on file.

July 12, 2018

Board of County Commissioner
Clackamas County

Members of the Board:

Approval of Intergovernmental Agreement #154433, Amendment #3 with The State of Oregon, Department of Human Services, Aging and People with Disabilities Division for the Provision of Services to Clackamas County Residents age 60 and over

Purpose/Outcomes	To provide Older American Act (OAA) and Oregon Project Independence (OPI) funded services, as well as Special Project Allocation (SPA) funded evidence-based health promotion services for persons age 60 and over in Clackamas County
Dollar Amount and Fiscal Impact	This amendment is for \$346,947 for a new total agreement of \$6,245,639. Funded by Federal OAA Funds and State General Funds designated for the OPI and SPA Programs.
Funding Source	Federal Older American Act & State General Fund - County General Funds used to meet match requirements for internal programs.
Duration	Effective July 1, 2017 and terminates on June 30, 2019
Previous Board Action	071317-A9, 052418-A6
Strategic Plan Alignment	<ol style="list-style-type: none"> 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 needs of older adults in the community.
Contact Person	Brenda Durbin, Director, Social Services Division 503-655-8641
Contract No.	8385

BACKGROUND:

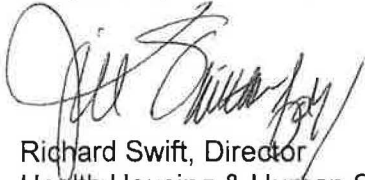
The Social Services Division of the Health, Housing and Human Services request approval of the Subrecipient Grant Agreement #154433, Amendment #3 with the State of Oregon, Dept. of Human Services, Aging and People with Disabilities, State Unit on Aging. This agreement provides funding for the Social Services Division to administer Older American Act (OAA) and Oregon Project Independence (OPI) funded services as well as Special Project Allocation (SPA) funds for evidence-based health promotion services for persons 60 and over living in Clackamas County. The services provided include nutrition programs, evidence-based health promotion activities, family caregiver supports, transportation, information and referral activities, and In-home services. These services link residents with resources to meet their individual needs. This helps them to remain independent and involved in the community as long as possible.

Social Services Division is the designated Area Agency on Aging (AAA) for the Clackamas Planning and Service area designated by the State of Oregon, Department of Human Services, Aging and People with Disabilities Division, State Unit on Aging. The planning allocation increased by \$346,947 from \$5,898,692 to \$6,245,639. This agreement reflects the adjusted Older American Act (OAA), funding for July 1, 2018 through June 30, 2019 of the 2017-2019 biennial agreement period. The original agreement was reviewed and approved by County Council on June 29, 2017. This amendment is effective upon signature by all parties.

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 black ink, appearing to read "Richard Swift", is written over the typed name and title.

Richard Swift, Director
Health Housing & Human Services



Grant Agreement Number 154433

**AMENDMENT TO
STATE OF OREGON
GRANT AGREEMENT**

In compliance with the Americans with Disabilities Act, this document is available in alternate formats such as Braille, large print, audio recordings, Web-based communications and other electronic formats. To request an alternate format, please send an e-mail to dhs-oha.publicationrequest@state.or.us or call 503-378-3486 (voice) or 503-378-3523 (TTY) to arrange for the alternative format.

This is amendment number **3** to Grant Agreement Number **154433** between the State of Oregon, acting by and through its Department of Human Services, hereinafter referred to as "DHS" and

Clackamas County Social Services Division (CCSS)

District 2, Type A

Serving: Clackamas County

PO Box 2950 - 2051 Kaen Road

Oregon City, Oregon 97045

Telephone: 503-655-8640

Facsimile: 503-655-8889

E-mail address: brendadur@co.clackamas.or.us; stefanierei@co.clackamas.or.us

hereinafter referred to as "Recipient".

1. This amendment shall become effective on the date this amendment has been fully executed by every party and, when required, approved by Department of Justice.
2. The Agreement is hereby amended as follows:
 - a. Section 3. "**Grant Disbursement Generally,**" is amended as follows: Deleted language is ~~struck through~~, and new language is **underlined and bold**.

The maximum not-to-exceed amount payable to Recipient under this Agreement, which includes any allowable expenses, is ~~\$5,898,692.00~~ **\$6,245,639.00**. DHS will not disburse grant to Recipient in excess of the not-to-exceed amount and will not disburse grant until this Agreement has been signed by all parties. DHS will disburse the grant to Recipient as described in Exhibit A.

- b. **Exhibit A, Part 2, "Payment and Financial Reporting, for Older American Act and Oregon Project Independence services", section 1. "Funding Appropriations", section b. only, is replaced in its entirety as follows:**
 - b. Payment for all work performed under this Agreement shall be subject to the provisions of ORS 293.462 and disbursements under this Agreement shall be

as set forth below:

Older Americans Act	\$3,596,974.00	CFDA 93.044, 93.045, 93.043, 93.052, 93.041
NSIP	\$327,979.00	CFDA 93.053
Continued Seq. Mitig. SPA Funds	\$196,321.00	
Continued EBSPA Funds	\$115,587.00	
Oregon Project Independence	\$2,001,485.00	
Oregon Project Independence Pilot	\$0.00	
Other State Funds	\$7,293.00	

3. Except as expressly amended above, all other terms and conditions of the original Agreement and any previous amendments are still in full force and effect.

RECIPIENT, BY EXECUTION OF THIS AMENDMENT, HEREBY ACKNOWLEDGES THAT RECIPIENT HAS READ THIS AMENDMENT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

4. Signatures.

Clackamas County Social Services Division (CCSS)

By:

Authorized Signature

Richard Swift

Printed Name

Director, Health Housing & Human Services Dept.

Title

Date

State of Oregon acting by and through its Department of Human Services

By:

Authorized Signature

Printed Name

Title

Date

Approved for Legal Sufficiency:

Via email by Steven Marlowe
Assistant Attorney General

June 28, 2018
Date

**DHS, Seniors & People with Disabilities, State Unit on Aging
Reviewed and approved for release by Tatia Halleman on June 14, 2018**

COPY

Richard Swift
 Director

July 12, 2018

Board of County Commissioners
 Clackamas County

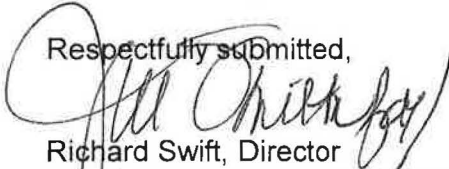
Members of the Board:

Approval of a Construction Contract with Kerr Contractors Oregon, Inc. for the
Fenton Avenue Improvements Project in Molalla

Purpose/ Outcome	This construction contract with Kerr Contractors Oregon, Inc. is to provide sanitary sewer, waterline, storm sewer, drainage swale, sidewalks, curbs, striping and street lighting in the public right of way, along Fenton Avenue, in Molalla. The project will extend 750 feet south. The improvements will end at the intersection of Heintz Street, in Molalla.
Dollar Amount and Fiscal Impact	Community Development Block Grant funds in the amount of \$165,000. The City of Molalla will provide an estimated \$533,465 dollars for construction of the project. The estimated total construction cost will be \$698,465 dollars. No County General Funds will be used for this project.
Funding Source	U.S. Department of Housing and Urban Development Community Development Block Grant (CDBG) funds.
Duration	July 2018 to November 2018
Previous Board Action/ Review	BCC Agenda Approval of Intergovernmental Agreement December 15, 2016 (Project delayed until the City of Molalla hired a new Public Works Director)
Strategic Plan Alignment	1. Provide low and moderate income persons with healthy, safe and stable housing in neighborhoods where they have improved access to services. 2. Ensure safe, healthy and secure communities.
Contact Person(s)	Steve Kelly – Housing and Community Development: 503-650-5665
Contract No.	H3S 8920

BACKGROUND: The Housing and Community Development Division of the Health, Housing and Human Services Department requests the approval of this construction contract with Kerr Contractors Oregon, Inc. for the Fenton Avenue Improvements Project. The project will add sanitary sewer, waterline, storm sewer, drainage swale, sidewalks, curbs, striping and street lighting in the public right of way. Community Development will provide project coordination representing Clackamas County. The City of Molalla has hired Dyer Partnership Engineers as their project engineer. The construction contract was reviewed and approved by County Counsel on June 4, 2018.

RECOMMENDATION: We recommend the approval of this contract and that Richard Swift, H3S Director be authorized to sign on behalf of the Board of County Commissioners.

Respectfully submitted,

 Richard Swift, Director
 Health, Housing and Human Services

**AGREEMENT FOR PUBLIC WORKS CONSTRUCTION WORK
BETWEEN CLACKAMAS COUNTY AND CONTRACTOR**

COUNTY

Clackamas County
Community Development Division
2051 Kaen Road, Suite 245
Oregon City, OR 97045

CONTRACTOR

Kerr Contractors Oregon, Inc.
PO Box 1060
Woodburn, OR 97071

THIS AGREEMENT (the "Contract") is entered into by and between Clackamas County (hereinafter called the "COUNTY") and Kerr Contractors Oregon, Inc. (hereinafter called CONTRACTOR), and is dated as of the date it is signed by the COUNTY.

This Contract for construction has been prepared for use with, and is subject to, the ODOT Specifications for Construction of the Construction Contract (2018, ODOT Standard Specifications for Construction) prepared by the Engineer's Joint Contract Documents Committee.

This Contract, which expressly includes and is subject to the terms and conditions of the Contract Documents, defined below, is the complete and exclusive statement of the agreement between the parties relevant to the purpose described herein, and supersedes all prior agreements or proposals, oral or written, and all other communications between the parties relating to the subject matter of this Contract. This Contract, or any modification of this Contract, will not be binding on either party except as signed by authorized agents of both parties.

COUNTY and CONTRACTOR, in consideration of the mutual covenants hereinafter set forth, agree as follows:

ARTICLE 1: WORK

CONTRACTOR shall complete all Work.

As used herein, "Work" shall mean the construction improvement tasks, as set forth in detail in the Contract Documents, and generally described as: the construction of approximately 755 LF of 8" sanitary sewer, 210 LF of 8" waterline, 150 LF of 12" storm sewer with drainage swale, 680 LF of roadway reconstruction, 1085 LF of curb and gutter, 4,445 SF of concrete sidewalk, 2,580 SF of concrete driveway, signage, striping, and street lighting. The Work shall be performed on Fenton Avenue in the City of Mollalla, Oregon, and extend from the intersection of Heintz Street to a point approximately 750 feet south.

ARTICLE 2: ENGINEER

The Project has been designed by The Dyer Partnership Engineers & Planners, Inc. who is hereinafter called ENGINEER and who is to act as COUNTY's representative, assume all duties and responsibilities and have the rights and authority assigned to ENGINEER in the Contract

Documents in connection with completion of the Work in accordance with the Contract Documents.

ARTICLE 3: CONTRACT TIME

3.1. Time is of the essence in this Contract and the CONTRACTOR agrees that **all Work shall be substantially completed by October 19, 2018, 5pm with a final completion date by November 2, 2018, 5pm, for agreed punchlist item(s)**. The Work is to commence per the date of the Notice To Proceed issued by the COUNTY. If the Notice To Proceed is delayed, the time schedule will be adjusted accordingly. The total timeframe for this Work is **120 days** unless a time extension is approved by the ENGINEER and COUNTY, via Change Order.

3.2. Liquidated Damages. COUNTY and CONTRACTOR recognize that time is of the essence of this Contract and that COUNTY will suffer financial loss if the Work is not completed within the times specified in paragraph 3.1 above, plus any extensions thereof allowed in accordance with Section 00180 of the ODOT Specifications for Construction. They also recognize the delays, expense and difficulties involved in proving in a legal proceeding the actual loss suffered by COUNTY if the Work is not completed on time. Accordingly, instead of requiring any such proof, COUNTY and CONTRACTOR agree that as liquidated damages for delay (but not as a penalty) CONTRACTOR shall pay COUNTY **\$250** for each day that expires after the time specified in paragraph 3.1 for Substantial Completion until the Work is substantially complete. After Substantial Completion if CONTRACTOR shall neglect, refuse or fail to complete the remaining Work within the Contract Time or any proper extension thereof granted by COUNTY, CONTRACTOR shall pay COUNTY **\$250** for each day that expires after the time specified in paragraph 3.1 for completion and readiness for final payment.

3.3 The Contractor will be held to the timeline of the Work, once the Work begins. Unforeseen conditions that may cause a delay will be reviewed and determined by the COUNTY and ENGINEER. Additional work days may be granted to the CONTRACTOR.

ARTICLE 4: CONTRACT PRICE

4.1. COUNTY shall pay CONTRACTOR for completion of the Work in accordance with the Contract Documents in current funds as follows:

4.1.1 In consideration of the faithful performance of the work herein embraced, as set forth in these Contract Documents, and in accordance with the direction of the ENGINEER and to his satisfaction to the extent provided in the Contract Documents, the COUNTY agrees to pay to the CONTRACTOR the amount bid, as adjusted in accordance with the Contract Documents, and based on the proposal made by the CONTRACTOR, to make such payments in the manner and times provided in the Contract Documents.

4.2 The Contract Price shall be the amount of **Six Hundred Ninety Eight Thousand Four Hundred Sixty Five Dollars and no cents (\$698,465.00)** which are described in the Contract Documents and are hereby accepted by the COUNTY.

4.3 The CONTRACTOR shall procure all permits and licenses, pay all charges and fees, and give all notices necessary and incident to the due and lawful prosecution of the work. In the performance of the work to be done under this contract, the CONTRACTOR shall use every reasonable and practicable means to avoid damage to property and injury to persons. The CONTRACTOR shall use no means or methods which will endanger, unnecessarily, either persons or property. The responsibility of the CONTRACTOR stated herein shall cease upon the work being accepted as complete by the COUNTY.

ARTICLE 5: PAYMENT PROCEDURES

5.1 CONTRACTOR shall submit Applications for Payment in accordance with Section 00195 of the ODOT Specifications for Construction. Applications for Payment will be processed by ENGINEER as provided in the ODOT Specifications for Construction.

5.2. Progress Payments. COUNTY shall make monthly progress payments on account of the Contract Price on the basis of CONTRACTOR's Applications for Payment as recommended by ENGINEER. All progress payments will be on the basis of the progress of the Work measured by the schedule of values established in the ODOT Specifications for Construction (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no schedule of values, as provided in the General Requirements.

5.2.1. At least twenty-eight (28) days before each payment falls due (but not more than once a month), CONTRACTOR shall submit to ENGINEER for review an Application for Payment filled out and signed by CONTRACTOR covering the Work completed as of the date of the application and accompanied by such supporting documentation as is required by the Contract Documents and also as ENGINEER may reasonably require.

5.2.2 ENGINEER will, within seven (7) days after receipt of each Application for Payment, either indicate in writing a recommendation of payment and present the Application to COUNTY, or return the Application to CONTRACTOR indicating in writing ENGINEER's reasons for refusing to recommend payment. In the latter case CONTRACTOR may make the necessary corrections and resubmit the Application. Within twenty-one (21) days after presentation of the Application for payment with ENGINEER's recommendation of payment, the amount recommended will become due and when due, will be paid by COUNTY to CONTRACTOR.

5.2.3. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below, but, in each case, less the aggregate of payments previously made and less such amounts as ENGINEER shall determine, or COUNTY may withhold, in accordance with Section 00195.50(b) of the ODOT Specifications for Construction.

95% of Work completed and approved by the ENGINEER.

95% of materials and equipment not incorporated in the Work (but delivered, suitably stored and accompanied by documentation satisfactory to COUNTY as provided in Section 00195.50 of the ODOT Specifications for Construction).

5.2.4. Upon Substantial Completion, in an amount sufficient to increase total payments to CONTRACTOR to 95% of the Contract Price, less such amounts as ENGINEER shall determine, or COUNTY may withhold, in accordance with Section 00195.50(b) of the ODOT Specifications for Construction. The COUNTY reserves the right to withhold 5% of the total project payment until all Work is completed and approved by the ENGINEER.

5.3. Final Payment. Upon final completion and acceptance of the Work in accordance with Section 00195.90 of the ODOT Specifications for Construction, COUNTY shall pay the remainder of the Contract Price as recommended by ENGINEER as provided in said Section 00195.90.

5.3.1 The Final Application for payment shall be accompanied by at least the following: (a) CONTRACTOR's Affidavit of Release of Liens; (b) CONTRACTOR's Affidavit of Payment of Debts and Claims; and (c) Consent of Surety to Final Payment. Once all three documents (a, b, and c) have been delivered to the COUNTY for review and approval, the remaining 5% of the Project Construction Contract will be released to the CONTRACTOR.

5.4. Payments, Contributions and Liens:

5.4.1. Under the provisions of ORS 279C.505 the CONTRACTOR shall:

5.4.1.1. Make payment promptly, as due, to all persons supplying to such contractor labor or material for the prosecution of the work provided for in such contract.

5.4.1.2. Pay all contributions or amounts due the State Industrial Accident Fund from such contractor or subcontractor incurred in the performance of the contract.

5.4.1.3. Not permit any lien or claim to be filed or prosecuted against the state, county, school district, municipality, municipal corporation or subdivision thereof, on account of any labor or material furnished.

5.4.1.4. Pay to the Revenue Department all sums withheld from the employees pursuant to ORS 316.167.

5.4.2. The CONTRACTOR shall demonstrate that an employee drug testing program is in place.

5.4.3. Under the provisions of ORS 279C.515, if the CONTRACTOR fails, neglects, or refuses to make prompt payment of any claim for labor or services furnished to the CONTRACTOR or a subcontractor by any person in connection with this contract as the claim becomes due, the proper officer representing the COUNTY may pay such claim to the person furnishing the labor

or services and charge the amount of the payment against the funds due or to become due the CONTRACTOR by reason of the contract. If the CONTRACTOR or a first-tier subcontractor fails, neglects or refuses to pay a person that provides labor or materials in connection with the public improvement contract within 30 days after receiving payment from the contracting agency or a contractor, the CONTRACTOR or first-tier subcontractor owes the person the amount due plus interest charges that begin at the end of the 10-day period within which payment is due under ORS 279C.580 (4) and that end upon final payment, unless payment is subject to a good faith dispute as defined in ORS 279C.580. The rate of interest on the amount due is nine percent per annum. The amount of interest may not be waived.

5.4.4. If the CONTRACTOR or a subcontractor fails, neglects or refuses to make payment to a person furnishing labor or materials in connection with the public contract, the person may file a complaint with the Construction Contractors Board, unless payment is subject to a good faith dispute as defined in ORS 279C.580.

ARTICLE 6: CONTRACTOR'S REPRESENTATIONS

In order to induce COUNTY to enter into this Agreement CONTRACTOR makes the following representations:

6.1. CONTRACTOR has examined and carefully studied the Contract Documents (including the Addenda listed in Article 8) and the other related data identified in the Bidding Documents including "technical data."

6.2. CONTRACTOR has visited the site and become familiar with and is satisfied as to the general, local and site conditions that may affect cost, progress, performance or furnishing of the Work.

6.3. CONTRACTOR is familiar with and is satisfied as to all federal, state and local Laws and regulations that may affect cost, progress, performance and furnishing of the Work.

6.4. CONTRACTOR has carefully studied all reports of explorations and tests of subsurface conditions at or contiguous to the site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the site as provided in Section 00120.15 and 00120.25 of the ODOT Specifications for Construction. CONTRACTOR acknowledges that COUNTY and ENGINEER do not assume responsibility for the accuracy or completeness of information and data shown or indicated in the Contract Documents with respect to Underground Facilities at or contiguous to the site. CONTRACTOR has obtained and carefully studied (or assumes responsibility for having done so) all such additional supplementary examinations, investigations, explorations, tests, studies and data concerning conditions (surface, subsurface and Underground Facilities) at or contiguous to the site or otherwise which may affect cost, progress, performance or furnishing of the construction to be employed by CONTRACTOR and safety precautions and programs incident thereto. CONTRACTOR does not consider that any additional examinations, investigations, explorations, tests, studies or data are necessary for the performance and furnishing of the Work

at the Contract Price, within the Contract Times and in accordance with the other terms and conditions of the Contract Documents.

6.5. CONTRACTOR is aware of the general nature of work to be performed by COUNTY and others at the site that relates to the Work as indicated in the Contract Documents.

6.6. CONTRACTOR has correlated the information known to CONTRACTOR, information and observations obtained from visits to the site, reports and drawings identified in the Contract Documents and all additional examinations, investigations, explorations, tests, studies and data with the Contract Documents.

6.7. CONTRACTOR has given ENGINEER written notice of all conflicts, errors, ambiguities or discrepancies that he has discovered in the Contract Documents and the written resolution thereof by ENGINEER is acceptable to CONTRACTOR, and the Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

6.8. CONTRACTOR shall be licensed by the State of Oregon Construction Contractors Board (CCB) or licensed by the State Landscaping Contractors Board (LCB) as required by ORS 671.530 as well as not limited to the same requirements of any and all subcontractors on this PROJECT. If the CONTRACTOR's CCB license is not current during any phase of construction, the COUNTY may consider the contract to be null and void immediately.

6.9. Prior to completion and final acceptance of work, the CONTRACTOR shall be held responsible for any injury or damage to the work or to any part thereof by action of the elements, or from any cause whatsoever, and the CONTRACTOR shall make good all injuries or damages to any portion of the work.

6.10. Except as otherwise provided in the Special Provisions of this contract, the ENGINEER shall make final inspection of work done by the CONTRACTOR within 10 days after written notification to the ENGINEER by the CONTRACTOR that the work is completed. If the work is not acceptable to the ENGINEER, the ENGINEER shall so advise the CONTRACTOR in writing as to the particular defects to be remedied before acceptance by the ENGINEER can be made.

ARTICLE 7: INDEMNITY – INSURANCE – BONDS

7.1 Indemnity. The CONTRACTOR agrees to indemnify, save harmless and defend the COUNTY, its officers, commissioners and employees from and against all claims and action, 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.

7.2 Insurance.

7.2.1. The CONTRACTOR agrees to furnish the COUNTY evidence of commercial general liability insurance in the amount of not less than \$1,000,000 combined single limit per occurrence/\$2,000,000 general annual aggregate for personal injury and property damage for the protection of the COUNTY, its officers, commissioners and employees against liability for damages because of personal injury, bodily injury, death or damage to property, including loss of use thereof in any way related to this contract. The general aggregate shall apply separately to this project/location. The COUNTY, at its option, may require a complete copy of the above policy. As evidence of the insurance coverage required by this contract, CONTRACTOR shall furnish a Certificate of Insurance to COUNTY. No contract shall be in effect until the required certificates have been received, approved and accepted by COUNTY. A renewal certificate will be sent to COUNTY 10 days prior to coverage expiration.

7.2.2. If the CONTRACTOR has assistance of other persons in the performance of this contract, the CONTRACTOR, if it is a subject employer, agrees to qualify and remain qualified for the term of this contract as an insured employer under ORS 656. CONTRACTORS shall maintain employer's liability insurance with limits of \$100,000 each accident, \$100,000 each employee, and \$500,000 each policy limit. CONTRACTOR is required to provide to COUNTY a Builders Risk Policy based on the award amount of the construction contract.

7.2.3. If any other required liability insurance is arranged on a "claims made" basis, "tail" coverage will be required at the completion of this contract for a duration of thirty-six (36) months or the maximum time period the CONTRACTOR'S insurer will provide "tail" coverage as subscribed, or continuous "claims made" liability coverage for thirty-six (36) months following the contract completion. Continuous "claims made" coverage will be acceptable in lieu of "tail" coverage, provided it's retroactive date is on or before the effective date of this contract.

7.2.4. The CONTRACTOR agrees to furnish the COUNTY evidence of business automobile liability insurance in the amount of not less than \$1,000,000 combined single limit for bodily injury and property damage for the protection of the COUNTY, its officers, commissioners and employees against liability for damages because of bodily injury, death or damage to property, including loss of use thereof in any way related to this contract. The COUNTY, at its option, may require a complete copy of the above policy.

7.2.5. The certificate of insurance, other than the pollution liability insurance shall include the COUNTY as an expressly scheduled additional insured using form CG 20-10, CG 20-37, CG 32-61 or their equivalent. A blanket endorsement or automatic endorsement is not sufficient to meet this requirement. Proof of insurance must include a copy of the endorsement showing the COUNTY as a scheduled insured. Such insurance shall provide sixty (60) days written notice to the COUNTY in the event of a cancellation or material change and include a statement that no act on the part of the insured shall affect the coverage afforded to the COUNTY under this insurance. This policy(s) shall be primary insurance as respects to the COUNTY. Any insurance or self insurance maintained by the COUNTY shall be excess and shall not contribute to it.

7.2.6. The CONTRACTOR shall obtain, at the CONTRACTOR'S expense and keep in effect during the term of the Contract, CONTRACTOR'S Pollution Liability insurance covering the CONTRACTOR'S liability for a third party bodily injury and property damage arising from pollution conditions caused by the CONTRACTOR while performing their operations under the Contract. The insurance coverage shall apply to sudden and accidental pollution events. Any coverage restriction as to time limit for discovery of a pollution incident and/or a time limit for notice to the insurer must be accepted by the COUNTY. The insurance coverage shall also respond to cleanup cost. This coverage may be written in combination with the commercial general liability insurance or professional liability insurance. The policy's limits shall not be less than \$1,000,000 each loss / \$1,000,000 aggregate. The policy shall be endorsed to state that the general aggregate limit of liability shall apply separately to this contract. Any self-insured retention / deductible amount shall be submitted to the COUNTY for review and approval.

7.3 Bonds. The CONTRACTOR agrees to furnish to the COUNTY bonds covering the performance of the Contract and the payment of obligations each in the amount equal to the full amount of the Contract as amended. Upon the request of any person or entity appearing to be a potential beneficiary of the bonds covering payment of obligations arising in the Contract, the CONTRACTOR shall promptly furnish a copy of the bonds or shall permit a copy to be made. The CONTRACTOR shall secure, include costs thereof in the bid, and pay for a performance bond and payments bond in compliance of ORS 279C.380 and other applicable revised statutes issued by a bonding company licensed to transact business in the State of Oregon in accordance with the bid and performance bonds forms provided or others acceptable to the COUNTY. The CONTRACTOR also agrees that the performance bond to be furnished as specified shall be such as to stay in force for a period of three hundred sixty-five days (365), after acceptance of the work by the COUNTY as a guarantee of repair or replacement of any item(s) of work found to be defective by reason of faulty workmanship or defective materials.

7.3.1. The CONTRACTOR shall have a public work bond filed with the Construction Contractors Board prior to starting work on the project, in accordance with ORS 279C.830. Additionally the CONTRACTOR shall include in every subcontract a provision requiring the subcontractor to have a public works bond filed with the Construction Contractors Board before starting work, in accordance with ORS 279C.830.

ARTICLE 8: CONTRACT DOCUMENTS

The Contract Documents which comprise the entire agreement between COUNTY and CONTRACTOR concerning the Work consist of the following:

- 8.1. This Agreement (pages 1 to 13, inclusive).
- 8.2. Exhibits (Reserved - Not used at this time).
- 8.3. Performance and Labor Material Payment Bonds, Public Works Bond consisting of 5 pages.

8.4. 2018 ODOT Standard Specifications for Construction (Cover, TOC, total pages 149, inclusive).

8.5. Supplementary Conditions, including:

Special Conditions (pages 1 to 12, inclusive).
HUD Labor Standards, HUD-4010 (pages 1 to 5, inclusive).
Federal Prevailing (Davis-Bacon) Wage Decision: OR180001 Modification: No. 4 Type: Highway, Dated: 5/4/2018 (pages 1 to 17 inclusive).
State of Oregon (BOLI) Wage Rates Decision: January 1, 2018 (pages 1 to 31 inclusive).
State of Oregon Wage Rates Amendment (BOLI): April 1, 2018 (page 2)

8.6. Specifications bearing the title "Fenton Avenue Improvements" (160 pages, dated March 2018).

8.7. Portland General Electric (PGE) Section including:

Section 00960 – Common Provisions for Electrical Systems (page 1)
Section 00970 – Highway Illumination (page 2)
PGE Statement of Streetlight Installation Responsibilities (pages 4)
Flowchart for Option A Street Lighting Service (page 1, 11 x 17)

8.8. County Signage (Hold for future use).

8.9. Addenda Number: Applicable or Not Applicable.

8.10. CONTRACTOR's Bid Proposal w/ First Tier List: (pages 1-8, inclusive).

8.11. The following which may be delivered or issued after the Effective Date of the Agreement and are not attached hereto: All Written Amendments and other documents amending, modifying, or supplementing the Contract Documents pursuant to Section 00140.30 of the ODOT Standard Specifications for Construction.

The documents listed in paragraphs 8.2 et seq. above are attached to this Agreement (except as expressly noted otherwise above).

There are no Contract Documents other than those listed above in this Article 8. The Contract Documents may only be amended, modified or supplemented as provided in Section 00140.30 of the ODOT Specifications for Construction.

ARTICLE 9: FEDERAL (Davis-Bacon) AND STATE (BOLI) PREVAILING WAGE RATES

Each worker in each trade or occupation employed in the performance of the contract either by the CONTRACTOR, subcontractor, or other person(s) doing or contracting for the whole or any part

of the work on this contract, shall be paid not less than the applicable prevailing wage rate, and will pay the higher rate of pay on an individual job classification of which shall be in effect for this contract pursuant to Davis-Bacon Act (40 U.S.C. 276a) and Bureau of Labor and Industries (a.k.a. BOLI) ORS 279C.800 through ORS 279C.870.

ARTICLE 10: DESCRIPTION OF CONTRACTOR

10.1. The CONTRACTOR is engaged hereby as an independent CONTRACTOR and will be so deemed for purposes of the following.

10.1.1. The CONTRACTOR will be solely responsible for payment of any Federal or State taxes required as a result of this Contract.

10.1.2. This Contract is not intended to entitle the CONTRACTOR to any benefits generally granted to COUNTY employees. Without limitation, but by way of illustration, the benefits which are not intended to be extended by this contract to the CONTRACTOR are vacation, holiday and sick leave, other leaves with pay, tenure, medical and dental coverage, life and disability, insurance, overtime, Social Security, Workers' Compensation, unemployment compensation, or retirement benefits (except insofar as benefits are otherwise required by law if the CONTRACTOR is presently a member of the Public Employees Retirement System).

10.1.3. The CONTRACTOR certifies that at present, he or she, if an individual, is not a program, county, or federal employee.

ARTICLE 11: MISCELLANEOUS

11.1. Terms used in this Agreement which are defined in Section 00130 - Award and Execution of Contract of the ODOT Specifications for Construction will have the meanings indicated in the ODOT Specifications for Construction.

11.2 The COUNTY, through its AUTHORIZED REPRESENTATIVE or his designee shall at all times be allowed access to all parts of the operations and work locations of the CONTRACTOR, and shall be furnished such information and assistance by the CONTRACTOR, or the designated representative or representatives of the CONTRACTOR, as may be required to make a complete and detailed inspection.

11.3. . CONTRACTOR shall not enter into any subcontracts for any of the Work required by this Contract, or assign or transfer any of its interest in this Contract by operation of law or otherwise, without obtaining prior written approval from the COUNTY. COUNTY's consent to any subcontract shall not relieve Contractor of any of its duties or obligations under this Contract

11.4. COUNTY and CONTRACTOR each binds itself, its partners, successors, assigns and legal representatives to the other party hereto, its partners, successors, assigns and legal representatives in respect of all covenants, agreements and obligations contained in the Contract Documents.

11.5. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon COUNTY and CONTRACTOR, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

11.6. GOVERNING LAW. This Contract shall be governed and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, or suit between District and Contractor that arises out of or relates to the performance of this Contract shall be brought and conducted solely and exclusively within the Circuit Court for Clackamas County, for the State of Oregon. Provided, however, that if any such claim, action, or suit may be brought in a federal forum, it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon.

ARTICLE 12: TAX LAWS

12.1. The CONTRACTOR shall comply with all federal, state and local laws, regulation, executive orders and ordinances applicable to the Work as described in Attachment A under this Contract. CONTRACTOR must, throughout the duration of this Contract and any extensions, comply with all tax laws of this state and all applicable tax laws of any political subdivision of this state. Any violation of this section shall constitute a material breach of this Contract. Further, any violation of CONTRACTOR'S warranty, in this Contract that CONTRACTOR has complied with the tax laws of this state and the applicable tax laws of any political subdivision of this state also shall constitute a material breach of this Contract. Any violation shall entitle COUNTY to terminate this Contract, to pursue and recover any and all damages that arise from the breach and the termination of this Contract, and to pursue any or all of the remedies available under this Contract, at law, or in equity, including but not limited to:

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

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

12.2. The CONTRACTOR represents and warrants that, for a period of no fewer than six calendar years preceding the effective date of this Contract, has faithfully complied with:

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

ARTICLE 13: DEBT LIMITATION

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.

IN WITNESS WHEREOF, COUNTY and CONTRACTOR have signed this Agreement in triplicate. One counterpart each has been delivered to COUNTY, CONTRACTOR and ENGINEER. All portions of the Contract Documents have been signed or identified by COUNTY and CONTRACTOR..

[Signature Page to Follow]

This Agreement will be effective upon the date on which it is signed by the COUNTY.


CONTRACTOR

COUNTY

Kerr Contractors Oregon, Inc.

Clackamas County, Oregon

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

By: 
Alan W. Aplin, Vice President

By: _____
Richard Swift, Director
Health, Housing and Human Services
Department

6/20/18
Date Signed

Date Signed

90-0592910
Contractor's Federal Tax Identification No.
or Social Security No. (if individual)
195658
Oregon Commercial Contractor's Board No.

Approved as to Form

 6/25/18
County Counsel Date

COPY

July 12, 2018

Board of Commissioners
 Clackamas County

Members of the Board:

Approval of an Amendment to the Agency Service Contract with Cascadia Behavioral Healthcare for Assertive Community Treatment Programs

Purpose/Outcomes	To provide Assertive Community Treatment programs for people who are Oregon Health Plan (OHP) member's capitated to Clackamas County.
Dollar Amount and Fiscal Impact	Amendment adds \$375,000, increasing the maximum contract value to \$1,125,000.
Funding Source	No County General Funds are involved. Funding provided by the State of Oregon, Oregon Health Plan (OHP).
Duration	Effective upon signature and terminates December 31, 2018
Previous Board Action	Original contract reviewed and approved by the Board July 27, 2017, Agenda Item #072717-A2.
Strategic Plan Alignment	1. Individuals and families in need are healthy and safe. 2. Ensure safe, healthy and secure communities.
Contact Person	Mary Rumbaugh, Director – Behavioral Health Division – (503) 742-5305
Contract Number	#8112

BACKGROUND:

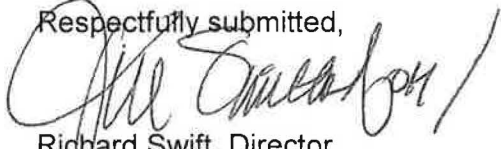
The Behavioral Health Division of the Health, Housing & Human Services Department requests the approval of an amendment to the Agency Service Contract with Cascadia Behavioral Healthcare for Assertive Community Treatment (ACT) programs. ACT programs are for adults who have not responded well to traditional outpatient mental health services. Services include assessments, psychiatric services, case management, employment and housing assistance, family support and education, substance abuse services, etc. for persons enrolled in services through Clackamas County Behavioral Health Division. The Behavioral Health Division has partnered with Cascadia Behavioral Healthcare for behavioral health services since 2007.

Cascadia Behavioral Healthcare, with the addition of \$375,000 provided through this amendment, will be compensated up to \$1,125,000 less any revenue from Medicare, open card or other third party payers. The amendment is effective upon signature and continues through December 31, 2018. County Counsel has reviewed and approved this amendment on June 20, 2018.

RECOMMENDATION:

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

Respectfully submitted,



Richard Swift, Director
 Health, Housing and Human Services Department

**Contract Amendment
Health, Housing, and Human Services Department**

H3S Contract Number: 8112

Board Agenda Number: _____

and Board date: _____

Division: Behavioral Health

Amendment No. 1

Contractor: Cascadia Behavioral Healthcare, Inc.

Amendment Requested By: Mary Rumbaugh, Director of Behavioral Health

Changes:

Scope of Services

Contract Budget/Compensation

Contract Term

Other Insurance requirements & new exhibits

Justification for Amendment:

This contract provides Non-Fidelity Assertive Community Treatment (ACT) services.

This amendment extends the term of the contract; increases the maximum value of the contract; amends insurance requirements and federal term and conditions; and adds several new exhibits.

The contract termination date will now be **December 31, 2018**.

Compensation of the contract **is increased by \$375,000.00** for 6 months of services, bringing the maximum compensation to **\$1,125,000.00**.

Insurance requirements are amended by the removal of Sections 5.2.1 through 5.2.12 of the contract and the addition of **Exhibit F**, Insurance. **Exhibit E**, OHP Required Federal Terms and Conditions has been amended and **Exhibits G**, Qualified Service Organization Business Associate Agreement and **Exhibit H**, Certification Statement for Independent Contractor have been added.

Agency may also be designated as "Contractor" in the exhibits included as part of this amendment.

This amendment is effective **upon signature** and continues through **December 31, 2018**.

Except as amended hereby, all other terms and conditions of the contract remain in full force and effect. The County has identified the changes with "***bold/italic***" font for easy reference, except when adding exhibits.

AMEND:

2.0 Term

Services provided under the terms of this contract shall commence on **July 1, 2017** and shall terminate **June 30, 2018** unless terminated by one or both parties as provided for in paragraph 6.0 below. This Contract can be amended by mutual consent of both parties.

TO READ:

2.0 Term

Services provided under the terms of this contract shall commence on **July 1, 2017** and shall terminate **December 31, 2018**, unless terminated by one or both parties as provided for in paragraph 6.0 below. This Contract can be amended by mutual consent of both parties.

AMEND:

3.0 Compensation and Fiscal Records

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

Maximum contract payment shall not exceed **\$750,000**

TO READ:

3.0 Compensation and Fiscal Records

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

Maximum contract payment shall not exceed ***\$1,125,000.00.***

AMEND: Exhibit C, Compensation

1. Compensation

COUNTY shall compensate AGENCY for satisfactorily performing services as specified in Exhibit B as follows:

Maximum contract payment to AGENCY shall not exceed ***\$750,000.00*** for the period of **July 1, 2017 through June 30, 2018**, *less Medicare, Open Card, Family Care and/or private insurance revenue collected.*

TO READ: Exhibit C, Compensation

1. Compensation

COUNTY shall compensate AGENCY for satisfactorily performing services as specified in Exhibit B as follows:

Maximum contract payment to AGENCY shall not exceed **\$1,125,000.00** for the period of **July 1, 2017 through December 31, 2018, less Medicare, Open Card, and/or private insurance revenue collected.**

AMEND:

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

5.2.1 **Commercial General Liability**

Required by COUNTY Not required by COUNTY

AGENCY shall obtain, at AGENCY's expense, and keep in effect during the term of this Contract, Commercial General Liability Insurance covering bodily injury, death and property damage on an "occurrence" form in the amount of **not less than \$1,000,000 per occurrence/ \$2,000,000 general aggregate** for the protection of COUNTY, its officers, elected officials, and employees. This coverage shall include Contractual Liability insurance for the indemnity provided under this Contract and personal injury liability, products and completed operations. This policy(s) shall be primary insurance as respects to the COUNTY. Any insurance or self-insurance maintained by COUNTY shall be excess and shall not contribute to it.

5.2.2 **Commercial Automobile Liability**

Required by COUNTY Not required by COUNTY

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

5.2.3 **Professional Liability**

Required by COUNTY Not required by COUNTY

If this Contract involves the delivery of professional services, AGENCY shall obtain and furnish the COUNTY evidence of Professional Liability Insurance in the amount of **not less than \$1,000,000 combined single limit per occurrence/\$2,000,000 general annual aggregate** for malpractice or errors

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

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

5.2.5 Notice of Cancellation. There shall be no cancellation, material change, exhaustion of aggregate limits or intent not to renew insurance coverage without 60 days written notice to COUNTY. Any failure to comply with this provision will not affect the insurance coverage provided to COUNTY. The 60 days' notice of cancellation provision shall be physically endorsed on to the policy.

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

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

Certificate holder should be:

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

Certificates of Insurance should be submitted electronically to:

BHContracts@clackamas.us

Or by mail to:

**Clackamas County Behavioral Health Division
Atten: Contracts
2051 Kaen Road, Suite 154
Oregon City, OR 97045**

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

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

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

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

5.2.12 Notice of Cancellation. There shall be no cancellation, material change, exhaustion of aggregate limits or intent not to renew insurance coverage without **sixty (60) days** written notice by the AGENCY to the COUNTY.

TO READ:

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

AMEND:

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

Exhibit A	Definitions
Exhibit B	Scopes of Work
Exhibit C	Compensation
Exhibit D	Statement of General Conditions
Exhibit E	OHP Required Federal Terms and Conditions

TO READ:

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

Exhibit A	Definitions
Exhibit B	Scopes of Work
Exhibit C	Compensation

Exhibit D	Statement of General Conditions
Exhibit E	OHP Required Federal Terms and Conditions
<i>Exhibit F</i>	<i>Insurance</i>
<i>Exhibit G</i>	<i>Qualified Service Organization Business Associate Agreement</i>
<i>Exhibit H</i>	<i>Independent Contractor</i>

AMEND:

EXHIBIT E
OHP REQUIRED FEDERAL TERMS AND CONDITIONS

Unless exempt under 45 CFR Part 87 for Faith-Based Organizations (Federal Register, July 16, 2004, Volume 69, #136), or other federal provisions, AGENCY shall comply with the following federal requirements to the extent that they are applicable to this Contract, to AGENCY, or to the Work, or to any combination of the foregoing. For purposes of this Contract, 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 with all federal laws, regulations and executive orders applicable to this Contract or to the delivery of Work. Without limiting the generality of the foregoing, AGENCY expressly agrees to comply with the following laws, regulations and executive orders to the extent they are applicable to this Contract: (a) Title VI and VII of the Civil Rights Act of 1964, as amended, (b) 45 CFR Part 84 which implements , Title V, 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) the Mental Health Parity and Addiction Equity Act of 2008, as amended (i) all regulations and administrative rules established pursuant to the foregoing laws, (j) all other applicable requirements of federal civil rights and rehabilitation statutes, rules and regulations, and (k) all federal laws requiring reporting of Member abuse. These laws, regulations and executive orders are incorporated by reference herein to the extent that they are applicable to this Contract and required by law to be so incorporated. No federal funds may be used to provide Work in violation of 42 U.S.C. 14402.

2. Equal Employment Opportunity

If this Contract, including amendments, is for more than \$10,000, then AGENCY shall 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 Contract, including amendments, exceeds \$150,000 then AGENCY shall 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 OHA, United States Department of Health and Human Services and the appropriate Regional Office of the Environmental Protection Agency.

4. Energy Efficiency

AGENCY shall 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. Resource Conservation and Recovery

Contractor shall 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.

6. Audits

- a. AGENCY shall comply with applicable audit requirements and responsibilities set forth in this Contract and applicable state or federal law.
- b. 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 COUNTY within **thirty (30) days** of completion. If AGENCY expends less than \$750,000 in a fiscal year beginning on or after that December 26, 2014, AGENCY is exempt from Federal audit requirements for that year.

7. Non-Discrimination

AGENCY shall comply with all federal and State laws and regulations including Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972 (regarding education programs and activities) the Age Discrimination Act of 1975, the Rehabilitation Act of 1973, the Americans with Disabilities Act (ADA) of 1990, and all amendments to those acts and all regulations promulgated thereunder. AGENCY shall also comply with all applicable requirements of State civil rights and rehabilitation statutes and rules.

8. OASIS

To the extent applicable, AGENCY shall comply with the Outcome and Assessment Information Set (OASIS) reporting requirements and patient notice requirements for skilled services provided by Home Health Agencies, pursuant to CMS requirements published in 42 CFR 484.20, and such subsequent regulations as CMS may issue in relation to the OASIS program.

9. Patient Rights Condition of Participation

To the extent applicable, AGENCY shall comply with the Patient Rights Condition of Participation (COP) that Hospitals must meet to continue participation in the Medicaid program, pursuant to 42 CFR Part 482. For purposes of this Contract, Hospitals include short-term, psychiatric, rehabilitation, long-term, and children's hospitals.

10. Federal Grant Requirements

The federal Medicaid rules establish that OHA is a recipient of federal financial assistance, and therefore is subject to federal grant requirements pursuant to 42 CFR 430.2(b). To the extent applicable to AGENCY or to the extent OHA requires AGENCY to supply information or comply with procedures to permit OHA to satisfy its obligations federal grant obligations or both, Contractor must comply with the following parts of 45 CFR:

- a. Part 74, including Appendix A (uniform federal grant administration requirements);
- b. Part 92 (uniform administrative requirements for grants to state, local and tribal governments);
- c. Part 80 (nondiscrimination under Title VI of the Civil Rights Act);
- d. Part 84 (nondiscrimination on the basis of handicap);
- e. Part 91 (nondiscrimination on the basis of age);
- f. Part 95 (Medicaid and CHIP federal grant administration requirements); and
- g. AGENCY shall not expend any of the funds paid under this Contract for roads, bridges, stadiums, or any other item or service not covered under the OHP.

TO READ:

EXHIBIT E
OHP REQUIRED FEDERAL TERMS AND CONDITIONS

Unless exempt under 45 CFR Part 87 for Faith-Based Organizations (Federal Register, July 16, 2004, Volume 69, #136), or other federal provisions, Contractor shall comply and, as indicated, cause all Subcontractors to comply with the following federal requirements to the extent that they are applicable. For purposes of this Contract, 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

Contractor shall comply and require all Subcontractors to comply with all federal laws, regulations and executive orders applicable to this Contract or to the delivery of Work. Without limiting the generality of the foregoing, Contractor expressly agrees to comply and require all Subcontractors to comply with the following laws, regulations and executive orders to the extent they are applicable to this Contract: (a) Title VI and VII of the Civil Rights Act of 1964, as amended, (b) 45

CFR Part 84 which implements, Title V, Sections 503 and 504 of the Rehabilitation Act of 1973, as amended, (c) the Americans with Disabilities Act of 1990, as amended, (d) Section 1557 of the Patient Protection and Affordable Care Act (ACA), (e) Executive Order 11246, as amended, (f) the Health Insurance Portability and Accountability Act of 1996, as amended, (g) the Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended, (h) the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, (i) the Mental Health Parity and Addiction Equity Act of 2008, as amended; (j) CMS regulations (including 42 CFR Part 438, subpart K) and guidance regarding mental health parity, including 42 CFR 438.900 et. seq.; (k) all regulations and administrative rules established pursuant to the foregoing laws, (l) all other applicable requirements of federal civil rights and rehabilitation statutes, rules and regulations, and (m) all federal laws requiring reporting of Member abuse. These laws, regulations and executive orders are incorporated by reference herein to the extent that they are applicable to this Contract and required by law to be so incorporated. No federal funds may be used to provide Work in violation of 42 U.S.C. 14402.

2. Equal Employment Opportunity

If this Contract, including amendments, is for more than \$10,000, then Contractor shall comply and require all Subcontractors 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 Contract, including amendments, exceeds \$100,000 then Contractor shall comply and require all Subcontractors 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 OHA, United States Department of Health and Human Services and the appropriate Regional Office of the Environmental Protection Agency. Contractor shall include and require all Subcontractors to include in all contracts with Subcontractors receiving more than \$100,000, language requiring the Subcontractor to comply with the federal laws identified in this section.

4. Energy Efficiency

Contractor shall comply and require all Subcontractors 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 Contract, the Contractor certifies, to the best of the Contractor's knowledge and belief that:

a. No federal appropriated funds have been paid or will be paid, by or on behalf of Contractor, 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 Contractor shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying" in accordance with its instructions.

c. The Contractor 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 subrecipients and Subcontractors shall certify and disclose accordingly.

d. This certification is a material representation of fact upon which reliance was placed when this Contract was made or entered into. Submission of this certification is a prerequisite for making or entering into this Contract 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.

e. No part of any federal funds paid to Contractor under this Contract 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 Contractor under this Contract shall be used to pay the salary or expenses of any grant or contract recipient, or agent acting for such recipient, 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 Contractor under this Contract 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. HIPAA Compliance

The parties acknowledge and agree that each of County and the Contractor is a “covered entity” for purposes of privacy and security provisions of the Health Insurance Portability and Accountability Act and its implementing federal regulations (collectively referred to as HIPAA). County and Contractor shall comply with HIPAA to the extent that any Work or obligations of County arising under this Contract are covered by HIPAA. Contractor shall develop and implement such policies and procedures for maintaining the privacy and security of records and authorizing the use and disclosure of records required to comply with this Contract and with HIPAA. Contractor shall comply and cause all Subcontractors to comply with HIPAA and the following:

- a. **Privacy and Security of Individually Identifiable Health Information.** Individually Identifiable Health Information about specific individuals is protected from unauthorized use or disclosure consistent with the requirements of HIPAA. Individually Identifiable Health Information relating to specific individuals may be exchanged between Contractor and County for purposes directly related to the provision of services to clients which are funded in whole or in part under this Contract. However, Contractor shall not use or disclose any Individually Identifiable Health Information about specific individuals in a manner that would violate HIPAA Privacy Rules in 45 CFR Parts 160 and 164, OHA Privacy Rules, OAR Chapter 407 Division 014, or OHA Notice of Privacy Practices, if done by OHA. A copy of the most recent OHA Notice of Privacy Practices is posted on the OHA web site at: <https://apps.state.or.us/cf1/FORMS/>, Form number ME2090 Notice of Privacy Practices, or may be obtained from OHA.
- b. **HIPAA Information Security.** Contractor shall adopt and employ reasonable administrative and physical safeguards consistent with the Security Rules in 45 CFR Part 164 to ensure that client information shall be used by or disclosed only to the extent necessary for the permitted use or disclosure and consistent with applicable State and federal laws and the terms and conditions of this Contract. Security incidents involving client information must be immediately reported to DHS’ Privacy Officer.
- c. **Data Transactions Systems.** Contractor shall comply with the HIPAA standards for electronic transactions published in 45 CFR Part 162 and the DHS EDT Rules, OAR 410-001-0000 through 410-001-0200. In order for Contractor to exchange electronic data transactions with OHA in connection with claims or encounter data, eligibility or Enrollment information, authorizations or other electronic transaction, Contractor shall execute an EDT Trading Partner Agreement with OHA and shall comply with the OHA EDT Rules.

- d. Consultation and Testing. If Contractor reasonably believes that the Contractor's, County's or OHA's data transactions system or other application of HIPAA privacy or security compliance policy may result in a violation of HIPAA requirements, Contractor shall promptly consult the County or OHA HIPAA officer. Contractor, County, or OHA may initiate a request for testing of HIPAA transaction requirements, subject to available resources and OHA testing schedule.

7. Resource Conservation and Recovery

Contractor shall comply and require all Subcontractors 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.

8. Audits

- a. Contractor shall comply, and require all subcontractors to comply, with applicable audit requirements and responsibilities set forth in this Contract and applicable state or federal law.
- b. If Contractor expends \$500,000 or more in Federal funds (from all sources) in its fiscal year beginning prior to December 26, 2014, Contractor shall have a single organization-wide audit conducted in accordance with the Single Audit Act. If Contractor expends \$750,000 or more in federal funds (from all sources) in a fiscal year beginning on or after December 26, 2014, Contractor 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 OHA within 30 days of completion. If Contractor 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, Contractor is exempt from Federal audit requirements for that year. Records must be available as provided in Exhibit B, Part 8, Section 2.

9. Debarment and Suspension

Contractor shall, in accordance with 42 CFR 438.808(b), not permit any person or entity to be a Subcontractor 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 contractors declared ineligible under statutory authority other than Executive Order No.12549. Subcontractors 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.

Contractor shall ensure that no amounts are paid to a Provider that could be excluded from participation in Medicare or Medicaid for any of the following reasons:

- a. The Provider is controlled by a sanctioned individual
- b. The Provider has a contractual relationship that provides for the administration, management or provision of medical services, or the establishment of policies, or the provision of operational support for the administration, management or provision of medical services, either directly or indirectly, with an individual convicted of certain crimes as described in section 1128(b)(8)(B) of the Social Security Act
- c. The Provider employs or contracts, directly or indirectly, for the furnishing of health care, utilization review, medical social work, or administrative services, with one of the following:
 - (i) Any individual or entity excluded from participation in Federal health care programs.
 - (ii) Any entity that would provide those services through an excluded individual or entity.

The Contract prohibits the Contractor from knowingly having a person with ownership of 5% or more of the Contractor's equity if such person is (or is affiliated with a person or entity that is) debarred, suspended, or excluded from participation in federal healthcare programs.

If OHA learns that Contractor has a prohibited relationship with a person or entity that is debarred, suspended, or excluded from participation in federal healthcare programs, OHA:

- a. Must notify DHHS of Contractor's noncompliance;
- b. May continue an existing agreement with the Contractor unless DHHS directs otherwise; and
- c. May not renew or extend the existing contract with the Contractor unless DHHS provides to the State a written statement describing compelling reasons that exist for renewing or extending the Contract, consistent with 42 CFR 438.610.

10. Drug-Free Workplace

Contractor shall comply and cause all Subcontractors to comply with the following provisions to maintain a drug-free workplace: (i) Contractor 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 Contractor's workplace or while providing services to Members. Contractor's notice shall specify the actions that will be taken by Contractor 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, Contractor'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 Contract 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 Contract, 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 days after such conviction; (v) Notify OHA within 10 days after receiving notice under Paragraph (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 Section 5154 of the Drug-Free Workplace Act of 1988; (vii) Make a good-faith effort to continue a drug-free workplace through implementation of Paragraphs (i) through (vi) above; (viii) Require any Subcontractor to comply with Paragraphs (i) through (vii) above; (ix) Neither Contractor, or any of Contractor's employees, officers, agents or Subcontractors may provide any service required under this Contract 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 Contractor or Contractor's employee, officer, agent or Subcontractor has used a controlled substance, prescription or non-prescription medication that impairs the Contractor or Contractor's employee, officer, agent or Subcontractor's performance of essential job function or creates a direct threat to 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 this Contract.

11. Pro-Children Act

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

12. Non-Discrimination

Contractor shall comply, and require its Subcontractors to comply, with all federal and State laws and regulations including Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972 (regarding education programs and activities) the Age Discrimination Act of 1975, the Rehabilitation Act of 1973, the Americans with Disabilities Act (ADA) of 1990, and all amendments to those acts and all regulations promulgated thereunder. Contractor shall also comply with all applicable requirements of State civil rights and rehabilitation statutes and rules.

13. OASIS

To the extent applicable, Contractor shall comply with, and shall require Subcontractors to comply with, the Outcome and Assessment Information Set (OASIS) reporting requirements and patient notice requirements for skilled services provided by Home Health Agencies, pursuant to CMS requirements published in 42 CFR 484.20, and such subsequent regulations as CMS may issue in relation to the OASIS program.

14. Patient Rights Condition of Participation

To the extent applicable, Contractor shall comply with, and shall require Subcontractors to comply with, the Patient Rights Condition of Participation (COP) that Hospitals must meet to continue participation in the Medicaid program, pursuant to 42 CFR Part 482. For purposes of this Contract, Hospitals include short-term, psychiatric, rehabilitation, long-term, and children's hospitals.

15. Federal Grant Requirements

The federal Medicaid rules establish that OHA and the County are recipients of federal financial assistance, and therefore are subject to federal grant requirements pursuant to 42 CFR 430.2(b). To the extent applicable to Contractor or to the extent OHA and/or the County requires Contractor to supply information or comply with procedures to permit OHA and/or the County to satisfy its obligations federal grant obligations or both, Contractor must comply with the following parts of 45 CFR:

- a. Part 74, including Appendix A (uniform federal grant administration requirements);
- b. Part 92 (uniform administrative requirements for grants to state, local and tribal governments);
- c. Part 80 (nondiscrimination under Title VI of the Civil Rights Act);
- d. Part 84 (nondiscrimination on the basis of handicap);
- e. Part 91 (nondiscrimination on the basis of age);
- f. Part 95 (Medicaid and CHIP federal grant administration requirements); and
- g. Contractor shall not expend, and Contractor shall include a provision in any Subcontract that its Subcontractor shall not expend, any of the funds paid under this Contract for roads, bridges, stadiums, or any other item or service not covered under the OHP.

16. Mental Health Parity

Contractor shall adhere to CMS guidelines regarding Mental Health Parity detailed below:

- a. If Contractor does not include an aggregate lifetime or annual dollar limit on any medical/surgical benefits or includes an aggregate lifetime or annual dollar limit that applies to less than one-third of all medical/surgical benefits provided to enrollees, it may not impose an aggregate lifetime or annual dollar limit, respectively, on mental health or substance use disorder benefits;
- b. If Contractor includes an aggregate lifetime or annual dollar limit on at least two-thirds of all medical/surgical benefits provided to enrollees, it must either apply the aggregate lifetime or annual dollar limit both to the medical/surgical benefits to which the limit would otherwise apply and to mental health or substance use disorder benefits in a manner that does not distinguish between the medical/surgical benefits and mental health or substance use disorder benefits; or not include an aggregate lifetime or annual dollar limit on mental health or substance use disorder benefits that is more restrictive than the aggregate lifetime or annual dollar limit, respectively, on medical/surgical benefits;
- c. If Contractor includes an aggregate lifetime limit or annual dollar amount that applies to one-third or more but less than two-thirds of all medical/surgical benefits provided to enrollees, it must either impose no aggregate lifetime or annual dollar limit on mental health or substance use disorder benefits; or impose an aggregate lifetime or annual dollar limit on mental health or substance use disorder benefits that is no more restrictive than an average limit calculated for medical/surgical benefits in accordance with 42 CFR 438.905(e)(ii);

- d. Contractor must not apply any financial requirement or treatment limitation to mental health or substance use disorder benefits in any classification that is more restrictive than the predominant financial requirement or treatment limitation of that type applied to substantially all medical/surgical benefits in the same classification furnished to enrollees (whether or not the benefits are furnished by Contractor).
- e. If a member is provided mental health or substance use disorder benefits in any classification of benefits (inpatient, outpatient, emergency care, or prescription drugs), mental health or substance use disorder benefits must be provided to the member in every classification in which medical/surgical benefits are provided;
- f. Contractor may not apply any cumulative financial requirements for mental health or substance use disorder benefits in a classification (inpatient, outpatient, emergency care, prescription drugs) that accumulates separately from any established for medical/surgical benefits in the same classification;
- g. Contractor may not impose NQTLs for mental health or substance use disorder benefits in any classification unless, under the policies and procedures of Contractor as written and in operation, any processes, strategies, evidentiary standards, or other factors used in applying the NQTL to mental health or substance use disorder benefits in the classification are comparable to, and are applied no more stringently than, the processes, strategies, evidentiary standards, or other factors used in applying the limitation for medical/surgical benefits in the classification;
- h. Contractor shall provide all necessary documentation and reporting required by OHA to establish and demonstrate compliance with 42 CFR part 438, subpart K regarding parity in mental health and substance use disorder benefits.
- i. Contractor shall use processes, strategies, evidentiary standards or other factors in determining access to out of network providers for mental health or substance use disorder benefits that are comparable to and applied no more stringently than, the processes, strategies, evidentiary standards or other factors in determining access to out of network providers for medical/surgical benefits in the same classification.

ADD:

**EXHIBIT F
INSURANCE**

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

1. **Workers Compensation.** Contractor, its subcontractors, if any, and all employers providing work, labor, or materials under this Contract are subject employers under the Oregon Workers' Compensation Law, and shall either comply with ORS 656.017, which requires said employers to provide workers' compensation coverage that satisfies Oregon law for all their subject workers, or shall comply with the exemption set out in ORS 656.126. Contractors shall maintain employer's liability insurance with limits of \$500,000 each accident, \$500,000 disease each employee, and \$500,000 each policy limit.

2. **Professional Liability.** **Required by County** **Not required by County**

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

If this box is checked Professional Liability limits shall be \$2,000,000 per occurrence and \$4,000,000 in annual aggregate.

3. **General Liability.** **Required by County** **Not required by County**

General Liability insurance with a combined single limit, or the equivalent, of not less than \$1,000,000 for each claim, incident, or occurrence, with an annual aggregate limit of \$2,000,000 for Bodily Injury and Property Damage for the protection of the **County, Health Share of Oregon, and the State of Oregon, and its officers, elected officials, agents, and employees.** It shall include contractual liability coverage for the indemnity provided under this Contract.

If this box is checked General Liability limits shall be \$2,000,000 per occurrence and \$4,000,000 in annual aggregate for bodily injury/death, and \$200,000 per occurrence and \$600,000 annual aggregate for property damage.

4. **Automobile Liability.** **Required by County** **Not required by County**

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

Commercial Automobile Liability insurance limits shall be \$2,000,000 per occurrence and \$4,000,000 in annual aggregate for bodily injury/death, and \$200,000 per occurrence and \$600,000 annual aggregate for property damage.

Personal Automobile Liability insurance limits shall be not less than \$250,000/occurrence, \$500,000/aggregate, and \$100,000/property damage.

5. **Physical Abuse and Molestation Liability.** **Required by County** **Not required by County**

Physical Abuse and Molestation Liability insurance with a combined single limit of not less than \$1,000,000 each claim, incident, or occurrence, with an annual aggregate limit of \$2,000,000. Coverage shall be provided through either general liability or professional liability coverage. Proof of Sex Abuse/Molestation insurance coverage must be provided.

6. **Privacy and Network Security.** **Required by County** **Not required by County**

Privacy and Network Security coverages shall be obtained and maintained to provide protection against liability for (a) system attack; (b) denial or loss of service attacks; (c) spread of malicious software code; (d) unauthorized access and use of computer systems; and (e) liability from the loss or disclosure of confidential data with limit of \$1,000,000 per claim/annual aggregate.

- If this box is checked Privacy and Network Security limit shall be at least \$4,000,000.
7. **Additional Insured Provision.** The insurance, other than Professional Liability (except to the extent it only applies to Commercial General Liability exposures), Workers' Compensation, Personal Automobile Liability and Pollution Liability Insurance, shall include **Clackamas County, Health Share of Oregon, and the State of Oregon, and their officers, elected officials, agents, and employees** as an additional insured.
 8. **Primary Coverage Clause.** Contractor's insurance shall apply as primary and will not seek contribution from any insurance or self-insurance maintained by, or provided to, the additional insureds listed above. This must be noted on the insurance certificate.
 9. **Cross-Liability Clause.** A cross-liability clause or separation of insureds condition will be included in all general liability, professional liability, pollution and errors and omissions policies required by this Contract.
 10. **"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 Contract, for a minimum of twenty-four (24) months following the later of: (i) the Contractor's completion and County's acceptance of all Services required under the Provider Contract; or (ii) the expiration of all warranty periods provided under the Contract. 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 County may grant approval of the maximum "tail" coverage period reasonably available in the marketplace. If County approval is granted, the Contractor shall maintain "tail" coverage for the maximum time period that "tail" coverage is reasonably available in the marketplace.
 11. **Self-insurance.** Contractor may fulfill one or more of its insurance obligation herein through a program of self-insurance, provided that Contractor's self-insurance program complies with all applicable laws, provides coverage equivalent in both type and level to that required in this Exhibit, and is reasonably acceptable to County. Contractor shall furnish an acceptable insurance certificate to County for any insurance coverage required by this Contract that is fulfilled through self-insurance. Stop-loss insurance and reinsurance coverage against catastrophic and unexpected expenses may not be self-insured.
 12. **Certificates of Insurance.** Contractor shall furnish evidence of the insurance required in this Contract. Contractor will maintain the insurance in full force throughout the duration of this Contract. No Contract shall be in effect until the required certificates have been received, approved, and accepted by County. A renewal certificate will be sent to County ten (10) days prior to coverage expiration. The insurance for general liability and commercial automobile liability must include an endorsement naming **Clackamas County, Health Share of Oregon, and the State of Oregon, and their officers, elected officials, agents, and employees** as additional insureds with respect to the Work under this Contract. If requested, complete copies of insurance policies, trust agreements, etc. shall be provided to the County. The Contractor shall be financially responsible for all pertinent deductibles, self-insured retentions and/or self-insurance.

Certificate Holder should be:

Clackamas County, 2051 Kaen Road, Suite 154, Oregon City, Oregon 97045

Certificates of Insurance should be submitted electronically or by mail to:

BHcontracts@clackamas.us
Clackamas County
Contracts Administration
2051 Kaen Road, Suite 154
Oregon City, OR 97045

- 13. Insurance Carrier Rating.** Coverages provided by the Contractor must be underwritten by an insurance company deemed acceptable by the County. Insurance coverage shall be provided by companies admitted to do business in Oregon or, in the alternative, rated A- or better by Best's Insurance Rating. The County reserves the right to reject all or any insurance carrier(s) with an unacceptable financial rating.
- 14. Waiver of Subrogation.** Contractor agrees to waive their rights of subrogation arising from the Work performed under this Contract.
- 15. Notice of cancellation or change.** There shall be no cancellation, material change, exhaustion of aggregate limits, reduction of limits, or intent not to renew the insurance coverage(s) without thirty (30) days written notice from the Contractor or its insurer(s) to the County at the following address: Clackamas County Behavioral Health Division, 2051 Kaen Road, Suite 154, Oregon City, OR 97045 or BHcontracts@clackamas.us.
- 16. Insurance Compliance.** The County will be entitled to enforce Contractor compliance with the insurance requirements, and will take all reasonable steps to enforce such compliance. Examples of "reasonable steps" include issuing stop work orders (or the equivalent) until the insurance is in full force, terminating the Contract as permitted by the Contract, or pursuing legal action to enforce the insurance requirements. In no event shall County permit a Contractor to work under this Contract when the County is aware that the Contractor is not in compliance with the insurance requirements.

ADD:

EXHIBIT G
QUALIFIED SERVICE ORGANIZATION BUSINESS ASSOCIATE AGREEMENT

This Qualified Service Organization Business Associate Agreement ("Agreement") is entered into upon signature ("Effective Date") by and between **The County of Clackamas Health, Housing, and Human Services, Behavioral Health Division** ("Covered Entity"), and **Cascadia Behavioral Healthcare** ("Business Associate") in conformance with the Health Insurance Portability and Accountability Act of 1996 and its regulations ("HIPAA"), and Confidentiality of Substance Use Disorder Patient Records, 42 CFR Part 2 ("Confidentiality Rule").

RECITALS

Whereas, the Covered Entity has engaged the services of the Business Associate as defined under 45 CFR §160.103 for or on behalf of the Covered Entity;
Whereas, the Covered Entity may wish to disclose Individually Identifiable Health Information to the Business Associate in the performance of services for or on behalf of the Covered Entity as described in a Services Agreement ("Services Agreement");

Whereas, such information may be Protected Health Information (“PHI”) as defined by the HIPAA Rules promulgated in accordance with the Administrative Simplification provisions of HIPAA;
Whereas, the Parties agree to establish safeguards for the protection of such information;
Whereas, the Covered Entity and Business Associate desire to enter into this Agreement to address certain requirements under the HIPAA Rules **and** the Confidentiality Rule;
Now, therefore, the parties hereby agree as follows:

SECTION I – DEFINITIONS

- 1.1 “Breach” is any unauthorized acquisition, access, use or disclosure of Unsecured PHI, unless the Covered Entity demonstrates that there is a low probability that the PHI has been compromised. The definition of Breach excludes the following uses and disclosures:
 - 1.1.1 Unintentional access by a Covered Entity or Business Associate in good faith and within a Workforce member’s course and scope of employment or placement;
 - 1.1.2 Inadvertent one time disclosure between Covered Entity or Business Associate Workforce members; and
 - 1.1.3 The Covered Entity or Business Associate has a good faith belief that an unauthorized person to whom the disclosure was made would not reasonably have been able to retain the information.
- 1.2 “Covered Entity” shall have the meaning given to such term under the HIPAA Rules, including, but not limited to, 45 CFR §160.103.
- 1.3 “Designated Record Set” shall have the meaning given to such term under the HIPAA Rules, including, but not limited to 45 CFR §164.501.
- 1.4 “Disclose” or “disclosure” shall have the meaning given to such terms under the Confidentiality Rule, 42 CFR §2.11.
- 1.5 “Effective Date” shall be the Effective Date of this Agreement.
- 1.6 "Electronic Protected Health Information" or "Electronic PHI" shall have the meaning given to such term at 45 CFR §160.103, limited to information of the Covered Entity that the Business Associate creates, receives, accesses, maintains or transmits in electronic media on behalf of the Covered Entity under the terms and conditions of this Agreement.
- 1.7 “Health Care Operations” shall have the meaning given to such term under the HIPAA Rules, including, but not limited to, 45 CFR §164.501.
- 1.8 “HIPAA Rules” shall mean the Privacy, Security, Breach Notification, and Enforcement Rules codified at 45 CFR Part 160 and Part 164.
- 1.9 “Individual” shall have the meaning given to such term in 45 CFR §160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR §164.502(g).
- 1.10 “Individually Identifiable Health Information” shall have the meaning given to such term under the HIPAA Rules, including, but not limited to 45 CFR §160.103.
- 1.11 “Program” shall have the meaning given to such term under the Confidentiality Rule, 42 CFR §2.11.
- 1.12 “Protected Health Information” or “PHI” means any information, whether oral or recorded in any form or medium: (i) that relates to the past, present or future physical or mental condition of an Individual; the provision of health care to an Individual; or the past, present or future payment for the provision of health care to an Individual; and (ii) that identifies the Individual or with respect to which there is a reasonable basis to believe the information can be used to identify the Individual, and shall have the meaning given to such term under the HIPAA Rules, 45 CFR §160.103 and §164.501.
- 1.13 “Protected Information” shall mean PHI provided by the Covered Entity to Business Associate or created, maintained, transmitted or received by Business Associate on Covered Entity’s behalf.

- 1.14 “Qualified Service Organization” shall have the meaning defined under the Confidentiality Rule, 42 CFR §2.11.
- 1.15 “Required by Law” shall have the meaning given to such phrase in 45 CFR §164.103.
- 1.16 “Secretary” shall mean the Secretary of the Department of Health and Human Services or his or her designee.
- 1.17 “Security Incident” shall have the meaning given to such phrase in 45 CFR §164.304.
- 1.18 “Unsecured Protected Health Information” shall mean protected health information that is not rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of a technology or methodology specified by the Secretary in accordance with 45 CFR §164.402.
- 1.19 Workforce means employees, volunteers, trainees, and other persons whose conduct, in the performance of work for a Covered Entity or Business Associate, is under the direct control of such Covered Entity or Business Associate, whether or not they are paid by the Covered Entity or Business Associate.

SECTION II – OBLIGATIONS AND ACTIVITIES OF THE BUSINESS ASSOCIATE

The Business Associate agrees to the following:

- 2.1 Not to use or further disclose PHI other than as permitted or required by this Agreement or as Required by Law;
- 2.2 To use appropriate safeguards, and comply with Subpart C of 45 CFR Part 164 with respect to Electronic PHI, to prevent use or disclosure of PHI other than as provided for by this Agreement;
- 2.3 To mitigate, to the extent practicable, any harmful effect that is known to the Business Associate of a use or disclosure of PHI by the Business Associate in violation of the requirements of this Agreement;
- 2.4 To immediately report to the Covered Entity any use or disclosure of PHI not provided for by this Agreement of which it becomes aware, including any Security Incident of which it becomes aware;
- 2.5 In accordance with 45 CFR §§164.502(e)(1)(ii) and 164.308(b)(2), if applicable, ensure that any agent, including a subcontractor, that creates, receives, maintains, or transmits PHI on behalf of the Business Associate agrees in writing to the same restrictions, conditions and requirements that apply to the Business Associate with respect to such PHI. Notwithstanding the preceding language of this subsection, Business Associate acknowledges that PHI obtained by the Business Associate relating to individuals who may have been diagnosed as needing, or who have received, substance use disorder treatment services, diagnosis or referral for treatment shall be maintained and used only for the purposes intended under this Agreement and in conformity with all applicable provisions of the Confidentiality Rule. This information received from the Covered Entity, is protected by the Confidentiality Rule and therefore the Business Associate is specifically prohibited from re-disclosing such information to agents or subcontractors without specific written consent of the subject Individual;
- 2.6 To provide access, at the request of the Covered Entity, and in the time and manner designated by the Covered Entity, to PHI in a Designated Record Set, to the Covered Entity or, as directed by the Covered Entity, to the Individual or the Individual’s designee as necessary to meet the Covered Entity’s obligations under 45 CFR §164.524; provided, however, that this Section is applicable only to the extent the Designated Record Set is maintained by the Business Associate for the Covered Entity;
- 2.7 To make any amendment(s) to PHI in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 CFR §164.526 at the request of the Covered Entity or an Individual, and in the time and manner designated by the Covered Entity; provided, however, that this Section is applicable only to the extent the Designated Record Set is maintained by the Business Associate for the Covered Entity;

- 2.8 To make internal practices, books and records, including policies and procedures on PHI, relating to the use and disclosure of PHI received from, or created or received by the Business Associate on behalf of, the Covered Entity available to the Covered Entity, or at the request of the Covered Entity to the Secretary, in a time and manner designated by the Covered Entity or the Secretary, for purposes of the Secretary's determining the Covered Entity's and the Business Associate's compliance with the HIPAA Rules;
- 2.9 To document such disclosures of PHI and information related to such disclosures as would be required for the Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR §164.528;
- 2.10 To comply with the confidentiality, disclosure and re-disclosure requirements of the Confidentiality Rule as applicable;
- 2.11 To resist any efforts in judicial proceedings any efforts to obtain access to the PHI protected by the Confidentiality Rule except as expressly provided for in the Confidentiality Rule;
- 2.12 To provide to the Covered Entity or an Individual, in a time and manner designated by the Covered Entity, information collected in accordance with Section 2.9 of this Agreement, to permit the Covered Entity to respond to a request by an accounting of disclosures of PHI in accordance with 45 CFR §164.528;
- 2.13 That if it creates, receives, maintains, or transmits any Electronic PHI on behalf of the Covered Entity, it will implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the Electronic PHI, and it will ensure that any agents (including subcontractors) to whom it provides such electronic PHI agrees to implement reasonable and appropriate security measures to protect the PHI. The Business Associate will report to the Covered Entity any Security Incident of which it becomes aware;
- 2.14 To retain records related to the PHI hereunder for a period of six (6) years unless this Agreement is terminated prior thereto. In the event of termination of this Agreement, the provisions of Section V of this Agreement shall govern record retention, return or destruction;
- 2.15 To promptly notify the Covered Entity of a Breach of Unsecured PHI as soon as practicable, but in no case later than 10 calendar days, after the discovery of such Breach. A Breach shall be treated as discovered as of the first day on which such Breach is known, or by exercising reasonable diligence would have been known, to any person, other than the person committing the Breach, who is an employee, officer, or agent of Business Associate. The notification shall include, to the extent possible, the identification of each Individual whose Unsecured PHI has been, or is reasonably believed by Business Associate to have been, accessed, acquired, used, or disclosed during the Breach in addition to the information required in Section V. In addition, Business Associate shall provide the Covered Entity with any other available information that the Covered Entity is required to include in the notification to the individual under 45 CFR §164.404(c); and
- 2.16 To the extent Business Associate is to carry out one or more of the Covered Entity's obligations under Subpart E of 45 CFR Part 164, comply with the requirements of Subpart E that apply to the Covered Entity in the performance of such obligations.

SECTION III – THE PARTIES AGREE TO THE FOLLOWING PERMITTED USES AND DISCLOSURES BY THE BUSINESS ASSOCIATE:

- 3.1 The Covered Entity and the Business Associate agree that this Agreement constitutes a Qualified Service Organization Agreement as required by the Confidentiality Rule. Accordingly, information obtained by the Business Associate relating to Individuals who may have been diagnosed as needing, or who have received, substance use disorder treatment services, diagnosis or referral for treatment shall be maintained and used only for the purposes intended under this Agreement and in conformity with all applicable provisions of the Confidentiality Rule.

- 3.2 Business Associate agrees to make uses and disclosures and requests for PHI consistent with the Covered Entity's minimum necessary policies and procedures.
- 3.3 Except as otherwise limited in this Agreement, the Business Associate may use or disclose PHI to perform functions, activities or services for, or on behalf of, the Covered Entity as specified in the Services Agreement, provided that such use or disclosure would not violate the Confidentiality or HIPAA Rules if done by the Covered Entity; and,
- 3.4 Except as otherwise limited in this Agreement, the Business Associate may:
- a. **Use for management and administration.** Use PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate so long as such use is also permitted by the Confidentiality Rule; and,
 - b. **Disclose for management and administration.** Disclose PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate, provided that disclosures are Required by Law, or the Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and will be used or further disclosed only as Required by Law or for the purposes for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached. PHI that is also subject to the Confidentiality Rule cannot be disclosed to a third party except as permitted under the Confidentiality Rule.

SECTION IV – NOTICE OF PRIVACY PRACTICES

- 4.1 If requested, the Covered Entity shall provide the Business Associate with the notice of privacy practices that the Covered Entity produces in accordance with 45 CFR §164.520, as well as any changes to such notice. The Covered Entity shall (a) provide the Business Associate with any changes in, or revocation of, permission by an Individual to use or disclose PHI, if such changes affect the Business Associate's permitted or required uses and disclosures; (b) notify the Business Associate of any restriction to the use or disclosure of PHI that the Covered Entity has agreed to in accordance with 45 CFR §164.522, to the extent that such restrictions may affect the Business Associate's use or disclosure of PHI; and (c) not request the Business Associate to use or disclose PHI in any manner that would not be permissible under the HIPAA Rules if done by the Covered Entity, except as set forth in Section 3.3 above.

SECTION V – BREACH NOTIFICATION REQUIREMENTS

- 5.1 With respect to any Breach, the Covered Entity shall notify each individual whose Unsecured PHI has been, or is reasonably believed by the Covered Entity to have been, accessed, acquired, used, or disclosed as a result of such Breach, except when law enforcement requires a delay pursuant to 45 CFR §164.412. This notice shall be:
- a. Without unreasonable delay and in no case later than 60 calendar days after discovery of a Breach.
 - b. By notice in plain language including and to the extent possible:
 - 1) A brief description of what happened, including the date of the Breach and the date of the discovery of the Breach, if known;
 - 2) A description of the types of Unsecured PHI that were involved in the Breach (such as whether full name, social security number, date of birth, home address, account number, diagnosis, disability code, or other types of information were involved);
 - 3) Any steps Individuals should take to protect themselves from potential harm resulting from the Breach;

- 4) A brief description of what the Covered Entity and/or Business Associate involved is doing to investigate the Breach, to mitigate harm to Individuals, and to protect against any further Breaches; and,
 - 5) Contact procedures for Individuals to ask questions or learn additional information, which shall include a toll-free telephone number, an e-mail address, web site, or postal address.
- c. By a method of notification that meets the requirements of 45 CFR §164.404(d).
 - d. Provided notice to the media when required under 45 CFR §164.406 and to the Secretary pursuant to 45 CFR §164.408.

5.2. Business Associate shall promptly provide any information requested by Covered Entity to provide the information described in Section 5.1.

SECTION VI – TERM AND TERMINATION

6.1 **Term.** The term of this Agreement shall be effective as of the date set forth above in the first paragraph and shall terminate when all of the PHI provided by the Covered Entity to the Business Associate, or created, maintained, transmitted or received by the Business Associate on behalf of the Covered Entity, is destroyed or returned to the Covered Entity, or, if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions in this Section.

6.2 **Termination for Cause.** Upon the Covered Entity's knowledge of a material breach of this Agreement by the Business Associate, the Covered Entity shall provide an opportunity for the Business Associate to cure the breach or end the violation. The Covered Entity shall terminate this Agreement and the Services Agreement if the Business Associate does not cure the breach or end the violation within the time specified by the Covered Entity, or immediately terminate this Agreement if cure is not reasonably possible.

If the Business Associate fails to cure a breach for which cure is reasonably possible, the Covered Entity may take action to cure the breach, including but not limited to obtaining an injunction that will prevent further improper use or disclosure of PHI. Should such action be taken, the Business Associate agrees to indemnify the Covered Entity for any costs, including court costs and attorneys' fees, associated with curing the breach.

Upon the Business Associate's knowledge of a material breach of this Agreement by the Covered Entity, the Business Associate shall provide an opportunity for the Covered Entity to cure the breach or end the violation. The Business Associate shall terminate this Agreement and Services Agreement if the Covered Entity does not cure the breach or end the violation within the time specified by the Business Associate, or immediately terminate this Agreement if the Covered Entity has breached a material term of this Agreement if cure is not reasonably possible.

6.3 **Effect of Termination.**

a. **Return or Destruction of PHI.** Except as provided in Section 6.3(b), upon termination of this Agreement, for any reason, the Business Associate shall return, or if agreed to by the Covered Entity, destroy all PHI received from the Covered Entity, or created, maintained or received by the Business Associate on behalf of the Covered Entity and retain no copies. This provision shall apply to PHI that is in the possession of subcontractors or agents of the Business Associate.

b. **Return or Destruction of PHI Infeasible.** In the event that the Business Associate determines that returning or destroying PHI is infeasible, the Business Associate shall provide to the Covered Entity notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the parties that return or destruction of the PHI is infeasible, the Business Associate shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction

infeasible, for so long as the Business Associate maintains such PHI. In addition, the Business Associate shall continue to use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to Electronic PHI to prevent use or disclosure of the PHI, for as long as the Business Associate retains the PHI.

SECTION VII – GENERAL PROVISIONS

- 7.1 **Regulatory references.** A reference in this Agreement to the Confidentiality Rule, HIPAA Rules or a section in the HIPAA Rules means that Rule or Section as in effect or as amended from time to time.
- 7.2 **Compliance with law.** In connection with its performance under this Agreement, Business Associate shall comply with all applicable laws, including but not limited to laws protecting the privacy of personal information about Individuals.
- 7.3 **Amendment.** The Parties agree to take such action as is necessary to amend this Agreement from time to time. All amendments must be in writing and signed by both Parties.
- 7.4 **Indemnification by Covered Entity.** Covered Entity agrees to indemnify, defend and hold harmless the Business Associate and its employees, directors, officers, subcontractors, agents or other members of its workforce, each of the foregoing hereinafter referred to as “Indemnified Party,” against all actual and direct losses suffered by the Indemnified Party and all liability to third parties arising from or in connection with Covered Entity’s breach of Section 4.1 of this Agreement. Accordingly, on demand, Covered Entity shall reimburse any Indemnified Party for any and all actual and direct losses, liabilities, fines, penalties, costs or expenses (including reasonable attorneys’ fees) which may for any reason be imposed upon any Indemnified Party by reason of any suit, claim, action, proceeding or demand by any third party which results for Covered Entity’s breach hereunder. Covered Entity’s obligation to indemnify any Indemnified Party shall survive the expiration or termination of this Agreement for any reason.
- 7.5 **Indemnification by Business Associate.** Business Associate agrees to indemnify, defend and hold harmless the Covered Entity and its commissioners, employees, directors, officers, subcontractors, agents or other members of its workforce, each of the foregoing hereinafter referred to as “Indemnified Party,” against all actual and direct losses suffered by the Indemnified Party and all liability to third parties arising from or in connection with Business Associate’s breach of Section II and III of this Agreement. Accordingly, on demand, Business Associate shall reimburse any Indemnified Party for any and all actual and direct losses, liabilities, fines, penalties, costs or expenses (including reasonable attorneys’ fees) which may for any reason be imposed upon any Indemnified Party by reason of any suit, claim, action, proceeding or demand by any third party which results for Business Associate’s breach hereunder. The obligation to indemnify any Indemnified Party shall survive the expiration or termination of this Agreement for any reason.
- 7.6 **Survival.** The respective rights and obligations of Business Associate under Section II of this Agreement shall survive the termination of the Services Agreement and this Agreement.
- 7.7 **Interpretation.** Any ambiguity in this Agreement shall be resolved to permit Covered Entity to first comply with the Confidentiality Rule and second to comply with the HIPAA Rules.

[Signature Page Follows for QSOBAA]

SIGNATURE PAGE
QUALIFIED SERVICE ORGANIZATION BUSINESS ASSOCIATE AGREEMENT

The Parties hereto have duly executed this Agreement as of the Effective Date as defined here above.

Business Associate

Cascadia Behavioral Healthcare

Covered Entity

**County of Clackamas
Board of Commissioners**

Authorized Signature

Date

Commissioner: Jim Bernard, Chair

Commissioner: Sonya Fischer

Commissioner: Paul Savas

Commissioner: Martha Schrader

Commissioner: Ken Humberston

Name / Title (Printed)

Signing on behalf of the Board:

Richard Swift, Director

Date

Health, Housing and Human Services

ADD:

EXHIBIT H
CERTIFICATION STATEMENT FOR INDEPENDENT CONTRACTOR

(Contractor completes if Contractor is not a corporation or is a Professional Corporation)

Contractor certifies he/she is independent as defined in Oregon Revised Statutes 670.600 and meets the following standards that the Contractor is:

1. Free from direction and control, beyond the right of the County to specify the desired result; **AND**
2. Are licensed if licensure is required for the services; **AND**
3. Are responsible for other licenses or certificates necessary to provide the services **AND**
4. Are customarily engaged in an "independently established business."

To qualify under the law, an "independently established business" must meet three (3) out of the following five (5) criteria. **Check as applicable:**

_____ A. Maintains a business location that is: (a) Separate from the business or work of the County; or (b) that is in a portion of their own residence that is used primarily for business.

_____ B. Bears the risk of loss, shown by factors such as: (a) Entering into fixed price contracts; (b) Being required to correct defective work; (c) Warranting the services provided; or (d) Negotiating indemnification agreements or purchasing liability insurance, performance bonds, or errors and omissions insurance.

- _____ C. Provides contracted services for two or more different persons within a 12-month period, or routinely engages in business advertising, solicitation or other marketing efforts reasonably calculated to obtain new contracts to provide similar services.

- _____ D. Makes significant investment in the business through means such as: (a) Purchasing tools or equipment necessary to provide the services; (b) Paying for the premises or facilities where the services are provided; or (c) Paying for licenses, certificates or specialized training required to provide the services.

- _____ E. Has the authority to hire and fire other persons to provide assistance in performing the services.

Additional provisions:

1. A person who files tax returns with a Schedule F and also performs agricultural services reportable on a Schedule C is not required to meet the independently established business requirements.
2. Establishing a business entity such as a corporation or limited liability company, does not, by itself, establish that the individual providing services will be considered an independent contractor.

Contractor Signature _____ Date _____

[Signature page follows]

SIGNATURE PAGE

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

**CASCADIA BEHAVIORAL
HEALTHCARE, INC.**

**THE COUNTY OF CLACKAMAS
BOARD OF COMMISSIONERS**

Authorized Signature

Date

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

Name / Title (Printed)

Signing on behalf of the Board:

146332-18

Oregon Business Registry #

Richard Swift, Director
Health, Housing and Human Services

Date

Domestic Nonprofit Corporation / Oregon
Entity Type / State of Formation

Approved as to form:

Kathleen Rastetter via email
County Counsel

June 20, 2018

Date

COPY

July 12, 2018

Board of County Commissioners
 Clackamas County

Members of the Board:

Approval of an Agency Services Contract with Cascadia Behavioral Healthcare for Outpatient Substance Abuse Services for Uninsured and Indigent Clackamas County Residents

Purpose/Outcomes	Provides outpatient substance abuse treatment services to uninsured or indigent Clackamas County residents.
Dollar Amount and Fiscal Impact	Contract maximum value is \$90,000.
Funding Source	No County General Funds are involved. Funds from State of Oregon, Community Mental Health Program (CMHP).
Duration	Effective upon signature and terminates June 30, 2020
Previous Board Action	N/A
Strategic Plan Alignment	1. Provide coordination, assessment, outreach, and recovery services to Clackamas County residents experiencing addiction distress so they can achieve their own recovery goals 2. Ensure safe, healthy and secure communities
Contact Person	Mary Rumbaugh, Director – Behavioral Health Division (503) 742-5305
Contract No.	#8872

BACKGROUND:

The Behavioral Health Division of the Health, Housing & Human Services Department requests the approval of an Agency Service Contract with Cascadia Behavioral Healthcare for outpatient substance abuse treatment services to uninsured and indigent residents in Clackamas County. Cascadia uses clinical judgment to determine which services are appropriate, and what frequency of care is medically necessary.

The contract, with a maximum value of \$90,000, is effective upon signature and terminates June 30, 2020, and was reviewed and approved by County Counsel June 6, 2018.

RECOMMENDATION:

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

Respectfully submitted,



Richard Swift, Director
 Health, Housing & Human Services Department

Healthy Families. Strong Communities.

**AGENCY SERVICES CONTRACT
CONTRACT #8872**

This Agency Service Contract, herein called "Contract," is between the County of Clackamas acting by and through its Health, Housing and Human Services Department, Behavioral Health Division, hereinafter called "County," and **Cascadia Behavioral Healthcare, Inc.**, hereinafter called "Contractor."

CONTRACT

1.0 Engagement

County hereby engages Contractor to provide **outpatient substance abuse services for uninsured and indigent residents of Clackamas County** as more fully described in **Exhibit B**, Scope of Work, attached hereto and incorporated herein. This contract sets forth the terms under which Contractor will contract with County to provide services to clients.

2.0 Term

Services provided under the terms of this Contract shall **commence upon signature and shall terminate June 30, 2020** unless terminated by one or both parties as provided for in paragraph 6.0 below.

3.0 Compensation and Fiscal Records

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

Maximum Contract payment shall not exceed **\$90,000.00**.

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

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

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

3.5 Access to Records and Facilities. County, the Secretary of State's Office of the State of Oregon, the Federal Government, and their duly authorized representatives shall have access to the books, documents, papers and records of Contractor that are directly related to this Contract, the funds paid to Contractor hereunder, or any services delivered hereunder for the purpose of making audits, examinations, excerpts, and transcripts. In addition, Contractor shall permit authorized representatives of County and State of Oregon to perform site reviews of all services delivered by Contractor hereunder.

3.5.1 Contractor shall maintain up-to-date accounting records that accurately reflect all revenue by source, all expenses by object of expense, and all assets, liabilities and equities consistent with Generally Accepted

Accounting Principles and Oregon Administrative Rules. Contractor shall make reports and fiscal data generated under and for this Contract available to County upon request.

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

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

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

4.0 Manner of Performance

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

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

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

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

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

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

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

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

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

5.0 General Conditions

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

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

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

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

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

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

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

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

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

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

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

5.9.1 Contractor shall:

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

5.9.2 If 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 this Contract as such claim becomes due, the proper officer representing County may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due to Contractor by reason of this Contract.

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

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

5.9.5 Workers' Compensation. Contractor, if it is an employer of one or more workers subject to workers' compensation coverage under ORS Chapter 656, shall qualify as an insured employer under ORS 656.017 or

as an exempt employer under ORS 656.126. Contractor shall maintain employer's liability insurance with limits of **\$500,000 each accident, \$500,000 disease each employee, and \$500,000 each policy limit.**

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

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

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

6.0 Termination

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

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

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

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

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

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

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

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

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

6.2.8 Debarment and Suspension. County shall not permit any person or entity to be an Contractor if the person or entity is listed on the non-procurement portion of the General Service Administration's "List of Parties Excluded from Federal Procurement or Non-procurement Programs" in accordance with Executive Orders No. 12,549 and No. 12,689, "Debarment and Suspension". (See 45 CFR part 76). This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory authority other than Executive Order No. 12549. County shall require all Contractors with

awards that exceed the simplified acquisition threshold to provide the required certification regarding their exclusion status and that of their principals prior to award.

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

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

7.0 Notices

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

If to Contractor:

Cascadia Behavioral Healthcare, Inc.
PO Box 8459
Portland, OR 97207

If to County:

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

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

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

(Signature page follows)

SIGNATURE PAGE

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

**CASCADIA BEHAVIORAL
HEALTHCARE, INC.**

**COUNTY OF CLACKAMAS
BOARD OF COMMISSIONERS**

Authorized Signature Date

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

Name / Title (Printed)

Signing on behalf of the Board:

146332-18

Oregon Business Registry #

Richard Swift, Director Date
Health, Housing and Human Services

Domestic Nonprofit Corporation / Oregon
Entity Type / State of Formation

Approved as to form:

Kathleen Rastetter via email June 6, 2018

County Counsel Date

COPY

July 12, 2018

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of an Agency Services Contract with Cascadia Behavioral Healthcare for Outpatient Mental Health Services for Uninsured and Indigent Residents of Clackamas County

Purpose/Outcomes	Provides outpatient mental health services for uninsured and indigent residents of Clackamas County
Dollar Amount and Fiscal Impact	Contract maximum value is \$90,000.
Funding Source	No County General Funds involved. State of Oregon, Community Mental Health Program (CMHP) funds.
Duration	Effective upon signature and terminates on June 30, 2020
Previous Board Action	N/A
Strategic Plan Alignment	1. Individuals and families in need are healthy and safe. 2. Ensure safe, healthy and secure communities.
Contact Person	Mary Rumbaugh, Director – Behavioral Health Division 503-742-5305
Contract No.	#8873

BACKGROUND:

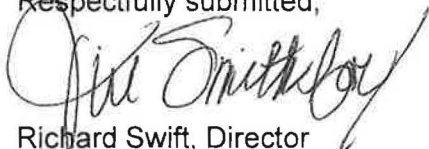
The Behavioral Health Division of the Health, Housing & Human Services Department requests the approval of an Agency Services Contract with Cascadia Behavioral Healthcare outpatient mental health services for uninsured and indigent residents of Clackamas County. Assessment and treatment services are provided to individuals with emotional and behavioral disorders, with the focus of services being on improving function and reducing the impact of the emotional or behavioral disorder on daily life.

This contract, with a maximum value of \$90,000, is effective upon signature and terminates June 30, 2020. County Counsel reviewed and approved this contract June 6, 2018.

RECOMMENDATION:

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

Respectfully submitted,



Richard Swift, Director
Health, Housing & Human Services Department

Healthy Families. Strong Communities.

AGENCY SERVICES CONTRACT
CONTRACT #8873

This Agency Service Contract, herein called "Contract," is between the County of Clackamas acting by and through its Health, Housing and Human Services Department, Behavioral Health Division, hereinafter called "County," and **Cascadia Behavioral Healthcare, Inc.**, hereinafter called "Contractor."

CONTRACT

1.0 Engagement

County hereby engages Contractor to provide **outpatient mental health services for uninsured or indigent residents of Clackamas County** as more fully described in **Exhibit B**, Scope of Work, attached hereto and incorporated herein. This contract sets forth the terms under which Contractor will contract with County to provide services to clients.

2.0 Term

Services provided under the terms of this Contract shall **commence upon signature and shall terminate June 30, 2020** unless terminated by one or both parties as provided for in paragraph 6.0 below.

3.0 Compensation and Fiscal Records

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

Maximum Contract payment shall not exceed **\$90,000.00**.

3.2. Method of Payment. To receive payment, Contractor shall follow processes described in **Exhibit C**, Compensation.

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

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

3.5 Access to Records and Facilities. County, the Secretary of State's Office of the State of Oregon, the Federal Government, and their duly authorized representatives shall have access to the books, documents, papers and records of Contractor that are directly related to this Contract, the funds paid to Contractor hereunder, or any services delivered hereunder for the purpose of making audits, examinations, excerpts, and transcripts. In addition, Contractor shall permit authorized representatives of County and State of Oregon to perform site reviews of all services delivered by Contractor hereunder.

3.5.1 Contractor shall maintain up-to-date accounting records that accurately reflect all revenue by source, all expenses by object of expense, and all assets, liabilities and equities consistent with Generally Accepted

Accounting Principles and Oregon Administrative Rules. Contractor shall make reports and fiscal data generated under and for this Contract available to County upon request.

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

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

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

4.0 Manner of Performance

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

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

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

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

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

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

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

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

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

5.0 General Conditions

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

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

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

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

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

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

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

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

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

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

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

5.9.1 Contractor shall:

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

5.9.2 If 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 this Contract as such claim becomes due, the proper officer representing County may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due to Contractor by reason of this Contract.

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

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

5.9.5 Workers' Compensation. Contractor, if it is an employer of one or more workers subject to workers' compensation coverage under ORS Chapter 656, shall qualify as an insured employer under ORS 656.017 or

as an exempt employer under ORS 656.126. Contractor shall maintain employer's liability insurance with limits of **\$500,000 each accident, \$500,000 disease each employee, and \$500,000** each policy limit.

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

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

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

6.0 Termination

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

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

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

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

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

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

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

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

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

6.2.8 Debarment and Suspension. County shall not permit any person or entity to be an Contractor if the person or entity is listed on the non-procurement portion of the General Service Administration's "List of Parties Excluded from Federal Procurement or Non-procurement Programs" in accordance with Executive Orders No. 12,549 and No. 12,689, "Debarment and Suspension". (See 45 CFR part 76). This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory authority other than Executive Order No. 12549. County shall require all Contractors with

awards that exceed the simplified acquisition threshold to provide the required certification regarding their exclusion status and that of their principals prior to award.

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

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

7.0 Notices

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

If to Contractor:
Cascadia Behavioral Healthcare, Inc.
PO Box 8459
Portland, OR 97207

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

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

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

(Signature page follows)

SIGNATURE PAGE

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

**CASCADIA BEHAVIORAL
HEALTHCARE, INC.**

**COUNTY OF CLACKAMAS
BOARD OF COMMISSIONERS**

Authorized Signature

Date

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

Name / Title (Printed)

Signing on behalf of the Board:

146332-18

Oregon Business Registry #

Richard Swift, Director
Health, Housing and Human Services

Date

Domestic Nonprofit Corporation / Oregon
Entity Type / State of Formation

Approved as to form:

Kathleen Rastetter via email
County Counsel

June 6, 2018
Date

July 12, 2018

Board of Commissioners
Clackamas County

Members of the Board:

Approval of an Agency Services Contract #8850 with Lifeworks Northwest for
Intensive Case Management Services

Purpose/Outcomes	To provide Intensive Case Management (ICM) services (formerly known as Non-Fidelity Assertive Community (ACT) services) to Clackamas County residents enrolled with Health Share of Oregon for their Oregon Health Plan (OHP) benefits.
Dollar Amount and Fiscal Impact	The contract maximum is \$1,500,000.
Funding Source	No County General Funds are involved. State of Oregon, OHP funds are utilized.
Duration	Effective upon signature and terminates on June 30, 2020
Previous Board Action	This is the renewal of contract #8211. The previous contract was approved by the Board of County Commissioners on August 3, 2017 - Agenda Item 080317-A1.
Strategic Plan Alignment	1. Individuals and families in need are healthy and safe. 2. Ensure safe, healthy and secure communities.
Contact Person	Mary Rumbaugh, Director – Behavioral Health Division – 503-742-5305
Contract No.	#8850

BACKGROUND:

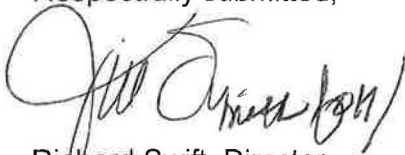
The Behavioral Health Division of the Health, Housing & Human Services Department requests the approval of an Agency Services Contract #8850 with Lifeworks Northwest for providing Intensive Case Management (ICM) services (formerly known as Non-Fidelity Assertive Community (ACT) services) to residents who are eligible members of HealthShare, OHP. The Behavioral Health Division has partnered with Lifeworks Northwest for behavioral health services since 2005.

The contract is effective upon signature and continues through June 30, 2020. County Counsel reviewed and approved this agreement on June 4, 2018.

RECOMMENDATION:

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

Respectfully submitted,



Richard Swift, Director
Health, Housing and Human Services

**AGENCY SERVICES CONTRACT
CONTRACT #8850**

This Agency Services Contract, herein called "Contract," is between the County of Clackamas acting by and through its Health, Housing and Human Services Department, Behavioral Health Division, hereinafter called "County," and **LifeWorks Northwest**, hereinafter called "Contractor."

CONTRACT

1.0 Engagement

County hereby engages Contractor to provide **Intensive Case Management (ICM) services** (formerly called Non-Fidelity Assertive Community (ACT) services) as more fully described in **Exhibit B**, Scope of Work, attached hereto and incorporated herein. This Contract sets forth the terms under which Contractor will contract with County to provide ICM services to clients.

2.0 Term

Services provided under the terms of this Contract shall **commence upon signature and shall terminate June 30, 2020** unless terminated by one or both parties as provided for in paragraph 6.0 below. This Contract can be amended by mutual consent of both parties.

3.0 Compensation and Fiscal Records

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

Total payment to Contractor shall not exceed **\$1,500,000.00**.

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

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

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

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

3.5 Access to Records and Facilities. County, the Secretary of State's Office of the State of Oregon, the Federal Government, and their duly authorized representatives shall have access to the books, documents, papers and records of Contractor that are directly related to this Contract, the funds paid to Contractor hereunder, or any services delivered hereunder for the purpose of making audits, examinations, excerpts, and transcripts. In addition, Contractor shall

permit authorized representatives of County and State of Oregon to perform site reviews of all services delivered by Contractor hereunder.

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

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

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

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

4.0 Manner of Performance

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

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

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

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

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

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

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

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

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

5.0 General Conditions

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

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

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

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

5.3 Governing Law; Consent to Jurisdiction. This Contract shall be governed by and construed in accordance with the laws of the State of Oregon without giving effect to the conflict of law provisions thereof. Any claim, action,

or suit between County and Contractor that arises out of or relates to performance under this Contract shall be brought and conducted solely and exclusively within the Circuit Court for Clackamas County, State of Oregon. Provided, however, that if any such claim, action or suit may be brought only in a federal forum, it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. Contractor by execution of this Contract consents to the in personal jurisdiction of said courts.

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

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

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

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

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

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

5.9.1 Contractor shall:

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

5.9.2 If 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 this Contract as such claim becomes due, the proper officer representing County may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due to Contractor by reason of this Contract.

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

- i. for all overtime in excess of eight (8) hours a day or forty (40) hours in any one week when the work week is five consecutive days, Monday through Friday;

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

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

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

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

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

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

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

6.0 Termination

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

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

6.2.1 Terms of the **Health Share Risk Accepting Entity Contract** are modified, changed or interpreted in such a way that the services are no longer allowable or appropriate for purchase under this Contract or are no longer eligible for the funding authorized by this Contract.

6.2.2 The termination, suspension or expiration of the **Health Share Risk Accepting Entity Contract.**

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

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

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

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

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

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

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

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

7.0 Notices

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

If to Contractor:
LifeWorks Northwest
14600 NW Cornell Road
Portland, OR 97229

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

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

- Exhibit A – Definitions
- Exhibit B – Scope of Work
- Exhibit C – Compensation
- Exhibit D – Insurance
- Exhibit E – CMHP Required Provider Contract Provisions
- Exhibit F – OHP Required Federal Terms & Conditions
- Exhibit G – CMHP Service Element
- Exhibit H – Business Associate Agreement (BAA)

- Exhibit I – Qualified Service Organization Business Associate Agreement (QSOBAA)
- Exhibit J – Certification Statement for Independent Contractor
- Exhibit K – Performance Standards
- Exhibit L – Statement of General Conditions

(Signature page follows)

SIGNATURE PAGE

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

LIFEWORKS NORTHWEST

**COUNTY OF CLACKAMAS
BOARD OF COMMISSIONERS**

Authorized Signature Date

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

Name / Title (Printed)

Signing on behalf of the Board:

066218-17

Oregon Business Registry #

Richard Swift, Director Date
Health, Housing and Human Services

Domestic Nonprofit Corporation / Oregon

Entity Type / State of Formation

Approved as to form:

Kathleen Rastetter via email June 4, 2018

County Counsel Date

COPY

Richard Swift
Director

July 12, 2018

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of an Agency Services Contract with LifeWorks Northwest for
Outpatient Substance Abuse Services for Uninsured and Indigent Clackamas County Residents

Purpose/Outcomes	Provides outpatient substance abuse treatment services to uninsured or indigent Clackamas County residents.
Dollar Amount and Fiscal Impact	Contract maximum payment is \$90,000.
Funding Source	No County General Funds are involved. Funds from State of Oregon, Community Mental Health Program (CMHP).
Duration	Effective upon signature and terminates June 30, 2020
Previous Board Action	NA
Strategic Plan Alignment	1. Provide coordination, assessment, outreach, and recovery services to Clackamas County residents experiencing addiction distress so they can achieve their own recovery goals 2. Ensure safe, healthy and secure communities
Contact Person	Mary Rumbaugh, Director – Behavioral Health Division (503) 742-5305
Contract No.	#8874

BACKGROUND:

The Behavioral Health Division of the Health, Housing & Human Services Department requests the approval of an Agency Services Contract with LifeWorks Northwest for outpatient substance abuse treatment services to uninsured and indigent residents in Clackamas County. LifeWorks uses clinical judgment to determine which services are appropriate, and what frequency of care is medically necessary.

The contract is effective upon signature and terminates June 30, 2020, with a maximum payment of \$90,000. This contract was reviewed and approved by County Counsel June 6, 2018.

RECOMMENDATION:

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

Respectfully submitted,



Richard Swift, Director
Health, Housing & Human Services Department

Healthy Families. Strong Communities.

**AGENCY SERVICES CONTRACT
CONTRACT #8874**

This Agency Service Contract, herein called "Contract," is between the County of Clackamas acting by and through its Health, Housing and Human Services Department, Behavioral Health Division, hereinafter called "County," and **LifeWorks Northwest**, hereinafter called "Contractor."

CONTRACT

1.0 Engagement

County hereby engages Contractor to provide **outpatient substance abuse services for uninsured and indigent residents of Clackamas County** as more fully described in **Exhibit B**, Scope of Work, attached hereto and incorporated herein. This contract sets forth the terms under which Contractor will contract with County to provide services to clients.

2.0 Term

Services provided under the terms of this Contract shall commence **upon signature and shall terminate June 30, 2020** unless terminated by one or both parties as provided for in paragraph 6.0 below.

3.0 Compensation and Fiscal Records

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

Maximum Contract payment shall not exceed **\$90,000.00**.

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

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

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

3.5 Access to Records and Facilities. County, the Secretary of State's Office of the State of Oregon, the Federal Government, and their duly authorized representatives shall have access to the books, documents, papers and records of Contractor that are directly related to this Contract, the funds paid to Contractor hereunder, or any services delivered hereunder for the purpose of making audits, examinations, excerpts, and transcripts. In addition, Contractor shall permit authorized representatives of County and State of Oregon to perform site reviews of all services delivered by Contractor hereunder.

3.5.1 Contractor shall maintain up-to-date accounting records that accurately reflect all revenue by source, all expenses by object of expense, and all assets, liabilities and equities consistent with Generally Accepted

Accounting Principles and Oregon Administrative Rules. Contractor shall make reports and fiscal data generated under and for this Contract available to County upon request.

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

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

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

4.0 Manner of Performance

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

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

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

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

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

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

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

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

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

5.0 General Conditions

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

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

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

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

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

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

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

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

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

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

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

5.9.1 Contractor shall:

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

5.9.2 If 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 this Contract as such claim becomes due, the proper officer representing County may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due to Contractor by reason of this Contract.

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

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

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

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

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

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

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

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

6.0 Termination

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

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

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

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

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

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

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

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

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

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

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

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

7.0 Notices

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

If to Contractor:
LifeWorks Northwest
14600 NW Cornell Road
Portland, OR 97229

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

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

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

(Signature page follows)

COPY

July 12, 2018

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of the Intergovernmental Agreement (IGA) with Multnomah County for
Psychiatric Consultation and Expert Opinion on Cases Involving Health Share Clackamas Clients

Purpose/Outcomes	Psychiatrist will provide adult, child and adolescent psychiatric consultation services involving Health Share Clackamas clients.
Dollar Amount and Fiscal Impact	Maximum value is \$9,800
Funding Source	No County General Funds are involved. State of Oregon, Oregon Health Plan (OHP) funds
Duration	Effective upon signature and terminates June 30, 2020
Previous Board Action	N/A
Strategic Plan Alignment	1. Individuals and families in need are healthy and safe. 2. Ensure safe, healthy and secure communities.
Contact Person	Mary Rumbaugh, Director, Behavioral Health Division 503-742-5305
Contract No.	#8801

BACKGROUND:

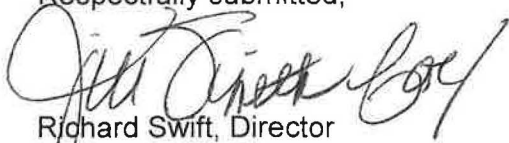
The Clackamas County Behavioral Health Division of the Housing & Human Services Department requests the approval of the Intergovernmental Agreement with Multnomah County for the purpose of providing psychiatric consultation services, which include direction and consultation in regards to adult, child and adolescent Health Share of Oregon – Clackamas clients, determining the medical necessity of services, technical assistance, and participation in monthly clinical meetings and conference calls.

This Intergovernmental Agreement, with a maximum value of \$9,800, is effective upon signature and terminates June 30, 2020. County Counsel reviewed and approved this Agreement May 7, 2018.

RECOMMENDATION:

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

Respectfully submitted,


Richard Swift, Director
Health, Housing and Human Services Department

INTERGOVERNMENTAL AGREEMENT
BETWEEN
CLACKAMAS COUNTY, OREGON
HEALTH, HOUSING AND HUMAN SERVICES BEHAVIORAL HEALTH DIVISION
AND
MULTNOMAH COUNTY, OREGON
MEDICAL DIRECTOR

Agreement # 8801

I. Purpose

This Agreement is entered into between Clackamas County Department of Health, Housing and Human Services, Behavioral Health Division (CLACKAMAS) and **MULTNOMAH COUNTY** (MULTNOMAH) for the cooperation of units of local government under the authority of ORS 190.010.

This agreement provides the basis for providing **psychiatric consultation and expert opinion on cases involving delegated HealthShare Clackamas members.**

II. Scope of Work and Cooperation

A. Multnomah County's Consulting Psychiatrist shall perform the following work:

Psychiatric Consultation Services

1. Consulting psychiatrist shall provide adult, child, and adolescent psychiatric consultation services for Utilization Review as a service to Clackamas County. Consulting psychiatrist shall provide direction, consultation and psychiatric review via telephone-standby, teleconferencing, email, fax, face-to-face in group and/or individual settings to Health Share of Oregon - Clackamas, Clackamas County Quality management, Clackamas County involuntary commitment and post-commitment, and all related residential programs.
2. Consulting psychiatrist shall determine the medical necessity of services to be provided to Health Share of Oregon - Clackamas adults, child, and adolescent members, indigent, and potential members.
3. Consulting psychiatrist shall work with Clackamas County Utilization Review (UR) to assist with planning for high utilization cases.
4. Consulting psychiatrist shall provide clinical consultation regarding pre-admission review, utilization management, and concurrent and retrospective review process for Health Share of Oregon (Health Share) - Clackamas members and potential members.
5. Consulting psychiatrist shall provide technical assistance and consultation to Health Share Clackamas service providers, partner agencies, and County staff.
6. Consulting psychiatrist shall participate in monthly clinical meetings or conference calls as needed with UR staff to discuss cases, and answer general questions, including questions related to medications.
7. Consulting psychiatrist shall act as Clackamas County's representative for appeals and medical necessity processes. Consulting psychiatrists shall be responsible for assisting with decisions related to the administrative medical and administrative medical/legal activities performed in and

on behalf of Clackamas County programs. Consulting psychiatrist shall fulfill the role of final arbiter of disputes regarding treatment on behalf of Clackamas County. Areas include:

- Authorization decisions, UR for clients going in or out of residential and psychiatric day treatment services
 - Appeals
 - Continued management and discharge decisions for services
 - UR for Special Population services
 - UR for short-term residential and crisis respite services
 - Level of Care decisions
8. Consulting psychiatrist shall maintain working relationships with County utilization management and care coordination staff, as well as managers and supervisors of direct clinical services and safety net programs, and quality manager.
9. Consulting psychiatrist shall provide timely review of appeals within **forteen (14) calendar days** of MULTNOMAH's receipt of standard appeal and **forty-eight (48) hours** for expedited reviews sent securely to:

BH-QualityManagement@clackamas.us

10. Consulting psychiatrist shall comply with the obligations set forth in the Business Associate Agreement, Exhibit D, and under HIPAA.

B. CLACKAMAS agrees to:

1. Compensate MULTNOMAH for services rendered at a rate of **\$195.00 per hour in quarter hour increments.**

III. Compensation

- A. CLACKAMAS shall compensate MULTNOMAH for satisfactorily completing activities described in Section II.A. above.
- B. The total payment to MULTNOMAH shall not exceed **\$9,800.00**.
- C. MULTNOMAH shall submit to CLACKAMAS a biweekly or monthly invoice for services rendered. The bill shall include County's client case number and patient's name, if provided by County, and the total time spent on each case in units. Such invoices shall be payable within **thirty (30) days** of the County's receipt. Payment must be received by MULTNOMAH on or before the 30th day after the invoice is received by CLACKAMAS. If payment is not received by the designated due date, a late fee will be assessed along with interest at the highest applicable legal rate, but not exceeding 18% per annum and all actual costs of collection shall be added to the amount due.

Invoices shall be submitted to:

**Clackamas County Behavioral Health Division
Attn: Accounts Payable
2051 Kaen Road, # 154
Oregon City, Oregon 97045**

or electronically to:

BHAP@clackmas.us

Within thirty (30) days after receipt of the bill, provided that the Program Manager has approved the activities specified on the request for reimbursement, CLACKAMAS shall pay the amount requested to MULTNOMAH.

IV. Liaison Responsibility

Tom Bialozor, Network Specialist will act as liaison from MULTNOMAH for this project.

Meghan Tamargo, Compliance & QM Supervisor, will act as liaison from CLACKAMAS for this project.

V. Special Requirements

- A. CLACKAMAS and MULTNOMAH agree to comply with all applicable local, state and federal ordinances, statutes, laws and regulations, including Oregon Public Contract laws and all applicable provisions of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), PL 104-191, 45 CFR Parts 160-164, as well as all applicable provisions in each party's Intergovernmental Agreement with the State of Oregon.
- B. Within the limits of the Oregon Tort Claims Act, MULTNOMAH agrees to protect and save CLACKAMAS, its elected and appointed officials, agents, and employees while acting within the scope of their duties as such, harmless from and against all claims, demands, and causes of action of any kind or character, including the cost of defense thereof, arising against CLACKAMAS' employees on account of personal injuries, death or damage to property arising out of services performed or omissions of services or in any way resulting from the acts or omissions of MULTNOMAH, and/or its agents, employees, subcontractors, or representatives under this agreement.

Within the limits of the Oregon Tort Claims Act, CLACKAMAS agrees to protect and save MULTNOMAH, its elected and appointed officials, agents, and employees while acting within the scope of their duties as such, harmless from and against all claims, demands, and causes of action of any kind or character, including the cost of defense thereof, arising against MULTNOMAH's employees on account of personal injuries, death or damage to property arising out of services performed or omissions of services or in any way resulting from the acts or omissions of CLACKAMAS, and/or its appointed officials, agents, employees, subcontractors, or representatives under this agreement.

- C. Access to Records. Each party to this agreement, as well as the State of Oregon and the Federal Government, and their duly authorized representatives shall have access to the books, documents, papers, and records of the other party to this Agreement which are directly pertinent to the Agreement for the purpose of making audit, examination, excerpts, and transcripts.
- D. This Agreement 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 therefor. Any provisions herein that would conflict with law are deemed inoperative to that extent.

VI. Amendment

This Agreement may be amended at any time with the concurrence of both parties. Any changes in the proposed budget or scope of work will be negotiated between the designated liaisons. Amendments become a part of this Agreement only after the written Amendment has been signed by both parties.

VII. Term of Agreement

This agreement becomes effective **upon signature** and is scheduled to terminate **June 30, 2020**.

This Agreement is subject to termination by either of the parties when thirty (30) days' written notice has been provided.

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

Exhibit A	Definitions
Exhibit B	OHP Required Federal Terms and Conditions
Exhibit C	Statement of General Conditions
Exhibit D	Business Associate Agreement

Signature page follows

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of an Agreement with Four Seasons Heating and Air Conditioning, Inc. for
Weatherization Specialty Contractors

Purpose / Outcome	To continue to increase energy efficiency to low-income client homes
Fiscal Impact	\$900,000 over a three (3) year per period
Funding Source	Department of Energy, Low-Income Energy Assistance Program, Energy Conservation Helping Oregonians, Bonneville Power Administration (USDOE) and leveraged private utility funds. No County General Funds are involved.
Duration	1-year contract with one (1) option to extend for an additional two (2) year period.
Strategic Plan Alignment	1. Provide energy efficiency services to lower-income county residents so they can experience decreased energy costs and increased comfort, health, and safety in their homes. 2. Ensure safe, healthy and secure communities
Previous Board Action	None
Contact Person	Jacque Meier, Weatherization Services Program Manager, (503) 650-3339, jacquemei@clackamas.us .

BACKGROUND

The Community Solutions Division (“CSD”) of the County’s H3S has been delivering weatherization services for over 35 years. The mission of CSD is to enhance the quality of life for individuals and families. Work may include insulation, air sealing measures, furnace replacement, and window and door replacement.

The mission of the low-income Single-family weatherization program (“SFWP”) is to increase the livability of homes through specified installation methods adopted by the County. Weatherization services are provided to approximately 125 low-income households per year.

PROCUREMENT PROCESS

On December 14, 2017, a Request for Proposals (RFP) to develop a qualified list of weatherization specialty contractors was issued. The RFP closed on January 30, 2018, having received one (1) proposal. It was determined that the proposal met the criteria outlined in the RFP and award was made to Four Seasons Heating & Air Conditioning, Inc. the sole proposer.

The agreement has been reviewed and approved by County Counsel.

Healthy Families. Strong Communities.

RECOMMENDATION

Staff respectfully recommends the Board approve and sign the contract with Four Seasons Heating & Air Conditioning, Inc. to provide Weatherization Specialty Contractor services.

Respectfully Submitted,

Richard Swift
Health, Housing, and Human Services Director

Placed on the _____ Agenda by the Procurement Division.

**WEATHERIZATION SERVICES CONTRACT
SPECIALTY CONTRACTORS**

This Weatherization Services Contract (this “Contract”) is entered into between **Four Seasons Heating & Air Conditioning, Inc.** (“Contractor”) and Clackamas County (“County”) to provide weatherization services for the Weatherization Assistance Program.

Section 1. Purpose: The purpose of this Contract is to outline the terms and conditions for all specific project work orders (“Work Orders”) that are issued to Contractor throughout the term of this Contract. Each Work Order shall detail the specific weatherization measures that include but are not limited to the construction, alteration or repair of the improvements to real property (“Work”) to be provided by the Contractor (“Project”).

Section 2. Effective Dates: This Contract shall become effective upon signature of both parties and shall continue through **June 30, 2019**, with the option to renew for an additional two (2) year period if agreed to by the parties. In the event completion of a Work Order falls beyond the expiration of the Contract, such Work Order shall remain in full force and effect under the terms of this Contract until the completion of the Work Order. Time is of the essence for this Contract. Contractor shall ensure that it meets the key dates identified in each Work Order.

“Substantial Completion” means the date when County accepts the Work in writing, as defined in the Work Order or any designated portion thereof as having reached that state of completion when it may be used or occupied for its intended purposes. “Final Completion” means the final completion of all requirements under the Contract, including Contract closeout, but excluding warranty work (as described in Section 36).

Section 3. Contract Documents: This Contract consists of the following documents, hereby incorporated by reference, and are listed in descending order of precedence.

- A. Any issued Work Order*
- B. This Contract;
- C. Request for Proposals #2017-92– Weatherization Specialty Contractors (“RFP”) and any attachments and addenda thereto;
- D. Contractor’s Proposal in response to the RFP.

* Work Orders will at a minimum include a description of the Work, the not to exceed compensation, Key Dates, and the detailed specifications and other project related information that pertains to the Work.

All of the above documents are intended to cooperate so that any work called for in one and not mentioned in the other, or vice-versa, is to be executed the same as if mentioned in all said documents. The documents comprising the complete Contract may be referred to as the “Contract Documents.”

Section 4. Consideration: This Contract is a requirements contract, whereby the County makes no guarantee of any amount of consideration to be paid to Contractor. The maximum amount of consideration that may be paid by County under this Contract shall not exceed nine hundred thousand dollars (**\$900,000.00**). Contractor shall only be compensated on a firm, fixed-price for a specific project as outlined in each Work Order, and in accordance with the requirements of this Contract for the performance of all Work described and reasonably inferred from the Contract Documents.

Section 5. Contract Payments:

- A. Invoice for payment shall be based upon a successful final inspection. As a condition precedent to County’s obligation to pay, all invoices for payment shall be approved by the County.
- B. Contractor shall submit to the County an invoice for each payment and, if required, receipts or other vouchers showing payments for materials and labor including payments to subcontractors. Generally,

invoice for payment will be accepted only for measures that have been installed. The County reserves the right to withhold all or part of a payment or may nullify in whole or part any payment previously made, to such extent as may be necessary in the County's opinion to protect the County from loss because of: (a) Work that is defective and not remedied, or that has been demonstrated or identified as failing to conform with applicable laws or the Contract Documents; (b) failure of the Contractor to make payments promptly to subcontractors or for labor, materials or equipment; (c) damage to the Work, County, Worksite Owner (defined below) or another contractor; and (d) reasonable evidence that the Work will not be completed within the identified Key Dates, and that the unpaid balance would not be adequate to cover actual damages for the anticipated delay.

Section 6. Permits-Licenses-Safety: The Contractor shall procure all permits and licenses, pay all charges and fees, and give all notices necessary and incident to the due and lawful prosecution of the Work as required by the County. In the performance of the Work to be done under this Contract, the Contractor shall use every reasonable and practicable means to avoid damage to property and injury to persons. The Contractor shall use no means or methods which will unnecessarily endanger either persons or property. The responsibility of the Contractor under this Section shall cease upon the Work being accepted as complete by the County, excepting therefrom any claims, failures, or challenges delivered to Contractor prior to acceptance.

Section 7. Materials-Improvements: Title to materials, improvements and other property required of the Contractor by this Contract shall vest in and become the property of the residential property owner where the Work is being performed ("Worksite Owner") at the time such are tendered by the Contractor and accepted by the County and Worksite Owner. Only materials, improvements and property free and clear of all liens (including but not limited to workman's liens), claims and encumbrances shall be so proposed by the Contractor for acceptance.

Section 8. Responsibility for Work: The Contractor shall be responsible for any injury or damage to the property upon which the Work is performed as a result of carrying out the Work or to any part thereof by action of natural elements such as weather or natural disasters, or from any cause whatsoever, and the Contractor shall make good all injuries or damages to any portion of the Work. This responsibility shall cease upon acceptance by the County and the Worksite Owner, excepting therefrom any hidden defects or Work failures covered by the warranties provided by Contractor during the warranty period as defined below.

Section 9. Final Inspection: The County shall make final inspection of Work done by the Contractor within 10 days after written notification to the County by the Contractor that the Work is completed. If the Work is not acceptable to the County, the County shall so advise the Contractor in writing as to the particular defects to be remedied before final acceptance by the County can be made.

Section 10. Emergency Conditions-Suspension of Activities: The County shall have the authority to suspend, wholly or in part, the activities of the Contractor and its subcontractors under this Contract for such period or periods of time as the County may deem necessary when due to a fire or other hazard or emergency caused by any reason whatsoever.

Section 11. Other Payments, Contributions and Liens: Contractor shall:

- A. Make payment promptly, as due, to all persons supplying to such contractor labor or material for the prosecution of the work provided for under the Contract Documents.
- B. Pay all contributions or amounts due the State 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 the County or the Worksite Owner on account of any labor or material furnished. Contractor will not assign any claims that Contractor has against County, or assign any sums due by County, to subcontractors, suppliers, or manufacturers, or Worksite Owner, and will not make any agreement or act in any way to give subcontractors a claim or standing to make a claim against the County or the Worksite Owner.
- D. Pay to the Revenue Department all sums withheld from the employees pursuant to ORS 316.167.

Section 12. Medical Care: The Contractor shall promptly, as due, make payment to any person, co-partnership, association, or corporation furnishing medical, surgical, or hospital care or other needed care and attention incident to sickness or injury. The Contractor agrees to pay for such services and all moneys and sums which the Contractor collected or deducted from the wages of his or her employees pursuant to any law, contract, or agreement for the purpose of providing or paying for such service.

Section 13. Labor Laws: Contractor shall comply with all State and Federal laws in the employment and payment of labor. Particular reference is made to the requirements of ORS chapter 279B.020 and ORS 279B.235 as well as federal requirements including, but not limited to 40 U.S.C 3702 and 3704, as supplemented by Department of Labor Regulations (29 CFR Part 5) which is incorporated herein by this reference.

All subject employers working under the Contract are either employers that will comply with ORS 656.017 or employers that are exempt under ORS 656.126. Contractor shall ensure that each of its subcontractors complies with these requirements.

Section 14. Responsibility for Damages and 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, employees or agents. The Contractor agrees to indemnify, hold harmless and defend the Worksite Owner and the County, including its officers, elected officials, 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.

Section 15. Insurance: Contractor shall be required to provide proof of the following insurance requirements:

- A. Commercial General Liability: The Contractor agrees to furnish the County evidence of commercial general liability insurance in the amount of not less than \$1,000,000 combined single limit per occurrence/ \$2,000,000 general annual aggregate for personal injury and property damage for the protection of the Worksite Owner and the County, its officers, elected officials, agents and employees against liability for damages because of personal injury, bodily injury, death or damage to property, including loss of use thereof, in any way related to this Contract. The general aggregate shall apply separately to this project / location. The County, at its option, may require a complete copy of the above policy.
- B. Automobile Liability: The Contractor agrees to furnish the County evidence of business automobile liability insurance in the amount of not less than \$500,000 combined single limit for bodily injury and property damage for the protection of the Worksite Owner and the County, its officers, elected officials, agents and employees against liability for damages because of bodily injury, death or damage to property, including loss of use thereof in any way related to this Contract. The County, at its option, may require a complete copy of the above policy.

- C. If the Contractor's insurance policy does not include a blanket endorsement for additional insured status when and where required by written contract, the insurance shall include the Worksite Owner and the County, its agents, officers, elected officials and employees as additional insureds. Contractor shall provide proof of the required insurance policies. Use Form CG 20 10 or its equivalent. Such insurance shall provide thirty (30) days written notice to the County in the event of a cancellation or material change and include a statement that no act on the part of the insured shall affect the coverage afforded to the County under this insurance. This policy(s) shall be primary insurance as respects to the Worksite Owner and County. Any insurance or self- insurance maintained by the Worksite Owner or County shall be excess and shall not contribute to it.
- D. If the Contractor has the assistance of other persons in the performance of this Contract, and the Contractor is a subject employer, the Contractor agrees to qualify and remain qualified for the term of this Contract as an insured employer under ORS 656. The Contractor shall maintain employer's liability insurance with limits of \$100,000 for each accident, \$100,000 per disease for each employee, and \$500,000 each minimum policy limit.
- E. If any other required liability insurance is arranged on a "claims made" basis, "tail" coverage will be required at the completion of this Contract for a duration of thirty-six (36) months or the maximum time period the Contractor's insurer will provide "tail" coverage as subscribed, whichever is greater, or continuous "claims made" liability coverage for thirty-six (36) months following the Contract completion. Continuous "claims made" coverage will be acceptable in lieu of "tail" coverage provided the coverage's retroactive date is on or before the effective date of this Contract.

This policy(s) shall be primary insurance as respects to the County. Any insurance or self-insurance maintained by the County shall be excess and shall not contribute to it.
- F. The Contractor shall require that all of its subcontractors of any tier provide insurance coverage (including additional insured provisions) and limits identical to the insurance required of the Contractor under this Contract, unless this requirement is expressly modified or waived by the County in writing.

Section 16. Extension of Time: An extension of time on this Contract may be made by the County only upon written request from the Contractor and with the written consent of the surety of the Contractor. Generally, such extension will be granted only upon a showing by the Contractor that the failure to perform this Contract within the specified period was due to causes beyond the control of the Contractor and without fault or negligence of the Contractor, however, the County reserves the right to grant an extension if it deems it is in its best interest. The written request must be received not later than 30 days prior to the expiration date of this Contract. Such request shall state the date to which the extension is desired and shall describe the conditions which have occurred to prevent the Contractor from completing this Contract within the specified time. If such an extension is granted, the change shall constitute an authorized amendment of the Key Date(s).

Section 17. Alterations in Details: The County reserves the right to make, at any time during the progress of the work to be done, such changes or alterations as may be found to be necessary or desirable; *provided however*, such changes or alterations shall not change the character of the Work to be done, nor increase the cost thereof unless the cost increase is approved in writing by both parties. Any changes or alterations so made shall not invalidate this Contract and the Contractor agrees to do the Work as changed or altered as if it had been a part of the original Contract.

- A. Change Order Process: Change orders can be initiated by either the County or the Contractor. Before any changes or alterations of the work order are started, Contractor or County shall request a written change order. This authorization can only be approved by County.

- a. Contractor shall promptly notify County, in writing or as instructed by County, of any subsurface or latent physical conditions at the site or in an existing structure which differ from those measures indicated or referred to in the Work Order. County shall investigate the situation. If County finds that there are subsurface or latent physical conditions which differ from those intended in the Work Order and which could not reasonably have been anticipated by CONTRACTOR, a change order shall be issued incorporating the necessary revisions.
- b. County may authorize minor changes in the work that may involve an adjustment in the Work Order price or the work timeline, which are consistent with the overall intent of the Work Order. Such a change order shall be binding on both the County and the Contractor.

Additional work performed without authorization through a change order shall not entitle Contractor to an increase in job price or extension of work timeline.

Section 18. Adjustment of Contract: Notwithstanding any other provisions of this Contract, the County may, pursuant to Oregon law, make adjustments in the Contract when material effect upon the volume and value of work to be done under the Contract is caused by major catastrophes or disasters resulting from act of God, terrorism, war, riot, windstorms, floods, fire or other acts of nature, which are beyond the control of the Contractor or County, and in no way connected with negligent acts or omissions of the Contractor or the representatives, employees or contractors of the Contractor. Contractor shall have an obligation to undertake such reasonable measures as necessary to mitigate any damages that could arise from such an event. Such adjustments may be made to place the parties in their original status under the Contract, insofar as possible; *provided however*, that any loss or cost to third parties is in no way recoverable from the County through action or otherwise by third parties, and *provided further*, the Contractor make written application to the County within 30 days after the event.

Section 19. Claims Review Process: A “Claim” means a demand by Contractor pursuant to this Section for review of the denial of Contractor’s initial request for an adjustment of Contract terms, payment of money, extension of Key Dates or other relief, submitted in accordance with the requirements and within the time limits established for review of Claims in this Section.

- A. All Contractor Claims shall be referred to the County for review. Contractor’s Claims, including Claims for adjustments to compensation or Contract Time, shall be submitted in writing by Contractor to the County within five (5) days after a denial of Contractor’s initial request for an adjustment of Contract terms, payment of money, extension of Key Dates or other relief, provided that such initial request has been submitted in accordance with the requirements and within the time limits established in this Section. Within thirty (30) Days after the initial Claim, Contractor shall submit to the County a complete and detailed description of the Claim (the “Detailed Notice”) that includes all information required by Section 19.B. Unless the Claim is made in accordance with these time requirements, it shall be waived by Contractor.
- B. The Detailed Notice of the Claim shall be submitted in writing by Contractor and shall include a detailed, factual statement of the basis of the Claim, pertinent dates, Contract provisions which support or allow the Claim, reference to or copies of any documents which support the Claim, the dollar value of the Claim, and the Key Dates adjustment requested for the Claim. If the Claim involves Work to be completed by Subcontractors, the Contractor will analyze and evaluate the merits of the Subcontractor claim prior to forwarding it and that analysis and evaluation to the County. The County will not consider direct claims from subcontractors, suppliers, manufacturers, or others not a party to this Contract. Contractor agrees that it will make no agreement, covenant, or assignment, nor will it commit any other act that will permit or assist any subcontractor, supplier, manufacturer, or other to directly or indirectly make a claim against County.

- C. The County will review all Claims and take one or more of the following preliminary actions within ten (10) Days of receipt of the Detailed Notice of a Claim: (1) request additional supporting information from the Contractor; (2) inform the Contractor and County in writing of the time required for adequate review and response; (3) reject the Claim in whole or in part and identify the reasons for rejection; (4) based on principles of equitable adjustment, recommend approval of all or part of the Claim; or (5) propose an alternate resolution.
- D. The County's decision shall be final and binding on the Contractor unless appealed by written notice to the County within fifteen (15) Days of receipt of the decision. The Contractor must present written documentation supporting the Claim within fifteen (15) Days of the notice of appeal. After receiving the appeal documentation, the County shall review the materials and render a decision within thirty (30) Days after receiving the appeal documents.
- E. The decision of the County shall be final and binding unless the Contractor delivers to the County its request for mediation, which shall be a non-binding process, within fifteen (15) Days of the date of the County's decision. The mediation process will be considered to have commenced as of the date the Contractor delivers the request. Both parties acknowledge and agree that participation in mediation is a prerequisite to commencement of litigation of any disputes relating to the Contract. Both parties further agree to exercise their best efforts in good faith to resolve all disputes within sixty (60) Days of the commencement of the mediation through the mediation process set forth herein.

In the event that a lawsuit must be filed within this sixty (60) Day period in order to preserve a cause of action, the parties agree that, notwithstanding the filing, they shall proceed diligently with the mediation to its conclusion prior to actively prosecuting the lawsuit, and shall seek from the Court in which the lawsuit is pending such stays or extensions, including the filing of an answer, as may be necessary to facilitate the mediation process. Further, in the event settlements are reached on any issues through mediation, the plaintiff shall promptly cause to be entered by the Court a stipulated general judgment of dismissal with prejudice, or other appropriate order limiting the scope of litigation as provided in the settlement.

- F. The mediation process will be considered to have been commenced as of the date one party delivers to the other its request in writing to mediate. The mediator shall be an individual mutually acceptable to both parties, but in the absence of agreement each party shall select a temporary mediator and the temporary mediators shall jointly select the permanent mediator. Each party shall pay its own costs for the time and effort involved in mediation. The cost of the mediator shall be split equally between the two parties. Participation in mediation is a mandatory requirement of both the County and the Contractor. The schedule, time and place for mediation will be mutually acceptable, or, failing mutual agreement, shall be as established by the mediator. The parties agree to comply with County's administrative rules governing the confidentiality of mediation, if any, and shall execute all necessary documents to give effect to such confidentiality rules. In any event, the parties shall not subpoena the mediator or otherwise require the mediator to produce records, notes or work product, or to testify in any future proceedings as to information disclosed or representations made in the course of mediation, except to the extent disclosure is required by law.
- G. Unless otherwise directed by the County, the Contractor shall proceed with the Work while any Claim, or mediation or litigation arising from a Claim, is pending. Regardless of the review period or the final decision of the County, the Contractor shall continue to diligently pursue the Work as identified in the Contract Documents. In no case is the Contractor justified or allowed to cease or delay Work, in whole or in part, without a written stop work order from the County.

Section 20. Violations, Suspension and Cancellation: If the Contractor violates any of the provisions of this Contract, the County, may, after giving written notice, suspend any further operations of the Contractor under this Contract, except such operations as may be necessary to remedy any violations. If the Contractor fails to remedy other violations of this Contract within ten (10) days after receipt of the suspension notice given under this Section, the County may, by written notice, cancel this Contract and take appropriate action to recover all damages suffered by the County by reason of such violations, including application toward payment of such damages of any advance payments and any performance bonds, or any other remedy available at law or equity.

Section 21. Subcontracting: It is understood and agreed that if all or any part of the Work to be done under this Contract is subcontracted, such subcontracting done by the Contractor or otherwise shall in no way relieve the Contractor of any responsibility under this Contract. The Contractor shall notify the County, in writing, of the names and addresses of all subcontractors, prior to subletting any part of the Work to be done under this Contract.

Section 22. Assignment of Contract: The Contractor agrees not to assign, transfer, convey or otherwise dispose of this Contract, or the right, title, or interest therein, either in whole or in part, by operation of law or otherwise, or the power of the Contractor to execute this Contract, to any other person, firm, or corporation, without the prior written consent of the County.

Section 23. Notices: Any written notice to the Contractor which may be required under this Contract to be served on the Contractor by the County may be served by personal delivery to the Contractor or the designated representative or representatives of the Contractor, or by mailing the notice to the address of the Contractor as such is given in the Contract, or by leaving the notice at said address. Should the Contractor be required to notify the County concerning the progress of the work to be done, or concerning any matter or complaint which the Contractor may have to make regarding the Contract subject matter, or for any other reason, it is understood that such notification is to be made in writing, delivered to the designated representative of the County in person or mailed to the County.

Section 24. Authorized Representative: During any period of operations or activity on the Project, and during any period of doing the Work required by this Contract on location, the Contractor shall have a designated representative or representatives available to the County in the area or Work location, or both where such activity is separated, which representative or representatives shall be authorized to receive on behalf of the Contractor any notice or instructions from the County and to take such action as may be required in regard to performance of the Contractor under this Contract. The County shall designate to the Contractor, the “authorized representative/project manager,” or his or her designee, as authorized field representative who shall be authorized to receive notices, inspect progress of Work, and issue instructions in regard to performance under the terms of this Contract.

Section 25. Inspection: The County, through its authorized representative/project manager, or his or her designee, shall at all times be allowed access to all parts of the operations and Work locations of the Contractor, and shall be furnished such information and assistance by the Contractor, or the designated representative or representatives of the Contractor, as may be required to make a complete and detailed inspection.

Section 26. Removal of Equipment and Materials: It is understood and agreed that the Contractor, upon completion of the requirements of this Contract, is to promptly remove from the Work location, all equipment, materials and other property the Contractor has placed or caused to be placed thereon that is not to become the property of the Worksite Owner. It is further understood and agreed that any such equipment, materials and other property that are not removed within seven (7) calendar days after Final Completion, or within such longer time as may be agreed upon in writing between the Contractor and the County, shall automatically and without need of further action become the property of the County and may be used or otherwise disposed of by the County without obligation to the Contractor or to any party to whom the Contractor may seek to transfer title or

whom have an interest, including a security interest, in such property. In accordance with this Contract, Contractor shall be required to clean up, remove, and dispose of all debris and waste materials.

Section 27. Liability of Public Officials: In carrying out any of the provisions of this Contract, or in exercising any power or authority granted under this Contract, there will be no liability upon the Clackamas County Board of Commissioners, its members, other County elected officials, officers, agents, employees, or the County's authorized representatives, either personally or as public officials and employees; it always being understood that in such matters said person is acting as an agent and/or representative of the County.

Section 28. Laws, Regulations and Orders, and Tax Law Covenant: The Contractor at all times shall observe and comply with all federal and state laws and lawful regulations issued there under and local bylaws, ordinances, regulations and codes which in any manner affect the activities of the Contractor under this Contract, and further shall observe and comply with all orders or decrees as exist at present and those which may be enacted later by bodies or tribunals having any jurisdiction or authority over such activities of the Contractor.

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

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

Section 29. Termination: This Contract may be terminated for the following reasons: (A) This Contract may be terminated by the County for convenience upon ten (10) days' written notice to the Contractor; (B) County may terminate this Contract effective immediately upon delivery of notice to Contractor, or at such later date as may be established by the County, if (i) federal or state laws, rules, regulations, or guidelines are modified, changed, or interpreted in such a way that either the Work under this Contract is prohibited or the County is prohibited from paying for such work from the planned funding source; or (ii) any license or certificate required by law or regulation to be held by the Contractor to provide the services required by this Contract is for any reason denied, revoked, or not renewed; (C) This Contract may also be immediately terminated by the County for default (including breach of Contract) if (i) Contractor fails to provide services or materials called for by this Contract within the time specified herein or any extension thereof; or (ii) Contractor fails to perform any of the

other provisions of this Contract or so fails to pursue the work as to endanger performance of this Contract in accordance with its terms, and after receipt of notice from the County, fails to correct such failure within ten (10) business days; or (D) If sufficient funds are not provided in future approved budgets of the County (or from applicable federal, state, or other sources) to permit the County in the exercise of its reasonable administrative discretion to continue this Contract, or if the program for which this Contract was executed is abolished, County may terminate this Contract without further liability by giving Contractor not less than thirty (30) days' notice.

Section 30. Description of a Contractor: The Contractor is engaged hereby as an independent Contractor and will be so deemed for purposes of the following:

- A. The Contractor will be solely responsible for payment of any Federal or State taxes required as a result of this Contract.
- B. This Contract is not intended to entitle the Contractor to any benefits generally granted to County employees. Without limitation, but by way of illustration, the benefits which are not intended to be extended by this Contract to the Contractor are vacation, holiday and sick leave, other leaves with pay, tenure, medical and dental coverage, life and disability, insurance, overtime, Social Security, Workers' Compensation, unemployment compensation, or retirement benefits (except insofar as benefits are otherwise required by law if the Contractor is presently a member of the Oregon Public Employees Retirement System).
- C. The Contractor certifies that at present, he or she, if an individual, is not a program, County, or federal employee.

Section 31. Constitutional Debt Limitation: 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.

Section 32. Access to Records: Contractor shall maintain books, records, documents, and other evidence and accounting procedures and practices sufficient to reflect properly all costs of whatever nature claimed to have been incurred and anticipated to be incurred in the performance of this Contract. The United States Government, the State of Oregon, and County and their duly authorized representatives shall have access to the books, documents, papers, and records of Contractor which are directly pertinent to this Contract for the purpose of making audit, examination, excerpts, and transcripts. Such books and records shall be maintained by Contractor for a minimum of three (3) years, or such longer period as may be required by applicable law, following final payment and termination of this Contract, or until the conclusion of any audit, controversy or litigation arising out of or related to this Contract, whichever date is later.

Section 33. Governing Law: This Contract shall be governed and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, or suit between County and Contractor that arises out of or relates to the performance of this Contract shall be brought and conducted solely and exclusively within the Circuit Court for Clackamas County, for the State of Oregon. Provided, however, that if any such claim, action, or suit may be brought in a federal forum, it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon.

Section 34. Hazard Communication: Contractor shall notify County prior to using products containing hazardous chemicals to which County employees or the Worksite Owner may be exposed. Products containing hazardous chemicals are those products defined by Oregon Administrative Rules, Chapter 437. Upon County's request, Contractor shall immediately provide safety data sheets for the products subject to this provision.

Section 35. Intended Third Party Beneficiaries: Although County and Contractor are the only parties to this Contract, the Worksite Owner (each property owner for each residential location under the Project) is an intended third party beneficiary and shall be entitled to rely upon and directly enforce the terms of this Contract.

Section 36. Warranty: Contractor warrants to County and the Worksite Owner that materials and equipment furnished under the Contract will be of good quality and new unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects not inherent in the quality required or permitted, that the Work will conform with the requirements of the Contract Documents for a period of one year following the date of successful final inspection. In addition to Contractor’s warranty, manufacturer’s warranties shall pass to the Worksite Owner and shall not take effect until such portion of the Work covered by the applicable warranty has been accepted in writing by the County. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The Contractor’s warranty excludes remedy for damage or defect caused by abuse, modification not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear under normal usage.

Section 37. Execution and Counterparts: This Contract may be executed in several counterparts, each of which shall be an original, all of which shall constitute but one and the same instrument.

Section 38. Liquidated Damages: It is imperative that the Work in this Contract reach Substantial Completion by the Key Date indicated in the Work Order, to ensure that the Worksite Owner shall be able to fully occupy the premises free and clear without disturbance. It is understood that the Work on the premises creates a substantial disruption of the use of the premises. The Contractor represents and agrees to the Substantial Completion date, and it has taken into account in its acceptance of the Work Order the requirements of the Contract Documents, the location, the time allowed for the Work, local conditions, availability of materials, equipment, and labor, and any other factor which may affect performance of the Work.

If the Contractor fails to achieve Substantial Completion as specified above, then the Contractor and County agree that it would be extremely difficult to ascertain the damages incurred by the County and Worksite Owner for the Contractor’s failure. Therefore, the County and the Contractor agree that in lieu of actual damages for delay, the Contractor shall reimburse County a stipulated sum as identified in the below table. The Contractor further agrees the stipulated sum is not a penalty.

Days Post Substantial Completion Date	Stipulated Sum
1-7 calendar days	\$100.00 each calendar day
7-15 calendar days	\$200.00 each calendar day
15-21 calendar days	\$300.00 each calendar day

Section 39. Federal Assurances

A. **Equal Employment Opportunity.** During the performance of this Contract, the Contractor agrees as follows:

1. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

2. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
 3. The Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Contractor's legal duty to furnish information.
 4. The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
 5. The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
 6. The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the County and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
 7. In the event of the Contractor's noncompliance with the nondiscrimination clauses of this Contract or with any of the said rules, regulations, or orders, this Contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
 8. The Contractor will include the portion of Section 39.A.1 through 39.A.8 in every subcontract or work order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or work order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: *Provided*, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the County, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.
- B. **Clean Air Act.** During the performance of this Contract, the Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (422 U.S.C. 7401—7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

- C. **Byrd Anti-Lobbying.** Pursuant 22 CFR Part 227, Contractor agrees to: a) sign and submit to the County (i) upon signing of this Contract, the required certification that it has not used and will not use federal appropriated funds to influence various government officials in making certain federal awards, using the “Certification Regarding Lobbying” form, and (ii) the “Disclosure of Lobbying Activities Form”, if it uses or has agreed to use funds other than federal appropriated funds for this purpose; (b) require that all subcontractors to sign the Certification Regarding Lobbying and submit to the County prior to any work commencing by the subcontractor.

Section 40. Survival: All warranty and indemnification provisions of this Contract, and all of Contractor’s other obligations under this Contract that are not fully performed by the time of Final Completion or termination, shall survive Final Completion or any termination of the Contract.

By signature below, the parties to this Contract agree to the terms, conditions, and content expressed herein effective upon the date of the last signature below.

Contractor

Clackamas County

Authorized Signature

Date

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

Name / Title Printed

CCB License Number

Richard Swift, Director
Health, Housing and Human Services

Oregon Business Registry Number

Date

Entity Type / State of Formation





DAN JOHNSON
DIRECTOR

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

July 12, 2018

Board of County Commissioner
Clackamas County

Members of the Board:

Approval of a Supplemental Project Agreement No. 32533 with Oregon Department of Transportation for the 232nd Drive at MP 0.3 Project

Purpose/Outcomes	Using Federal Emergency Relief Program (ERP) funds, this agreement allows Clackamas County to proceed with the design and construction of improvements needed to repair and stabilize the roadway on 232 nd Drive at Milepost 0.3.
Dollar Amount and Fiscal Impact	Overall Project Cost Estimate: \$575,000 Federal Emergency Relief Program funds: \$515,948 City of Gladstone match (10.27% min): \$59,052
Funding Source	Federal Emergency Relief Program (ERP) and Clackamas County Road Funds.
Duration	Execution until completion of the project.
Previous Board Action	01/01/17: BCC Approval of Master Certification Agreement No. 30923 for County implementation of federally funded projects
Strategic Plan Alignment	- Build a strong infrastructure - Ensure safe, healthy and secure communities
Contact Person	Joel Howie, Civil Engineering Supervisor 503-742-4658

Clackamas County obtained Federal Emergency Relief Program (ERP) funds to repair and stabilize the roadway on 232nd Drive at Milepost 0.3. The road was damaged in March of 2017 as a result of heavy rains that occurred during the spring of 2017. A state emergency declaration, which included Clackamas County, was signed by the governor allowing Clackamas County to be eligible for the ERP funding.

Clackamas County will complete the work as a Supplemental Project under the County's Local Agency Certification Program Agreement No. 30923 with ODOT. This project will be financed with 89.73 percent of federal ERP funds matched by 10.27 percent of County Road Funds. This agreement has been reviewed and approved by County Counsel.

RECOMMENDATION:

Staff respectfully recommends that the Board of County Commissioners approve the attached Supplemental Project Agreement with ODOT for the 232nd Drive at MP 0.3 Project as listed in the agreement.

Respectfully submitted,

Mike Bezner
Assistant Director of Transportation

**Oregon Department of Transportation
LOCAL AGENCY CERTIFICATION PROGRAM
EMERGENCY RELIEF PROGRAM
Supplemental Project Agreement No. 32533
Project Name: 232nd Drive at MP 0.3**

THIS SUPPLEMENTAL PROJECT AGREEMENT (Agreement) is made and entered into by and between THE STATE OF OREGON, acting by and through its Department of Transportation, hereinafter referred to as "State" or "ODOT," and CLACKAMAS COUNTY acting by and through its elected officials, hereinafter referred to as "Agency," both herein referred to individually as "Party" or collectively as "Parties."

RECITALS

1. By the authority granted in Local Agency Certification Program Agreement No. 30923, executed on January 30, 2017 (Local Agency Certification Program Agreement) incorporated herein and by this reference made a part hereof, State may enter into this Supplemental Project Agreement with Agency for the performance of work on this improvement Project. The Certification Program allows State to certify a local agency's procedures and delegates authority to the certified local agency to administer federal-aid projects.
2. Certification status information as of the date of execution of this Agreement:
 - a. Agency is fully certified in the following functional areas:
 - design (excluding bridge design)
 - "advertise, bid, and award" for construction contracts
 - construction contract administration
 - b. Agency is conditionally certified in the following functional areas:
 - consultant selection (formal and informal process)
3. 232nd Drive at MP 0.3 is a part of the Agency's street system under the jurisdiction and control of Agency.

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

TERMS OF AGREEMENT

1. Under such authority, State and Agency agree to Agency delivering the 232nd Drive at MP 0.3 project, hereinafter referred to as "Project." Project includes improvements needed to repair and stabilize the roadway on 232nd Drive at MP 0.3 which will include constructing a deep patch that involves reconstructing the roadway subgrade in the distressed area. Slope stabilization, drainage and surface runoff and mitigation will be addressed and resolved within the project area. The location of the Project is shown on the sketch map attached hereto, marked "Exhibit A," and by this reference made a part hereof.

2. The Project will be conducted as a part of the Emergency Relief Program (ERP) under Title 23, United States Code. The total Project cost is estimated at \$575,000, which is subject to change. The Project will be financed with \$515,947.50 of ERP funds. Agency shall be responsible for all remaining costs, including the 10.27 percent match for all eligible costs, any non-participating costs, and all costs in excess of ERP funds. Any increase in ERP funds must be approved by the Federal Highway Administration (FHWA). Agency will report the final cost of each phase of the Project at the completion of each phase, as well as the total Project cost at the end of the Project, to the State's Local Agency Liaison. Such phases generally consist of Preliminary Engineering, Right of Way, Utility, and Construction, described in the Local Agency Certification Program Agreement.
3. If State performs work on the Project, State will provide Agency with a preliminary estimate for the cost of State's work. Prior to the start of each Project phase, State will provide an updated estimate of State's costs from that phase to Agency. Such phases generally consist of Preliminary Engineering, Right of Way, Utility, and Construction. Agency understands that State's costs are estimates only and agrees to reimburse State for actual cost incurred per the Terms of this Agreement.
4. Agency shall make all payments for work performed on the Project, including all construction costs, and invoice State for one-hundred (100%) percent of its costs. State shall reimburse Agency invoices at the pro-rated federal share. All costs beyond the federal and state reimbursement and any non-participating costs will be the responsibility of the Agency. State shall invoice FHWA and Agency for work provided as part of the Project. Agency agrees to reimburse State for work performed for the project upon receipt of invoice. Failure of Agency to make such payments to State may result in withholding of Agency's proportional allocation of State Highway Funds until such costs are paid. Agency understands that State's costs are estimates only and agrees to reimburse State for the actual amount expended.
5. Agency guarantees the availability of Agency funding in an amount required to fully fund Agency's share of the Project.
6. This Agreement is subject to the terms and provisions of the Local Agency Certification Program Agreement.
7. Information required by 2 CFR 200.331(a)(1) shall be contained in the USDOT FHWA Federal Aid Project Agreement for this Project, a copy of which shall be provided by State to Agency with the Notice to Proceed.
8. Indirect Cost Rate.
 - a. As required by 2 CFR 200.331(a)(4), the indirect cost rate(s) for this project at the time the agreement is written is 35.57%. This rate may change during the term of this Agreement upon notice to ODOT and ODOT's subsequent written approval.
 - b. If the approved rate changes during the term of this Agreement, Agency shall invoice ODOT using the current indirect cost rate(s) for the Project on file with ODOT at the time the work is performed. If Agency does not have an approved indirect cost rate on

file with ODOT at the time the work is performed, Agency shall invoice ODOT using a zero percent (0%) rate.

9. Agency Work on this Project:

a. Agency shall perform the following functional areas in which Agency is fully certified and as authorized by the Local Agency Certification Program Agreement:

- design (excluding bridge design)
- “advertise, bid, and award” the construction contract
- construction contract administration

b. While Agency is in the process of transitioning from conditional to full certification, by the terms of this Agreement and for only this Project, Agency is authorized and shall perform as if fully certified in the following functional area:

- consultant selection (formal and informal process)

10. Agency understands that this Project is subject to the terms and conditions of the Local Agency Certification Program Agreement and may also be subject to the terms of a corrective action plan and increased monitoring if ODOT’s evaluation of Agency’s test project(s) or program documents identifies the need for corrective action.

11. State will submit the requests for federal funding to the FHWA. The federal funding for this Project is contingent upon approval of each funding request by FHWA. Any work performed outside the period of performance and scope approved by FHWA will be considered nonparticipating and paid for at Agency expense.

12. State’s Local Agency Liaison or designee will provide Agency with a written notice to proceed for each phase of the Project when FHWA approval has been secured and funds are available for expenditure on this Project.

13. State considers Agency a subrecipient of the federal funds it receives as reimbursement under this Agreement. The Catalog of Federal Domestic Assistance (CFDA) number and title for this Project is 20.205, Highway Planning and Construction.

14. The term of this Agreement will begin upon execution and will terminate upon completion of the Project and final payment or ten (10) calendar years following the date of final execution, whichever is sooner. The Project will be completed within two (2) calendar years following the date of final execution of this Agreement by both Parties or such time as set forth in the “ER Manual” published by the Federal Highway Administration. Projects for permanent repairs that have not advanced to construction obligation by the end of the second fiscal year following the year in which the disaster occurred cannot be authorized. Additional information can be obtained at <http://www.fhwa.dot.gov/reports/erm/ermchap6.cfm#i>.

15. If Agency fails to meet the requirements of this Agreement or the underlying federal regulations, State may withhold the Agency’s proportional share of Highway Fund distribution necessary to reimburse State for costs incurred by such Agency breach.

16. State may conduct periodic inspections during the useful life of the Project to verify that Project is being properly maintained and continues to serve the purpose for which federal funds were provided.
17. State and Agency agree that the useful life of the Project is 20 years.
18. By signing this Agreement, Agency agrees to comply with the provisions of the Federal Funding Accountability and Transparency Act (FFATA) and is subject to the following award terms: <http://edocket.access.gpo.gov/2010/pdf/2010-22705.pdf> and <http://edocket.access.gpo.gov/2010/pdf/2010-22706.pdf>. If, in the preceding fiscal year, Agency received more than 80% of its gross revenues from the federal government, those federal funds exceed \$25,000,000 annually, and the public does not have access to information about the compensation of executives through reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 or section 6104 of the Internal Revenue Code of 1986, Agency shall report the total compensation and names of its top five executives to State. Agency shall report said information to State within 14 calendar days of execution of this Agreement and annually thereafter, utilizing the FFATA form attached hereto as Exhibit "B".

19. **Americans with Disabilities Act Compliance:**

- a. **General:** Agency agrees to comply with Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990 as amended by the ADA Amendments Act of 2008 (together, "ADA") as identified in paragraph 1 of the General Provisions section of Local Agency's Certification Program Agreement, and to utilize ODOT standards to assess and ensure Project compliance with the ADA.
- b. **ADA Design Standards and Construction Specifications:** Agency agrees to comply with ODOT's current ADA-related design standards, construction specifications, and design exception documentation and approval requirements for design, modification, upgrade, or construction of Project sidewalks, curb ramps, and pedestrian activated signals on both the Oregon State Highway System (state highway) and on the local agency system, including using the ODOT Highway Design Manual, ODOT Design Exception process, ODOT Standard Drawings, ODOT Construction Specifications, and current ODOT Curb Ramp Inspection form.
 - i. **ADA Inspection Forms:** Prior to issuing the Second Notification pursuant to Oregon Standard Specification 00180.50(g), or Agency's approved equivalent, Agency agrees to submit an ODOT Curb Ramp Inspection Form 734-5020 to the address on the form as well as to State's Regional Local Agency Liason for each curb ramp designed, constructed, upgraded, or modified for this Project. The completed form is the required documentation from Agency showing that each curb ramp meets ODOT standards and is ADA compliant. ODOT's fillable Curb Ramp Inspection Form 734-5020 and instructions are available at the following website:

<http://www.oregon.gov/ODOT/HWY/CONSTRUCTION/Pages/HwyConstForms1.aspx>

- ii. **State inspection:** Agency shall promptly notify State of Project completion and allow State to inspect Project sidewalks, curb ramps, and pedestrian-activated

signals located on or along a state highway prior to acceptance of Project by Agency and prior to release of any Agency contractor.

- c. **Work Zone Access:** Agency shall ensure that temporary pedestrian routes are provided through or around any Project work zone. Any such temporary pedestrian route shall include directional and informational signs, comply with ODOT standards, and include accessibility features equal to or better than the features present in the existing pedestrian facility. Agency shall also ensure that advance notice of any temporary pedestrian route is provided in accessible format to the public, people with disabilities, and disability organizations at least 10 days prior to the start of construction.
 - d. **Reimbursement:** Unless Agency has an approved design exception, State will only reimburse Agency for work that meets the applicable ODOT standards, regardless of whether the work is on a State-owned or an Agency-owned facility.
 - e. **On-going Maintenance Obligation:** Agency shall ensure that any portions of the Project under Agency's maintenance jurisdiction are maintained in compliance with the ADA throughout the useful life of the Project. This includes, but is not limited to, Agency ensuring that:
 - i. Pedestrian access is maintained as required by the ADA,
 - ii. Any complaints received by Agency identifying sidewalk, curb ramp, or pedestrian-activated signal safety or access issues are promptly evaluated and addressed,
 - iii. Any repairs or removal of obstructions needed to maintain Project features in compliance with the ADA requirements that were in effect at the time of Project construction are completed by Agency or abutting property owner pursuant to applicable local code provisions,
 - iv. Any future alteration work on the Project or Project features during the useful life of the Project complies with the ADA requirements in effect at the time the future alteration work is performed, and
 - v. Applicable permitting and regulatory actions are consistent with ADA requirements.
 - f. **Survival:** Maintenance obligations in this section shall survive termination of this Agreement.
20. Agency shall ensure compliance with the Cargo Preference Act and implementing regulations (46 CFR Part 381) for use of United States-flag ocean vessels transporting materials or equipment acquired specifically for the Project. Strict compliance is required, including but not limited to the clauses in 46 CFR 381.7(a) and (b) which are incorporated by reference. Agency shall also include this requirement in all contracts and ensure that contractors include the requirement in their subcontracts.
21. Agency shall require its contractor(s) and subcontractor(s) that are not units of local government as defined in ORS 190.003, if any, to indemnify, defend, save and hold harmless the State of Oregon, Oregon Transportation Commission and its members,

Department of Transportation 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 (Claims), to the extent such Claims are caused, or alleged to be caused by the negligent or willful acts or omissions of Agency's contractor or any of the officers, agents, employees or subcontractors of the contractor. It is the specific intention of the Parties that State shall, in all instances, except to the extent Claims arise from the negligent or willful acts or omissions of State, be indemnified for all Claims caused or alleged to be caused by the contractor or subcontractor.

22. Any such indemnification shall also provide that neither Agency's contractor and subcontractor nor any attorney engaged by Agency's contractor and subcontractor shall defend any claim in the name of the State of Oregon 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 of Oregon may, at anytime at its election assume its own defense and settlement in the event that it determines that Agency's contractor is prohibited from defending the State of Oregon, or that Agency's contractor is not adequately defending the State of Oregon's interests, or that an important governmental principle is at issue or that it is in the best interests of the State of Oregon to do so. The State of Oregon reserves all rights to pursue claims it may have against Agency's contractor if the State of Oregon elects to assume its own defense.
23. This Agreement may be terminated by mutual written consent of both Parties.
24. State may terminate this Agreement effective upon delivery of written notice to Agency, or at such later date as may be established by State, under any of the following conditions:
- a. If Agency fails to provide services called for by this Agreement within the time specified herein or any extension thereof.
 - b. If Agency fails to perform any of the other provisions of this Agreement, or so fails to pursue the work as to endanger performance of this Agreement in accordance with its terms, and after receipt of written notice from State fails to correct such failures within ten (10) days or such longer period as State may authorize.
 - c. If Agency fails to provide payment of its share of the cost of the Project.
 - d. If State fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow State, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement.
 - e. If federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the work under this Agreement is prohibited or if State is prohibited from paying for such work from the planned funding source.
25. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.

26. Agency, as a recipient of federal funds, pursuant to this Agreement with State, shall assume sole liability for Agency's breach of any federal statutes, rules, program requirements and grant provisions applicable to the federal funds, and shall, upon Agency's breach of any such conditions that requires State to return funds to the FHWA, 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 Agency, 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.
27. State and Agency hereto agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be invalid, unenforceable, 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.
28. Agency grants State the right to enter onto Agency right of way for the performance of duties as set forth in this Agreement.
29. Agency certifies and represents that each individual signing this Agreement has been authorized to enter into and execute this Agreement on behalf of Agency, under the direction or approval of its governing body, commission, board, officers, members or representatives, and to legally bind Agency.
30. This Agreement may be executed in several counterparts (facsimile or otherwise) all of which when taken together shall constitute one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of this Agreement so executed shall constitute an original.
31. This Agreement and the Local Agency Certification Program Agreement (Certification Program) Agreement No. 30923, as amended and all attached exhibits constitutes the entire agreement between the Parties on the subject matter hereof. In the event of conflict, the body of this Agreement and the attached Exhibits will control over Project application and documents provided by Agency to State. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either party unless in writing and signed by both Parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of State to enforce any provision of this Agreement shall not constitute a waiver by State of that or any other provision. Notwithstanding this provision, the Parties may enter into a Right Of Way Services Agreement in furtherance of the Project.
32. State's Local Agency Liaison for the Agreement is Mahasti Hastings, Local Area Liaison, 123 NW Flanders Street, Portland, OR 97221, 503-731-8595, mahasti.v.hastings@odot.state.or.us, or assigned designee upon individual's absence. State shall notify the other Party in writing of any contact information changes during the term of this Agreement.

Agency/State
Agreement No. 32533

33. Agency's Project Liaison for this Agreement is Joel Howie, Civil Engineering Supervisor, 150 Beaver Creek Rd, Oregon City, OR 97045, 503-742-4658, JHowie@co.clackamas.or.us, or assigned designee upon individual's absence. Agency shall notify the other Party in writing of any contact information changes during the term of this Agreement.

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

This Project is in the 2018-2021 Statewide Transportation Improvement Program (STIP), (Key #21221) that was adopted by the Oregon Transportation Commission on July 20, 2017 (or subsequently approved by amendment to the STIP).

Under authority from Subdelegation Order No. 11, Paragraph No. 1, the Maintenance Engineer is authorized to declare an emergency and Federal Emergency Relief Program Funds were approved by FHWA on June 13, 2017.

SIGNATURE PAGE TO FOLLOW

Agency/State
Agreement No. 32533

CLACKAMAS COUNTY, acting by and
through its elected officials

By _____

Title _____

Date _____

LEGAL REVIEW APPROVAL
(If required in Agency's process)

By _____
Agency Legal Counsel

Date _____

Agency Contact:

Joel Howie
Civil Engineering Supervisor
150 Beaver Creek Rd,
Oregon City, OR 97045
503-742-4658
JHowie@co.clackamas.or.us

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

By _____

Highway Division Administrator

Date _____

APPROVAL RECOMMENDED

By _____

Certification Program Manager

Date _____

By _____

Region 1 Manager

Date _____

**APPROVED AS TO LEGAL
SUFFICIENCY**

By Rachel Bertoni per email

Assistant Attorney General

Date 5/22/18

State Contact:

Mahasti Hastings
Local Area Liaison
123 NW Flanders Street
Portland, OR 97221
503-731-8595
mahasti.v.hastings@odot.state.or.us

Exhibit A – Project Location Map

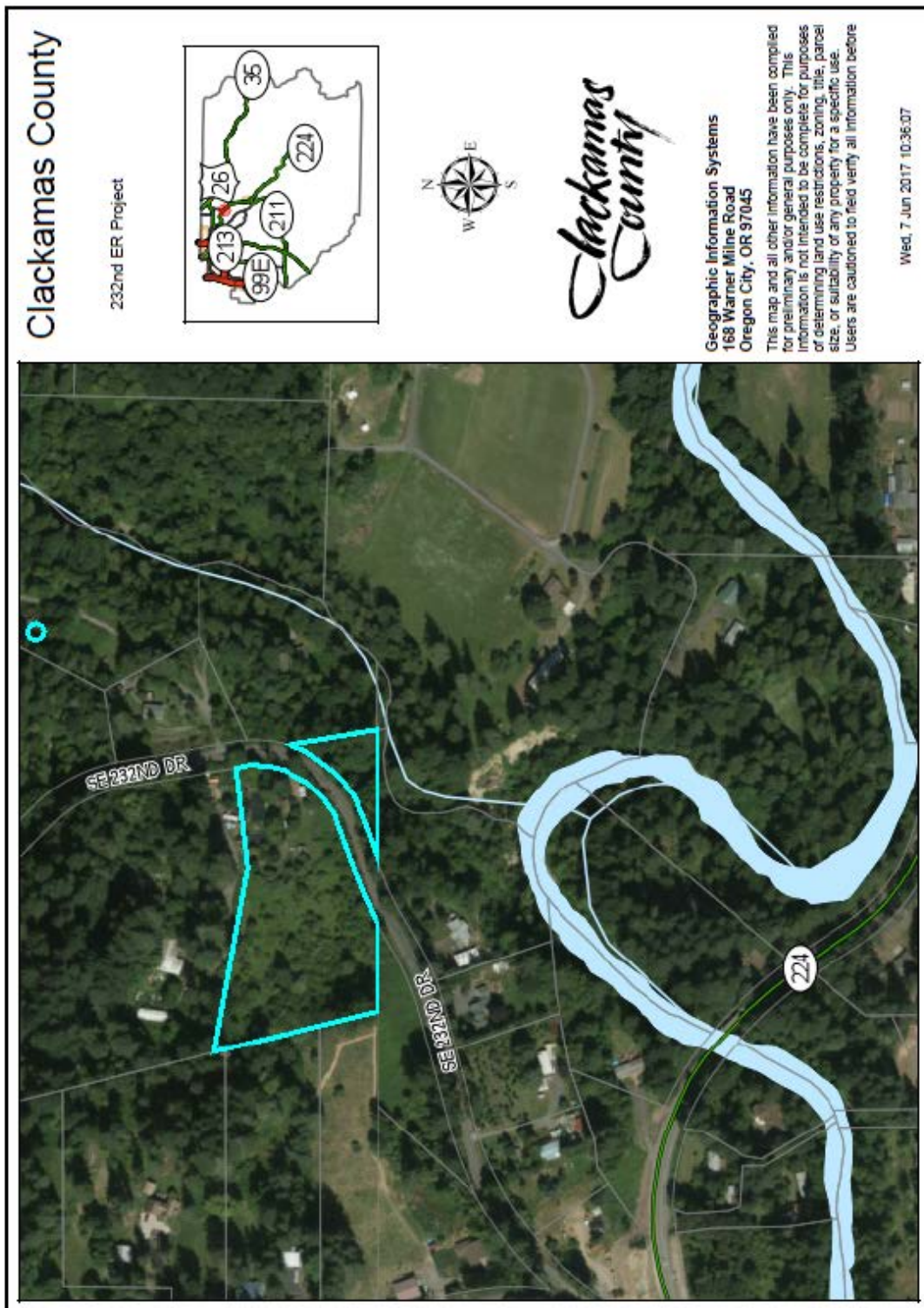


Exhibit B
Federal Funding Accountability and Transparency Act (FFATA)
Subaward Reporting

(For purposes of this Exhibit, references to “your organization” shall mean “Agency” and references to “ODOT” shall mean “State.”)
The Oregon Department of Transportation (ODOT) is required to fulfill a federal requirement for contracting under the Federal Funding Accountability and Transparency Act (FFATA) Subaward Reporting System (FSRS). FFATA reporting is a requirement for subawards (also known as subrecipients) of federal awards in excess of \$25,000,000. Your organization will enter into an agreement with ODOT where the funding source is a federal grant with a subrecipient relationship. Your organization is required to submit the information below to the Oregon Department of Transportation within fourteen calendar days of execution of the Agreement and annually thereafter, if applicable. (See the following page for further details.)

Legal entity name: _____

Data Universal Number System (DUNS) number: _____

Executive compensation

Executive compensation information is also required to determine whether or not the following information must be reported in FSRS:

- a. In your organization’s previous fiscal year, did your organization receive 80% or more of its annual gross revenue and \$25,000,000 or more in federal procurement contracts, subcontracts, loans, grants, subgrants, cooperative agreements and federal financial assistance awards subject to the Transparency Act? (Include parent organization, all branches, and all affiliates worldwide.)
 Yes No If “yes,” proceed to b. If “no,” no further action is required and submittal of this form is not required.
- b. Does the public have access to information about the compensation of the senior executives in your organization (including parent organization, all branches, and all affiliates worldwide) through periodic reports filed under section 13(a) or 15(d) of the Securities and Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986?
 Yes No If “yes,” provide a link to the SEC: <http://www.sec.gov> where this information is located and return form to the ODOT contact shown at the bottom of this form.
Provide link here:

If “no,” provide compensation information below.

Names and annual compensation amounts of the five most highly compensated executives:

1.	\$
2.	\$
3.	\$
4.	\$
5.	\$

Business entity contact information (person completing form):

Type name	Title	Date
-----------	-------	------

Return completed form to: Jeff Flowers, Program and Funding Services Manager; Oregon Department of Transportation; 555 13th Street NE; Salem, OR 97301; Jeffrey.A.FLOWERS@odot.state.or.us

Background on FFATA requirements

The Federal Funding Accountability and Transparency Act (FFATA) was signed on September 26, 2006. The intent of the Act is to empower every American with the ability to hold the government accountable for each spending decision. The end result is to reduce wasteful spending in the government. The FFATA legislation requires information on federal awards (federal financial assistance and expenditures) be made available to the public via a single, searchable website, which is www.USASpending.gov.

Definition of compensation

Your organization is considered a subrecipient of federal funds. Unless your organization is exempt, FFATA requires you to report total compensation for each of your five most highly compensated executives for the preceding completed year. Total compensation means the cash and non-cash dollar value earned by the executive during the subrecipient's preceding fiscal year and includes the following: salary and bonus; awards of stock, stock options, and stock appropriation rights; earnings for services under non-equity incentive plans; change in pension value; above-market earnings on deferred compensation which is not tax-qualified; and other compensation as defined in 2 CFR Part 170, Section 170.330(b)(5)(vi).

More detailed information about the FFATA can be found at: <http://edocket.access.gpo.gov/2010/pdf/2010-22705.pdf>

If you have any questions, contact:

Jeff Flowers
Program and Funding Services Manager
Oregon Department of Transportation
555 13th Street NE
Salem, OR 97301
Jeffrey.A.FLOWERS@odot.state.or.us
Telephone: 503-986-4453



DAN JOHNSON
DIRECTOR

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

July 12, 2018

Board of Commissioners
Clackamas County

Members of the Board:

A Board Order Adopting the Vacation of a Portion of 80th Avenue

Purpose/Outcomes	Vacates a portion of 80th Avenue, a non-maintained Local Access Road
Dollar Amount and Fiscal Impact	Revenue only
Funding Source	N/A
Duration	Upon execution; permanent vacation.
Previous Board Contact	N/A
Strategic Plan Alignment	-Grow a Vibrant Economy
Contact Person	Doug Cutshall, Engineering Technician 503-742-4669

BACKGROUND

80th Avenue, (Bonaventure Street, plat name) became a part of the Local Access Road system May 17, 1889, through Pleasant Little Homes No.3, Plat No. 34, Clackamas County Plat Records. This portion of 80th Avenue is a dead end road and provides no connectivity to any through streets in the area. At this time, the petitioner has no plan for the vacated right-of-way other than a driveway. Vacating this portion of 80th Avenue will not deprive public access to adjoining properties.

The portion of 80th Avenue to be vacated is a 30 foot wide, 208 foot long, right-of-way that serves no public need and is not a benefit to the traveling public. Vacating this portion of 80th Avenue will not affect area traffic flow.

The Petition to Vacate under ORS 368.341 has been filed with the determined fee and acknowledged signatures of owners of 100 percent of property abutting public property proposed to be vacated, pursuant to ORS 368.351. All abutting property owners in this instance have signed the Consent to Vacate forms that have been acknowledged by the proper authority.

Clackamas County Department of Transportation and Development and all local utility companies, have been contacted and do not have any objections to this vacation provided all utility rights are reserved. County Counsel has reviewed and approved this vacation.

RECOMMENDATION

Staff respectfully recommends that the Board adopt the attached Board Order approving the vacation of portion of 80th Avenue.

Sincerely,

Mike Bezner, PE
Assistant Director of Transportation

For information on this issue or copies of attachments
please contact Doug Cutshall at 503-742-4669.

MEMORANDUM

TO: Board of Commissioners

FROM: Dan Johnson, Director D.T.D.

DATE: July 3, 2018

SUBJ: **ROAD OFFICIAL'S REPORT FOR THE VACATION OF 80TH AVENUE**

LOCATION: 80th Avenue, A Non-Maintained Local Access Road, is situated in the NE1/4 of Section 29, T.1 S., R.2 E., W.M.

FACTS AND FINDINGS: 80th Avenue, (Bonaventure Street, plat name) became a part of the Local Access Road system May 17, 1889, through Pleasant Little Homes No.3, Plat No. 34, Clackamas County Plat Records. This portion of 80th Avenue is a dead end road and provides no connectivity to any through streets in the area. At this time, the petitioner has no plan for the vacated right-of-way other than a driveway. Vacating this 30 foot wide, 208 foot long portion of 80th Avenue will not deprive public access to adjoining properties and will not affect area traffic flow.

The Petition to Vacate under ORS 368.341 has been filed with the determined fee and, acknowledged signatures of owners of 100 percent of private property proposed to be vacated and acknowledged signatures of owners of 100 percent of property abutting public property proposed to be vacated, pursuant to ORS 368.351. All abutting property owners in this instance have signed the Consent to Vacate forms that have been acknowledged by the proper authority.

Clackamas County Departments of Transportation Maintenance, Engineering, Planning, Traffic, along with all local utility companies have been contacted and do not have any objections to this vacation.

After considering traffic impacts, fiscal impacts, and social impacts, it appears to be in the public interest to vacate the area petitioned.

It is my assessment to support the subject vacation.

Pursuant to ORS 368.351 and County policy, the Board may make its determination in the matter of this vacation without a public hearing. This is allowed when there is acknowledged signatures of owners of 100 percent of private property proposed to be vacated and acknowledged signatures of owners of 100 percent of property abutting any public property proposed to be vacated, this Road Official's Report is submitted, and there is no controversy related to the proposed vacation.

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

In the matter of the Vacation of
A portion of 80th Avenue a
Local Access Road, situated
In Section 29, T.1 S., R.2 E., W.M.
Clackamas County, Oregon



Board Order No. _____
Page 1 of 1

Whereas, This matter coming before the Board of County Commissioners at this time and appearing to the Board that in accordance with ORS 368.341 and pursuant to ORS 368.351, a petition has been filed with the determined fee and acknowledged signatures of owners of 100 percent of property abutting public property proposed to be vacated, and a written report finding this vacation to be in the public interest from the County Road Official, Dan Johnson, Director, have been submitted in the matter of the vacation of a portion of Bellevue Avenue, a Non-maintained Local Access Road, described as follows:

All that portion of 80th Avenue, situated in the northeast ¼ of Section 29, T.1 S., R.2 E., W.M., Clackamas County, Oregon, as more particularly described and shown on attached Exhibits "A" and "B";and

Whereas, the Board having read said petition and report from the County Road Official and having determined the vacation of the above described portion of roadway to be in the public interest; and,

Whereas, Clackamas County Departments of Transportation Maintenance, Engineering, Planning, Traffic, along with all local utility companies, have been contacted and do not have any objections to this vacation;

NOW THEREFORE, the Clackamas County Board of County Commissioners approves that the attached described portion of 80th Avenue, a Non-maintained Local Access Road, containing, 4,740 square feet, more or less, be vacated that this Order and attached exhibits be recorded in the Deed Records for Clackamas County and that a copy be filed with the County Surveyor, County Assessor, and Finance Office/Fixed Assets.; and,

DATED this _____ day of _____, 2018

BOARD OF COUNTY COMMISSIONERS

Chair

Recording Secretary

Exhibit "A"

80th Avenue
Pleasant Little Homes No.3
Date: April 6, 2018

A Local Access Road
Map No. 12E29AA
Page 1 of 1

VACATION OF 80TH AVENUE

All of that portion of 80th Avenue, a non-maintained Local Access Road, as shown on attached Exhibit "B", which by this reference is made a part hereof, situated in the northeast quarter of Section 29, Township 1 South, Range 2 East, Willamette Meridian, Clackamas County, Oregon, and the Pleasant Little Homes No. 3, Plat No. 34, Clackamas County Plat Records, said portion of road right-of-way being more particularly described as follows:

All of 80th Avenue, (Bonaventure Street, by plat), lying north of and between the easterly extension of the north line of that property described in Document Number 2000-000175, Clackamas County Deed Records, and the south line of Block 1, of said plat. Said portion of 80th Avenue being 30 feet wide and 208 feet in length.

Containing 6,240 square feet, more or less.

LUTHER ROAD



1" = 60'

8
TAX MAP & LOT
12E29AA00500

①

FIRST AVENUE
(VACATED C.J. 24 - P 392)

TAX MAP & LOT
12E29AA00600

TAX MAP & LOT
12E29AA03100

16 15 14 13 12 11 10 9 8 7 6 5
17 18 19 20 21 22 23 24 ② 25 26 27 28 2

PLEASANT LITTLE HOMES No. 3
PLAT No. 34

SITUATED IN THE NE1/4 OF
SECTION 29, T.1 S., R.2 E., W.M.

TAX MAP & LOT
12E29AA00700

DOCUMENT No.
2000-000175

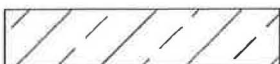
TAX MAP & LOT
12E29AA03000

80TH AVENUE
(BONAVENTURE STREET)

CORNWELL STREET (SECOND AVENUE)



AREA TO BE VACATED



PREVIOUSLY VACATED ROAD

DEPARTMENT OF TRANSPORTATION
AND DEVELOPMENT

150 BEAVERCREEK ROAD
OREGON CITY, OR 97045



BY: D. CUTSHALL

DATE: 04/06/2018

SHEET

EXHIBIT "B"

1 OF 1



RANDALL A. HARMON
MANAGER

TRANSPORTATION MAINTENANCE DIVISION

McCoy Building

902 ABERNETHY ROAD | OREGON CITY, OR 97045

Board of County Commissioners
Clackamas County

Members of the Board:

**Approval of a Contract with Ennis Paint, Inc DBA Ennis-Flint
For White and Yellow Lead-Free Paint and ThermoPlastic**

Purpose/Outcomes	The Transportation Maintenance Division uses white and yellow waterborne traffic paint to stripe County roads and contracts with cities to stripe roads within their jurisdiction. They also use a variety of ThermoPlastic pavement markings on County roads to define lines that can't be striped by machine: legends for curves, bicycle and handicap symbols, etc. Both of these items will be purchased from Oregon State's price agreement number 1513.
Dollar Amount and Fiscal Impact	The maximum contract value is \$1,275,000
Funding Source	215-7433-00-424710 and 215-7433-00-424715
Duration	The contract will terminate on September 30, 2021.
Strategic Plan Alignment	<ol style="list-style-type: none"> 1. Helps keep a strong infrastructure and ensures safe communities. 2. Provides maintenance to the traveling public so they can experience a clean, attractive and healthy community.
Previous Board Action	None
Contact Person	Everett Hay, 503-650-3205

PROCUREMENT PROCESS:

This request is to purchase against the State of Oregon Contract #1513 for White and Yellow Lead-Free Paint and ThermoPlastic pavement markings. A Notice of Intent to purchase was advertised in accordance with ORS and LCRB Rules on June 28, 2018. No comments were received by the time of closing on July 9, 2018.

This request has been reviewed and approved by County Counsel.

Ennis Paint, Inc.

RECOMMENDATION:

Staff recommends the Board approve the request to purchase from Ennis Paint, Inc., DBA Ennis-Flint for White and Yellow Lead-Free Paint and ThermoPlastic pavement markings.

Respectfully submitted,

Randall A. Harmon
Transportation Operations Manager

Placed on the _____ Agenda by the Purchasing Division



RANDALL A. HARMON
MANAGER

TRANSPORTATION MAINTENANCE DIVISION

McCoy Building

902 ABERNETHY ROAD | OREGON CITY, OR 97045

Board of County Commissioners
Clackamas County

Members of the Board:

**Approval of a Contract with Potters Industries, LLC
For Visibead Plus II**

Purpose/Outcomes	The Transportation Maintenance Division uses beads in the striping paint during the summer to stripe County roads. We also contract with cities in Clackamas County to stripe roads within their jurisdictions.
Dollar Amount and Fiscal Impact	The maximum contract value is \$750,000 for three and a half years
Funding Source	215-7433-00-424714
Duration	The contract will terminate on December 31, 2021
Strategic Plan Alignment	<ol style="list-style-type: none">1. Helps keep a strong infrastructure and ensures safe communities.2. Provides maintenance to the traveling public so they can experience a clean, attractive and healthy community.
Previous Board Action	None
Contact Person	Everett Hay, 503-650-3205

PROCUREMENT PROCESS:

This request is to purchase against the State of Washington Contract #02513 for Visibead Plus II. A Notice of Intent to purchase was advertised in accordance with ORS and LCRB Rules on June 27, 2018. No comments were received by the time of closing on July 5, 2018.

This request has been reviewed and approved by County Counsel.

Page 2

RECOMMENDATION:

Staff recommends the Board approve the request to purchase from Potters Industries, LLC Visibead Plus II.

Respectfully submitted,

Randall A Harmon
Transportation Operations Manager

Placed on the _____ Agenda by the Purchasing Division



RANDALL A. HARMON
MANAGER

TRANSPORTATION MAINTENANCE DIVISION

McCoy Building

902 ABERNETHY ROAD | OREGON CITY, OR 97045

Board of County Commissioners
Clackamas County

Members of the Board:

**Approval of a Contract with Potters Industries, LLC
For Visilok Drying Agent**

Purpose/Outcomes	The Transportation Maintenance Division uses the visilock drying agent during the summer to stripe County roads. We also contract with cities in Clackamas County to stripe roads within their jurisdictions. The Visilok Drying Agent is a specialty product that is used to help the paint stick to the asphalt when conditions are cooler or in the mornings when there might be dew or wet areas.
Dollar Amount and Fiscal Impact	The maximum contract value is \$300,000 for three and a half years
Funding Source	215-7433-00-424714
Duration	The contract will terminate on December 31, 2021
Strategic Plan Alignment	<ol style="list-style-type: none">1. Helps keep a strong infrastructure and ensures safe communities.2. Provides maintenance to the traveling public so they can experience a clean, attractive and healthy community.
Contact Person	Everett Hay, 503-650-3205

PROCUREMENT PROCESS:

This request is to purchase against the State of Washington Contract #02513 for the Visilok Drying Agent and a Notice of Intent to purchase was advertised in accordance with ORS and LCRB Rules on June 28, 2018. No comments were received by the time of closing on July 9, 2018.

This request has been reviewed and approved by County Counsel.

Page 2

RECOMMENDATION:

Staff recommends the Board approve the request to purchase from Potters Industries, LLC for the Visilok Drying Agent.

Respectfully submitted,

Randall A. Harmon
Transportation Operations Manager

Placed on the _____ Agenda by the Purchasing Division



RANDALL A. HARMON
MANAGER

TRANSPORTATION MAINTENANCE DIVISION

McCoy Building

902 ABERNETHY ROAD | OREGON CITY, OR 97045

Board of County Commissioners
Clackamas County

Members of the Board:

**Approval of a Contract with P.C.R., Inc. for
Dickey Prairie Road Pavement Distress Mitigation**

Purpose/Outcomes	This contract will repair the damaged road by constructing a MSE retaining wall, deep road patch, and re-establish two way travel on Dickey Prairie Road.
Dollar Amount and Fiscal Impact	Contract value is \$549,855.00
Funding Source	215-7433-00-431900, RM2017-19
Duration	Contract execution through December 31, 2018
Strategic Plan Alignment	This project will provide strong infrastructure and ensure safe communities by maintaining the County's existing road infrastructure.
Contact Person	Vince Hall, Project Manager 503-650-3210

Background:

Dickey Prairie Road's south bound lane is closed to protect the safety of the traveling public because of damage caused by landslide activity. Dickey Prairie Road is a two lane dead-end road which serves as a life safety route for multiple private residences. If the road isn't repaired and the northbound lane is damaged by the landslide multiple residences will lose access in and out of the area and they won't have access to emergency services.

This contract will repair the damaged road by constructing a MSE retaining wall, deep road patch, and re-establish two way travel on Dickey Prairie Road.

The project work is anticipated to begin immediately following contract signing. Substantial completion will be not later than August 31, 2018 with final completion not later than December 31, 2018.

Procurement Process:

This project was completed by way of a two (2) process solicitation: Notice of Sole Source for a specific item within the bid package and a Competitive Bid.

While discussing the project with the project manager, the bid item for a Tensar Corporation SierraScape Retaining Wall System was noted to be specific to the project. Research was conducted to identify any alternatives. It was determined that the SierraScape system was the only logical item that could be used for this application due to its smaller size and its ability to allow water to pass through should the current drainage system fail. On May 2, 2018, the Procurement Division issued a Notice of Sole Source for this specific bid item and received no protests.

Upon completion of the Notice of Sole Source, the Bid Package then advertised in accordance with ORS and LCRB Rules on May 14, 2018. Bids were opened on June 6, 2018. The County received one (1) bid: P.C.R., Inc., \$549,855.00. After review of the Bid, P.C.R., Inc. was determined to be lowest responsive bidder.

This contract has been reviewed and approved by County Counsel.

Recommendation:

Staff respectfully recommends that the Board approves and signs this construction services contract with P.C.R., Inc. for Dickey Prairie Road Pavement Distress Mitigation.

Sincerely,

Randall A. Harmon
Transportation Operations Manager

Placed on the BCC Agenda _____ by Procurement



CLACKAMAS COUNTY PUBLIC IMPROVEMENT CONTRACT

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

Project Name: **#2018-40 Dickey Prairie Road Pavement Distress Mitigation**

1. Contract Price, Contract Documents and Work.

The Contractor, in consideration of the sum of **five hundred forty-five thousand eight hundred fifty-five Dollars (\$549,855.00)** (the "Contract Price"), to be paid to the Contractor by Owner in the manner and at the time hereinafter provided, and subject to the terms and conditions provided for in the Instructions to Bidders and other Contract Documents (as defined in the Clackamas County General Conditions for Public Improvement Contracts (11/1/2017) ("General Conditions") referenced within the Instructions to Bidders), all of which are incorporated herein by reference, hereby agrees to perform all Work described and reasonably inferred from the Contract Documents. The Contract Price is the amount contemplated by the Base Bid.

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

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

The Plans, Specifications and Drawings expressly incorporated by reference into this Contract includes, but is not limited to, the Special Provisions for Dickey Prairie Road Pavement Mitigation Project (the "Specifications"), together with the provisions of the Oregon Standard Specifications for Construction (2015) referenced therein.

2. Representatives.

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

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

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

3. Key Persons.

The Contractor's personnel identified below shall be considered Key Persons and shall not be replaced during the project without the written permission of Owner, which shall not be unreasonably withheld. If the Contractor intends to substitute personnel, a request must be given to Owner at least 30 days prior to the intended time of substitution. When replacements have been approved by Owner, the Contractor shall provide a transition period of at least 10 working days during which the original and replacement personnel shall be

working on the project concurrently. Once a replacement for any of these staff members is authorized, further replacement shall not occur without the written permission of Owner. The Contractor's project staff shall consist of the following personnel:

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

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

4. Contract Dates.

COMMENCEMENT DATE: Upon Issuance of Notice to Proceed

SUBSTANTIAL COMPLETION DATE: August 31, 2018

FINAL COMPLETION DATE: December 31, 2018

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

5. Insurance Certificates.

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

6. Tax Compliance.

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

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

7. Confidential Information.

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

8. Counterparts.

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

9. Integration.

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

The Contract Documents constitute the entire agreement between the parties. There are no other understandings, agreements or representations, oral or written, not specified herein regarding this Contract. Contractor, by the signature below of its authorized representative, hereby acknowledges that it has read this Contract, understands it, and agrees to be bound by its terms and conditions.

10. Liquidated Damages

The Contractor acknowledges that the Owner will sustain damages as a result of the Contractor’s failure to substantially complete the Project in accordance with the Contract Documents. These damages may include, but are not limited to delays in completion, use of the Project, and costs associated with Contract administration and use of temporary facilities.

- 10.1 Liquidated Damages shall be as follows if the actual Substantial Completion exceeds the required date of Substantial Completion:
 - 10.1.1. \$800.00 per Calendar day past the Substantial Completion.

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

Contractor DATA:
P.C.R., Inc.
P.O. Box 630
Beavercreek, Oregon 97004

Contractor CCB # 134134 Expiration Date: 03/17/2019
Oregon Business Registry # 668434-84 Entity Type: DBC State of Formation: Oregon

Signature page to follow.

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

P.C.R., Inc.

Clackamas County Board of County Commissioners

Authorized Signature

Date

Chair

Date

Name / Title Printed

Recording Secretary

APPROVED AS TO FORM

County Counsel

Date



DAN JOHNSON
DIRECTOR

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

July 12, 2018

Board of Commissioners
Clackamas County

Members of the Board:

**Approval to apply for a BUILD Discretionary Transportation Grant to
replace the bridge across the Bull Run River**

Purpose/ Outcomes	Approval to apply for a BUILD Discretionary Transportation Grant to replace the bridge across the Bull Run River on Bull Run Road.
Dollar Amount and Fiscal Impact	\$7.2 million in grant funds will be requested. Matching funds in the amount of \$720,000 will be provided from Road Fund
Funding Source	Federal Highway Administration and Clackamas County Road Use Funds. No county general funds will be involved.
Duration	Grant award would occur no later than December 2018. Project would begin in 2019 and be complete no later than September 2025.
Previous Board Action	The Board previously reviewed and approved this proposed grant application in a Policy Session on May 31, 2018.
Strategic Plan Alignment	- Build strong infrastructure.
Contact Person	Stephen Williams, Principal Transportation Planner 503- 742-4696
Contract No.	NA

BACKGROUND:

Annually, since 2009, the US Department of Transportation, Federal Highway Administration has offered discretionary grants for vital transportation improvements, previously known as TIGER Grants, but now known as the BUILD Grant program. The emphasis for the program has shifted to focus on smaller grants (less than \$25 million) for infrastructure in rural areas. Full replacement of the bridge over the Bull Run River on Bull Run Road is a strong candidate for BUILD funding. The bridge is over 124 years old and has a sufficiency rating of 25 (out of 100). This bridge is the only connection to an area of northeast Clackamas County with a population of 360 for emergency response and access to services in Sandy. It is also a critical connection for the Portland Water Bureau to access the Bull Run Reservoir, which is the primary water source for over 1,000,000 people in the Portland area.

RECOMMENDATION:

Staff respectfully recommends the approval to apply for the BUILD grant in the amount of \$7.2 million.

Respectfully submitted,

Mike Bezner, Assistant Director
Transportation and Development

Grant & Financial Award Application Lifecycle Form

Use this form to track your potential funding 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: Department of Transportation and Development - Transportation Planning Grant | Funding Renewal? Yes No

Name of Funding Opportunity: BUILD Transportation Discretionary Grants

Funding Source: Federal State Local: Metro

Requestor (Name of staff person initiating form): Stephen Williams

Requestor Contact Information: swilliams@clackamas.us; (503) 742-4696

Department Fiscal Representative: Diedre Landon

Program Name or Number (please specify): BUILD Transportation Discretionary Grants

Brief Description of Project:

The BUILD Program (previously TIGER) is intended to provide federal funding for vital transportation infrastructure improvements, with a special emphasis on projects in rural areas. This bridge, which spans the Bull Run River, has been identified as a critical bridge and also a good candidate for BUILD grant funding. The bridge has a sufficiency rating of 25 and is over 100 years old. The bridge is the primary access to the the Bull Run Reservoir, the main water supply for the City of Portland. Any problem with the bridge that limits access to the reservoir would greatly hinder operations of the Portland water system. The bridge is also the main access point for loggers who are conducting planned harvests within the watershed protection zone of the reservoir. This proposed grant application would secure funding to completely replace the bridge.

Name of Funding (Granting) Agency: Federal Highway Administration

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

<https://www.transportation.gov/BUILDgrants>

OR

Application Packet Attached: Yes No

Completed By: Stephen Williams 05/23/2018
Date

Section II: Funding Opportunity Information

Competitive Grant Non-Competing Grant/Renewal Other Notification Date: 12/18/2018

CFDA(s), if applicable: 20.932

Announcement Date: 04/27/2018 Announcement/Opportunity #: _____

BUILD Transportation Discretionary Grants

Award Category/Title: Grants Max Award Value: \$7.2 million

Allows Indirect/Rate: Unclear but likely, per OMB circular A-87 Match Requirement: Match preferred but not required

Application Deadline: 07/19/2018 Other Deadlines: 09/30/2020

Award Start Date: appx: 6/2020 Other Deadline Description: Grant must be obligated by 9/30/2020

Award End Date: 09/30/2025

Completed By: Stephen Williams

Pre-Application Meeting Schedule: 29-May-18

Section III: Funding Opportunity Information - To be completed by Dept Program Staff

Mission/Purpose:

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

A goal in Performance Clackamas is to Build Strong Infrastructure and this project will fund full replacement of a deficient bridge built in the 19th century which has an extremely low sufficiency rating (25).

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

One of the goals identified as part of DTD's mission/purpose is the development of a safe transportation system. Although this bridge is very low use, it is very important because it the only bridge over Bull Run River into the Bull Run Reservoir watershed protection area. The bridge is critical for Portland Water System maintenance at the reservoir.

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

Since this bridge and the approach roads are all county owned/maintained the project must be carried out by the department.

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

The objective of this award would be to replace this bridge by building a completely new bridge next to the existing bridge.

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

No, the proposal does not fund an existing program, although the requested grant funds would replace an expenditure of road use funds that will be required in the coming years due to the poor condition of this bridge.

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 award timeframe?

Yes, the organization does have adequate and qualified staff. The staff required will be one project manager in the capital projects program, with the support and direction of the Transportation Capital Improvements Manager, as well as other staff experts within Department of Transportation and Development.

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?

The critical partner for this project is Portland Water System. They need a bridge to cross Bull Run River to access their facilities at the Bull Run Reservoir. DTD has been in contact with Portland representatives regarding this grant application and will conduct

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.)?

This is not a pilot project.

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.)?

This grant funding will not create a new program.

Collaboration

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

The county departments that will be involved in this project will be the Department of Transportation and Development, and Department of Public and Government Affairs for required public outreach activities.

Reporting Requirements

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

It is anticipated the county will be asked to submit progress reports and deliverables to FHWA every month as a condition of disbursement of funds. Final products will include full design of the project, right-of-way acquisition, and full construction of the proposed new bridge.

2. What is the plan to evaluate award 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 award timeframe?

Award performance will primarily be judged on the ability to complete construction within the proposed budget.

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

It is anticipated that FHWA will require a full, itemized reimbursement request and a cost report submitted monthly, although 2 CFR 200 gives FHWA has some leeway on that requirement. Upon completion the county must submit an itemized project cost report and request for final payment including holdback. The County is responsible to maintain all fiscal records and other records necessary to document County performance for a period of no less than six years.

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

Fiscal

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

If this application is funded it will provide up to \$7.2 million towards the replacement of a bridge that is over 120 years old and sufficiency rating of 25.

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

If the grant is awarded, Road Use Funds will be used to complete project engineering up to 100% design, as well as right-of-way

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

This grant does not require a match. We would show the proposed expenditure of Road Use funds described under the previous question as demonstrating county commitment to the project.

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

This is a one-time, grant funding proposal. Sustained funding is not required.

5. Does this award 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?

It is unclear at this time from the Notice of Funding Opportunity if indirect costs will be allowed. However, previous grants under this program have allowed indirect costs consistent guidance from OMB and the adopted DTD Indirect Cost Plan that has been approved by Oregon DOT.

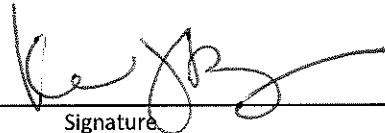
Program Approval:

Karen Buehrig

Name (Typed/Printed)

5-30-18

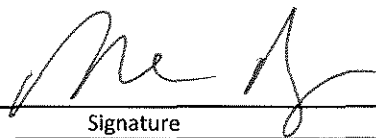
Date




Signature

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

Section IV: Approvals

DIVISION DIRECTOR OR ASSISTANT DIRECTOR (or designee, if applicable)		
Mike Bezner	5/30/18	
Name (Typed/Printed)	Date	Signature


DEPARTMENT DIRECTOR		
Don Johnson	6/1/18	
Name (Typed/Printed)	Date	Signature

IF APPLICATION IS FOR FEDERAL FUNDS, PLEASE SEND COPY OF THIS DOCUMENT, BY EMAIL OR BY COURIER, TO FINANCE. ROUTE ORIGINAL OR SCANNED VERSION TO COUNTY ADMIN.

Section V: Board of County Commissioners/County Administration

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

For applications up to \$150,000:

COUNTY ADMINISTRATOR	Approved: <input checked="" type="checkbox"/>	Denied: <input type="checkbox"/>
David D. Kozup	6/3/2018	
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:

County Administration Attestation

County Administration: re-route to department contact when fully approved.

Department: keep original with your award file.

DRAFT

Approval of Previous Business Meeting Minutes:

June 14, 2018

BOARD OF COUNTY COMMISSIONERS BUSINESS MEETING MINUTES

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

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

Thursday, June 14, 2018 – 10:00 AM

Public Services Building

2051 Kaen Rd., Oregon City, OR 97045

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

CALL TO ORDER

- Roll Call
- Pledge of Allegiance

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

1. **REMOVED** - Presentation Regarding City of Damascus Excess Fund Disbursements (David Bodway, Finance & Todd Loggan, Public & Government Affairs) *this item will be placed on the 6-21-18 agenda.*
2. Presentation Supporting the 2018 Pride Parade
Laurel Butman, Deputy County Administrator presented this item and introduced the video.
~Board Discussion~

II. CITIZEN COMMUNICATION

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

1. Larry Moseley, Oregon City – spoke about the Boy Scouts 100th Anniversary.
2. Al Notz, Molalla – concerns regarding a marijuana grow next door to him in Molalla.
3. Les Poole, Gladstone – spoke about marijuana administrative rules, tolling creating congestion we need clear directive, encouraged folks to visit Facebook page, Vehicle Transportation Alliance.

~Board Discussion~

III. PUBLIC HEARING

1. **Resolution No. 2018-51** for a Clackamas County Supplemental Budget Greater than 10% and Budget Reduction for Fiscal Year 2017-2018
Diane Padilla, Budget Manager presented the staff report.
Chair Bernard opened the public hearing and asked if anyone would like to speak, seeing none he closed the public hearing and asked for a motion.

MOTION:

Commissioner Humberston: I move we approve the Resolution for a Clackamas County Supplemental Budget Greater than 10% and Budget Reduction for Fiscal Year 2017-2018.

Commissioner Fischer: Second.

all those in favor/opposed:

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 DISCUSSION ITEM

The Board is sitting as the Board of Public Health for this item.

Health, Housing & Human Services

1. Approval of the Blueprint for a Healthy Clackamas County Plan
Dawn Emerick, Health, Housing & Human Services presented the staff report including a PowerPoint presentation. Rich Swift, Director of Health Housing & Human Services added some input on this plan.

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

Chair Bernard stated this is a discussion items and called up the folks who have signed up to speak regarding the Blueprint for a Healthy Clackamas County Plan.

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

1. Mike Foley, Community Activist and volunteer, spoke in support.
2. Linda Eastlund, Clackamas Education Service District, spoke in support.
3. Molly Haynes, Kaiser Permanente, spoke in support.
4. Joe Marek, Drive to Zero/Transportation Safety, spoke in support.
5. Debra Mason, Clackamas Service Center, spoke in support.
6. Amy Cook, Community Paramedic, Clackamas Fire, spoke in support.

~Board Discussion~

Chair Bernard asked for a motion.

MOTION:

Commissioner Humberston: I move we approve the Blueprint for Health Clackamas County.

Commissioner Fischer/Schrader: Second.

all those in favor/opposed:

Commissioner Fischer: Aye.

Commissioner Humberston: Aye.

Commissioner Savas: Aye.

Commissioner Schrader; Aye.

Chair Bernard: Aye – the Ayes have it, the motion carries 5-0.

~Board Discussion~

The Board reconvened as the Board of County Commissioners for the remainder of the meeting.

*Commissioner Humberston was excused to attend another meeting.

V. CONSENT AGENDA

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

MOTION:

Commissioner Schrader: I move we approve the consent agenda.

Commissioner Savas: Second.

all those in favor/opposed:

Commissioner Fischer: Aye.

Commissioner Savas: Aye.

Commissioner Schrader: Aye.

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

A. Health, Housing & Human Services

1. Approval of an Amendment to the Interagency Agreement between the Housing and Community Development Division and the Social Services Division for the Jackson Place Transitional Housing Project – *Housing & Community Development*

2. Approval of Amendment No. 1 for Intergovernmental Revenue Agreement with Lane County, for On-line Food Handlers Training/Testing Project – *Public Health*
3. Approval of Amendment No. 8 for the Intergovernmental Agreement with the State of Oregon, acting by and through its Oregon Health Authority, for Operation as the Local Public Health Authority for Clackamas County – *Public Health*
4. Approval of Amendment No. 1 to a Professional Services Agreement with Laboratory Corporation of America (LabCorp) for Laboratory Services for Clackamas County Health Centers Division (CCHCD) – *Health Centers*
5. Approval of an Intergovernmental Sub-recipient Agreement, Amendment No.2 with City of Lake Oswego/Lake Oswego Adult Community Center to Provide Social Services for Clackamas County Residents – *Social Services*
6. Approval of an Intergovernmental Sub-recipient Agreement, Amendment No. 2 with Senior Citizen Council of Clackamas County to Provide Social Services for Clackamas County Residents – *Social Services*
7. Approval of a Professional, Technical, and Personal Services Contract with Northwest Family Services for Alcohol and Drug Pre-Engagement and Outreach Services at Clackamas County Middle and High Schools – *Behavioral Health*
8. Approval of Amendment No. 3 to the Professional, Technical, and Personal Services Agreement No.7840 with The Living Room for Youth/Young Adult Peer Support Services – *Behavioral Health*
9. Approval of Amendment No. 5 to Professional, Technical, and Personal Services Agreement No. 7315 with Oregon Family Support Network for Peer Delivered Services System of Care for Families in Crisis in Emergency Departments – *Behavioral Health*

B. Department of Transportation & Development

1. Approval of a Trust Deed Securing an Obligation to Contribute Funding to the Victory Road/Forsythe Road Intersection Realignment Project
2. Approval of Amendment No. 4 to the Contract with OBEC Consulting Engineers, Inc. for Consulting Engineering Services for the Replacement of the Salmon River (Elk Park Road) Bridge - *Procurement*

C. Finance Department

1. **Resolution No. 2018-52** for Clackamas County for Budgeting of New Specific Purpose Revenue for Fiscal Year 2017-2018
2. **Resolution No. 2018-53** for Clackamas County for Transfer of Appropriations for Fiscal Year 2017-2018

D. Elected Officials

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

E. Business & Community Services

1. Approval of a Grant Agreement with the Oregon State Marine Board (OSMB) as Part of the Maintenance Assistance Program (MAP) for FY 2018-19

F. Public & Government Affairs

1. Approval of the Contract with Oregon Publication Corp., dba Pamplin Media Group for Publication Printing Services for the ClackCo Quarterly - *Procurement*

VI. NORTH CLACKAMAS PARKS & RECREATION DISTRICT

1. **Resolution No. 2018-54** for North Clackamas Parks & Recreation District for Transfer of Appropriations for Fiscal Year 2017-2018
2. Approval of an Intergovernmental Agreement between North Clackamas Parks & Recreation District and Clackamas Community College for Community Based Instructional Programs
3. Approval of an Intergovernmental Agreement between North Clackamas Parks & Recreation District and Clackamas Community College for Educational & Enrichment Services
4. Approval of a Public Improvement Contract between North Clackamas Parks and Recreation District and Green Thumb Landscape & Maintenance, Inc. dba GT General Contracting - *Procurement*

VII. WATER ENVIRONMENT SERVICES

(Service District No. 1)

1. Approval of a Materials and Services Agreement between Atlas Copco Compressors LLC, and Clackamas County Service District No. 1 for the Tri-City Water Resource Recovery Facilities Process Air Blower Systems - *Procurement*
2. Approval of a Materials and Services Agreement between Atlas Copco Compressors LLC, and Water Environment Services for the Tri-City Water Resource Recovery Facilities Process Air Blower Systems - *Procurement*
3. Approval of Guaranteed Maximum Price, Amendment No. 2 with Slayden Constructors, Inc. for the Kellogg Creek Water Resource Recovery Facility Improvements Project

VIII. COUNTY ADMINISTRATOR UPDATE

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

IX. COMMISSIONERS COMMUNICATION

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

MEETING ADJOURNED – 12:03 PM

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>



Clackamas County Sheriff's Office

CRAIG ROBERTS, Sheriff

July 12, 2018

Board of County Commissioners
Clackamas County

Members of the Board:

An Intergovernmental Agreement between the
State of Oregon Department of Transportation and Clackamas County
for participation in the Oregon Motor Carrier Safety Action Plan

Purpose/Outcome	This Intergovernmental Agreement covers the enforcement of motor carrier safety regulations in mutually agreed upon highway locations, as identified in Exhibit "A" attached. The purpose is to facilitate increased inspection of commercial vehicles, drivers, general cargo or hazardous materials, in order to enhance highway safety.
Dollar Amount and Fiscal Impact	The amount shall not exceed \$50,000.00 in state funds (and not to exceed \$113.75 per qualifying safety stop), which may be increased by a fully executed amendment.
Funding Source	The State of Oregon, Department of Transportation is the source of funds for this agreement.
Safety Impact	Said activities will increase inspection of commercial vehicles, drivers, general cargo or hazardous materials to enhance highway safety.
Duration	The term of this agreement begins upon full execution through completion of the project and final payment or June 30, 2019, whichever is sooner, unless extended by a fully executed amendment.
Strategic Plan Alignment	CCSO is under-going the Strategic Planning at this time
Previous Board Action/Review	The County Board of Commissioners has previously approved an intergovernmental agreement with the State of Oregon DOT for participation in this Action Plan.
Contact Person	Sergeant John Naccarato, ph. 503-785-5092
Contract No.	Agreement No. 32916


BACKGROUND:

This Intergovernmental Agreement between the State of Oregon, Department of Transportation and Clackamas County, allows for the County to enforce motor carrier safety regulations in mutually agreed upon highway locations, as identified in Exhibit "A" in order to enhance highway safety.

RECOMMENDATION:

Staff recommends the Board approve of this agreement between the Clackamas County Sheriff's Office and the State of Oregon Department of Transportation.

Respectfully submitted,


Craig Roberts, Sheriff

"Working Together to Make a Difference"

**INTERGOVERNMENTAL AGREEMENT
Oregon Motor Carrier Safety Action Plan
(MCSAP)
Clackamas County**

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

RECITALS

1. By the authority granted in Oregon Revised Statute (ORS) 190.110, state agencies may enter into agreements with units of local government for the performance of any or all functions and activities that a party to the agreement, its officers, or agents have the authority to perform.
2. Pursuant to ORS 825.248, the Oregon Department of Transportation (ODOT) is required to develop an annual commercial motor vehicle safety plan, referred to as the Oregon Motor Carrier Safety Action Plan (MCSAP). The goal of the MCSAP is to reduce accidents involving commercial motor vehicles (CMV) and to reduce injuries and fatalities resulting from accidents involving CMVs. On-road vehicle inspections focusing on conditions that would require the CMV or CMV operator to be taken out of service can reduce truck-at-fault crashes on Oregon highways. Because the on-road vehicle inspections would be precipitated by a valid traffic stop of the CMV, the on-road vehicle inspections may also curb unsafe driving actions of CMV operators that would be subject to a traffic citation or written warning.
3. By the authority granted in ORS 825.250(2), the Oregon Department of Transportation (ODOT) may enter into agreements with Agency or a city to provide inspections of commercial vehicles, drivers, general cargo or hazardous materials when the inspections are performed by employees of the Agency or agency who have been trained and certified by ODOT as a commercial vehicle inspector pursuant to ORS 810.560.
4. Agency employs individuals who are trained and certified by ODOT as a commercial vehicle inspector pursuant to ORS 810.560. Agency wishes to have said employees perform inspections of commercial vehicles, drivers, general cargo or hazardous materials on behalf of, and at the request of, State.
5. State wishes to enter into an agreement with Agency to facilitate increased inspection of commercial vehicles, drivers, general cargo or hazardous materials, using employees of the Agency who have been trained and certified by ODOT as a commercial vehicle inspector pursuant to ORS 810.560 in order to enhance highway safety through uniform commercial motor vehicle inspections conducted statewide.

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

DEFINITIONS

1. "Authorized Representative" as defined in ORS 825.250(2), means a city, agency or state employee who has been trained and certified by Oregon Department of Transportation (ODOT), as a commercial vehicle inspector, as defined in Oregon Administrative Rules (OAR) 740-100-0015, and who is employed either by ODOT or by an agency that has an agreement with ODOT to provide inspections of commercial vehicles, drivers, general cargo or hazardous materials.

2. "Commercial Motor Vehicle (CMV)" means any self-propelled or towed motor vehicle used on a highway in commerce to transport passengers or property when the vehicle has a gross vehicle weight rating or gross combination weight rating, or gross vehicle weight or gross combination weight of 10,001 pounds or more or is designed or used to transport more than 8 passengers, including the driver, for compensation or is designed or used to transport more than 15 passengers, including the driver, and is not used to transport passengers for compensation or is used in transporting as hazardous material as defined by the U.S. Department of Transportation under 49 U.S.C. 5103 and transported in a quantity requiring placarding under regulations found in 49 CFR, subtitle B, chapter I, subchapter C.

3. "Qualifying Safety Stop (QSS)" means a stop of a CMV that result in a truck/driver inspection report and a written traffic citation or written warning for unlawful/unsafe driving behavior.

4. "Highway" means every public way, road, street, thoroughfare and place, including bridges, viaducts and other structures within the boundaries of this state, open, used or intended for use of the general public for vehicles or vehicular traffic as a matter of right.

For the purpose of enforcing traffic offenses contained in the Oregon Vehicle Code, except for ORS 810.230, "highway" includes premises open to the public that are owned by a homeowners association and whose boundaries are contained within a service district established on or before July 1, 2002, under ORS 451.410 to 451.610. [1983 c.338 §51; 2007 c.561 §1]

TERMS OF AGREEMENT

1. Under such authority, State wishes to retain the services of Agency to enforce motor carrier safety regulations in mutually agreed upon highway locations, as identified in Exhibit A" attached hereto and by this reference made a part hereof. Payment for said services shall not exceed a maximum amount of \$113.75 per QSS. The cumulative maximum not to exceed amount for all payments to Agency is \$50,000.00 in state funds, which may be increased by a fully executed amendment.

2. The term of this Agreement shall begin on July 1, 2018, and will terminate on June 30, 2019 or upon completion of the project and final payment, unless extended by a fully executed amendment.

Agency OBLIGATIONS

1. Agency, through its Authorized Representative, shall initiate safety inspections only within the course of conducting a valid traffic stop. The safety inspection shall comply with the North American Standard Inspection Procedures, which are incorporated by reference and made part of this Agreement.
2. Agency shall conduct roadside inspections in a manner that provides a continuous enforcement presence in identified locations on highways throughout the term of the agreement.
3. Agency Authorized Representative shall to the greatest extent possible, record all inspections on Aspen software and electronically upload computer-driven inspections daily.
4. Agency Authorized Representative shall conduct roadside inspections at locations on state highways that are adequate to protect the safety of driver and enforcement personnel.
5. Agency shall provide copies of any truck/driver inspections and CMV operator traffic citations or written warnings issued during a QSS within agreed locations. Agency shall ensure citations and written warnings reflect unlawful/unsafe driving behavior.
6. Agency agrees that their Authorized Representative will implement inspection procedures in accordance with minimum standards contained herein.
7. Agency agrees to enforce the North American Uniform Inspection Out-of-Service Criteria as adopted into Oregon law by State under:
 - a. OAR 740-100-0090, Part I- Driver.
 - b. OAR 740-100-0070, Part II - Vehicle.
 - c. OAR 740-100-0080, Part III - Hazardous Materials.
8. Agency agrees citations and written warnings shall include at a minimum the following:
 - a. Date of QSS
 - b. Location of QSS (Hwy, Direction, and Milepost Marker)
 - c. Vehicle License Number

- d. Motor Carrier Name
 - e. Motor Carrier US DOT Number
 - f. Driver Name and Driver License Number
 - g. Reason for QSS
 - h. Violation(s)
 - i. Out of Service defects (if applicable)
9. Agency shall submit monthly, an Invoice Cover Sheet see Exhibit B, attached hereto and by this reference made a part hereof, that identifies the number of QSS inspections along with corresponding citations and written warnings. Submission of all inspections, citations and written warnings for the previous month shall be submitted, to State's Project Manager for review and approval, no later than the 20th of each month. Under no conditions shall State's obligations exceed the amount listed under Terms of Agreement, Paragraph 1. Travel expenses will not be reimbursed.
10. Agency shall comply with all federal, state, and local laws, regulations, executive orders and ordinances applicable to the work under this Agreement, including, without limiting the generality of the foregoing, Agency 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.
11. Agency shall perform the service under this Agreement as an independent contractor and shall be exclusively responsible for all costs and expenses related to its employment of individuals to perform the work under this Agreement including, but not limited to, retirement contributions, workers compensation, unemployment taxes, and state and federal income tax withholdings.
12. Agency shall not enter into any subcontracts for any of the work schedules under this agreement without obtaining prior written approval from State.
13. All employers, including Agency, that employ subject workers who work under this Agreement 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. Employers Liability insurance with coverage limits of not less than \$500,000 must be included. Agency shall ensure that each of its contractors complies with these requirements.
14. Agency certifies and represents that the individual(s) signing this Agreement has been authorized to enter into and execute this Agreement on behalf of Agency, under

the direction or approval of its governing body, commission, board, officers, members or representatives, and to legally bind Agency/Agency.

15. Agency's Project Manager for this Project is Sergeant John Naccarato, Traffic Team Supervisor, Clackamas County Sheriff's Office 2223 Kaen Rd., Oregon City OR 97045, Phone 503-785-5092, Email: Johnnac@co.clackamas.or.us, or assigned designee upon individual's absence. Agency shall notify the other Party in writing of any contact information changes during the term of this Agreement.

STATE OBLIGATIONS

1. In consideration for the services performed, State agrees to pay Agency within forty-five (45) days of receipt by State of eligible inspections, citations or written warnings a maximum amount of \$113.75 per QSS. Total amount will not exceed a maximum amount of \$50,000. Travel expenses will not be reimbursed.
2. State certifies, at the time this Agreement is executed, that sufficient funds are available and authorized for expenditure to finance costs of this Agreement within State's current appropriation or limitation of the current biennial budget.
3. State's Project Manager for this Project is David McKane Safety Program Manager, 3930 Fairview Industrial Dr. SE Salem OR 503.373.0884, David.J.McKane@odot.state.or.us or assigned designee, upon individual's absence. State shall notify the other Party in writing of any contact information changes during the term of this Agreement.

GENERAL PROVISIONS

1. This Agreement may be terminated by either Party upon thirty (30) days' notice, in writing and delivered by certified mail or in person.
2. State may terminate this Agreement effective upon delivery of written notice to Agency/, or at such later date as may be established by State, under any of the following conditions:
 - a. If Agency fails to provide services called for by this Agreement within the time specified herein or any extension thereof.
 - b. If Agency/ fails to perform any of the other provisions of this Agreement, or so fails to pursue the work as to endanger performance of this Agreement in accordance with its terms, and after receipt of written notice from State fails to correct such failures within ten (10) days or such longer period as State may authorize.
 - c. If State fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow State, in the exercise of its

reasonable administrative discretion, to continue to make payments for performance of this Agreement.

- d. If federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the work under this Agreement is prohibited or State is prohibited from paying for such work from the planned funding source.
3. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.
4. If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 ("Third Party Claim") against State or Agency with respect to which the other Party may have liability, the notified Party must promptly notify the other Party in writing of the Third Party Claim and deliver to the other Party a copy of the claim, process, and all legal pleadings with respect to the Third Party Claim. Each Party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with counsel of its own choosing. Receipt by a Party of the notice and copies required in this paragraph and meaningful opportunity for the Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to that Party's liability with respect to the Third Party Claim.
5. With respect to a Third Party Claim for which State is jointly liable with Agency (or would be if joined in the Third Party Claim), State shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by Agency in such proportion as is appropriate to reflect the relative fault of State on the one hand and of Agency on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of State on the one hand and of Agency on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. State's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if State had sole liability in the proceeding.
6. With respect to a Third Party Claim for which Agency is jointly liable with State (or would be if joined in the Third Party Claim), Agency shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by State in such proportion as is appropriate to reflect the relative fault of Agency on the one hand and of State on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of Agency on the one hand and of State on the other hand shall be determined by reference to, among other things, the Parties'

relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. Agency's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if it had sole liability in the proceeding.

7. 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.
8. This Agreement may be executed in several counterparts (facsimile or otherwise) all of which when taken together shall constitute one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of this Agreement so executed shall constitute an original.
9. This Agreement and attached exhibits constitute the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either Party unless in writing and signed by both Parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of State to enforce any provision of this Agreement shall not constitute a waiver by State of that or any other provision.

Signature Page to Follow

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

CLACKAMAS COUNTY, by and through
its **elected officials**

By _____

Date _____

By _____

Date _____

APPROVED AS TO LEGAL FORM

By _____
Counsel

Date _____

Agency Contact:

John Naccarato
Traffic Team Supervisor
2223 Kaen Rd
Oregon City, OR 97045
503-785-5092
johnnac@co.clackamas.or.us

STATE Contact:

David McKane
3930 Fairview Industrial Dr. SE MS #2
Salem Or 97302
503-373-0884
David.J.McKane@odot.state.or.us

STATE OF OREGON, by and through
its Department of Transportation

By _____

Motor Carrier Transportation Division
Administrator

Date _____

APPROVAL RECOMMENDED

By _____

David McKane, Manager Motor Carrier
Safety Program

Date _____

**APPROVED AS TO LEGAL
SUFFICIENCY**

By: N/A
Assistant Attorney General

EXHIBIT A
Agency PATROL Locations

The Clackamas County Sherriff's Office and the Department of Transportation agree that inspections conducted on State, County and Municipal highways within the official limits of Clackamas County qualify for CMV QSSs.

Inspections conducted at other locations may qualify for CMV QSSs, if prior approval from ODOT is received.

EXHIBIT B
Invoice Cover Sheet

Agreement # 32916 Oregon Motor Carrier Safety Action Plan

Agency Name:	Clackamas County Sheriff's Office
Address:	2223 Kaen Rd
City:	Oregon City
State/Zip:	Oregon
Contact Name:	Sergeant John Naccarato
Telephone Number:	503-785-5092

Month Stops were made: _____

Number of CMV QSS that qualified for payment:	Rate	Amount
	\$113.75	



John S. Foote, District Attorney for Clackamas County

Clackamas County Courthouse, 807 Main Street, Room 7, Oregon City, Oregon 97045
503 655-8431, FAX 503 650-8943, www.co.clackamas.or.us/da/

July 12, 2018

Board of County Commissioner
Clackamas County

Members of the Board:

Approval of
Office for Violence Against Women 2018-2020 Subrecipient Grant Award

Purpose/Outcomes	The primary purpose of OVW grants are to develop capacity to reduce violence against women and administer justice for and strengthen services to victims of domestic violence, dating violence, sexual assault and stalking. The intent of this grant opportunity is to continue advocacy to rural victims in Clackamas County.
Dollar Amount and Fiscal Impact	The County will receive a maximum of \$198,780. This grant will continue to fund a 1.0 FTE advocate position through the District Attorney's Office that has been providing advocacy to rural victims of domestic violence, sexual assault and stalking.
Funding Source	Office for Violence Against Women through Clackamas Women's Services
Duration	Effective January 1, 2018 - September 30, 2020
Previous Board Action/Review	None
Strategic Plan Alignment	The use of these grant funds will support the delivery of direct services to rural victims of domestic violence, sexual assault and stalking.
Contact Person	Carrie Walker, Victim Assistance Program Director – District Attorney's Office, 503-655-8616

BACKGROUND:

The Office for Violence Against Women (OVW) was established in 1995 after the passage of the Violence Against Women Act (VAWA) was passed in 1994. OVW administers grant for programs to develop effective responses to violence against women.

This grant was awarded to Clackamas Women's Services for expanding access for marginalized and underserved populations, enhancing services and providing prevention through the A Safe Place Family Justice Center Rural Collaborative for Clackamas County. As a subrecipient, the Clackamas County District Attorney's Office Victim Assistance Program will receive funding to continue providing services to rural victims of domestic violence and sexual assault. This position was originally funded in 2013 through an OVW grant administered by Clackamas County Children, Youth and Families.

RECOMMENDATION:

Staff recommends the Board approve this grant award and authorizes John S Foote, District Attorney, to sign on behalf of Clackamas County.

Respectfully submitted,

John S. Foote
District Attorney

CLACKAMAS WOMEN'S SERVICES

SUBRECIPIENT GRANT AGREEMENT: OVW-FED-DOJ-Rural-0041-2

Project Name: *Expanding access for marginalized and underserved populations, enhancing services and providing prevention through the A Safe Place Family Justice Center Rural Collaborative for Clackamas County*

This Agreement is between **Clackamas Women's Services**, an Oregon Non-profit Organization and Clackamas County, an Oregon County Government acting through its **Clackamas County District Attorney's Office**.

Clackamas Women's Services Data

Grant Accountant: Melissa Erlbaum	Program Manager: Erin Henkelman
Clackamas Women's Services 256 Warner Milne Road Oregon City, OR 97045 503-557-5810 melissae@cwsor.org	Clackamas Women's Services 256 Warner Milne Road Oregon City, OR 97045 503-655-8600 erinh@cwsor.org

Subrecipient Data

Finance/Fiscal Representative: Robert Willson	Program Representative: Carrie Walker
Clackamas County District Attorney's Office 807 Main St Oregon City OR 97045 503-655-8431 rwillson@co.clackamas.or.us	Clackamas County District Attorney's Office 807 Main St Oregon City OR 97045 503-655-8616 carriewal@co.clackamas.or.us
DUNS: 096992656	

RECITALS

1. Clackamas Women's Services ("CWS") assists individuals and families affected by domestic violence and/or sexual assault. Their approach to serving the community is based on the principle that all human beings have the right to live in a safe and healthy environment, free of threats, sexual harassment and all types of abuse in their lives. CWS believes that violence is a result of attitudes, power and control, and that violence results when people unjustly exercise power over others. Therefore, all oppressive behaviors must be simultaneously addressed. To that end, CWS works to ensure that individuals and families have equal access to community resources and they provide support, advocacy and opportunity for self-empowerment, assisting survivors to exercise free and informed life choices free of violence and oppression.
2. Clackamas County's A Safe Place Family Justice Center ("ASP-FJC") was formed to serve as a platform for aggregating, managing, and deploying targeted capital to encourage partnerships between state, local, and tribal governments, courts, victim service providers, coalitions and rape crisis centers, to ensure that sexual assault, domestic violence, dating violence, and stalking are treated as serious violations of criminal law requiring the coordinated involvement of the entire criminal justice system and community-based victim service organizations throughout Clackamas County.
3. Clackamas County ("SUBRECIPIENT") is a partner agency for ASP-FJC. Funding in this agreement is for SUBRECIPIENT's Rural Services project, which is a major partnership of

SUBRECIPIENT involving multiple community partners such as Clackamas Women's Services ("CWS"), Clackamas County Sheriff's Office, and El Programa Hispano Catolico.

4. Project Description: CWS, SUBRECIPIENT, El Programa Hispano Catolico ("EPHC"), and Clackamas County Sheriff's Office ("CCSO"). and A Safe Place Family Justice Center for Clackamas County ("ASP-FJC") have come together to collaborate and to assist CWS in making this application for U.S. Department of Justice Office on Violence Against Women ("OVW") Fiscal Year 2017 Rural Sexual Assault, Domestic Violence, Dating Violence, and Stalking Program in support of funding for continued and enhanced services through the A Safe Place Family Justice Center for Clackamas County's Rural Collaborative and to increase support for Latina victims in rural Clackamas County.

Over the past year an increasing number of victims from the rural community are accessing services at the Center, comprising 30% of the participants served at ASP-FJC. This is due to the strong partnerships and integrated services offered through the model and the long-standing collaboration that has been supporting rural Clackamas County through the OVW Rural Program. As a result more victims from the rural community have accessed services throughout the whole system of care than in previous years.

5. This Grant Agreement of Federal financial assistance sets forth the terms and conditions pursuant to which SUBRECIPIENT agrees on delivery of the Program.

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

AGREEMENT

1. **Term and Effective Date.** Pursuant to the terms of the grant award, this Agreement shall be effective as of **January 1, 2018** and shall expire on **September 30, 2020**, unless sooner terminated or extended pursuant to the terms hereof.
2. **Program.** The Program is described in Attached Exhibit A: Subrecipient Statement of Program Objectives. SUBRECIPIENT agrees to carry out the program in accordance with the terms and conditions of this Agreement in exchange for payment by CWS as described herein.
3. **Standards of Performance.** SUBRECIPIENT shall perform all activities and programs in accordance with the requirements set forth in this Agreement and all applicable laws and regulations. Furthermore, SUBRECIPIENT shall comply with the requirements of the U.S. Department of Justice Office on Violence Against Women grant #2017-WR-AX-0041 (Federal award date: 9/25/2017) that is the source of the grant funding, in addition to compliance with requirements of Title 2 of the *Code of Federal Regulations* (CFR), Part 200 and with the current edition of the DOJ Grants Financial Guide, which is incorporated herein by reference. A copy of that grant award has been provided to SUBRECIPIENT by CWS, which is attached to and made a part of this Agreement by this reference.
4. **Grant Funds.** CWS funding for this Agreement is the **Catalogue of Federal Domestic Assistance [CFDA] 16.589** issued to CWS by the U.S. Department of Justice Office on Violence Against Women Arrest Program (Federal Award Identification #[s]: 2017-WR-AX-0041). The maximum, not to exceed, grant amount that CWS will pay to SUBRECIPIENT is **\$198,780**. This is a cost reimbursement grant and disbursements will be made in accordance with the schedule and requirements contained in Exhibit D: Required Financial Reporting and Reimbursement Request and Exhibit E: Monthly/Quarterly/Final Performance Report.
5. **Amendments.** The terms of this Agreement shall not be waived, altered, modified, supplemented, or

amended, in any manner whatsoever, except by written instrument signed by both parties.

SUBRECIPIENT must submit a written request including a justification for any amendment to CWS in writing at least forty five (45) calendar days before this Agreement expires. No payment will be made for any services performed before the beginning date or after the expiration date of this Agreement. If the maximum compensation amount is increased by amendment, the amendment must be fully executed before SUBRECIPIENT performs work subject to the amendment.

6. **Termination.** This Agreement may be terminated by the mutual consent of both parties or by a party upon written notice from one to the other upon thirty (30) business days' notice. This notice may be transmitted in person, by certified postal mail, facsimile, or by email.
7. **Funds Available and Authorized.** CWS certifies that it has received an award sufficient to fund this Agreement. SUBRECIPIENT understands and agrees that payment of amounts under this Agreement is contingent on CWS receiving appropriations or other expenditure authority sufficient to allow CWS, in the exercise of its sole administrative discretion, to continue to make payments under this Agreement.
8. **Future Support.** CWS makes no commitment of future support and assumes no obligation for future support for the activity contracted herein except as set forth in Section 7.
9. **Administrative Requirements.** SUBRECIPIENT agrees to its status as a subrecipient, and accepts among its duties and responsibilities the following:
 - a) **Financial Management.** SUBRECIPIENT shall comply with 2 CFR Part 200, Subpart D—*Post Federal Award Requirements*, and agrees to adhere to the accounting principles and procedures required therein, use adequate internal controls, and maintain necessary sources documentation for all costs incurred.
 - b) **Revenue Accounting.** Grant revenue and expenses generated under this Agreement should be recorded in compliance with generally accepted accounting principles and/or governmental accounting standards. This requires that the revenues are treated as unearned income or "deferred" until the compliance requirements and objectives of the grant have been met. Revenue may be recognized throughout the life cycle of the grant as the funds are "earned". All grant revenues not fully earned and expended in compliance with the requirements and objectives at the end of the period of performance must be returned to CWS within 15 days.
 - c) **Personnel.** If SUBRECIPIENT becomes aware of any likely or actual changes to key systems, or grant-funded program personnel or administration staffing changes, SUBRECIPIENT shall notify CWS in writing within 30 days of becoming aware of the likely or actual changes and a statement of whether or not the SUBRECIPIENT will be able to maintain compliance at all times with all requirements of this Agreement.
 - d) **Cost Principles.** SUBRECIPIENT shall administer the award in conformity with 2 CFR 200, Subpart E. These cost principles must be applied for all costs incurred whether charged on a direct or indirect basis. Costs disallowed by the Federal government shall be the liability of the SUBRECIPIENT.
 - e) **Period of Availability.** SUBRECIPIENT may charge to the award only allowable costs resulting from obligations incurred during the funding period.
 - f) **Match.** Matching funds are not required for this Agreement.

- g) **Budget.** SUBRECIPIENT use of funds may not exceed the amounts specified in the Exhibit B: Subrecipient Program Budget. SUBRECIPIENT may not transfer grant funds between budget lines without the prior written approval of CWS. At no time may budget modification change the scope of the original grant application or Agreement.
- h) **Indirect Cost Recovery.** SUBRECIPIENT elects no indirect cost recovery on this award.
- i) **Research and Development.** SUBRECIPIENT certifies that this award is not for research and development purposes.
- j) **Payment.** The SUBRECIPIENT must submit a final request for payment no later than fifteen (15) days after the end date of this Agreement. Routine requests for reimbursement should be submitted as specified in Exhibit D: Required Financial Reporting and Reimbursement Request.
- k) **Performance Reporting.** The SUBRECIPIENT must submit Performance Reports as specified in Exhibit E for each period (monthly, quarterly, and final) during the term of this Agreement.
- l) **Financial Reporting.** Methods and procedures for payment shall minimize the time elapsing between the transfer of funds and disbursement by the grantee or SUBRECIPIENT, in accordance with Treasurer regulations at 31 CFR Part 205. Therefore, upon execution of this Agreement, SUBRECIPIENT will submit completed Exhibit D: Required Financial Reporting and Reimbursement Request on a monthly basis.
- m) **Closeout.** CWS will closeout this award when CWS determines that all applicable administrative actions and all required work have been completed by SUBRECIPIENT, pursuant to 2 CFR 200.343—*Closeout*. SUBRECIPIENT must liquidate all obligations incurred under this award and must submit all financial (Exhibits F, G & H), performance, and other reports as required by the terms and conditions of the Federal award and/or CWS, no later than 90 calendar days after the end date of this agreement. At closeout, SUBRECIPIENT must account for all equipment with remaining value over \$5,000 and residual supplies valued over \$5,000 in the aggregate that were purchased with Federal funds authorized by this Agreement. Compensation to the Federal Agency may be required for equipment or residual supplies valued over \$5,000 per 2 CFR 200.313 & 314.
- n) **Universal Identifier and Contract Status.** The SUBRECIPIENT shall comply with 2 CFR 25.200-205 and apply for a unique universal identification number using the Data Universal Numbering System (DUNS) as required for receipt of funding. In addition, the SUBRECIPIENT shall register and maintain an active registration in the Central Contractor Registration database, now located at <http://www.sam.gov>.
- o) **Suspension and Debarment.** The SUBRECIPIENT shall comply with 2 CFR 180.220 and 901. This common rule restricts subawards and contracts with certain parties that are debarred, suspended or otherwise excluded from or ineligible for participation in Federal assistance programs or activities. SUBRECIPIENT is responsible for further requiring the inclusion of a similar term or condition in any subsequent lower tier covered transactions. SUBRECIPIENT may access the Excluded Parties List System at <http://www.sam.gov>. The Excluded Parties List System contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Orders 12549 and 12689. Awards that exceed the simplified acquisition threshold shall provide the required certification regarding their exclusion status and that of their principals prior to award.

- p) **Lobbying.** SUBRECIPIENT certifies (Exhibit C: Lobbying) that no portion of the Federal grant funds will be used to engage in lobbying of the Federal Government or in litigation against the United States unless authorized under existing law and shall abide by 2 CFR 200.450 and the Byrd Anti-Lobbying Amendment 31 U. S. C. 1352. In addition, the SUBRECIPIENT certifies that it is a nonprofit organization described in Section 501(c) (4) of the Code, but does not and will not engage in lobbying activities as defined in Section 3 of the Lobbying Disclosure Act.
- q) **Audit.** The SUBRECIPIENT shall comply with the audit requirements prescribed in the Single Audit Act Amendments and the new Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, located in 2 CFR 200.501. SUBRECIPIENT expenditures of \$750,000 or more in Federal funds require an annual Single Audit. SUBRECIPIENT is required to hire an independent auditor qualified to perform a Single Audit. Subrecipients of Federal awards are required under the Uniform Guidance to submit their audits to the Federal Audit Clearinghouse (FAC) within 9 months from the SUBRECIPIENT'S fiscal year end or 30 days after issuance of the reports, whichever is sooner. The website for submissions to the FAC is <https://harvester.census.gov/facweb/>. At the time of submission to the FAC, the SUBRECIPIENT will also submit a copy of the audit to CWS. If requested and if SUBRECIPIENT does not meet the threshold for the Single Audit requirement, SUBRECIPIENT shall submit to CWS a financial audit or independent review of financial statements within 9 months from the SUBRECIPIENT'S fiscal year end or 30 days after issuance of the reports, whichever is sooner.
- r) **Monitoring.** The SUBRECIPIENT agrees to allow CWS access to conduct site visits and inspections of financial records for the purpose of monitoring in accordance with 2 CFR 200.331. CWS, the Federal government, and their duly authorized representatives shall have access to such financial records and other books, documents, papers, plans, records of shipments and payments and writings of SUBRECIPIENT that are pertinent to this Agreement, whether in paper, electronic or other form, to perform examinations and audits and make excerpts and transcripts. Monitoring may be performed onsite or offsite, at CWS' discretion. Depending on the outcomes of the financial monitoring processes, this Agreement shall either a) continue pursuant to the original terms, b) continue pursuant to the original terms and any additional conditions or remediation deemed appropriate by CWS, or c) be de-obligated and terminated.
- s) **Record Retention.** The SUBRECIPIENT will retain and keep accessible all such financial records, books, documents, papers, plans, records of shipments and payments and writings for a minimum of three (3) years, or such longer period as may be required by the Federal agency or applicable state law, following final payment and termination of this Agreement, or until the conclusion of any audit, controversy or litigation arising out of or related to this Agreement, whichever date is later, according to 2 CFR 200.333-337.
- t) **Fiduciary Duty.** SUBRECIPIENT acknowledges that it has read the award conditions and certifications for the Office on Violence Against Women Arrest Program Grant #2017-WR-AX-0041, that it understands and accepts those conditions and certifications, and that it agrees to comply with all the obligations, and be bound by any limitations applicable to CWS, as grantee, under those grant documents.
- u) **Failure to Comply.** SUBRECIPIENT acknowledges and agrees that this Agreement and the terms and conditions therein are essential terms in allowing the relationship between CWS and SUBRECIPIENT to continue, and that failure to comply with such terms and conditions represents a material breach of the original grant and this Agreement. Such material breach shall give rise to CWS' right, but not obligation, to withhold SUBRECIPIENT grant funds until compliance is met or to terminate this relationship including the original Agreement and all associated amendments.

10. Compliance with Applicable Laws

- a) **Public Policy.** The SUBRECIPIENT expressly agrees to comply with all public policy requirements, laws, regulations, and executive orders issued by the Federal government, to the extent they are applicable to the Agreement: (i) Titles VI and VII of the Civil Rights Act of 1964, as amended; (ii) Sections 503 and 504 of the Rehabilitation Act of 1973, as amended; (iii) the Americans with Disabilities Act of 1990, as amended; (iv) Executive Order 11246, "Equal Employment Opportunity" as amended; (v) the Health Insurance Portability and Accountability Act of 1996; (vi) the Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended; (vii) the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended; (viii) all regulations and administrative rules established pursuant to the foregoing laws; and (ix) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations; and 2 CFR Part 200 as applicable to SUBRECIPIENT. Additional requirements are as specified in the Special Conditions section of award 2017-WR-AX-0041, which are attached in Attachment A.
- b) **Rights to Inventions Made Under a Contract or Agreement.** SUBRECIPIENT agrees that contracts or agreements for the performance of experimental, developmental, or research work shall provide for the rights of the Federal Government and the recipient in any resulting invention in accordance with 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any further implementing regulations issued by the Department of Justice.
- c) **Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 et seq.).** SUBRECIPIENT agrees that if this Agreement is in excess of \$150,000, the recipient agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, 42 U.S.C. 7401 et seq., and the Federal Water Pollution Control Act, as amended 33 U.S.C. 1251 et seq. Violations shall be reported to the awarding Federal Department and the appropriate Regional Office of the Environmental Protection Agency.
- d) **State Statutes.** SUBRECIPIENT expressly agrees to comply with all statutory requirements, laws, rules, and regulations issued by the State of Oregon, to the extent they are applicable to the Agreement.
- e) **Conflict Resolution.** If potential, actual or perceived conflicts are discovered among federal, state and local statutes, regulations, administrative rules, executive orders, ordinances or other laws applicable to the Services under the Agreement, SUBRECIPIENT may in writing request CWS to resolve the conflict. SUBRECIPIENT shall specify if the conflict(s) create a problem for the design or other Services required under the Agreement. CWS shall undertake reasonable efforts to resolve the issue but is not required to deliver any specific answer or product. The SUBRECIPIENT shall remain obligated to independently comply with all applicable laws and no action by CWS shall be deemed a guarantee, waiver, or indemnity for non-compliance with any law.
- f) **Disclosure of Information.** Any confidential or personally identifiable information (2 CFR 200.82) acquired by the SUBRECIPIENT during the execution of the project should not be disclosed during or upon termination or expiration of this Agreement for any reason or purpose without the prior written consent of CWS. SUBRECIPIENT further agrees to take reasonable measures to safeguard such information (2 CFR 200.303) and to follow all applicable federal, state and local regulations regarding privacy and obligations of confidentiality.

11. Federal and State Procurement Standards

- a) 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. All

sole-source procurements must receive prior written approval from CWS in addition to any other approvals required by law applicable to the SUBRECIPIENT. Justification for sole-source procurement should include a description of the project and what is being contracted for, an explanation of why it is necessary to contract noncompetitively, time constraints and any other pertinent information. Interagency agreements between units of government are excluded from this provision.

- b) SUBRECIPIENT must maintain written standards of conduct covering conflicts of interest and governing the performance of its employees engaged in the selection, award and administration of contracts. If SUBRECIPIENT has a parent, affiliate, or subsidiary organization that is not a state, local government, or Indian tribe, SUBRECIPIENT must also maintain written standards of conduct covering organizational conflicts of interest. SUBRECIPIENT shall be alert to organizational conflicts of interest or non-competitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade. Contractors that develop or draft specifications, requirements, statements of work, and/or Requests for Proposals (RFP) for a proposed procurement must be excluded by SUBRECIPIENT from bidding or submitting a proposal to compete for the award of such procurement. Any request for exemption must be submitted in writing to CWS.
- c) The SUBRECIPIENT agrees that, to the extent they use contractors or subcontractors, such recipients shall use small, minority, women-owned or disadvantaged business concerns and contractors or subcontractors to the extent practicable.

12. General Agreement Provisions.

- a) **Non-appropriation Clause.** If payment for activities and programs under this Agreement extends into CWS' next fiscal year, CWS' obligation to pay for such work is subject to approval of future appropriations to fund the Agreement by the Board of CWS.
- b) **Indemnification.** Subject to the limits of the Oregon Tort Claims Act, SUBRECIPIENT agrees to indemnify and hold CWS and its officers, employees, and agents harmless with respect to any claim, cause, damage, action, penalty or other cost (including attorney's and expert fees) arising from or related to SUBRECIPIENT's negligent or willful acts or those of its employees, agents or those under SUBRECIPIENT's control. SUBRECIPIENT is responsible for the actions of its own agents and employees, and CWS assumes no liability or responsibility with respect to SUBRECIPIENT's actions, employees, agents or otherwise with respect to those under its control.
- c) **Insurance.** During the term of this Agreement, SUBRECIPIENT shall maintain in force, at its own expense, each insurance noted below. In lieu of the insurance policies and conditions described in this section, CWS hereby agrees and acknowledges that SUBRECIPIENT's self-insurance for general liability and workers compensation are sufficient insurance for purposes of this Agreement.
 - 1) **Commercial General Liability.** SUBRECIPIENT shall obtain, at SUBRECIPIENT's expense, and keep in effect during the term of this Agreement, Commercial General Liability Insurance covering bodily injury and property damage on an "occurrence" form in the amount of not less than \$1,000,000 per occurrence/ \$2,000,000 general aggregate for the protection of CWS, its officers, and employees. This coverage shall include Contractual Liability insurance for the indemnity provided under this Agreement. This policy(s) shall be primary insurance as respects to CWS. Any insurance or self-insurance maintained by CWS shall be excess and shall not contribute to it.
 - 2) CWS, at its option, may require a complete copy of the above policy.

- 3) **Workers' Compensation.** Insurance in compliance with ORS 656.017, which requires all employers that employ subject workers, as defined in ORS 656.027, to provide workers' compensation coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). If contractor is a subject employer, as defined in ORS 656.023, contractor shall obtain employers' liability insurance coverage limits of not less than \$1,000,000.
 - 4) **Additional Insured Provisions.** All required insurance, other than Professional Liability, Workers' Compensation, and Personal Automobile Liability and Pollution Liability Insurance, shall include "CWS, its agents, officers, and employees" as an additional insured.
 - 5) **Notice of Cancellation.** There shall be no cancellation, material change, exhaustion of aggregate limits or intent not to renew insurance coverage without 60 days written notice to CWS. Any failure to comply with this provision will not affect the insurance coverage provided to CWS. The 60 days' notice of cancellation provision shall be physically endorsed on to the policy.
 - 6) **Insurance Carrier Rating.** Coverage provided by SUBRECIPIENT must be underwritten by an insurance company deemed acceptable by CWS. Insurance coverage shall be provided by companies admitted to do business in Oregon or, in the alternative, rated A- or better by Best's Insurance Rating. CWS reserves the right to reject all or any insurance carrier(s) with an unacceptable financial rating.
 - 7) **Certificates of Insurance.** As evidence of the insurance coverage required by this Agreement, SUBRECIPIENT shall furnish a Certificate of Insurance to CWS. CWS and its officers must be named as an additional insured on the Certificate of Insurance. No Agreement shall be in effect until the required certificates have been received, approved, and accepted by CWS. A renewal certificate will be sent to CWS 10 days prior to coverage expiration.
 - 8) **Primary Coverage Clarification.** SUBRECIPIENT coverage will be primary in the event of a loss and will not seek contribution from any insurance or self-insurance maintained by, or provided to, the additional insureds listed above.
 - 9) **Cross-Liability Clause.** A cross-liability clause or separation of insured's condition will be included in all general liability, professional liability, and errors and omissions policies required by the Agreement.
 - 10) **Waiver of Subrogation.** SUBRECIPIENT agrees to waive their rights of subrogation arising from the work performed under this Agreement.
- d) **Assignment.** This Agreement may not be assigned in whole or in part without the prior express written approval of CWS.
 - e) **Independent Status.** SUBRECIPIENT is independent of CWS and will be responsible for any federal, state, or local taxes and fees applicable to payments hereunder. SUBRECIPIENT is not an agent of CWS and undertakes this work independent from the control and direction of the CWS excepting as set forth herein. SUBRECIPIENT shall not seek or have the power to bind CWS in any transaction or activity.
 - f) **Notices.** Any notice provided for under this Agreement shall be effective if in writing and (1) delivered personally to the addressee or deposited in the United States mail, postage paid,

certified mail, return receipt requested, (2) sent by overnight or commercial air courier (such as Federal Express), (3) sent by facsimile transmission, with the original to follow by regular mail; or, (4) sent by electronic mail with confirming record of delivery confirmation through electronic mail return-receipt, or by confirmation that the electronic mail was accessed, downloaded, or printed. Notice will be deemed to have been adequately given three days following the date of mailing, or immediately if personally served. For service by facsimile or by electronic mail, service will be deemed effective at the beginning of the next working day.

- g) **Governing Law.** This Agreement is made in the State of Oregon, and shall be governed by and construed in accordance with the laws of that state without giving effect to the conflict of law provisions thereof. Any litigation between CWS and SUBRECIPIENT arising under this Agreement or out of work performed under this Agreement shall occur, if in the state courts, in the Clackamas County court having jurisdiction thereof, and if in the federal courts, in the United States District Court for the State of Oregon.
- h) **Severability.** If any provision of this Agreement is found to be illegal or unenforceable, this Agreement nevertheless shall remain in full force and effect and the provision shall be stricken.
- i) **Counterparts.** This Agreement may be executed in any number of counterparts, all of which together will constitute one and the same Agreement. Facsimile copy or electronic signatures shall be valid as original signatures.
- j) **Third Party Beneficiaries.** Except as expressly provided in this Agreement, there are no third party beneficiaries to this Agreement. The terms and conditions of this Agreement may only be enforced by the parties.
- k) **Binding Effect.** This Agreement shall be binding on all parties hereto, their heirs, administrators, executors, successors and assigns.
- l) **Integration.** This Agreement contains the entire Agreement between CWS and SUBRECIPIENT and supersedes all prior written or oral discussions or Agreements.

(Signature Page Follows)

SIGNATURE PAGE TO SUBRECIPIENT GRANT AGREEMENT

AGREED to by the Parties.

CLACKAMAS WOMEN'S SERVICES,
OREGON

By: _____
Executive Director,
Melissa Erlbaum

Dated: _____

CLACKAMAS COUNTY

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

Signing on Behalf of the Board,

By: _____
Jim Bernard, Chair or Designee

Dated: _____

By: _____
Recording Secretary

Dated: _____

Approved to Form

By: _____
County Counsel

Dated: _____

- Exhibit A: SUBRECIPIENT Statement of Program Objectives
- Exhibit B: SUBRECIPIENT Program Budget
- Exhibit C: Lobbying Certificate
- Exhibit D: Required Financial Reporting and Reimbursement Request
- Exhibit E: Monthly/Quarterly/Final Performance Report
- Exhibit F: Final Financial Report

Exhibit A. Attachment 1

GOALS & OBJECTIVES	ACTIVITIES	OUTPUTS	OUTCOMES
<p>Goal #1 Provide meaningful and increased access to the Latinx community in rural Clackamas County.</p> <p>Objective #1 Provide long-term and short-term population specific services to adult and minor victims in rural communities, including assistance in immigration matters.</p> <p>Objective #2 Reduce the impact of the unique barriers faced by Latinx victims in the rural areas of the County.</p>	<p>Rural advocate will provide bilingual and bicultural crisis intervention as well as short-term stabilization through safety planning, information and referral, financial support, case management, skills training, legal and medical support, and general advocacy.</p> <p>Rural advocate will conduct extensive outreach in rural communities to increase awareness of services to survivors and will participate in the ASP-FJC Rural Domestic Violence Collaborative Meetings.</p> <p>Rural advocate will link victims directly to legal advocacy and assistance services through EPHC & Catholic Charities immigration clinics and other related services.</p>	<p>Rural advocate will conduct a minimum of 8 community presentations related to domestic and sexual violence.</p> <p>The Latina rural advocate will serve a minimum of 30 rural victims annually.</p> <p>Offer immigration assistance forums/clinics/outreach efforts semi-annually.</p>	<p>85% of survivors will have developed a safety plan</p> <p>85% of survivors will report having gained knowledge of community resources and new ways to keep themselves and their children safe.</p>

Exhibit A. Attachment 1

<p>Goal #2 Increase the safety and well-being of women and children in the rural communities of Clackamas County by directly and immediately addressing sexual assault, domestic violence, dating violence and stalking.</p> <p>Objective #1 Provide long-term and short-term victim services to adult and minor victims in rural communities.</p> <p>Objective #2 Enhance and implement strategies to increase awareness and prevent sexual assault, domestic violence, dating and/or stalking.</p> <p>Objective #3 Encourage collaboration across multiple sectors through sustaining and expanding projects of the ASP-FJC Rural Collaborative.</p>	<p>Provide 1.0 FTE system-based DA-VAP Victim Advocate to work exclusively with rural victims of domestic violence, dating violence, sexual assault and stalking.</p> <p>System-based rural advocate will provide ongoing crisis intervention, safety planning, protective order application assistance, Crime Victim Compensation application support, hospital and law enforcement call out response, information and referrals, criminal justice support and accompaniment, emergency financial assistance, advocacy, and ongoing emotional support to rural victims, regardless of the prosecutorial merit of the case.</p> <p>1.5 FTE Rural Advocates (community-based) provide crisis intervention, short-term and long-term support services and coordinate wrap around services through the ASP-FJC Rural Collaboration.</p>	<p>System-based rural advocate serves 300 victims during Y1-Y3.</p> <p>Community-based rural advocates serve minimum 100 victims (children, youth, and adults) annually.</p> <p>Expand the ASP Rural Collaborative by adding a minimum of one new partner agency annually.</p>	<p>90% of all rural victims requesting services will have developed or understand how to develop a basic short/long term safety plan.</p> <p>85% of all rural victims requesting services will report that (1) they will have an increased awareness of resources to support their life in a violence-free environment and (2) their requested services met their basic needs.</p> <p>95% of victims who receive safety planning services from the DA-VAP advocate will be informed about the protective order process.</p> <p>95% of victims seeking a protective order will receive support in filing for the order.</p> <p>ASP-FJC Rural Collaborative is viewed as a high-functioning and effective collective impact model as assessed by community partners through annual survey.</p>
<p>Goal #3 Expand and enhance</p>	<p>. 5 FTE Prevention Specialist</p>	<p>Provide ten-module violence-</p>	<p>Reduce the rate of sexual and</p>

Exhibit A. Attachment 1

<p>capacity to reduce the rate of sexual and dating violence perpetration and victimization before the violence occurs by addressing known risk factors, and promoting healthy relationships and behaviors among youth.</p> <p>Objective #1 Teach and promote bystander intervention in middle and high schools in rural Clackamas County.</p> <p>Objective #2 Pilot Social Emotional Learning (SEL) programming for parents in order to help them model healthy relationships with their children.</p>	<p>focused on services in rural schools.</p> <p>CWS Rural Advocate and Prevention Specialist deliver SEL programming.</p>	<p>prevention curriculum in 5-6 middle school and high schools in the rural school system annually.</p> <p>Complete its research of available SEL programs and plan specific projects for each targeted audience (Y1). Pilot Social Emotional Learning programming for parents in order to help them model healthy relationships with their children (Y2).</p>	<p>dating violence perpetration and victimization.</p> <p>Increase in awareness of services available for students who are victimized. Dependent on the SEL pilot program, educators would use a corresponding evaluation tool for Y2.</p>
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**EXHIBIT B: SUBRECIPIENT BUDGET
OVW-FED-DOJ-Rural-0041-2**

Organization: Clackamas District Attorney's Office

Funded Program Name:

Program Contact:

Agreement Term: January 1, 2018-September 30, 2020

	<i>Approved Award Amount</i>	<i>Approved Match Amount</i>
Approved Award Budget Categories		
Personnel (List salary, FTE & Fringe costs for each position)		<i>No match is required on this award</i>
1.0 Rural Victim Advocate		
Salary	\$ 141,870.00	
Fringe	\$ 56,910.00	
Total Personnel Services	\$ 198,780.00	
Total Other Costs	\$ -	
Total Grant Costs	\$ 198,780.00	

EXHIBIT C
CONGRESSIONAL LOBBYING CERTIFICATE

The undersigned certifies, to the best of his or her knowledge and belief, that:

No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, 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 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.

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 undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions[as amended by "Government-wide Guidance for New Restrictions on Lobbying," 61 Federal Regulations 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, et seq.)].

The undersigned 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 subrecipients shall certify and disclose accordingly.

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 (as amended by the Lobbying Disclosure Act of 1995). 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.

[Note: Pursuant to 31 U.S.C. §1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each expenditure or failure.]

The Authorized Representative certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Organization understands and agrees that the provisions of 31 U.S.C. §3801, et seq., apply to this certification and disclosure, if any.

Clackamas County District Attorney's Office

2017-WR-AX 0041

Organization Name

Award Number or Project Name

Carrie Walker, Director

Name and Title of Authorized Representative

Signature

Date

EXHIBIT E-Updated MONTHLY AND FINAL PERFORMANCE REPORT

Performance Reporting Schedule

SUBRECIPIENT must submit a **Semi Annual** Performance Report, to Clackamas Women's Services, on January 10th and July 10th annually.

SUBRECIPIENT must submit a **Final** Performance Report no later than October 15, 2020 along with the final request for payment.

Performance Reporting Content and Format

The reports may be provided electronically. **The following reports are due SEMI-ANNUALLY on January 10th and July 10th.**

- (a) MUSKIE Data Collection Form;
- (b) Progress Report on Outputs, Objectives ;

MUSKIE Report: CC-DA to complete sections A2, C1, C2, C3, C4, D, E2 and Q 71, Q72, Q73 and Q74

Progress Report: See Attachment 1for reference

Reporting Adverse Conditions or Material Impairments to Award Performance

In addition to the Quarterly and Final Performance Reports, SUBRECIPIENT must notify Clackamas Women's Services Project Officer of developments that have a significant impact on grant-supported activities. SUBRECIPIENT must inform Clackamas Women's Services Project Officer as soon as problems, delays or adverse conditions become known which will materially impair the ability of SUBRECIPIENT to meet the outputs/outcomes specified above. This notification shall include a statement of the action taken or contemplated and any assistance needed to resolve the situation.

Project Name: <i>Expanding access for marginalized and underserved populations, enhancing services and providing prevention through the A Safe Place Family Justice Center Rural Collaborative for Clackamas County</i>	Agreement #: OVW-FED-DOJ-Rural-0041-2
Federal Award #: OVW-FED-DOJ-Rural-0041	Date of Submission: XX/XX/XX
Subrecipient: Name	
Has Subrecipient submitted all requests for reimbursement? Y/N	
Has Subrecipient met all programmatic closeout requirements? Y/N	

Exhibit F: Final Financial Report

Report of Funds received, expended, and reported as match (if applicable) under this agreement

Total Federal Funds authorized on this agreement:	
Year-to-Date Federal Funds requested for reimbursement on this agreement:	
Total Federal Funds received on this agreement:	
Balance of unexpended Federal Funds (Line 1 minus Line 2):	

By signing this report, I certify to the best of my knowledge and belief that the report is true, complete, and accurate, and the expenditures, disbursements and cash receipts are for the purposes and objectives set forth in the terms and conditions of the Federal award. I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise. (U.S. Code Title 18, Section 1001 and Title 31, Sections 3729-3730 and 3801-3812).

Subrecipient's Certifying Official (printed): _____

Subrecipient's Certifying Official (signature): _____

Subrecipient's Certifying Official's title: _____



NANCY S. BUSH
DIRECTOR

DEPARTMENT OF DISASTER MANAGEMENT
COMMUNICATIONS AND EMERGENCY OPERATIONS CENTER
2200 KAEN ROAD OREGON CITY, OR 97045

July 12, 2018

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of FY15-16 Urban Area Security Initiative (UASI)
Subrecipient Grant Agreement with South Fork Water Board

Purpose/Outcomes	Approving the FY15-16 Subrecipient Grant Agreement between Clackamas County and South Fork Water Board (SFWB) allows SFWB to receive and/or benefit from UASI grant funds that pass through Clackamas County.
Dollar Amount and Fiscal Impact	The UASI grant is a 100% federal share grant. Clackamas County acts as the pass-through for grant funds to sub-recipients, receiving full reimbursement for any expenses incurred. Approval of this Subrecipient Grant Agreement, provides SFWB with a mobile water treatment plant valued at \$135,000.
Funding Source	The United States Department of Homeland Security, Federal Emergency Management Agency - no County General Funds are involved.
Duration	The FY15-16 UASI grant award period is effective through May 31, 2019.
Previous Board Action	The FY15 UASI Intergovernmental Agreement, which serves as the basis for this agreement, was approved by the Board of County Commissioners during the March 31, 2016 business meeting – agenda item 033116-D1. The FY16 UASI IGA was approved by the Board of County Commissioners during the August 3, 2017 business meeting – agenda item 080317-E1.
Strategic Plan Alignment	<ol style="list-style-type: none"> 1. Coordination and Integration of Planning and Preparedness 2. Ensure Safe, Healthy and Secure Communities
Contact Person	Nancy Bush, Director, 503-655-8665
Contract No.	Subrecipient grant agreement 18-030

BACKGROUND:

Clackamas County is a signatory to the FY15 and FY16 UASI Intergovernmental Agreements with the City of Portland that require the County to be the sponsoring, or pass-through, agency for other county agencies and special districts that receive funding or benefit from UASI grants. Approval of the FY15-16 UASI Subrecipient Grant Agreement with SFWB will allow the district to receive a mobile water treatment plant valued at \$135,000.

The agreement has been reviewed and approved by County Counsel.

RECOMMENDATION:

Staff respectfully recommends the Board approve Subrecipient Grant Agreement #18-030 between Clackamas County and SFWB.

Respectfully submitted,

Nancy Bush, Director

**CLACKAMAS COUNTY, OREGON
SUBRECIPIENT GRANT AGREEMENT 18-030**

Project Name: **Mobile Water Treatment Plant**
Project Number:

This Agreement is between **Clackamas County**, Oregon, acting by and through its
Department of Disaster Management and **South Fork Water Board**, an Oregon Municipality.

Clackamas County Data

Grant Accountant: Michael Morasko	Program Manager: Sarah Stegmuller Eckman
Clackamas County – Finance 2051 Kaen Road Oregon City, OR 97045 503-742-5435 mmorasko@clackamas.us	Clackamas County – Disaster Management 2200 Kaen Road Oregon City, OR 97045 503-650-3381 sarahste@clackamas.us

Subrecipient Data

Finance/Fiscal Representative: Wyatt Parno	Program Representative: John Collins
South Fork Water Board 15962 S. Hunter Ave. Oregon City, OR 97045 503-496-1525 wparno@orcite.org	South Fork Water Board 15962 S. Hunter Ave. Oregon City, OR 97045 503-657-6581 johnc@sfbw.org
DUNS: 180784696	

URBAN AREA SECURITY INITIATIVE (UASI)

This Intergovernmental (Agreement) between Clackamas County, Oregon (“COUNTY”) and South Fork Water Board (“SUBRECIPIENT”) is entered into pursuant to the authority granted in Oregon Revised Statutes (“ORS”) Chapter 190, for the coordination of activities related to the use of the United States Department of Homeland Security’s Urban Areas Security Initiative (“UASI”) grant program funds for addressing the unique planning, organization, equipment, training, and exercise needs of high-threat, high-density Urban Areas, to assist in building an enhanced and sustainable capacity to prevent, protect against, mitigate, respond to, and recover from acts of terrorism.

Recitals

The United States Department of Homeland Security (“DHS”), Federal Emergency Management Agency (“FEMA”) Grant Programs Directorate, has provided UASI grant funding in the amount of \$3,000,000 in Fiscal Year 2015 to the State of Oregon (“STATE”), acting by and through the Oregon Military Department, Office of Emergency Management (“OEM”) for distribution of \$2,576,060 to the Portland Urban Area (“PUA”).

STATE awarded UASI Grant #15-170 to the City of Portland, Bureau of Emergency Management (“PBEM”) for Fiscal Year 2015 in the amount of \$2,579,060, a copy of which is attached to this Agreement and incorporated herein as Attachment 1 and Exhibits A, B, C and D.

The United States Department of Homeland Security (DHS), Federal Emergency Management Agency (FEMA) Grant Programs Directorate, has provided UASI Grant funding in the amount of \$2,962,000 in Fiscal Year 2016 to STATE, acting by and through "OEM" for distribution of \$2,822,000 to PUA.

STATE awarded UASI Grant #16-170 to "PBEM" for Fiscal Year 2016 in the amount of \$2,822,000, a Copy of which is attached to this Agreement and incorporated herein as Attachment 2 And Exhibits A, B, C and D.

UASI Grants #15-170 and #16-170 are intended to increase the capabilities of the PUA, which includes jurisdictions in Multnomah, Clackamas, Columbia and Washington counties in Oregon and Clark County in Washington, as well as the Port of Portland and TriMet, to build an enhanced and sustainable capacity to prevent, protect against, respond to, and recover from acts of terrorism.

A list of equipment, supplies, professional services, training and exercise events to be grant funded has been developed through the application process and coordination with STATE. PBEM, as Grant Administrator, is required to oversee and coordinate the expenditure of the UASI grant funds and has developed procedures to guide the procurement, delivery, and reimbursement processes. PBEM is also required to make periodic reports to STATE regarding the expenditure of the UASI grant funds and has developed procedures to coordinate the collection and submission of information and documents needed to support the reporting process.

The RDPO is the designated organization in the PUA that serves in the capacity of Urban Area Work Group ("UAWG") to coordinate program development and decision-making processes for allocating UASI sub-grants, as specified in the "Standard Operating Procedure Urban Areas Security Initiative (UASI) Program Management Under the Regional Disaster Preparedness Organization (RDPO)", Attachment 2.

COUNTY is required to follow PBEM-developed procurement, delivery, reimbursement, and reporting procedures, to ensure compliance with all terms of the award, and is obligated to coordinate with and obtain similar assurances from SUBRECIPIENT.

NOW THEREFORE, according to the terms of this Subrecipient Grant Agreement the COUNTY and SUBRECIPIENT agree as follows:

AGREEMENT

- 1. Term and Effective Date.** This Agreement shall become effective on the date it is fully executed and approved as required by applicable law. Expenses relating to the project may be incurred no earlier than **December 14, 2017** and no later than **May 31, 2019**, unless this Agreement is sooner terminated or extended pursuant to the terms hereof. No grant funds are available for expenditures after the expiration date of this Agreement.
- 2. Program.** The Program is described in Attached Exhibit A: Subrecipient Statement of Program Objectives. SUBRECIPIENT agrees to carry out the program in accordance with the terms and conditions of this Agreement.
- 3. Standards of Performance.** SUBRECIPIENT shall perform all activities and programs in accordance with the requirements set forth in this Agreement and all applicable laws and regulations. Furthermore, SUBRECIPIENT shall comply with the requirements of the STATE-awarded UASI Grants #15-170 and UASI Grant # 16-170 that are the source of the grant funding, in addition to compliance with requirements of 2 *Code of Federal Regulations* ("CFR"), Part 200, 2 CFR Part 215, 2 CFR Part 225, CFR Part 230, CFR Part 200.21. A copy of those grant awards have been provided to SUBRECIPIENT by the COUNTY, which is attached to and made a part of this Agreement by this reference.

4. **Grant Funds.** COUNTY's funding for this Agreement is the **Homeland Security Grant Program (UASI) (CFDA 97.067)** issued to COUNTY by the City of Portland, through its Bureau of Emergency Management. The maximum, not to exceed, grant amount that the COUNTY will pay is **\$135,000**.
5. **Amendments.** The terms of this Agreement shall not be waived, altered, modified, supplemented, or amended, in any manner whatsoever, except by written instrument signed by both parties. **SUBRECIPIENT must submit a written request including a justification for any amendment to the COUNTY in writing at least forty five (45) calendar days before this Agreement expires.** No payment will be made for any services performed before the beginning date or after the expiration date of this Agreement. If the maximum compensation amount is increased by amendment, the amendment must be fully executed before SUBRECIPIENT performs work subject to the amendment.
6. **Termination.** This Agreement may be terminated by the mutual consent of both parties or by a party upon written notice from one to the other upon thirty (30) business days-notice. This notice may be transmitted in person, by certified mail, facsimile, or by email.
7. **Funds Available and Authorized.** COUNTY certifies that it has received an award sufficient to fund this Agreement. SUBRECIPIENT understands and agrees that payment of amounts under this Agreement is contingent on the COUNTY receiving appropriations or other expenditure authority sufficient to allow the COUNTY, in the exercise of its sole administrative discretion, to continue to make payments under this Agreement.
8. **Future Support.** COUNTY makes no commitment of future support and assumes no obligation for future support for the activity contracted herein except as set forth in this Agreement.
9. **Administrative Requirements.** SUBRECIPIENT agrees to its status as a subrecipient, and accepts among its duties and responsibilities the following:
 - a) That it has read the award conditions and certifications for UASI Grant #15-170 and UASI Grant #16-170; including Exhibits A, B, C and D and that it understands and accepts those conditions and certifications, and that it agrees to comply with all the obligations, and be bound by any limitations applicable to PBEM, as grantee, under those grant documents.
 - b) To comply with all City of Portland and State financial management processes, and to maintain accounting and financial records in accordance with Generally Accepted Accounting Principles ("GAAP") and financial, administrative, and audit requirements as set forth in the most recent versions of the Code of Federal Regulations and Office of Management and Budget Circulars. A nonexclusive list of regulations commonly applicable to DHS grants includes:
 - i. Administrative Requirements: 2 CFR 200 (State and Local Governments) and 2 CFR Part 215 (Non-Profit Organizations).
 - ii. Cost Principles: 2 CFR Part 225 (State, Local, and Tribal Governments); Part 230 (Non-Profit Organizations); and Federal Acquisition Regulations (FAR) Part 31.2 (Contracts with Commercial Organizations).
 - iii. Audit Requirements: 2 CFR 200.21.
 - c) To comply with all City of Portland and State procurement requirements, including the competitive bid processes as outlined in Portland City Code ("PCC") and Oregon Revised Statutes ("ORS"). A nonexclusive list of code and statutes commonly applicable to procurement include:
 - i. PCC Chapter 5.33 (Goods and Services) and PCC Chapter 5.68 (Professional, Technical and Expert Service Contracts).
 - ii. ORS 279A (Public Contracting – General Provisions) and ORS 279B (Public Contracting – Public Procurements).

- d) That all equipment, supplies, and services procured by the SUBRECIPIENT are as described in the approved grant budget documents.
- e) That regardless of how it is procured, all equipment and supplies purchased shall be owned by the SUBRECIPIENT until disposition takes place. SUBRECIPIENT shall be responsible for inventory tracking, maintenance and storage while in possession of such equipment and supplies.
- f) SUBRECIPIENT agrees that regardless of who the Owner is, all equipment purchased with grant funds will be made available to all eligible regional partners per 44 CFR 13.32(c)(2). All reasonable requests must be met when sufficient notice is given and no reasonable conflict exists. Owners may not charge "rental" fees for equipment, but may seek reimbursement for normal expendables (not already covered by grant funds) such as fuel, vehicle damage, maintenance for wear and tear, etc., when appropriate.
- g) To comply with all property and equipment tracking and monitoring processes required by the grant, this Agreement, the City and the State. To treat all single items of equipment valued over \$5,000 as fixed assets and to provide the City with a list of such equipment on an annual basis, using PBEM's Equipment Inventory Report and completing and returning the report to PBEM on or before June 30th. **The list should include, but is not limited to, status, asset number, funding source, date of purchase, equipment description, serial number, and location where the equipment is housed or stored. Additionally, all equipment must have a sticker affixed that visibly states: "Purchased with funds provided by the U.S Department of Homeland Security."** All requirements for the tracking and monitoring of fixed assets are set forth in 2 CFR 200 Subparts A-D and 2 CFR 200.21. 2 CFR 200.21 compliance supplement on transfer and disposition reporting can be found on the Whitehouse website: <http://www.whitehouse.gov/omb/circulars/>. SUBRECIPIENT shall maintain and store all equipment and supplies, provided or purchased, in the manner that will keep it safe, prolong its useful life and be maintained in good working condition at all times.
- h) Any request or invoice SUBRECIPIENT submits for reimbursement of costs will be consistent with the items identified in the approved grant budget documents.
- i) SUBRECIPIENT understands and accepts full financial responsibility and may not be reimbursed for costs incurred which have not been approved by the State and/or the U.S. Department of Homeland Security, FEMA Grant Programs Directorate.
- j) SUBRECIPIENT will not deviate from the items listed in the approved grant budget documents without first securing written approval from the COUNTY.
- k) In all publications created with funding under this grant, SUBRECIPIENT shall prominently include the following statement: "This document was prepared under a grant from FEMA's Grant Programs Directorate, U.S. Department of Homeland Security. Points of view or opinions expressed in this document are those of the authors and do not necessarily represent the official position or policies of FEMA's Grant Programs Directorate or the U.S. Department of Homeland Security."
- l) All of SUBRECIPIENT's financial records, supporting documentation and all other records pertinent to this grant or agreements under this grant shall be retained by the SUBRECIPIENT following termination, completion or expiration of this Agreement for purposes of State of Oregon or Federal examination and audit, as established by Federal, State or City retention schedules (whichever is longer). Currently, the City of Portland's retention requirement for these documents is 10 years. A nonexclusive list of code and statutes commonly applicable to retention include:

- i. City of Portland Retention Schedules, Section 4808
<http://www.portlandonline.com/auditor/index.cfm?c=27183&a=7949>
 - ii. OAR 166-200-0050(17)
 - iii. 2 CFR 200.333-337
- m) SUBRECIPIENT will obtain a copy of 2 CFR 200 Subparts A-D, and to apprise itself of all rules and regulations set forth.
- n) SUBRECIPIENT will not to supplant its local funds with federal funds but rather use the federal funds to increase the amount of funds that, in the absence of federal aid, would be made available to fund programs within the UASI grant program guidelines.
- o) SUBRECIPIENT will comply with National Incident Management System (NIMS) objectives identified as requirements by the State and certify that the Agency and any sub-recipients of the Agency are registered with the State as being NIMS compliant.
- p) SUBRECIPIENT will comply with all applicable federal, state, and local environmental and historic preservation ("EHP") requirements and provide information requested to ensure compliance with applicable laws.
- q) SUBRECIPIENT agrees to timely comply with all reporting obligations required by the Grant's terms and the City.
- r) SUBRECIPIENT agrees to provide the COUNTY with Performance, Equipment Inventory, and Audit Reports when required by the COUNTY and in the form required by the COUNTY.
 - a. Performance reports are due to PBEM on a quarterly basis: April 15th, July 15th, October 15th, and January 15th during the term of the grant agreement. Late Performance Reports could result in the suspension and/or termination of the grant.
 - b. Equipment Inventory Reports are due to the COUNTY on an annual basis, on June 30th of each year.
 - c. Results of SUBRECIPIENT's 2 CFR 200.21 report are due to the COUNTY fifteen (15) days after the SUBRECIPIENT's receipt of the report, along with a corrective action plan (if applicable). Agencies expending \$750,000 or more in Federal awards during their fiscal year, are required to have Single Audit, as provided in 2 CFR 200 Subpart F. A copy of 2 CFR 200 Appendix XI Single Audit compliance requirements can be found at <http://www.whitehouse.gov/omb/circulars>.
- s) SUBRECIPIENT agrees to comply with all applicable laws, regulations, program guidance and guidelines of the Federal Government, the State of Oregon, and OEM in the performance of this Agreement, including but not limited to those listed in UASI Grant #15-170 and UASI Grant #16-170, Exhibit B, Federal Requirements and Certifications, Exhibit C, Subagreement Insurance Requirements and Exhibit D, Standard Operating Procedure Urban Areas Security Initiative (UASI) Program Management Under the Regional Disaster Preparedness Organization (RDPO).
- t) SUBRECIPIENT agrees to comply with all of its obligations under this Agreement and any applicable, incorporated document or documents.
- u) **Financial Management.** SUBRECIPIENT shall comply with 2 CFR Part 200, Subpart D—*Post Federal Award Requirements*, and agrees to adhere to the accounting principles and procedures

required therein, use adequate internal controls, and maintain necessary sources documentation for all costs incurred.

- v) **Personnel.** If SUBRECIPIENT becomes aware of any likely or actual changes to key systems, or grant-funded program personnel or administration staffing changes, SUBRECIPIENT shall notify COUNTY in writing within 30 days of becoming aware of the likely or actual changes and a statement of whether or not the SUBRECIPIENT will be able to maintain compliance at all times with all requirements of this Agreement.
- w) **Cost Principles.** The SUBRECIPIENT shall administer the award in conformity with 2 CFR 200, Subpart E. These cost principles must be applied for all costs incurred whether charged on a direct or indirect basis. Costs disallowed by the Federal government shall be the liability of the SUBRECIPIENT.
- x) **Period of Availability.** SUBRECIPIENT may charge to the award only allowable costs resulting from obligations incurred during the funding period.
- y) **Match.** Matching funds are not required for this Agreement.
- z) **Budget.** SUBRECIPIENT use of funds may not exceed the amounts specified in the Exhibit A: Subrecipient Program Budget. SUBRECIPIENT may not transfer grant funds between budget lines without the prior written approval of the COUNTY. At no time may budget modification change the scope of the original grant application or Agreement.
- aa) **Research and Development.** SUBRECIPIENT certifies that this award is not for research and development purposes.
- bb) **Performance Reporting.** SUBRECIPIENT must submit Performance Reports as specified in Exhibit C for each period (quarterly, and final) during the term of this Agreement. SUBRECIPIENT may submit same report to COUNTY as is provided to PBEM.
- cc) **Specific Conditions.** SUBRECIPIENT agrees to allow PBEM to conduct the procurement on behalf of SUBRECIPIENT for all items specified in the Program Budget (Exhibit A).
- dd) **Closeout.** COUNTY will closeout this award when COUNTY determines that all applicable administrative actions and all required work have been completed by SUBRECIPIENT, pursuant to 2 CFR 200.343—*Closeout*. SUBRECIPIENT must liquidate all obligations incurred under this award and must submit all performance and other reports as required by the terms and conditions of the Federal award and/or COUNTY no later than 15 calendar days after the end date of this agreement.
- ee) **Universal Identifier and Contract Status.** SUBRECIPIENT shall comply with 2 CFR 25.200-205 and apply for a unique universal identification number using the Data Universal Numbering System (“DUNS”) as required for receipt of funding. In addition, the SUBRECIPIENT shall register and maintain an active registration in the Central Contractor Registration database, now located at <http://www.sam.gov>.
- ff) **Lobbying.** SUBRECIPIENT certifies (Exhibit C: Lobbying) that no portion of the Federal grant funds will be used to engage in lobbying of the Federal Government or in litigation against the United States unless authorized under existing law and shall abide by 2 CFR 200.450 and the *Byrd Anti-Lobbying Amendment* 31 U. S. C. 1352.

- gg) **Monitoring.** SUBRECIPIENT agrees to allow COUNTY access to conduct site visits and inspections of financial records for the purpose of monitoring in accordance with 2 CFR 200.331. The COUNTY, the Federal government, and their duly authorized representatives shall have access to such financial records and other books, documents, papers, plans, records of shipments and payments and writings of SUBRECIPIENT that are pertinent to this Agreement, whether in paper, electronic or other form, to perform examinations and audits and make excerpts and transcripts. Monitoring may be performed onsite or offsite, at the COUNTY's discretion. Depending on the outcomes of the financial monitoring processes, this Agreement shall either a) continue pursuant to the original terms, b) continue pursuant to the original terms and any additional conditions or remediation deemed appropriate by COUNTY, or c) be de-obligated and terminated.
- hh) **Record Retention.** SUBRECIPIENT will retain and keep accessible all such financial records, books, documents, papers, plans, records of shipments and payments and writings for a minimum of three (3) years, or such longer period as may be required by the Federal agency or applicable state law, following final payment and termination of this agreement, or until the conclusion of any audit, controversy or litigation arising out of or related to this Agreement, whichever date is later, according to 2 CFR 200.333-337.
- ii) **Fiduciary Duty.** SUBRECIPIENT acknowledges that it has read the award conditions and certifications for State of Oregon Grants #15-170 and #16-170, that it understands and accepts those conditions and certifications, and that it agrees to comply with all the obligations, and be bound by any limitations applicable to the Clackamas County, as grantee, under those grant documents.
- jj) **Failure to Comply.** SUBRECIPIENT acknowledges and agrees that this agreement and the terms and conditions therein are essential terms in allowing the relationship between COUNTY and SUBRECIPIENT to continue, and that failure to comply with such terms and conditions represents a material breach of the original grant and this agreement. Such material breach shall give rise to the COUNTY's right, but not obligation, to withhold SUBRECIPIENT grant funds until compliance is met or to terminate this relationship including the original agreement and all associated amendments.

10. Compliance with Applicable Laws

- a) **Public Policy.** The SUBRECIPIENT expressly agrees to comply with all public policy requirements, laws, regulations, and executive orders issued by the Federal government, to the extent they are applicable to the Agreement: (i) Titles VI and VII of the Civil Rights Act of 1964, as amended; (ii) Sections 503 and 504 of the Rehabilitation Act of 1973, as amended; (iii) the Americans with Disabilities Act of 1990, as amended; (iv) Executive Order 11246, "Equal Employment Opportunity" as amended; (v) the Health Insurance Portability and Accountability Act of 1996; (vi) the Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended; (vii) the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended; (viii) all regulations and administrative rules established pursuant to the foregoing laws; and (ix) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations; and 2 CFR Part 200 as applicable to SUBRECIPIENT.
- b) **Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 et seq.).** SUBRECIPIENT agrees that if this Agreement is in excess of \$150,000, the recipient agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, 42 U.S.C. 7401 et seq., and the Federal Water Pollution Control Act, as amended 33 U.S.C. 1251 et seq. Violations shall be reported to the awarding Federal Department and the appropriate Regional Office of the Environmental Protection Agency.

- c) **State Statutes.** SUBRECIPIENT expressly agrees to comply with all statutory requirements, laws, rules, and regulations issued by the State of Oregon, to the extent they are applicable to the Agreement.
- d) **Conflict Resolution.** If potential, actual or perceived conflicts are discovered among federal, state and local statutes, regulations, administrative rules, executive orders, ordinances or other laws applicable to the Services under the Agreement, SUBRECIPIENT may in writing request County to resolve the conflict. SUBRECIPIENT shall specify if the conflict(s) create a problem for the design or other Services required under the Agreement. The County shall undertake reasonable efforts to resolve the issue but is not required to deliver any specific answer or product. SUBRECIPIENT shall remain obligated to independently comply with all applicable laws and no action by the County shall be deemed a guarantee, waiver, or indemnity for non-compliance with any law.
- e) **Disclosure of Information.** Any confidential or personally identifiable information (2 CFR 200.82) acquired by SUBRECIPIENT during the execution of the project should not be disclosed during or upon termination or expiration of this agreement for any reason or purpose without the prior written consent of COUNTY. SUBRECIPIENT further agrees to take reasonable measures to safeguard such information (2 CFR 200.303) and to follow all applicable federal, state and local regulations regarding privacy and obligations of confidentiality.
- f) **Mileage reimbursement.** If mileage reimbursement is authorized in SUBRECIPIENT budget or by the written approval of COUNTY, mileage must be paid at the rate established by SUBRECIPIENT'S written policies covering all organizational mileage reimbursement or at the IRS mileage rate at the time of travel, whichever is lowest.

11. Federal and State Procurement Standards

- a) All procurement transactions, whether negotiated or competitively bid and without regard to dollar value, shall be conducted by PBEM.
- b) COUNTY's performance under the Agreement is conditioned upon SUBRECIPIENT's compliance with, and SUBRECIPIENT shall comply with, the obligations applicable to public contracts under the Oregon Public Contracting Code and applicable Local Contract Review Board rules, which are incorporated by reference herein.
- c) SUBRECIPIENT must maintain written standards of conduct covering conflicts of interest and governing the performance of its employees engaged in the selection, award and administration of contracts. If SUBRECIPIENT has a parent, affiliate, or subsidiary organization that is not a state, local government, or Indian tribe, SUBRECIPIENT must also maintain written standards of conduct covering organizational conflicts of interest. SUBRECIPIENT shall be alert to organizational conflicts of interest or non-competitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade. Contractors that develop or draft specifications, requirements, statements of work, and/or Requests for Proposals (RFP) for a proposed procurement must be excluded by SUBRECIPIENT from bidding or submitting a proposal to compete for the award of such procurement. Any request for exemption must be submitted in writing to COUNTY.
- d) SUBRECIPIENT agrees that, to the extent they use contractors or subcontractors, such recipients shall use small, minority, women-owned or disadvantaged business concerns and contractors or subcontractors to the extent practicable.

12. General Agreement Provisions.

- a) **Indemnification.** SUBRECIPIENT agrees to indemnify and hold COUNTY and its commissioners, officers, employees, and agents harmless with respect to any claim, cause, damage, action, penalty or other cost (except for attorney's and expert fees) arising from or related to SUBRECIPIENT's negligent or willful acts or those of its employees, agents or those under SUBRECIPIENT's control. SUBRECIPIENT is responsible for the actions of its own agents and employees, and COUNTY assumes no liability or responsibility with respect to SUBRECIPIENT's actions, employees, agents or otherwise with respect to those under its control.
- b) **Insurance.** During the term of this Agreement, SUBRECIPIENT shall maintain in force, at its own expense, each insurance noted below:
 - 1) **Commercial General Liability.** SUBRECIPIENT shall obtain, at SUBRECIPIENT's expense, and keep in effect during the term of this Agreement, Commercial General Liability Insurance covering bodily injury and property damage on an "occurrence" form in the amount of not less than \$1,000,000 per occurrence/ \$2,000,000 general aggregate for the protection of COUNTY, its officers, commissioners, and employees. This coverage shall include Contractual Liability insurance for the indemnity provided under this Agreement. This policy(s) shall be primary insurance as respects to the COUNTY. Any insurance or self-insurance maintained by COUNTY shall be excess and shall not contribute to it.
 - 2) **Commercial Automobile Liability.** If the Agreement involves the use of vehicles, SUBRECIPIENT shall obtain at SUBRECIPIENT expense, and keep in effect during the term of this Agreement, Commercial Automobile Liability coverage including coverage for all owned, hired, and non-owned vehicles. The combined single limit per occurrence shall not be less than \$1,000,000.
 - 3) **Professional Liability.** If the Agreement involves the provision of professional services, SUBRECIPIENT shall obtain and furnish the COUNTY evidence of Professional Liability Insurance in the amount of not less than \$1,000,000 combined single limit per occurrence/\$2,000,000 general annual aggregate for malpractice or errors and omissions coverage for the protection of the COUNTY, its officers, commissioners and employees against liability for damages because of personal injury, bodily injury, death, or damage to property, including loss of use thereof, and damages because of negligent acts, errors and omissions in any way related to this Agreement. COUNTY, at its option, may require a complete copy of the above policy.
 - 4) **Additional Insured Provisions.** All required insurance, other than Professional Liability, Workers' Compensation, and Personal Automobile Liability and Pollution Liability Insurance, shall include "Clackamas County, its agents, commissioners, officers, and employees" as an additional insured.
 - 5) **Notice of Cancellation.** There shall be no cancellation, material change, exhaustion of aggregate limits or intent not to renew insurance coverage without 60 days written notice to the COUNTY. Any failure to comply with this provision will not affect the insurance coverage provided to COUNTY. The 60 days notice of cancellation provision shall be physically endorsed on to the policy.
 - 6) **Insurance Carrier Rating.** Coverage provided by SUBRECIPIENT must be underwritten by an insurance company deemed acceptable by COUNTY. Insurance coverage shall be provided by companies admitted to do business in Oregon or, in the alternative, rated A- or better by Best's Insurance Rating. COUNTY reserves the right to reject all or any insurance carrier(s) with an unacceptable financial rating.

- 7) **Certificates of Insurance.** As evidence of the insurance coverage required by this Agreement, SUBRECIPIENT shall furnish a Certificate of Insurance to COUNTY. The COUNTY and its officers must be named as an additional insured on the Certificate of Insurance. No Agreement shall be in effect until the required certificates have been received, approved, and accepted by COUNTY. The certificate will specify that all insurance-related provisions within the Agreement have been complied with. A renewal certificate will be sent to COUNTY 10 days prior to coverage expiration.
 - 8) **Primary Coverage Clarification.** SUBRECIPIENT coverage will be primary in the event of a loss.
 - 9) **Cross-Liability Clause.** A cross-liability clause or separation of insured's condition will be included in all general liability, professional liability, and errors and omissions policies required by the Agreement.
- c) **Assignment.** This Agreement may not be assigned in whole or in part without the prior express written approval of the COUNTY.
 - d) **Independent Status.** SUBRECIPIENT is independent of the COUNTY and will be responsible for any federal, state, or local taxes and fees applicable to payments hereunder. SUBRECIPIENT is not an agent of the COUNTY and undertakes this work independent from the control and direction of the COUNTY excepting as set forth herein. SUBRECIPIENT shall not seek or have the power to bind the COUNTY in any transaction or activity.
 - e) **Notices.** Any notice provided for under this Agreement shall be effective if in writing and (1) delivered personally to the addressee or deposited in the United States mail, postage paid, certified mail, return receipt requested, (2) sent by overnight or commercial air courier (such as Federal Express), (3) sent by facsimile transmission, with the original to follow by regular mail; or, (4) sent by electronic mail with confirming record of delivery confirmation through electronic mail return-receipt, or by confirmation that the electronic mail was accessed, downloaded, or printed. Notice will be deemed to have been adequately given three days following the date of mailing, or immediately if personally served. For service by facsimile or by electronic mail, service will be deemed effective at the beginning of the next working day.
 - f) **Governing Law.** This Agreement is made in the State of Oregon, and shall be governed by and construed in accordance with the laws of that state without giving effect to the conflict of law provisions thereof. Any litigation between the COUNTY and SUBRECIPIENT arising under this Agreement or out of work performed under this Agreement shall occur, if in the state courts, in the Clackamas County court having jurisdiction thereof, and if in the federal courts, in the United States District Court for the State of Oregon.
 - g) **Severability.** If any provision of this Agreement is found to be illegal or unenforceable, this Agreement nevertheless shall remain in full force and effect and the provision shall be stricken.
 - h) **Counterparts.** This Agreement may be executed in any number of counterparts, all of which together will constitute one and the same Agreement. Facsimile copy or electronic signatures shall be valid as original signatures.
 - i) **Third Party Beneficiaries.** Except as expressly provided in this Agreement, there are no third party beneficiaries to this Agreement. The terms and conditions of this Agreement may only be enforced by the parties.
 - j) **Binding Effect.** This Agreement shall be binding on all parties hereto, their heirs, administrators, executors, successors and assigns.

- k) **Integration.** This Agreement contains the entire Agreement between COUNTY and SUBRECIPIENT and supersedes all prior written or oral discussions or Agreements.

(Signature Page Follows)

SIGNATURE PAGE TO SUBRECIPIENT GRANT AGREEMENT

AGREED as of the Effective Date.

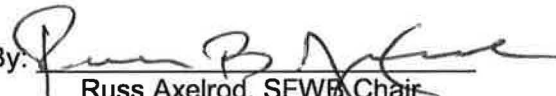
CLACKAMAS COUNTY

SOUTH FORK WATER BOARD

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

Signing on Behalf of the Board,

By: _____
Chair or Designee

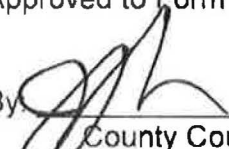
By: 
Russ Axelrod, SFWB Chair

By: _____
Recording Secretary

Dated: 6/21/18

Dated: _____

Approved to Form

By: 
County Counsel

Dated: 5/14/18

- Exhibit A: SUBRECIPIENT Program Budget
- Exhibit B: Congressional Lobbying Certificate
- Exhibit C: Quarterly/Final Performance Reporting
- Exhibit D: Equipment Inventory Reporting Form

Exhibit A: SUBRECIPIENT Program Budget

Water Treatment Plnt Trailer	UASI 15 \$30,694	UASI 16 \$81,706	
Trailer Wrap		\$3,000	
Water Bags		\$19,600	
Total	\$30,694	\$104,306	\$135,000

EXHIBIT B: CONGRESSIONAL LOBBYING CERTIFICATE

The undersigned certifies, to the best of his or her knowledge and belief, that:

No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, 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 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.

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 undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government-wide Guidance for New Restrictions on Lobbying," 61 Federal Regulations 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, et seq.)].

The undersigned 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 subrecipients shall certify and disclose accordingly.

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 (as amended by the Lobbying Disclosure Act of 1995). 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.

[Note: Pursuant to 31 U.S.C. §1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each expenditure or failure.]

The Authorized Representative certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Organization understands and agrees that the provisions of 31 U.S.C. §3801, et seq., apply to this certification and disclosure, if any.

Organization Name

Award Number or Project Name

Name and Title of Authorized Representative

Signature

Date

Exhibit C: Quarterly/Final Performance Reporting

SUBRECIPIENT will report quarterly to Portland Bureau of Emergency Management (PBEM) using the form located at the following link: <http://tinyurl.com/htmtxm6>.

Reports will be due on April 15, July 15, October 15, and January 15 until the project is complete (e.g. all funds have been spent and final invoice has been submitted).

SUBRECIPIENT will receive a reminder and a link to the reporting form directly from PBEM shortly before the due dates.

EXHIBIT D: EQUIPMENT INVENTORY REPORTING FORM

Instructions for completing PBEM Urban Areas Security Initiative Equipment Inventory Report

General Instructions

This is the standard form to be used by sub-grantee to provide detailed item information in connection with required reports of tangible property under the UASI grants. ***Equipment means tangible non-expendable personal property having a useful life of more than one (1) year and an acquisition cost of \$5,000 or more per unit. Note that this report is due, October 1st of each year.***

Sub-Grantees Enter the name of the entity that was party to the Sub-Grantee Award Agreement

Grant # Enter the unique UASI grant number assigned to the project

Submitted by Enter the name of the point of contact for the project or the person responsible for compiling the report

No reportable Equipment was purchased with this grant Select the checkbox if the statement applies. If selected, submit the report, not further action is needed

Asset Tag# Enter the unique asset tag number assigned to the individual unit. This number is sub-grantee created

Asset Description Provide a brief description of the item

Condition Code Enter the application condition code from the following list:

Code	Description
A.	Excellent. Property that is in new condition or unused condition and can be used immediately w/o modification or repairs
B.	Usable. Property which shows some wear, but can be used without significant repair
C.	Repairable. Property which is unusable in its current condition but can be economically repaired
X.	Salvage. Property which has value in excess of its basic material content, but repair or rehabilitation is impractical and/or uneconomical
S.	Scrap. Property which has no value except for its basic material content

Serial # Enter the manufacturer's serial number, model number stock number, or other identification number

Location of Asset Enter the physical address where the asset is kept or used

Acquisition Cost Enter the purchase price of the asset

Match Cost Enter the sub-grantee cost share contribution, if applicable

Date Acquired Enter the date the item was acquired by the sub-grant



Asset Tag #	Asset Description	Code	Serial #	Location of Asset	Acquisition Cost	Match Cost	Date Acquired

I certify to the best of my knowledge that all the information on this form is complete and correct and that the equipment listed was purchased with fiscal year 2016 Urban Area Security Initiative (UASI) grant funds and are prominently marked "Purchased with funds from the U.S Department of Homeland Security".

Printed Name: _____ Signature: _____ Date: _____



JUVENILE DEPARTMENT
JUVENILE INTAKE AND ASSESSMENT CENTER
2121 KAEN ROAD | OREGON CITY, OR 97045

July 12th, 2018

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of Intergovernmental Agreement
With City of West Linn for Youth Work Crews for the Project Payback
Program

Purpose/ Outcomes	City of West Linn will provide opportunities for youth involved with the Juvenile Department to complete general labor, including litter patrol, brush cutting, ivy removal and leaf pickup/removal within their city.
Dollar Amount and Fiscal Impact	West Linn, Oregon will provide up to \$10,200 through June 30, 2019. There are no general fund dollars required.
Funding Source	City of West Linn, Oregon
Duration	Effective through June 30, 2019.
Previous Board Action	None
Strategic Plan Alignment	Ensure safe, healthy, and secure communities: The revenue received from this contract will provide funds for the youth that are working to receive a stipend which is in turn used to pay restitution to victims, court fines, and fees.
Contact Person	Lisa Krzmarzick, Administrative Services Supervisor, Juvenile Department, ext. 8788
Contract No.	N/A

BACKGROUND:

This Intergovernmental Agreement provides work for youth which then provides an avenue for the youth to earn funds to repay victims and pay their court fines and fees.

RECOMMENDATION:

Staff recommends the Board of County Commissioners approve the attached Intergovernmental Agreement renewal.

Respectfully submitted,

Christina L. McMahan, Director
Juvenile Department

INTERGOVERNMENTAL AGREEMENT
BETWEEN CLACKAMAS COUNTY, OREGON
AND THE CITY OF WEST LINN, OREGON
FOR THE PROVISION OF YOUTH WORK CREWS FOR THE
PROJECT PAYBACK PROGRAM

I. Purpose

This agreement is entered into between Clackamas County (COUNTY), by and through its Juvenile Department and the City of West Linn (CITY) for the cooperation of units of local government under the authority of ORS 190.010. This agreement provides the basis for the Juvenile Department, Project Payback or COUNTY contractor to provide supervised Youth Offender Work Crews (Work Crew) to perform general labor at sites under the control of the CITY.

II. Scope of Work and Cooperation

A. CITY agrees to accomplish the following work under this agreement:

1. Identify Work Crew projects, such as litter patrol, brush cutting/clearing, painting, ivy removal and leaf pick up/removal in West Linn.
2. Schedule Work Crew projects on a mutually agreed upon schedule.
3. Provide needed materials.
4. Obtain right of entry for work done on property not owned or controlled by the CITY.

B. COUNTY agrees to:

1. Provide a Work Crew supervisor to supervise the Work Crews.
2. Provide a work crew to perform general labor on a mutually agreed upon schedule. Work crew size will average four youths. Total labor hours per crew will average twenty-four (24) labor hours. Any work days with less than 4 crew members will not be billed.
3. Provide necessary equipment needed by the Work Crew.
4. Use best efforts to resolve any dispute with CITY should Work Crews not complete a project to CITY'S substantial satisfaction, keeping in mind the given worker population is "youth," not professional adults.

III. Compensation

A. Compensation. CITY agrees to pay COUNTY an amount not to exceed \$340.00 per day for up to 30 days, total amount not to exceed \$10,200.00 annually for the services set forth in this Agreement. The daily rate may be reviewed and revised on an annual basis with approval from all parties.

B. Payments. Interim payments shall be made on the basis of requests for payment submitted as follows:

1. COUNTY may bill quarterly, including itemized detail of hours worked.

2. CITY bills will be mailed to:

City of West Linn
Attn: Ken Worcester, Parks Director
22500 Salamo Road,
West Linn, OR 97068

2. All requests for payment are subject to the approval of CITY consistent with the terms of this Agreement.

3. CITY payments shall be mailed to:

Clackamas County Juvenile Department
Attn. Lisa Krzmarzick, Administrative Services Supervisor
2121 Kaen Road,
Oregon City OR 97045

IV. Liaison Responsibility

Ken Worcester (kworcester@westlinnoregon.gov) will act as liaison from CITY for this project. Wayne Curry (WayneCur@co.clackamas.or.us) will act as liaison from the COUNTY.

V. Special Requirements

A. Hazardous Materials. No Work Crew provided under this agreement shall be required to clean up any work site when known or suspected hazardous materials are present.

B. Conformance to Laws. COUNTY and CITY agree to comply with all applicable local, state and federal ordinances, statutes, laws and regulations. Specifically,

COUNTY shall comply with Oregon Public Contracting Provisions pursuant to the requirements in ORS 279B.020 and 279B.220 through 249B.235.

- C. Indemnification. CITY agrees to indemnify, save harmless and defend the COUNTY, its officers, commissioners, and employees from and against all claims and actions, and all expenses, except for attorney fees, 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 CITY or its employees. COUNTY agrees to indemnify, save harmless, and defend the CITY, its officers, commissioners, and employees from and against all claims and actions, and all expenses, except for attorney fees 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 COUNTY or its employees subject to the limitations if applicable set forth in Article XI, Section 10 of the Oregon Constitution and the Oregon Tort Claims Act, ORS 30.260 to 30.300.

- D. Insurance. Each party agrees to maintain insurance levels or self-insurance in accordance with ORS 30.282, for the duration of this Agreement at levels necessary to protect against public body liability as specified in ORS 30.269 through 30.274. COUNTY will provide liability insurance for those individuals on the work site for the purposes of all activities undertaken pursuant to this agreement and also provide adequate automobile insurance for any transport vehicle used to transport the Work Crews. If applicable, workers' compensation insurance shall also be provided. It is agreed to the extent permitted by law that COUNTY'S self-insurance shall meet the obligations of this paragraph.

- E. Record and Fiscal Control System. All payroll and financial records pertaining in whole or in part to this agreement shall be clearly identified and readily accessible. Such reports and documents should be retained for a period of three (3) years after receipt of final payment under this agreement, provided that any records and documents that are subject to audit findings shall be retained for a longer time until such audit findings are resolved.

- F. Access to Records. The COUNTY shall have access to the books, documents, papers, and records of the CITY which are directly pertinent to the agreement for the purpose of making audit, examination, excerpts, and transcripts.

VI. Amendment

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.

VII. Term of Agreement

- A. Effective date. This agreement becomes effective on July 1, 2018 and continues until June 30, 2019, unless amended or terminated in accordance with this

Agreement. This IGA can be renewed for up to two (2) additional one year terms with the written approval of both parties.

- B. Termination. This agreement is subject to termination by either of the parties following thirty (30) days written notice to the other.

VIII. Debt Limitation of Oregon Counties

This Agreement 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.

WHEREAS, the aforementioned is hereby agreed upon by both parties and executed by the duly authorized signatures below.

CITY OF WEST LINN

**CLACKAMAS COUNTY, OREGON
BOARD OF COUNTY COMMISSIONERS**



Ken Worcester
Parks & Recreation Director

Jim Bernard
Chair


06/21/2018

Date

Date

Recording Secretary

Approved as to form:

 Date: _____
County Counsel



JUVENILE DEPARTMENT
JUVENILE INTAKE AND ASSESSMENT CENTER
2121 KAEN ROAD | OREGON CITY, OR 97045

July 12, 2018

Board of County Commissioners
Clackamas County

Members of the Board:

**Approval of Intergovernmental Agreement with Clackamas Education
Service District (ESD) to Provide Education and Vocational Opportunities
for At-Risk Youth**

Purpose/ Outcomes	Clackamas ESD will contribute funding towards the cost of an employee to provide services through the Youth Workforce Innovation and Opportunity Act (WIOA) to at least 36 youth.
Dollar Amount and Fiscal Impact	Clackamas ESD will provide funding in the sum of \$43,000 through June 30, 2019. General funds dollars will fund the balance of the staff position.
Funding Source	Clackamas Education Service District
Duration	Effective through June 30, 2019.
Previous Board Action	IGA for 2016-17 fiscal year: June 29, 2016; Agenda Item G.2. and IGA for 2017-18 fiscal year: June 22, 2017; Agenda Item E.1.
Strategic Plan Alignment	Ensure safe, healthy, and secure communities: This service provides vocational and educational opportunities, including tutoring, GED courses and testing, college and vocational training for at risk youth.
Contact Person	Lisa Krzmarzick, Administrative Services Supervisor, Juvenile Department, ext. 8788

BACKGROUND:

For the past six years the Juvenile Department, Oregon Youth Authority, and Clackamas ESD have worked cooperatively to fund a staff position and flexible funding for wrap around services for youth which provides educational and vocational opportunities. For the 2018-19 fiscal year Clackamas ESD and the Juvenile Department are requesting to enter into an Intergovernmental Agreement describing the services to be provided and the funding being contributed towards the full-time position.

RECOMMENDATION:

Staff recommends the Board of County Commissioners approve the attached Intergovernmental Agreement.

Respectfully submitted,

Christina L. McMahan, Director
Juvenile Department

Intergovernmental Agreement
Clackamas ESD/ Clackamas County Juvenile Department
Youth Workforce Innovation and Opportunity Act (WIOA) Services

THIS AGREEMENT, made and entered into this 1st day of July, 2018, by and between the CLACKAMAS EDUCATION SERVICE DISTRICT, hereinafter referred to as "CESD," and Clackamas County Juvenile Department hereinafter referred to as the "Partner Program." As used in this Agreement, CESD is defined as the agency whose responsibility is the planning, coordination, and support of comprehensive workforce development services for WIOA eligible youth in Clackamas County, under the Workforce Innovation and Opportunity Act (WIOA) and State of Oregon Work Experience Grant. The Partner Program is defined as the setting in which the workforce development services are implemented and delivered.

WHEREAS, both parties deem it advantageous to provide a workforce development program for youth who may be identified as at-risk or experiencing barriers to education and/or employment, and who can be most appropriately served in a Partner Program setting. The parties agree to meet the Federal Workforce Innovation and Opportunity Act (WIOA) requirements and Performance Standards, CESD and the C-TEC Youth Services program requirements.

The Partner Program will receive a total of \$43,000 (\$40,000 in WIOA federal funds and \$3,000 in Oregon Work Experience funds) to provide the outlined services for a consistent caseload size of 36 youth. Caseload size includes both active and follow-up youth. As youth fully exit services, Partner Program has 60 days to enroll a new participant. The caseload will reflect at least 85% Out-of-School Youth.

I. CESD shall be responsible for the following:

A. Program Coordination

1. Ensure that C-TEC Youth Services meet all WIOA requirements.
2. Align program services with the Region 15 workforce development system.
3. Assist in the development of education, training, and employment opportunities for enrolled youth if not readily available in the community.
4. Work collaboratively with community organizations to provide opportunities for youth participants.
5. Provide regular Partner Program meetings for coordination of services and training.

B. Training

1. Provide training and technical support for Partner Program staff regarding C-TEC Youth Services' (WIOA) requirements, processes, and procedures.
2. Provide the C-TEC Youth Services Handbook, program forms, and materials that meet program requirements.

C. Partner Support

1. Provide technical support related to WIOA.
2. Verify WIOA youth eligibility.
3. Input application and registration materials into i-Trac Information Management System (State data management system).
4. Monitor records and services regularly to support the success of the Partner Program.
5. Provide quarterly performance reports for the C-TEC Youth Services program, and each Partner Program.

D. Invoices and Payments

1. Provide an invoice template to use for monthly invoicing.
2. Issue payments within 30 days of receiving invoices.

II. The Partner Program shall be responsible for the following:

A. Staffing

1. Identify one grant administrator, as well as one direct service staff to act as the liaisons to CESD.
2. Employ staff that have demonstrated success in working with at-risk youth populations and are familiar with education and employment services. Include CESD in the interview and selection process to identify mutually agreed upon staff to work under this agreement.
3. Ensure that staff performs duties solely for the benefit of WIOA eligible youth when employed under WIOA funding.

B. Outreach, Recruitment, Eligibility Determination, and Enrollment of Youth

1. Establish methods for outreach, recruitment, and referrals within your community.
2. Screen youth for eligibility, and advise youth on how to obtain required eligibility documents.
3. Conduct CASAS math and reading assessments for Out-of-School youth as appropriate.

4. Provide eligibility and enrollment documents to CESD for verification of eligibility and data entry.
5. Maintain a consistent caseload size of 36 youth. Caseload size includes both active and follow-up youth. As youth fully exit services, Partner Program has 60 days to enroll a new participant.
6. At least 60% of the caseload or 22 participants must be in active status at all times.
7. Provide participants a copy of the C-TEC Youth Services *Applicant's Rights and Responsibilities* form at the time of eligibility determination. The *Applicant's Rights and Responsibilities* form and the C-TEC Youth Services Handbook outline the procedure for filing a grievance. Partner Program staff shall be familiar with and act in accordance with the procedures.

C. Youth Services

1. Ensure that the 14 WIOA required program elements are available to enrolled participants: adult mentoring of 12 months or more; alternative secondary school offerings or dropout recovery services; comprehensive guidance and counseling including drug and alcohol abuse counseling; supportive services; tutoring, study skills training, and dropout prevention; paid and unpaid work experiences; occupational skills training; education offered concurrently with and in the same context as workforce preparation activities; financial literacy education; entrepreneurial skills training; services that provide labor market and employment information; activities that help youth prepare for transitions to post-secondary education and training; leadership development opportunities; and follow-up services. See C-TEC Youth Services Handbook for complete definitions.
2. Develop Individual Service Plans (ISPs) with each youth, and update at least quarterly or more frequently as needed
3. Conduct objective assessments with youth to determine appropriate services.
4. Conduct CASAS assessments a minimum of every 5 months for Out-of-School youth that are basic skills deficient unless another measurable skills gain has been documented for that year.
5. Provide a minimum of one (1) WIOA service to each youth, every 90 days while in active service, with more frequent contact/services as appropriate. Be in communication with youth at least once every 30 days. Youth participants in active status that do not receive any service for 90 days must be moved to follow-up services status.
6. Provide a minimum of one (1) WIOA service to each youth, every 90 days while in follow-up services status and more frequent contact and services as appropriate. Be in communication with youth at least once every 30 days.
7. Spend at least 15% of WIOA staff time on work experience related activities, such as: helping participants prepare for internships, job shadows, and pre-apprenticeship programs; assisting participants to access career exploration opportunities; promoting work experience and career exploration. Spend at least 7% of staff time on State of Oregon Work Experience Grant related activities, such as: participating in LaunchPath training and promoting this tool in the community, training others to use LaunchPath, facilitating work experience interviews and evaluations.
8. Assist youth in working to achieve their education and employment goals, as documented in the ISP.
9. Provide information to all enrolled participants of C-TEC sponsored activities, and assist youth to participate. This includes referring youth through the designated process, and assisting with transportation, childcare, or removal of other barriers that may deter participation.
10. Use the i-Trac Management Information System (internet based tool) to document youth goals, progress, and case notes, with updates made within 5 days of activity. Maintain a hard copy and electronic case file for each participant detailing the service history, in active and follow-up services. Detail shall identify each participant activity by major WIOA component, document receipt of a service or partner service every 90 days or closure of the file. Additionally, information must be maintained in sufficient detail to support the expenditure of funds per program requirements.
11. Assist all youth to work towards obtaining the National Career Readiness Certificate (NCRC), with a goal of at least 25% of youth achieving this certification.
12. Provide a method for staff to make allowable support service purchases to meet youth needs in a timely manner. This may include emergent needs, or purchases that require a credit card, cash, or check.
13. Be knowledgeable of community resources and assist youth to access resources and navigate systems to meet their needs.
14. Follow program policies and procedures as outlined in the C-TEC Youth Services Handbook.

D. Performance Measures

1. Meet performance standards at the benchmark level each program year and not below 80% of benchmark to be considered for renewed funding for the subsequent year.
2. Placement in Employment/Education in the 2nd Quarter After Exit (62%): the percentage of participants who are in education or training activities, or in unsubsidized employment during the second quarter after the exit quarter.
3. Placement in Employment/Education in the 4th Quarter After Exit (59%): the percentage of participants who are in education or training activities, or in unsubsidized employment during the fourth quarter after the exit quarter.
4. Credential Attainment Rate (65%): the percentage of participants enrolled in an education or training program who attained a recognized post-secondary credential or a secondary school diploma, or its recognized equivalent, during participation or within one year after exit from the program.
5. Measurable Skills Gain (43%): percentage of participants who, during a program year, are in an education or training program and who are achieving measurable skills gains as defined by WIOA.

E. C-TEC Youth Services Team Meetings

1. Require direct service staff to participate in C-TEC Youth Services Team meetings on a regular basis.
2. Grant administrator to participate in annual C-TEC Youth Services Partner Coordination meeting.

III. Liability and Insurance Coverage Required:

The Partner Program shall provide insurance coverage at its own expense for the required level of insurance as specified in this section. All insurance carried by the Partner Program must be primary to and non-contributory with any insurance, including any self-insurance. Partner Program shall be financially responsible for all deductibles or self-insured retention contained within the insurance. Partner Program agrees to maintain continuous, uninterrupted coverage for the duration of this Agreement. There shall be no cancellation, material change, or reduction of limits without thirty (30) days advance written notice from the Partner Program to CESD. If the insurance is canceled or terminated prior to completion of the Agreement, Partner Program shall purchase new policy and provide a certificate of insurance evidencing coverage and limits equal to or greater than the required level of insurance as defined in this section. In the event the Partner Program fails to keep in effect at all times the specified insurance coverage, CESD may terminate this Agreement, subject to the provisions of this Agreement. It is agreed to the extent permitted by law that Clackamas County's self-insurance shall meet the obligations set forth under this Agreement, Section III.

A. General Liability Insurance

Partner Program must carry a Commercial General Liability insurance policy on an occurrence basis with a combined single limit of at least \$1,000,000 per occurrence and at least \$2,000,000 in the aggregate per project, for Bodily Injury, Property Damage, and Personal Injury, which protects the Awarding Agency, Pass-Through Entity (if applicable), CESD, Clackamas Workforce Partnership, Clackamas County and each of their respective officers, agents, and employees from claims for damages arising in whole or in part out of Partner Program's performance under this Agreement. The general liability insurance shall provide contractual liability coverage for the indemnity required under this contract.

B. Motor Vehicle Liability Insurance Partner Program must carry Automobile Liability insurance with a combined single limit of not less than \$1,000,000 combined single limit per accident for Bodily Injury and Property Damage for Partner Program's vehicles, whether owned, hired, or non-owned, which includes coverage for CESD and their respective officers, agents, and employees.

C. Professional Liability Errors and Omissions Insurance Partner Program shall at all times carry a Professional Liability/Errors and Omissions type insurance policy with limits of not less than \$1,000,000 each occurrence and \$2,000,000 in the annual aggregate.

D. Workers' Compensation Insurance The Partner Program must carry Workers' Compensation Insurance in compliance with ORS 656 covering all its employees as required by applicable workers' compensation laws including employers' liability with limits not less than \$500,000/ \$500,000/ \$500,000. If the Partner Program pays wages directly to C-TEC Youth Service's trainees under this Agreement, the Partner Program must also carry Workers' Compensation Insurance in compliance with ORS 656 covering any and all such trainees. No Workers'

Compensation Insurance has been or will be obtained by CESD for the Partner Program or for the Partner Program's employees and subcontractors.

- E. **Bonding** The Partner Program shall carry an Employee Fidelity Bond on every officer, director, agent, or employee authorized to receive or deposit funds under this contract or issue financial documents, checks, or other instruments of payment of program costs. Bond shall be in the amount of at least \$100,000. The bond shall be effective prior to any Contract payment and for at least twelve (12) months after this Agreement terminates.
- F. **Property and Equipment** All property and equipment purchased by Partner Program with funds received under this Agreement, or purchased on behalf of Partner Program for the program site(s) covered under this Agreement, shall be insured by Partner Program at replacement value against fire, theft, and destruction equal to the full replacement cost.
- G. **Certificates of Insurance** As evidence of the insurance coverage required by this Agreement, the Partner Program shall furnish acceptable insurance certificates to CESD at the time, or prior to the time, Partner Program executes this Agreement. Partner Program shall name CESD, Clackamas Workforce Partnership, Clackamas County and each of their respective officers, agents, and employees as additional insured with respect to the Partner Program's services to be provided under this Agreement. Insuring companies or entities are subject to CESD acceptance. If requested, complete copies of the insurance policy shall be provided to CESD.
- H. **Subcontractor Insurance** Partner Program shall require and verify that all of its subcontractors of any tier provide insurance coverage and limits identical to the insurance required of the Partner Program under this agreement, unless this requirement is expressly modified or waived by CESD in writing.
- I. **Sexual/Physical Abuse/Molestation Insurance** Partner Program must carry a Sexual or Physical Abuse or Molestation Liability insurance policy on an occurrence basis with a combined single limit of at least \$1,000,000 per occurrence and at least \$1,000,000 in the aggregate, which protects the Awarding Agency, Pass-Through Entity (if applicable), CESD, Clackamas Workforce Partnership, and each of their respective officers, agents, and employees from claims for damages arising in whole or in part out of Partner Program's performance under this Agreement.
- J. To the extent permitted by the Oregon Constitution, Article XI, Sections 7 and 10, and to the extent permitted by the Oregon Tort Claims Act or provided for in private insurance contracts, Partner Program agrees to indemnify, defend, and hold CESD or Clackamas Workforce Partnership, harmless from all damages, losses, and expenses including (but not limited to) attorney fees, and to defend all claims, proceedings, lawsuits, and judgments arising out of or resulting from the other party's negligence in the performance of or failure to perform under this contract. Either party to this contract shall not be required to indemnify or defend the other party for any liability arising out of wrongful acts of its own officers, employees, or agents. (Indemnity Clause PL 105-220 Sec. 184; 20 CFR Subpart G.)
- K. **Additional Insured Clause:** The liability insurance coverage required for the performance of this Agreement shall be endorsed to name Clackamas Education Service District as additional insured with respect to the activities performed under this Agreement.
- L. Nothing contained in these insurance requirements is to be construed as limiting the extent of the Partner Program's responsibility for payment of damages resulting from Partner Program's operation under this contract.

IV. Payments, Invoices and Program Costs

- A. The monthly invoice submitted by the Program Partner will be paid within 30 days of receipt. These funds may only be expended between July 1, 2018 and June 30, 2019. An invoice spreadsheet will be provided to the Partner Program. The Partner Program will submit the invoice to the C-TEC Coordinator, by the 8th of each month for the prior month's expenses. The Partner Program may add accruals to their invoice of actual and allocable costs incurred, but not yet paid. **Catalog of Federal Domestic Assistance (CFDA) Number: 17.259**
- B. Funding paid to the Partner Program is acquired through the WIOA grant. Therefore, all money must be used in the implementation of the grant, for WIOA eligible youth. This includes, but is not limited to staff pay, materials and supplies, support services, transportation, and expenses derived from implementing WIOA youth services.
- C. At least 5% of the funds must be budgeted for youth support services, to eliminate financial barriers experienced by participants. Support service costs may only be used when no other resources are available, and must follow the guidance provided in the C-TEC Youth Services Handbook.
- D. All funding is based on cost reimbursement. Only allocable and allowable costs paid out by the Partner Program, which are based on benefits received and associated with the activities and services described, will be reimbursed.
- E. Any act or omission by Partner Program which results in repayment of funds to the funding source will be the

responsibility of Partner Program. Partner Program agrees to repay such funds.

- F. In the event the program generates any program income, the Partner Program shall report to CESD, the program income as a separate line item, by cost category, on the month following accrual. Program income is defined as "income received by the recipient or sub recipient directly generated by a grant or sub grant supported activity, or earned only as a result of the grant or sub grant". Such income is to be applied against the costs of the project.
- G. Unless otherwise specified, ownership and title of all non-expendable personal property and equipment purchased with WIOA funds is vested in the U.S. Department of Labor and/or State of Oregon. The CESD may take possession of all such equipment and property at any time during or upon termination of this Agreement. All such property purchased under this Agreement shall be returned to the CESD within thirty (30) days after the Agreement has terminated.
- H. Any funds provided under this Agreement that remain unused at the end of the fiscal year or at Agreement end are not be obligated under this contract and will be returned to the CESD.
- I. Partner Program must comply with the standards in the most recent versions of appropriate Uniform Administrative Requirements and CESD policies and procedures.

V. Records Control

- A. The Partner Program will establish, maintain, and safeguard all participant files, records, project records, and documents. The Partner Program will ensure confidentiality of participant information as provided in State law and administrative rules. Records must be sufficient to justify all payments claimed and paid under this contract, and be compliance with C-TEC Youth Services Program Handbook. Federal record retention requirements applicable to this agreement are found at 2 CFR 200.333-337. The Program Partner shall retain all financial and other required records and supporting documents according to these requirements.
- B. **Social Security Number Use** Partner Program will not print a participant's full Social Security Number (SSN) on any document that will be sent through the mail (U.S. or electronic) without a written request from the person whose SSN will be printed on the document, except as required by law. Partner Program will use only the I-Trac Customer ID, the Jobseeker ID, or the last 4 digits of a SSN on documents unless there is a compelling business reason to use the entire SSN. If a document contains a full SSN, Partner Program will take steps to protect the document from unauthorized disclosure. Partner Program will not provide copies of a document containing a full SSN to anyone other than the person whose SSN is listed on the document, except as allowed by State or Federal law. Partner Program may provide a copy of a document to a third party with the SSN redacted if the document is otherwise allowed to be released. No Partner Program will publicly post or display a document containing a full SSN.
- C. **Data and Record Security** Partner Program must develop, implement and maintain reasonable safeguards to protect the security and confidentiality of participant personal information. Employees of Partner Program with access to personal information must take reasonable steps to prevent a breach of the information. Reasonable steps include locking file cabinets, monitoring access to areas containing personal information, locking computer workstations if leaving the area, and maintaining physical control over files, computer workstations, thumb drives, CDs or other media which contains personal information. Partner Program must also ensure the proper disposal of documents or other media which contains personal information. Contracting with a document shredding company will be considered proper disposal of paper documents. Partner Program will be responsible for properly disposing of or erasing electronically stored personal information on hard drives, CDs, thumb drives or other devices under their control.
- D. **Limitation of Public Access to Records** If disclosure of trainee records is requested by the public, current confidentiality or non-disclosure standards in ORS 192 and OAR 589-020-0330, pertaining to records of participants, shall apply. Personal information may be made available to other service providers on a selective basis consistent with the participant's signed "**Release of Information**" form. Trade secrets, or commercial or financial information, that is obtained from a person and privileged or confidential shall not be available to the public.
- E. **Breach Notification** Any Partner Program who becomes aware of any potential breach of a document or electronic file containing participant personal information will immediately notify CWP. A breach occurs when any unauthorized individual or entity gains access to personal information or when unintended disclosure of personal information is made, for example loss or theft of a electronic device containing personal information, loss or theft of a paper document containing personal information, unauthorized access to a network containing personal information, or a document containing personal information being sent to the wrong address.

- F. In the event the **Partner Program is unable to keep their records**, the Partner Program will notify the CESD who will take custody and be responsible for the maintenance and retention of the records.
- G. The Partner Program shall provide to the CESD upon request, sufficient staff time necessary to aid in the performance of contract related (a) project research, (b) project evaluation, (c) project monitoring, and (d) completion of project fiscal review and audits.
- H. **Disposal of Records** No records addressed in this Agreement will be disposed of without instruction from or approval of CESD. CESD will provide instructions and timelines for disposing of records.

VI. Responsibility for WIOA Cost Reduction/Coordination with Other Funding Sources

- A. For activities funded under this Agreement, the CONTRACTOR shall identify training costs supported by other Federal, State, or local programs in order to ensure that these federal funds are in addition to funds otherwise available

VII. Communications

- A. **Funding Acknowledgement** Whenever written, magnetic media, electronic, or verbal information related to the services provided pursuant to this Agreement is distributed to the media or directly to the general public, another agency or governmental audience, whether such information is solicited or unsolicited, the Partner Program shall acknowledge and name the Clackamas Workforce Partnership (CWP) and CESD as the sponsoring agencies for the services provided through this Agreement.
- B. All advertisements or recruitment materials must receive prior approval from C-TEC Youth Services and contain the following language: "An Equal Opportunity Employer/Program" and "auxiliary aids and services are available upon request to individuals with disabilities" in English and Spanish.
- C. **Patents and Copyrights** Partner Program must comply with the standards in 2 CFR Part 200 for the development, licensing, distribution, and use of product(s) and materials developed with this contract.

VIII. Nondiscrimination and Equal Opportunity Provisions

- A. The Partner Program assures that it will comply fully with the nondiscrimination and equal opportunity provisions of the Workforce Innovation and Opportunity Act (WIOA), all Federal, State, and local laws, regulations, executive orders, and ordinances regarding nondiscrimination and equal opportunity provisions including the Nontraditional Employment for Women Act of 1991; Title VI and VII of the Civil Rights Act of 1964, as amended; section 503 and 504 of the Rehabilitation Act of 1973, as amended; Americans with Disabilities Act of 1990, as amended; Section 188 of the Workforce Investment Act; the Age Discrimination in Employment Act of 1975, as amended; Title IX of the Education Amendments of 1972, as amended; Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended; Drug Abuse Office and Treatment Act of 1972, as amended; Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act of 1970, as amended; Sections 523 and 527 of the Public Health Service Act of 1912, as amended; Health Insurance Portability and Accountability Act of 1996 (HIPPA) (42U.S.C. §§1320d et seq.); Title VIII of the Civil Rights Act of 1968, as amended; and with all applicable requirements imposed by or pursuant to regulations implementing those laws, including but not limited to 29 CFR, Part 33 and 37. The United States has the right to seek judicial enforcement of this assurance. Partner Program will not exclude from participation, discriminate against, nor deny employment or services to any person including participant on the grounds of race, color, religion, sex, national origin, marital status, youth offender, age (except as provided by WIOA regulations), disability, citizenship, sexual orientation or perceived sexual orientation, gender identity, political affiliation or belief, or association with any person with, or perceived to have one or more of the above named characteristics, and for beneficiaries only, citizenship or participation in the program funded under this Agreement.
- B. Partner Program expressly agrees to comply with the Equal Employment Opportunity provisions in Executive Order (E.O.) 11246, as amended by E.O. 11375 and supplemented by the requirements of 41 CFR Part 60. Further, the Partner Program shall include brief wording in each orientation of potential applicants to describe the Equal Opportunity and Affirmative Action position of this Contract and the method of filing a complaint in regard to such. Partner Program will ensure that the language "equal opportunity employer/program" and "auxiliary aids and services are available upon request to individuals with disabilities" appear in publications, broadcasts and other communications as outlined in the applicable Uniform Administrative Requirements. Where such materials indicate the Partner Program may be reached by telephone, the materials must state the telephone number of the TDD/TTY or relay service used by the CONTRACTOR, as required.

IX. Compliance

- A. **Compliance with Applicable Law** the Partner Program will comply with the Workforce Innovation and Opportunity Act (WIOA) as amended and all subsequent amendments thereto and all implementing regulations.
- B. The Partner Program agrees to comply with all applicable Oregon State and Clackamas County laws, rules and regulations, as well as State, Clackamas Workforce Partnership policies, and CESD procedures, and regulations.
- C. **Veteran's Priority Provisions** Partner Program agrees to comply with Veteran's Priority Provisions. The Jobs for Veterans Act (Public Law 107-288) requires grantees to provide priority of service to veterans and spouses of certain veterans for the receipt of employment, training, and placement services in any job training program directly funded, in whole or in part, by DOL. The regulations implementing the priority of service can be found at 20 CFR 1010. In circumstances where a grant recipient must choose between two qualified candidates for a service, one of whom is a veteran or eligible spouse, the veterans priority of service provisions require that the grant recipient give the veteran or eligible spouse priority of service by first providing him or her that service. To obtain priority of service, a veteran or spouse must meet the program's eligibility requirements. Grantees must comply with DOL guidance on veterans' priority. ETA's Training and Employment Guidance Letter (TEGL) No. 10-09 (issued November 10, 2009) provides guidance on implementing priority of service for veterans and eligible spouses in all qualified job training programs funded in whole or in part by DOL. TEGL 10-09 is available at <http://wdr.doleta.gov/directives>.
- D. **Limitations on Union or Anti-Union, Sectarian, Religious, Political or Lobbying Activities** No funds under this agreement shall be used in any way to assist, promote or deter union activities. No individual shall be required to join a union as a condition for enrollment in a program in which only institutional training is provided unless such training involves individuals employed under a collective bargaining agreement. No trainee may be placed into, or remain working in, any position which is affected by labor disputes involving a work stoppage. These funds may not be spent on the employment or training of participants in sectarian activities which include religious activities, political activities, and/or lobbying. The Partner Program agrees that the participants shall not be employed on the construction, operation or maintenance of any facility or portion of any facility which is used or may be used for sectarian instruction or as a place of religious worship.
- E. **Maintenance of Effort** No currently employed worker shall be displaced by any trainee, including partial displacement such as a reduction in the hours of non-overtime work, wages, or employment benefits. No program shall impair existing contracts for services or collective bargaining agreements. No program which would be inconsistent with the terms of a collective bargaining agreement shall be undertaken without the written concurrence of the labor organization and employer concerned. No trainee shall be employed, or job opening filled when (a) any other individual is on layoff from the same or any substantially equivalent job, or (b) when the employer has terminated the employment of any regular employee or otherwise reduced its workforce with the intention of filling the vacancy so created by hiring a trainee whose wages are subsidized under this Contract.
- F. **Fraud Notification Requirements** Partner Program must comply with CWP's requirement that all suspected incidents of fraud, abuse, or other criminal activity must be immediately reported on the same business day as the complaint was made or the incident discovered. Program Partner will conform to CWP's established policies and procedures for reporting and resolution.
- G. This Agreement, it's Exhibits, Attachments, Endorsements, Changes, or References incorporated is authorized under the federal Workforce Innovation and Opportunity Act. The Partner Program understands and agrees that modifications to this agreement will be necessary throughout the Agreement period as federal, state or local laws, rules, regulations or local ordinances necessitate change under this implementation. The Partner Program is notified that such changes shall be bilaterally agreed upon or unilateral, as necessary (Public Law 105-220.)
- H. **Additionally the following special terms apply to this Agreement:**
- (i) **Nepotism.** No individual may be placed in a WIOA employment activity if a member of that person's immediate family is directly supervised by or directly supervises that individual.
- (ii) **Code of Conduct** Partner Program shall maintain written standards of conduct governing the performance of its employees engaged in the award and administration of contracts. No employee, officer or agent shall participate in the selection, award, or administration of a contract or contract supported by these funds if a real or apparent conflict of interest as defined by ORS Chapter 244 would be involved. Such a conflict would arise when the employee, officer, or agent, any member of his or her immediate family (see Section 23 Nepotism) or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in the firm selected for an award.
- The officers, employees, and agents of the Partner Program shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors, or parties to sub-agreements. However, Partner Program may set

standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct shall provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the Partner Program. No officer, employee or agent, any member of his or her immediate family, or an organization which employs or is about to employ any of the parties indicated herein, shall financially benefit from the activities of any program participant or applicant.

- (iii) **Governing Law, Venue, Consent to Jurisdiction** This Contract shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. 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. The rights and obligations of the parties shall be construed and enforced as if the Contract did not contain the particular term or provisions held to be invalid.

Any claim, action, suit or proceeding (collectively, "Claim") between CWP and CONTRACTOR that arises from or relates to this Contract shall be brought and conducted solely and exclusively within the Circuit Court of Multnomah 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. CONTRACTOR, by execution of this Contract, hereby consents to the jurisdiction of said courts.

- (iv) **Prohibited activities:** WIOA funds must not be spent on: (1) The wages of incumbent employees during their training if funded by WIOA; (2) Public service employment, except to provide disaster relief employment, as specifically authorized in WIOA and under a special Federal disaster relief assistance grant; (3) Expenses prohibited under any other Federal, State or local law or regulation, including foreign travel. (4) Drug testing except to facilitate the hiring process. (5) General economic development and related employment generating activities (6) Investment in revolving loan funds. (7) Investment in contract bidding Resource Centers. (8) Capitalization of businesses. (9) Business relocation services (10) Construction, purchase, and renovation of real property. (11) Employment or training of participants in sectarian activities.
- (v) **Employee displacement prohibitions** (a) A participant in a program or activity authorized under title I of WIOA must not displace (including a partial displacement, such as a reduction in the hours of non-overtime work, wages, or employment benefits) any currently employed employee. (b) A program or activity authorized under title I of WIOA must not impair existing contracts for services or collective bargaining agreements. When a program or activity would be inconsistent with a collective bargaining agreement, the appropriate labor organization and employer must provide written concurrence before the program or activity begins. (c) A participant in a program or activity may not be employed in or assigned to a job if: (1) Any other individual is on layoff from the same or any substantially equivalent job; (2) The employer has terminated the employment of any regular, unsubsidized employee or otherwise caused an involuntary reduction in its workforce with the intention of filling the vacancy so created with the WIOA participant; or (3) The job is created in a promotional line that infringes in any way on the promotional opportunities of currently employed workers. Partner Program certifies that this Agreement does not violate any collective bargaining agreements to which it is a party.
- (vi) WIOA funds shall only be used for activities that are in addition to those that would otherwise be available in the local area in the absence of such funds.
- (vii) **Charging of Fees to Participants** No person or organization may charge a fee to any individual for referral to or placement in training or employment programs

X. Certification Regarding Lobbying 31 U.S.C. Sec. 1352

- A. The Partner Program certifies that no Federal appropriated funds have been paid or will be paid, by or on behalf of the Partner Program, to any person for influencing or attempting to influence an officer or employee of an agency, a Member 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, or the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement or any other award covered by 31 U.S.C. Sec. 1352.
- 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 Partner Program shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- C. The Partner Program require that the language of this Certification be included in the award documents for all sub

awards at all tiers (including subcontracts, sub grants and contracts under grants, loans, and cooperative agreements) and that all sub recipients shall certify and disclose accordingly. 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 shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

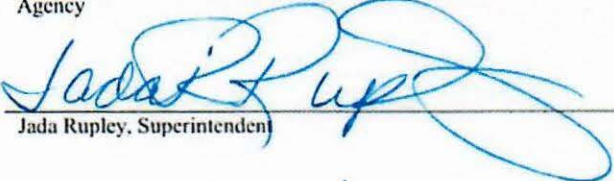
XI. Assurances

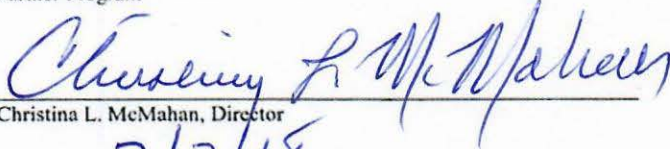
- A. The Partner Program through its duly authorized representative, hereby assures and certifies that throughout the period of the grant /Agreement award and at all times while this Agreement is in effect, it comply with (as they may be amended from time to time), all applicable federal, state and local laws, regulations, ordinances, executive orders, administrative rules and directives, including without limitation: the Title IB of the Workforce Innovation and Opportunity Act of 1998 (PL 105-220 29 USC Sec 2801 et seq) and corresponding WIOA Regulations (20 CFR 660.300) OMB Circulars A-87 and A-133; all regulations and administrative rules established pursuant to the foregoing, all applicable Oregon Revised Statutes; and all applicable Oregon Administrative Rules.
- B. By signing this agreement, the authorized representative assures and certifies that it:
1. **Financial Capability** Has the legal authority to apply for and receive funds, including federal and state funds, under the grants and programs covered by this Agreement, and the institutional, managerial and financial capability (including funds sufficient to pay the non-federal share of project cost) to ensure proper planning, management and completion of the projects, grants and programs covered by this Agreement.
 2. **Generally Accepted Accounting System** Will establish a proper accounting system in accordance with Generally Accepted Accounting Principles (GAAP) and CWP policies and procedures.
 3. Will give CWP, the Awarding Agency, and Pass-Through Entity (if applicable), the Governor (if applicable) and their duly authorized representatives; appropriate governmental authorities involved in the administration of these funds to extent necessary for its proper administration, authority to audit, examine, and make excerpts or transcripts from its books of accounts, correspondence, papers, records, files, forms, or other documents of the Partner Program including all contracts, invoices, materials, payrolls, personnel records, conditions of employment and other data relating to all matters covered by this Agreement which are necessary to evaluate whether the funds have been spent lawfully, and to determine compliance with all applicable rules and regulations, and the provisions of this Agreement, including the proper allocation of costs to this Agreement. Authorized representatives could include but are not limited to the Director - Office of Civil Rights, the Comptroller General of the United States and the Inspector General.
 4. Will not permit any person or entity to receive grant or program funds if the person or entity is listed on the non-procurement portion of the General Service Administration's list of parties excluded from federal procurement or non-procurement programs in accordance with Executive Order No. 12,549 and Executive Order No. 12,689 of the President of the United States.
 5. **Conflict of Interest** Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain. Every reasonable course of action shall be taken by the Partner Program in order to maintain the integrity of this expenditure of CESD's funds and to avoid any favoritism or questionable or improper conduct.
 6. **Complete the Work** Shall initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
 7. **Political Activities** Will comply, as applicable, with the provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7326) which limit the political activities of employees whose principal employment activities are funded in whole or in part with federal funds. In addition, the Partner Program agrees to comply with, where applicable, Public Law 101-121, which prohibits influencing Federal financial transactions. Partner Program shall not use funds provided under this Contract for publicity or propaganda purposes, for the preparation, distribution or use of any kit, pamphlet, booklet, publication, radio, television or film presentation designed to support or defeat legislation pending before the Congress, except in presentation to the Congress itself. Nor shall grant funds be used to pay the salary or expenses of

- any Partner Program staff or agent, related to any activity designed to influence legislation or appropriations pending before the Congress.
8. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§276a to 276a-7), the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§327-333), regarding labor standards for federally assisted construction sub-agreements.
 9. **Debarment and Suspension** As required by Executive Orders 12549 and 12689 and 2 CFR.200.212 regarding Debarment and Suspension, the CONTRACTOR certifies to the best of its knowledge and belief, that neither it nor its principals:
 - 1) Are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency;
 - 2) Have within a three-year period preceding this proposal been convicted or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - 3) Are presently indicted or otherwise criminally or civilly charged by a government entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(B) of this certification; and,
 - 4) Have within a three-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.
 10. **Discrimination** Will comply with all Federal, state and local laws, regulations, executive orders and ordinances regarding nondiscrimination and equal opportunity provisions applicable to this Agreement.
 11. **Audits** Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A-133, Audits of States, Local Governments and Non-Profit Organizations."

This Agreement shall continue in effect until June 30, 2018, unless cancelled by one of the parties giving thirty (30) days written notice of intent to cancel to the other. Notice of cancellation shall be sent to the contact person described herein. This intergovernmental agreement may be amended if mutually agreed upon, in writing, by both parties.

IN WITNESS THEREOF, the parties have duly executed this agreement as of the date written above.

<u>Clackamas Education Service District</u> Agency  <u>Jada Rupley, Superintendent</u> Date: <u>6.29.18</u>	<u>Clackamas County</u> Partner Program <u>Board of County Commissioners</u> Date: _____
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Clackamas County Juvenile Department
 Partner Program

Christina L. McMahan, Director
 Date: 7/3/18



Laura Zentner, CPA

Director

BUSINESS AND COMMUNITY SERVICES

Development Services Building

150 Beaver Creek Road, Oregon City, OR 97045

July 12, 2018

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of an Intergovernmental Agreement with the City of Gladstone
to provide Library Director Services

Purpose/Outcomes	Provide temporary Library Director services to the City of Gladstone until Gladstone Public Library operations are transferred to the County.
Dollar Amount and Fiscal Impact	\$63,832 in revenue, credited to the BCS Oak Lodge Library program
Funding Source	N/A - Revenue
Duration	July 13, 2018 through June 30, 2019
Strategic Plan Alignment	<ul style="list-style-type: none">• Build public trust through good government• Build a strong infrastructure• Grow a vibrant economy• Ensure safe, healthy and secure communities
Previous Board Action	<i>10/12/2017 Business Meeting</i> – Approval of Settlement Agreement with City of Gladstone <i>2/15/2018 Business Meeting</i> – Approval of Amendment No. 1 to the Settlement Agreement with the City of Gladstone
Contact Person	Laura Zentner, <i>BCS Director</i> , 503-742-4351

BACKGROUND:

In October 2017, the County and the City of Gladstone entered into a Settlement Agreement which contemplates the operation and construction of two new libraries, one located within the City of Gladstone and one located within the Oak Lodge Library service area. Both libraries will be managed and operated by the County.

On May 15, 2018, City of Gladstone voters approved ballot measure 3-530, which provided necessary Charter approval for the implementation of the Settlement Agreement. County and City staff have begun the planning process to transfer library operations and anticipate the transfer of Gladstone Library operations to the County to be complete in fiscal year 2019/2020.

Following the May 15, 2018 election, the City of Gladstone's Library Director resigned and the Gladstone Public Library is currently operating without a Library Director or manager. The City has requested that the County provide temporary Library Director Services from July 13, 2018 through June 30, 2019, or until such time as the County assumes full management and operation of the Gladstone Library.

Under the Intergovernmental Agreement (IGA), the County will provide Library Director Services not to exceed an average of 20 hours per week. These services will be performed by the current

Oak Lodge Library Director, Mitzi Olson. In consideration, the City of Gladstone will pay the County \$15,958 on a quarterly basis, representing half of Director Olson's salary and benefits.

By offering temporary Library Director Services during this transition period, both communities can immediately begin realizing some of the efficiencies envisioned by the Settlement Agreement. Providing these services will minimize the disruption of library operations, maintain the quality of library services to the community of Gladstone during this transitional period, as well as facilitate planning and preparation for the full transfer of services from the City of Gladstone to the County.

The City of Gladstone and the County intend to enter into a separate IGA for the ongoing management and operation of the Gladstone Public Library starting in fiscal year 2019/2020. That IGA will be presented to the Board at a later date.

RECOMMENDATION:

Staff recommend that the Board of County Commissioners approve the Intergovernmental Agreement to Provide Library Director Services and authorizes the BCS Director or designee to execute all documents necessary to effectuate the same.

ATTACHMENTS:

1. Intergovernmental Agreement to Provide Library Director Services
2. Settlement Agreement between Clackamas County and the City of Gladstone
3. Amendment No. 1 to the Settlement Agreement between Clackamas County and the City of Gladstone

Respectfully submitted,

Laura Zentner, Director

INTERGOVERNMENTAL AGREEMENT TO PROVIDE LIBRARY DIRECTOR SERVICES

THIS INTERGOVERNMENTAL AGREEMENT ("Agreement") is made and entered into as of the last date of signature indicated below (the "Effective Date"), by and between Clackamas County ("County"), a political subdivision of the State of Oregon, and the City of Gladstone ("City"), an Oregon municipal corporation (collectively, the "Parties" and individually "Party").

RECITALS

- A. Pursuant to ORS Chapter 190.010, governmental entities such as County and City are authorized to enter into written agreements for the performance of any or all functions and activities that either Party has the authority to perform on its own.
- B. The City currently operates a library within the Gladstone Library Service Area. The County currently operates a library within the Oak Lodge Service Area. The City and County will be entering into a separate Intergovernmental Agreement for the County to operate both the Gladstone and Oak Lodge Service Areas pursuant to a settlement agreement in the case Gladstone v. Clackamas County, Clackamas County Circuit Court Case No. 16CV27287.
- C. This Agreement is for the temporary provision of Library Director Services to the City by the County.

NOW THEREFORE, the Parties agree as follows:

TERMS

- 1. **Effective Date.** This Agreement is effective July 13, 2018 and terminates June 30, 2019 or as provided in paragraph 6.
- 2. **Consideration.** The City will pay the County \$15,958 quarterly. This figure represents half of salary and benefits of the current Oak Lodge Library Director, Mitzi Olson;
- 3. **Scope of Work.** Services will not exceed an average of 20 hours per week. Duties of the Library Director may include, but not limited to the following:
 - a. Plans, coordinates and implements library patron services for the Gladstone Library; determines nature and extent of library programs, collection development and acquisitions and specific services provided to the public;
 - b. Prepares annual budget and work plan; plans, implements and monitors

budget expenditures; researches and initiates proposals for grants and other funding resources; supervises and monitors purchases and contracts conducted by library staff;

- c. Directs the management of the Gladstone Library; establishes methods and procedures for daily library operations; sets general staffing schedules and library hours of operations;
 - d. Hires and supervises professional and clerical staff; prepares performance evaluations; recommend and administers progressive discipline; conducts and/or facilitates staff training and development programs; promotes cooperative team efforts among staff and with other City departments; motivates employees to provide quality service to citizens;
 - e. Participates in cooperative programs and services with other libraries, County and City departments, businesses and other agencies; establishes level of participation in auxiliary activities; represents the library on committees, advisory boards, and at meetings;
 - f. Promotes community awareness and support of library programs; represents the Gladstone Library with community and social service organizations; develops volunteer programs and supervises volunteer recruitment and training; and
 - g. Provides staff support to the Library Board; researches and provides statistical and written reports as requested; compiles data for special federal and state reports.
4. **Notice.** Any notice under this Agreement shall be in writing and shall be effective when actually delivered or when deposited in the mail, addressed to the Parties as follows:

Liaison from City for the Agreement will be:

Jacque Betz
City Administrator
City of Gladstone
525 Portland Ave.
Gladstone, OR 97027
(503) 557-2769
betz@ci.gladstone.or.us

Liaison from County for the Agreement will be:

Laura Zentner

Director, Business & Community Services
Clackamas County
150 Beaver Creek Rd.
Oregon City, OR 97045
(503) 742-4351
lzentner@clackamas.us

5. **Staffing and Responsibility.** Parties shall continue to serve as employer of their respective employees. However, while County's employee is serving as Library Director for City she/he will be an agent of the City for the purposes of the Oregon Tort Claims Act.
6. **Termination of Agreement.** This Agreement shall continue in effect as described in paragraph 1 above, or until terminated by either party as provided herein. Either Party may terminate this Agreement by providing thirty (30) days' notice in writing to the other Party. In the event of termination of the Agreement, City shall pay all costs and fees required under this Agreement which are incurred, up until the date of termination. Such termination shall be without prejudice to any obligations or liabilities of either party accrued prior to such termination.
7. **Amendment Provisions.** The terms of this Agreement may be amended by mutual agreement of the Parties. Any amendment shall be in writing, shall refer specifically to this Agreement, and shall be executed by the Parties.
8. **Defense and Indemnification.** Subject to the Oregon Constitution and the limits of the Oregon Tort Claims Act, each Party agrees to hold harmless, defend, and indemnify the other Party, its officers, employees and agents against any and all claims, demands, actions or suits (excluding all attorneys' fees and costs) arising from this Agreement where the claim, suit, action, loss, damage, injury or liability is attributable to the acts or omissions of the indemnifying Party, its officers, employees or agents. Nothing in this section shall require a Party to indemnify the other Party from liability arising from the sole negligence of the other Party, its officers, employees, or agents.
9. **Governing Law and Forum.** The Parties expressly agree that this Agreement shall be governed and interpreted in accordance with the laws of the State of Oregon, without giving effect to the conflict of law provisions thereof. Any litigation between the County and the City arising under this Agreement or out of work performed under this Agreement shall occur, if in the state courts, in the Clackamas County court having jurisdiction thereof, and if in the federal courts, in the United States District Court for the District of Oregon.
10. **Assignment.** Neither party shall assign this Agreement, in whole or in part

except by operation of law, or any right or obligation hereunder, without the prior written approval of the other, which may be granted or withheld in its sole and absolute discretion.

- 11. Severability.** If any provision of this Agreement is found to be unconstitutional, illegal or unenforceable, this Agreement nevertheless shall remain in full force and effect and the offending provision shall be stricken. The Court or other authorized body finding such provision unconstitutional, illegal or unenforceable shall construe this Agreement without such provision to give effect to the intentions of the parties to the maximum extent possible.
- 12. Integration.** This Agreement contains the entire agreement between the County and the City on this subject matter and supersedes all prior written or oral discussions or agreements.
- 13. Waiver.** The County and the City shall not 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 be of the same nature as that waived.
- 14. Third Party Beneficiaries.** The County and the City are the only parties to this Agreement. Nothing in this Agreement gives or shall be construed to give or provide any benefit, direct, indirect or otherwise, to third parties unless such third parties are expressly described as intended to benefit from its terms.

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

CLACKAMAS COUNTY

CITY OF GLADSTONE

Jim Bernard, Chair
Board of County Commissioners

Name:
Title:

Date: _____

Date: _____

Attest: Recording Secretary

Attest:

Date

Date

Approved as to form

Approved as to form

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT ("Agreement") is made by and between the City of Gladstone ("City") and Clackamas County ("County"). The Effective Date of this Agreement is the date upon which the last signature is obtained between the parties.

RECITALS

WHEREAS, in November 2008, voters in Clackamas County authorized the formation of the Library District of Clackamas County ("Library District") to provide stable funding for library services throughout Clackamas County by collecting District-wide property taxes and distributing those funds directly to library service providers;

WHEREAS, in August 2009, Library District entered into an intergovernmental agreement to distribute Library District tax revenue to library service providers ("Master IGA"), including the City;

WHEREAS, as part of the preparatory process for the formation of the Library District, County proposed a one-time contribution from the County general fund to each city providing library services in the Library District;

WHEREAS, in April 2011, the City and County entered into an intergovernmental agreement in which the County agreed to provide the City with a \$2.5 million capital contribution ("Capital IGA"); both the Master IGA and the Capital IGA contemplate the City constructing one new library to provide library services to City residents and residents of unincorporated Oak Lodge;

WHEREAS, soon thereafter, the County distributed the \$2.5 million to the City to fund a new library on Webster Road ("Webster Road Library");

WHEREAS, in April 2012, City electors approved two new charter provisions that require the Gladstone City Council to submit to the electors for approval any capital project that requires a bond or any project of more than \$1 million, thus requiring the Gladstone City Council to submit the plan for the Webster Road Library to the City's electorate;

WHEREAS, in November 2012, the City's electors rejected the Webster Road Library project and, pursuant to the County's request, City returned the \$2.5 million capital contribution to the County, less \$1 million the City previously spent developing the Webster Road Library;

WHEREAS, the parties agreed County would hold the remaining \$1.5 million ("Capital Contribution") in trust for the City while the City developed an alternative plan for library services for City and Oak Lodge residents;

WHEREAS, between November 2012 and June 2014, City and County discussed alternatives for the proposed library;

WHEREAS, in November 2014, City electors approved Ballot Measure 3-446 ("BM 3-446"), which authorized the construction of a 13,000 to 16,000 square foot library to be located on Portland Avenue in Gladstone between Gladstone High School and the Clackamas River;

WHEREAS, BM 3-446 included a prohibition against using “City/urban renewal funds” to “construct/operate” the new library;

WHEREAS, in February 2016, City submitted a capital plan to County and requested the County distribute the remaining \$1.5 million;

WHEREAS, in March 2016, County responded by asserting City’s capital plan was insufficient under the Capital IGA and providing City notice of its intent to terminate the Capital IGA in September 2016;

WHEREAS, in June 2016, City submitted to County a supplemental capital plan and again requested County distribute the remaining funds;

WHEREAS, in August 2016, County again refused to distribute the funds; and

WHEREAS, on August 22, 2016, City filed a breach of contract complaint against County in Clackamas County Circuit Court; County answered the complaint in September 2016 with affirmative defenses and a breach of contract counterclaim (Case No. 16CV27287, “Lawsuit”); and

WHEREAS, the Clackamas County Circuit Court set the case for trial on September 5, 2017;

WHEREAS, on June 20, 2017, the parties jointly requested a stay of further proceedings and discovery in the Lawsuit to commence settlement discussions;

WHEREAS, during this time, elected and administrative officials from both parties met to discuss possible solutions for library services in the Gladstone/Oak Lodge service area;

WHEREAS, in August 2017, the parties discussed two “Concept Options” for consideration;

WHEREAS, this Agreement contemplates implementing Concept Option A (defined below) in a manner that is equitable and beneficial for members of both the Gladstone and Oak Lodge library service areas such that citizens will receive the Threshold level of service called for in the Master IGA;

WHEREAS, proceeding with this Agreement is intended to provide a clear framework for a two library solution for both the Gladstone and Oak Lodge communities while providing robust and meaningful opportunities for public engagement and input both in the implementation of Concept Option A and the operation of both libraries contemplated thereunder going forward; and

WHEREAS, the parties now agree that it is in their best interest to settle the Lawsuit and work together to find a library solution in accordance with the terms of this Agreement.

NOW, THEREFORE, the City and County agree as follows:

1. Dismissal of Lawsuit.

1.1. In consideration of the promises and obligations of this Agreement, including the parties’ good faith obligation to implement Concept Option A (defined in Section 2.1 below), City will dismiss the Lawsuit within ten (10) days of its Effective Date with prejudice, without an award to any party, and with the parties bearing their own costs, expenses, disbursements and attorneys’ fees.

2. Concept Option A.

2.1. City and County commit to pursuing and implementing "Concept Option A" as described in this section and in Exhibit A, attached and incorporated into this Agreement. For purposes of clarity, the parties agree that Concept Option A contemplates that two new libraries will be constructed. The first would be in the City as more fully described in Section 2.2.3. The second will be located in unincorporated Clackamas County within the Oak Lodge library service area with a specific site to be determined after appropriate public input pursuant to Section 3.3. Both libraries will be jointly operated by Clackamas County in a collective manner to realize efficiencies and best provide library services to their collective patrons. Revenues distributed from the Library District for both the Gladstone and Oak Lodge service areas, including prior reserves, may be used to implement Concept Option A upon successful completion of the City obligations outlined in Section 2.2 and County obligations outlined in Section 2.3. Going forward, revenue generated by the Library District for both service areas will be distributed to Clackamas County and combined with the City contribution under Section 2.2.1 for the express purpose of supporting Concept Option A and the operation of the two library facilities for the benefit of their patrons.

2.2. City Obligations:

2.2.1. City Measure. City will submit a measure to its electors for the May 2018 primary election to authorize a roughly 6,000 square foot library located in Gladstone ("City Measure"). The measure will also specify that City will contribute approximately \$200,000 per fiscal year of general fund revenue, with increases indexed to the annual rate of increase of the City's property tax revenue, to fund operating costs of Concept Option A.

2.2.2. Amendments. City agrees to effectuate and support any amendments to the Capital IGA, the Master IGA, or the Master Order necessary to accomplish Concept Option A.

2.2.3. City Property. City acknowledges that one of the key premises of Concept Option A is that land currently owned by the City (the "City Parcel") will be made available as a location to construct a new 6,000 square foot library in the City. The City Parcel is the current location of Gladstone city hall, which will be made available after relocation of said city hall. The City agrees to make the City Parcel or, in its sole discretion, a similarly sized and located parcel of land available to the County for construction of the planned library at a rate of \$1 per year leasehold interest for a period at least as long as any debt associated with implementation of Concept Option A.

2.3. County Obligations:

2.3.1. Amendments. County agrees to effectuate and support any amendments to the Master Order, Capital IGA and the Master IGA necessary to accomplish Concept Option A.

2.3.2. County Measure. If an election is required to effectuate any amendments to the Master Order, Capital IGA or the Master IGA, the County will submit a measure to voters ("County Measure") for the May 2018 election.

2.3.3. No Other Entities. The City and County acknowledge that they are the only parties to this Agreement, and that they are not committing on behalf of any other entities with respect to the subject matter hereof. Specifically, the County is not committing to any particular course of action on behalf of North Clackamas Parks and Recreation District, for which it serves as the governing body, by agreeing to Concept Option A specifically or this Agreement generally.

3. Timeframes.

3.1. Measures. Both parties agree to submit any necessary measure to the County Election Official no later than the final submission date for local governments to file the ballot title with the County Election Official for the May 2018 election.

3.2. Amendments. Both parties agree that any necessary amendments to the Master Order, Capital IGA and the Master IGA will occur no later than six (6) months after the County Elections Office certifies the elections results for the May 2018 election.

3.3 Public Involvement.

3.3.1. The parties acknowledge that Concept Option A is a general strategy that has many details to be determined. The parties commit to a robust and transparent public engagement process to allow input on such details, including but not limited to location of the two libraries, size, level of services anticipated, and other issues and amenities as may be of interest to the public. This involvement will specifically include the Oak Lodge Board of Trustees, the Gladstone Library Board, and the Library District Advisory Board, whom each shall have the specific opportunity to provide input on the implementation of Concept Option A and, if desired, enhanced delivery through some degree of additional funding as suggested under Concept Option B. The parties agree to share such public input with each other in coordinating the delivery of the best possible library services to the citizens in the Oak Lodge/Gladstone service areas.

3.3.2. With respect to City, the location and size of the library may only deviate from the location and size described in Section 2.2.3 of this Agreement if the City, in its sole discretion, provides to County a parcel of land similar in size and location to the City Parcel and decides, in its sole discretion, to allow a library facility in the City to be less than 6000 square feet.

4. Contingencies.

4.1. Failure to Submit County Measure. If County fails to submit County Measure, or fails to use the appropriate procedure to submit County Measure, to the electors within the timeframe specified above, County will pay City a lump sum of three hundred sixty thousand dollars and no cents (\$360,000.00) by March 31, 2018 for the City to use for library purposes.

4.2. County Measure Fails. If County Measure fails, County will pay City a lump sum of three hundred sixty thousand dollars and no cents (\$360,000.00) within thirty (30) days of the County Election's Official certifying the election results for the City to use for library purposes.

4.3. Failure to Submit City Measure or City Measure Fails. If City fails to submit City Measure to the electors within the timeframe specified above or if City Measure fails, City is not entitled to any lump sum payment from County; however, City's current service population, including the residents in the unincorporated area currently within City's service population, will continued to be served by City and City will continue to receive District revenue as specified in the Master IGA.

4.4. Master IGA. If County Measure is approved and County determines the Master IGA must be amended to effectuate Concept Option A and the parties to the Master IGA fail to amend it within six (6) months of County Elections Office certifying the election results, County will pay City a lump sum of three hundred sixty thousand dollars and no cents (\$360,000.00) for the City to use for library purposes within thirty (30) days of a written demand from City.

5. Capital Contribution.

5.1. In Trust. County agrees to continue holding the Capital Contribution in trust until such time as County uses the funds to effectuate Concept Option A. However, if any contingency under Section 4 of this Agreement occurs and triggers an obligation for the County to pay City, the County will pay the City three hundred sixty thousand dollars and no cents (\$360,000.00) as

described in Section 4 above. Full implementation of Concept Option A, an expanded service plan including a variation as described in Section 5.2 below, City's non-performance under Section 4.3, or payment to the City of three hundred sixty thousand dollars and no cents (\$360,000.00) as required by any of Sections 4.1, 4.2, or 4.4 above shall be considered satisfaction of the terms of this Agreement and further will remove the restrictions on funds pursuant to this Section 5.1.

5.2 Additional Capital. The parties agree that nothing in this Agreement shall be understood or interpreted to prevent or restrict either party from choosing to enhance either of the two capital facilities anticipated under Concept Option A, up to and including the proposal or inclusion of capital dollars from or through additional service districts and/or general obligation bonds such as discussed under Concept Option B or otherwise, such as a local improvement district. To the extent there are additional capital contributions to either the City library facility or the unincorporated area library facility, such contributions shall not result in a reduction of or substitute for funds allocated under Concept Option A but rather be supplemental thereto. Capital contributions in addition to the amounts described in Concept Option A are the sole responsibility of the party seeking additional capital contributions.

6. **Release of Claims.**

6.1. Conditioned on the full satisfaction of the City's and County's obligations under this Agreement, each party releases the other from any and all claims it might otherwise have against the other relative to the Master IGA, Capital IGA or the Capital Contribution including, without limitation, any and all claims for principal, interest, fines, penalties, delinquency charges, or other amounts due.

7. **General Provisions.**

7.1. No Third-Party Rights. There are no third-party beneficiaries of this Agreement and nothing in this Agreement is intended to offer or confer any rights or remedies under or by reason of this Agreement on any person(s) other than the parties to it.

7.2. Entire Agreement. This Agreement constitutes the entire agreement and understanding concerning the subject matter hereof between the parties, and supersedes and replaces all prior communications, negotiations, representations, proposed agreements and agreements, whether written or oral.

7.3. Authority. Each party executing this Agreement represents and warrants that (a) it has obtained all necessary consents and approvals prior to its execution; and (b) that it has not assigned or transferred, or purported to assign or transfer, to any other person or entity any of the rights or obligations contained within this Agreement.

7.4. Successors. The terms of this Agreement are binding upon and inure to the benefit of the parties and the past and present agents, servants, officers, directors, employees, trustees, representatives, shareholders, parent and subsidiary corporations, successors, heirs, administrators, insurers, and assigns of each.

7.5. Severability. If any provision of this Agreement is deemed unlawful or unenforceable, such provision is fully severable, and the remainder of this Agreement remains in full force and effect.

7.6. Modifications and Amendments. This Agreement may not be altered, modified, or amended without the approval of each party's governing body and the express written consent of both parties.

7.7. No Waiver. Any failure by any party to enforce any provision of this Agreement, or to require at any time performance by the other party of any of the provisions hereof during the pendency of this Agreement, will in no way affect the validity of this Agreement, nor any part

hereof, and will not be deemed a waiver of the rights of any party hereinafter to enforce any and each such provision.

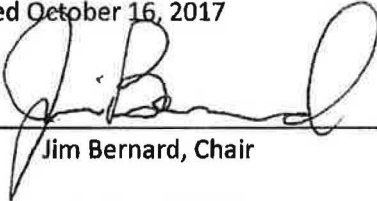
- 7.8. Photocopies Effective As Original. The executing parties agree that a photocopy, facsimile copy, or other signed copy of this Agreement is as effective as the original.
- 7.9. Counterparts. This Agreement may be signed in counterparts with the same force and effect as if all signatures were collected on the same original.
- 7.10. Costs and Expenses. Each party agrees to bear its own costs, expenses and attorney's fees relating to the Lawsuit.
- 7.11. Further Assurances. The parties agree to cooperate fully and execute any further documents, and take any further actions, as may be reasonable and necessary in order to carry out the purpose and intent of this Agreement.
- 7.12. Headings and Titles. Section headings and titles are organizational aids, and, as such, may not be used to interpret this Agreement or the language of any of the provisions herein to the extent that they contradict any of the more specific provisions of the paragraphs herein.
- 7.13. Construction. This Agreement will not be construed against its drafter, but rather will be construed as if both parties drafted it.

[SIGNATURES ON FOLLOWING PAGE]

SIGNED:

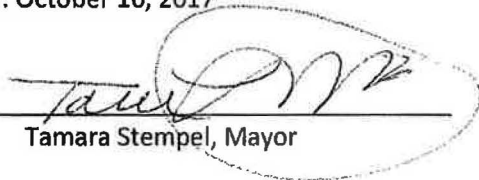
FOR CLACKAMAS COUNTY

Dated October 16, 2017

By: 
Jim Bernard, Chair

FOR CITY OF GLADSTONE

Dated: October 16, 2017

By: 
Tamara Stempel, Mayor

Attachment – Concept Options A & B

CONCEPT OPTION A - JOINT GLADSTONE/OAK LODGE LIBRARY OPERATION (one service area with uniform services) -- debt paid from operating cash and use of \$3.5 reserves		
	Oak Lodge	Gladstone
Population	38,998	11,505
Building Square Feet (.5 per capita)	19,500	6,000 (rounded up)
Estimated Building Cost @ \$300/Square Foot	\$5.9 Million	\$1.8 Million
Estimated Annual Debt – \$4.2 Million Bond Issuance	\$310,000 20 year bond (to be paid from operating revenue) 3.5% Interest Rate	
Revenue Bond Rate	No impact to citizens (debt paid from operating cash)	
Annual Operating Revenue –	\$1,281,502 – Oak Lodge \$700,159 – Gladstone <u>\$200,000</u> – Gladstone General Fund	
Per Capita before debt = \$43.20	\$2,181,661	
Per Capita after debt = \$37.06	(\$310,000) – Annual Debt <u>\$1,871,661</u> Operating Revenue for both facilities	

Assumptions:

- Build two new Libraries
 - Gladstone
 - Oak Lodge
- Change Master Order - \$3.5 Million Reserve to be used for capital construction
- \$4.2 Revenue Bond – capital construction
- No change in service boundary
- IGA for County to manage operations of both facilities
 - More efficient operations; staff sharing; economies of scale
 - Need to forecast operating costs of jointly running both libraries
 - Gladstone employees to become County employees?
- Joint construction of both buildings
 - IGA for construction/ownership/citizen involvement
 - Use of same contractor
 - Use of same Design/Landscape Architect firm
- Communication Plan/PGA to assist
 - Citizens
 - OL Library Advisory Group
 - Gladstone Advisory Group
- Gladstone – Measure to repeal current GF restrictions

CONCEPT OPTION B- JOINT GLADSTONE/OAK LODGE LIBRARY OPERATION (one service area with uniform services) – debt paid via GO Bond & Capital District Formation		
	Oak Lodge	Gladstone
Population	38,998	11,505
Building Square Feet (.5 per capita)	19,500	6,000 (rounded up)
Estimated Building Cost @ \$300/Square Foot	\$5.9 Million	\$1.8 Million
Estimated Annual Debt – \$6.7 Million GO Bond Issuance	\$500,000 20 year bond 3.5% Interest Rate	
GO Bond Rate	.13 cents per \$1,000 AV (\$39 per year for house with AV of \$300,000)	
Annual Operating Revenue –	\$1,281,502 – Oak Lodge \$700,159 – Gladstone <u>\$200,000</u> – Gladstone General Fund	
Per Capita before debt = \$43.20	\$2,181,661 = Annual Operating Revenue	

Assumptions:

- Create Capital District to construct two new facilities
 - Gladstone
 - Oak Lodge
- PGA to manage joint County/Gladstone Campaign to create new Capital District
 - Uniform rate/8/10/2017 11:18 AM County Counsel to assist with legal requirements
- County to issue GO Bond and manage payment of debt
 - \$6.7 GO Bond – capital construction
 - GO Rate estimate at .13 per thousand of AV
 - \$39 per year for house with AV of \$300,000
- Joint construction of both buildings
 - IGA for construction/ownership/citizen Involvement
 - Use of same Contractor/Design/Landscape Architect firm
- No change to Master Order – use \$1 Million for capital
- No change in service boundary
- IGA for County to manage operations of both facilities
 - More efficient operations; staff sharing; economies of scale
 - Need to forecast operating costs of jointly running both libraries
 - Gladstone employees to become County employees?
- Communication Plan/PGA to assist
 - Citizens/OL Library Advisory Group/Gladstone Advisory Group
- Gladstone – Measure to repeal current GF restrictions

Amendment No. 1 to Settlement Agreement

Between

Clackamas County and

The City of Gladstone

THIS AMENDMENT NO. 1 TO THE SETTLEMENT AGREEMENT ("Amendment") is made by and between the City of Gladstone ("City") and Clackamas County ("County"). The Effective Date of this Agreement is the date upon which the last signature is obtained between the parties.

WHEREAS, the City and County entered into that certain Settlement Agreement dated October 16th, 2017 (the "Agreement") resolving certain disputed matters; and

WHEREAS, the County has requested additional time to accomplish certain required actions in the Agreement for the benefit of both parties, and the City has expressed a willingness to do so; and

WHEREAS, this Amendment effectuates the proposed changes;

NOW THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. The Agreement's Sections 2.3.2, 3.1, 3.2, 4.1 and 4.4 are hereby amended and restated to read in their entirety:
 - 2.3.2. County Measure. If an election is required to effectuate any amendments to the Master Order, Capital IGA or the Master IGA, the County will submit a measure to voters ("County Measure") for the November 2018 election.
 - 3.1. Measures. City shall file any necessary measure to the County Election Official no later than the final submission date for local governments to file the ballot title with the County Election Official for the May 2018 election. County shall file any necessary measure to the County Election Official no later than the final submission date for local governments to file the ballot title with the County Election Official for the November 2018 election.
 - 3.2. Amendments. Both parties agree that any necessary amendments to the Master Order, Capital IGA and the Master IGA will occur no later than December 31, 2018.
 - 4.1. Failure to Submit County Measure. If County fails to submit County Measure, or fails to use the appropriate procedure to submit County Measure, to the electors within the timeframe specified above, County will pay City a lump sum of three hundred sixty thousand dollars and no cents (\$360,000.00) by October 31, 2018 for the City to use for library purposes.
 - 4.4. Master IGA. If the Master IGA must be amended to effectuate Concept Option A and the parties to the Master IGA fail to amend it by December 31, 2018, County will pay City a lump sum of three hundred sixty thousand dollars and no cents (\$360,000.00) for the City to use for library purposes within thirty (30) days of a written demand from City.

2. Except as set forth herein, the Agreement is affirmed and ratified.

SIGNED:


FOR CLACKAMAS COUNTY

Dated February 1st 2018

By: 
Jim Bernard, Chair

FOR CITY OF GLADSTONE

Dated: February 2nd, 2018

By: 
Tamara Stempel, Mayor



Dave Cummings
Chief Information Officer

Technology Services

July 12, 2018

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of ORMAP Intergovernmental Agreement Contract # 3712-18
with the Oregon Department of Revenue for
Digital GIS Tax Lot Conversion

Purpose/Outcomes	This IGA will provide funding to continue the conversion of paper survey documents and Assessment maps to a digital GIS database as required under ORS 306.135.
Dollar Amount and Fiscal Impact	This semi-annual IGA Contract is \$47,000 for this funding period. Amount varies with each ORMAP grant request due to funding availability. The County matches \$35,000 annually, typically 35% of the amount the State provides.
Funding Source	State of Oregon, Department of Revenue
Duration	Terminates June 30, 2019
Previous Board Action/Review	The County has participated in this program since 1999 with the BCC approval of IGA Contracts with the Dept. of Revenue twice a year in varying amounts.
Strategic Plan Alignment	1. Creation of a publicly available internet based data and document portal including all legally available data 2. Building public trust through good government
Contact Person	Eric Bohard, Tech. Services Mgr. – Technology Services 503-723-4814

BACKGROUND:

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

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

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

RECOMMENDATION:

Staff respectfully recommends that the Board of County Commissioners approves Intergovernmental Agreement Contract # 3712-18 with the State of Oregon Department of Revenue for the continued conversion of paper survey documents and Assessment maps to a digital GIS database.

Respectfully submitted,

David Cummings
Chief Information Officer

**DEPARTMENT OF REVENUE
ORMAP INTERGOVERNMENTAL AGREEMENT
CONTRACT #3712-18**

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

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

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

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

I. EFFECTIVE DATE OF AGREEMENT; AWARD; PROJECT COMPLETION

- A. Effective Date of Agreement. This Agreement shall become effective on the date this Agreement has been signed by every party and all required approvals have been obtained.
- B. Award. The Department shall provide funds in the amount of **\$47,000.00** (the "Award") to the County to fund all or part of the activities set forth in Exhibit A ("Proposal") which is attached hereto and by this reference made a part hereof. The part of the activities set forth in the Proposal which is funded by the Award shall be called the "Project". All of the activities set forth in the Proposal, whether funded by the Department or by other sources, shall be referred to as the "Total Project". (If there are no other funders beside the Department for the activities described in the Proposal, the Total Project is the same as the Project.) The Department shall not be obligated to provide to the County, and the County shall not use the Award other than for costs for the Project.
- C. Project Completion. County agrees to complete the Total Project in accordance with the terms and specifications of the Proposal by **June 30, 2019** ("Project Completion Date"). Final billing for the Project shall be submitted to the Department on or before **July 31, 2019**.

II. DISBURSEMENTS.

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

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

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

III. REPRESENTATIONS AND WARRANTIES

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

IV. CONDITIONS TO DISBURSEMENT

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

V. COVENANTS

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

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

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

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

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

VI. TERMINATION; REMEDIES

- A. Termination for Convenience. Either party may terminate this Agreement at any time upon thirty (30) days prior written notice to the other party; provided, however, that the County shall, within thirty (30) days of such termination, reimburse the Department for all funds disbursed by the Department hereunder to the extent that the amount of funds disbursed exceeds the amount of the Award multiplied by the percentage of the Project completed to the satisfaction of the Department; provided further that until the County has fully reimbursed the Department for such funds, the County shall comply with the terms of this Agreement.
- B. Termination Because of Non-Appropriation or Project Ineligibility.
1. The Department, at any time upon prior written notice to the County, may terminate this Agreement if the Department fails to receive funding or appropriations, limitations, or other expenditure authority at levels sufficient to allow Agency, in the exercise of its reasonable administrative discretion, to pay for the allowable costs of the Project to be funded hereunder or any state law, regulation or guideline is modified, changed or interpreted in such a way that the Total Project, or any portion of the Total Project, is no longer eligible for Award funds.
 2. In the event insufficient funds are appropriated by the County for its share of the costs of the Total Project and the County has no other lawfully available funds, then the County may terminate this Agreement at the end of its current fiscal year, with no further liability to the Department. The County shall deliver to the Department written notice of such termination within thirty (30) days of its determination of such shortfall.
- C. Termination for Default. The Department may, at any time upon thirty (30) days prior written notice to the County, terminate this Agreement if:
1. The design and implementation of the Total Project is not pursued with due diligence; or
 2. The cadastral portions of the Total Project do not conform to the Department of Revenue Oregon Cadastral Map System; or

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

VII. GENERAL PROVISIONS

- A. Force Majeure. Neither the Department nor the County shall be held responsible for delay or failure to perform when such delay or failure is due to fire, flood, epidemic, strike, public carrier, act of God, act of a public enemy or a public authority or a cause which cannot be reasonably foreseen or provided against.
- B. Persons Not to Benefit. No member of or delegate to Congress, resident commissioner, officer, agent or employee of the United States of America, member of the Oregon Legislative Assembly, elected official of the State of Oregon, or official, agent, or employee of the State of Oregon, or elected member, officer, agent, or employee of any political subdivision, municipality or municipal corporation of the State of Oregon shall derive any unfair knowledge or financial benefit from this Agreement that is not offered to others in a competitive process.
- C. No Third Party Beneficiaries. The Department and County are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.
- D. Successors and Assigns. The provisions of this Agreement shall be binding upon and shall inure to the benefit of the Department and County and their respective successors and assigns; provided however that the County may not

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

- E. Severability. The Department and the County agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular term or provisions held to be invalid.
- F. Notice. Except as otherwise expressly provided in this Agreement, any communications between the parties hereto or notices to be given hereunder shall be given in writing by personal delivery, facsimile, or mailing the same, postage prepaid, to the Department or the County at the address or number set forth on the signature page of this Agreement, or to such other addresses or numbers as either party may hereafter indicate pursuant to this Section. Any communication or notice so addressed and mailed shall be deemed to be given five (5) days after mailing. Any communication or notice delivered by facsimile shall be deemed to be given when receipt of the transmission is generated by the transmitting machine. Any communication or notice by personal delivery shall be deemed to be given when actually delivered.
- G. Counterparts. This Agreement may be executed in several counterparts, all of which when taken together shall constitute one agreement binding all parties, notwithstanding that all parties are not signatories to the same counterpart. Each copy of the Agreement so executed shall constitute an original.
- H. Governing Law; Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively, "Claim") between the Department and/or other agency or department of the State of Oregon and the County that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Marion County for the State of Oregon; provided, however, if a Claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this Section be construed as a waiver by the State of Oregon of any form of defense or immunity, whether it is sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any Claim or from the jurisdiction of any court. COUNTY, BY EXECUTION OF THIS CONTRACT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS.
- I. Merger Clause; Amendment; Waiver. THIS AGREEMENT CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE DEPARTMENT AND THE COUNTY ON THE SUBJECT MATTER HEREOF. NO MODIFICATION OR

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

DEPARTMENT:

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

COUNTY:

Clackamas County

By: _____
Joshua Hardage, Contracts & Procurement Manager

Date: _____

By: _____

Title: _____

Date: _____

Telephone: _____

Fax No: _____

EXHIBIT A

AWARD LETTER
COUNTY GRANT PROPOSAL



Oregon

Kate Brown, Governor

Department of Revenue
Property Tax Division
955 Center St NE
PO Box 14380
Salem, OR 97309-5075
www.oregon.gov/dor

June 7, 2018

Eric Bohard, Technical Services Division Manager
Clackamas County Technical Services
121 Library Court
Oregon City, OR 97045

Dear Mr. Bohard

I am pleased to inform you that the Department of Revenue has approved your request for funding through the ORMAP program. You will soon receive a contract to formalize the ORMAP grant agreement with the Department of Revenue. The agreement will be effective from July 1, 2018 through June 30, 2019.

Listed below are the deliverables as outlined in your grant request. In order to expedite the payment process for you, please use the "ORMAP Invoice" form, you can download a copy from the ORMAP site. Please state the correct contract number on the chart and complete the information requested for each task or deliverable.

Contract Number:		
Task	Deliverable	Award Amount
1	1,500 Taxlots	\$42,000.00
2	10 Control Points	\$5,000.00
Total		\$47,000.00

If you have questions, please contact the ORMAP Coordinator, Philip McClellan (503-586-8128).

Best wishes for a successful project.

With regards,

Bram N. Ekstrand
Property Tax Assistance and Oversight Section Manager
Oregon Department of Revenue

cc: County Assessor
DOR Finance Department
File

ORMAP Grant Application

Section I. County and Grant Information			
A. County: Clackamas		B. Funding Cycle: Spring 2018	
C. Project will help meet ORMAP Goal(s): 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 <input checked="" type="checkbox"/> 5 <input type="checkbox"/> 6 <input type="checkbox"/>		D. Fund Request: \$47,000	
Section II. Summary of Project			Department Assessment
A. Brief Overview of the Request			<input type="checkbox"/> Pass <input type="checkbox"/> Fail
This project is a continuation of Clackamas County's ORMAP tax lot re-mapping project. The funds requested for this period will be used to digitally capture, rectify, annotate, and prepare tax lots for map production using COGO techniques. With full funding, 1,500 rural and urban tax lots will be completed to ORMAP standards for this project period. In addition, 10 control points will be obtained.			
Scope and Deliverables			
Check	Deliverables	Brief description of the deliverables	
<input checked="" type="checkbox"/>	Tax Lot Conversion	Conversion of paper plats and surveys using COGO or digitizing techniques for rural tax lots to a GIS layer.	
<input type="checkbox"/>	Tax Map Conversion		
<input checked="" type="checkbox"/>	Control Points	10 points	
<input type="checkbox"/>	Development		
<input type="checkbox"/>	Other Assistance		
<input type="checkbox"/>	Other Deliverable		
<input type="checkbox"/>	Hardware/Software		
B. Projected Project Completion Date (projects should not exceed one year)			
June 30, 2019			
C. Total Costs of Project (add lines as necessary)			
Deliverable	Number of Items	Cost per Item	Total Cost
Tax Lot Conversion (COGO/ Annotate)	1500	\$28	\$42,000
Control points	10	\$500	\$5,000
County contribution (Detailed below)			\$40,000
Total for project			\$87,000
D. Partnerships and Contributions (add lines as necessary)			
Partner		Contribution	
Clackamas County Assessor's Office		\$15,000 - New plat maintenance, plat and deed research, quality control, cartographic QC.	
Clackamas County GIS		\$25,000 -QC/ prep for map production/rectify to control/project management/problem tax lot conversion	
A. Assessor's Signature & Date:		See File Copy	
F. Fiscal Coordinator - Name & Contact Number:		Eric Bohard 503-723-4814	

G. Project Coordinator – Name & Title:	Eric Bohard, Technical Services Division Manager
E-mail address:	ericboh@clackamas.us
Phone Number:	503-723-4814
Mailing Address:	Clackamas County Technical Services 121 Library Court Oregon City, OR 97045

Section III. Detail Project Information –Answer all questions

A. Overview

1. Describe what the project is trying to accomplish.

Clackamas County is continuing to undergo a tax lot enhancement project to increase the relative precision of our current tax lot GIS data layer. Though Clackamas County has a complete digital GIS tax lot layer, some of the previous GIS mapping efforts are simply cartoon representations of ownership tax lots and have a wide level of accuracy confidence. Hence, the focus of this project is to complete re-mapping tax lots in the County to meet the accuracy levels described in ORMAP technical specifications. In order to rectify these tax lots, ground control must be surveyed. In this project, 10 control points are required to be surveyed by the Clackamas County Surveyor's Office.

2. What part(s) of the county does this project cover (Township, Range, and Sections, if applicable)?

The project will cover newly created urban and existing rural and resource tax lots in selected parts of the County where acceptable survey ground control exists. As new subdivisions are recorded within timeframe of this project, typically in the urban growth boundary (i.e. urban level tax lots), those tax lots are added to the GIS database. New urban tax lots are added first then rural tax lots. The request for control affects rural tax lots.

3. What is the status/outcome of all previously funded ORMAP projects? (Please include funding cycles and a "status map" of your county.)

Prior to the fall 2006 ORMAP contract, all efforts were to re-map urban tax lots. Since then, beginning with the spring 2007 contract, the efforts have shifted to rural tax lots. As new urban or rural tax lots are created, they are immediately brought into the digital GIS database to ORMAP standards through our normal tax lot maintenance process and are not part of any ORMAP funding request. Annexations, primarily the City of Happy Valley, are creating a need to convert rural tax lots to urban ORMAP standards. A breakdown of our status of the funded projects is as follows:

Urban/UGB Tax Lots: (\$270,500 approved funding - previous contracts since the inception of ORMAP not including the contracts below)

Total Urban Tax Lots:	113,089
Tax Lots Completed (COGO, rectified, and annotated)	113,089 (100%)

Rural Tax Lots: (\$552,215 approved funding, contracts 1801, 1849, 1922, 2295, 2351, 2421, 2467, 2507, 2876, 2966, 2995, 3036, 3064, 3107, 3150, 3374, 3436-15, 3536-16, 3574-16, 3625-17,)

Total Rural Tax Lots:	45,567
Tax Lots Completed:	39,779 (87%)

Resource Tax Lots: (no funding specifically requested)

Total Resource Tax Lots:	896
Tax Lot Completed:	559 (62%)

4. Describe, in detail, your technical approach to the project (such as, mapping methodology).

We will use COGO tools to re-map those areas that have suitable data. Trying to re-map every rural tax lot using COGO tools is not practical since actual surveys and plats are widely scattered in the rural area. In those areas where COGO tax lot capture is practical, high quality surveyed ground control will be acquired. The process and criteria used to COGO capture rural plats is modeled on the urban tax lot capture design we developed. These captured platted areas will act as "anchors" or a foundation as areas with known accuracy. Next, deeds, surveys,

orthophotography, and existing tax lot maps are used to “fill in” the areas in-between the anchors. As we build the rural tax lots between the anchors, ground control will be acquired more sparsely to insure the non-platted rural tax lots are within ORMAP accuracy standards. COGO methods will be used whenever practical. The use of ESRI’s Parcel Fabric also will be used whenever possible.

Control points will be surveyed by professional, licensed surveyors in accordance with professional practices and State law.

5. Describe the project deliverables.

This project will deliver 1500 additional re-mapped tax lots, fully annotated, using our technical approach and rectified to control meeting ORMAP rural tax lot standards. As new subdivisions are created, typically in the urban areas, those tax lots are mapped to ORMAP urban standards under our maintenance process.

10 surveyed control points will be captured.

6. Who will be doing the work (county staff, contractor, or DOR staff)? Please define their roles.

County staff will be used to complete 100% of this project. They will capture, annotate, and QC tax lots to ORMAP standards. Control points will be obtained from County staff.

7. How will the county cartographer integrate the deliverables into the County’s maintenance plan?

This project develops the base digital GIS base layer for tax lots. Once created, the County Cartographer will use various tools developed for tax lot maintenance to update any changes that might occur for the tax lots re-mapped in this project. The project’s deliverables will be part of the overall countywide GIS tax lot layer. The deliverables from this project will be used to create the tax maps, directed exclusively by the County Cartographer.

8. Provide a project timeline with milestones or completion dates.

To date, all urban tax lots are completed. As urban tax lots are created during this project period, those are completed under daily maintenance. This project deals only with rural tax lots, of which 87% are completed. Based on current resources and anticipated ORMAP funding, we estimate completion of Goal 4 in December 2019. Thus far, we have remapped to ORMAP specifications 96.2% of the total. To date, 153,427 tax lots have been captured and annotated in our GIS, leaving approximately 6,125 tax lots comprising of rural and resource level tax lots to complete. Of that number, 3,336 are in progress and near completion leaving 2,789 tax lots to begin.

Milestones are defined as the completion of each of these tasks within each phase.

- Plats are gathered from source County offices
- Capture plats and surveys with the most appropriate method (COGO or digitizing)
- Plats and surveys are quality controlled
- Work with the County Surveyor to acquire ground control
- Tie plats and surveys to ground control
- Annotation
- Final quality control

9. Does this project have any partnerships? If yes, please identify them.

Yes. The deliverables from this project are used by many agencies as a base to map infrastructure and other details. Typical agencies outside the County who have entered into partnership agreements include cities, water districts, utilities providers, school districts, community planning organizations, and a variety of state and federal agencies. Additionally, Clackamas County has developed boundary agreements with all our County neighbors. We have agreements covering 100% of the area that bounds our county.

10. Describe any innovations utilized by this project.

We use the tools developed by the ORMAP tools group and have participated in that group from its inception either to be part of the application development team or as a test group. We are also using the latest tools

developed by ESRI to stay current with ArcGIS releases. Finally, the deliverables from this project are allowing the Assessor's Cartographers to retire the old mylar tax maps and completely replace them with a digital product. Recently, we started utilizing ESRI's Parcel Fabric schema.

11. Detail Costs (who is paying for what).

Approximately 54% of this project is funded by ORMAP. The remaining will come from County resources. The County Assessor's Office provides labor to input new plats for the maintenance portion of the over-all ORMAP project plus QC. Direct staff time on the ORMAP project will comprise the bulk of expenses for this project and will be evenly split between the County and ORMAP.

B. Quality Control

1. Who will be responsible for quality control (QC)?

All Quality Control is the responsibility of Clackamas County's Departments of Assessment and Taxation and Technology Services, GIS Division.

2. Will county cartography staff review the deliverables?

Yes. The cartography staff in the Assessor's Office performs the final QC. They insure all components are present and correct for map production to DOR and Clackamas County standards.

3. Will there be a review by Department of Revenue's cartography staff?

That is arranged by A&T cartographers. DOR Cartography staff has come to the county to review our technique and process and are always welcome to see what we are doing with tax lot capture.

4. Describe QC procedures.

The quality control process is very extensive. A quality control checklist was developed for those entering COGO information and for those checking it. Ground control is evaluated as to its level of survey accuracy for the plat rectification process. If customary ground control is not available, rectified orthophotos are used. Plats controlled in this manner will be revisited when better ground control is obtained. Plats are never rubber sheeted. The County Surveyor resolves any errors that occur when rectifying to ground control (i.e. gaps and overlaps). In summary, all quality control efforts will meet or exceed ORMAP Technical Specifications.

C. Project Detail

1. Is this project an "edge matching project"? If so, how much of the county boundary will be completed?

No. 100% of edge matching has been completed with surrounding counties with prior projects and we have agreements with all our neighbors.

2. Is this project part of an ongoing or multi-phased remapping project?

Yes, this project is a continuation of our on-going re-mapping project as outlined in our Business Plan. In addition, this project is likely to be the first of three where ground control will be requested.

3. What percentage of the county tax lots and tax maps meet the ORMAP technical specifications?

	Total Countywide	Meet Tech Specs	Percent Complete
Tax Lots	159,552	153,427	96.2
Tax Maps	3,382	2,116	62.6

4. Upon completion of this project will your county meet goal 6 (100% of tax maps meeting technical specification)?

No, our anticipated completion date is December 2019, perhaps sooner.

5. Is this project part of a multi-county effort? If so, please explain.

No

6. Will the project cost be affected if it is not fully funding this cycle?
Yes. It will delay our overall completion time.

D. Data Availability

1. Does the county have a data sharing agreement with the State?
Yes

2. Identify any data restrictions or licensing issues.

All data produced under the ORMAP program is freely available through a Data Sharing Agreement to other government agencies. Clackamas County has entered into an IGA with the State for data sharing. All publication of this data, particularly via the Internet, must comply with all Clackamas County policies and disclaimers as adopted by County Administration or the Board of County Commissioners. All data is governed by a data licensing agreement. The public has access to digital tax lot lines freely over a GIS Data Portal.

E. Background Information

Any other information that you feel may help support the project.

F. Other Issues - Please identify.

We have entered areas of the County that have insufficient survey ground control to map tax lots to rural ORMAP standards. Acquiring this control will be time consuming and expensive. This may affect the progress towards our completion timeframe.

Submit completed forms to:

Mail	Contact Information
ORMAP Project Coordinator Oregon Department of Revenue Property Tax Division 955 Center St. NE Salem OR 97301-2555	Tel: 503-586-8128 Fax: 503-945-8737 or.map@state.or.us

G. Racial and Ethnic Impact Statement

RACIAL AND ETHNIC IMPACT STATEMENT

This form is used for informational purposes only and must be included with the grant application.

Chapter 600 of the 2013 Oregon Laws require applicants to include with each grant application a racial and ethnic impact statement. The statement provides information as to the disproportionate or unique impact the proposed policies or programs may have on minority persons¹ in the State of Oregon if the grant is awarded to a corporation or other legal entity other than natural persons.

1. The proposed grant project policies or programs could have a disproportionate or unique positive impact on the following minority persons:

Indicate all that apply:

- Women
- Persons with Disabilities
- African-Americans
- Hispanics
- Asians or Pacific Islanders
- American Indians
- Alaskan Natives

2. The proposed grant project policies or programs could have a disproportionate or unique negative impact on the following minority persons:

Indicate all that apply:

- Women
- Persons with Disabilities
- African-Americans
- Hispanics
- Asians or Pacific Islanders
- American Indians
- Alaskan Natives

3. The proposed grant project policies or programs will have no disproportionate or unique impact on minority persons.

If you checked numbers 1 or 2 above, on a separate sheet of paper, provide the rationale for the existence of policies or programs having a disproportionate or unique impact on minority persons in this state. Further provide evidence of consultation with representative(s) of the affected minority persons.

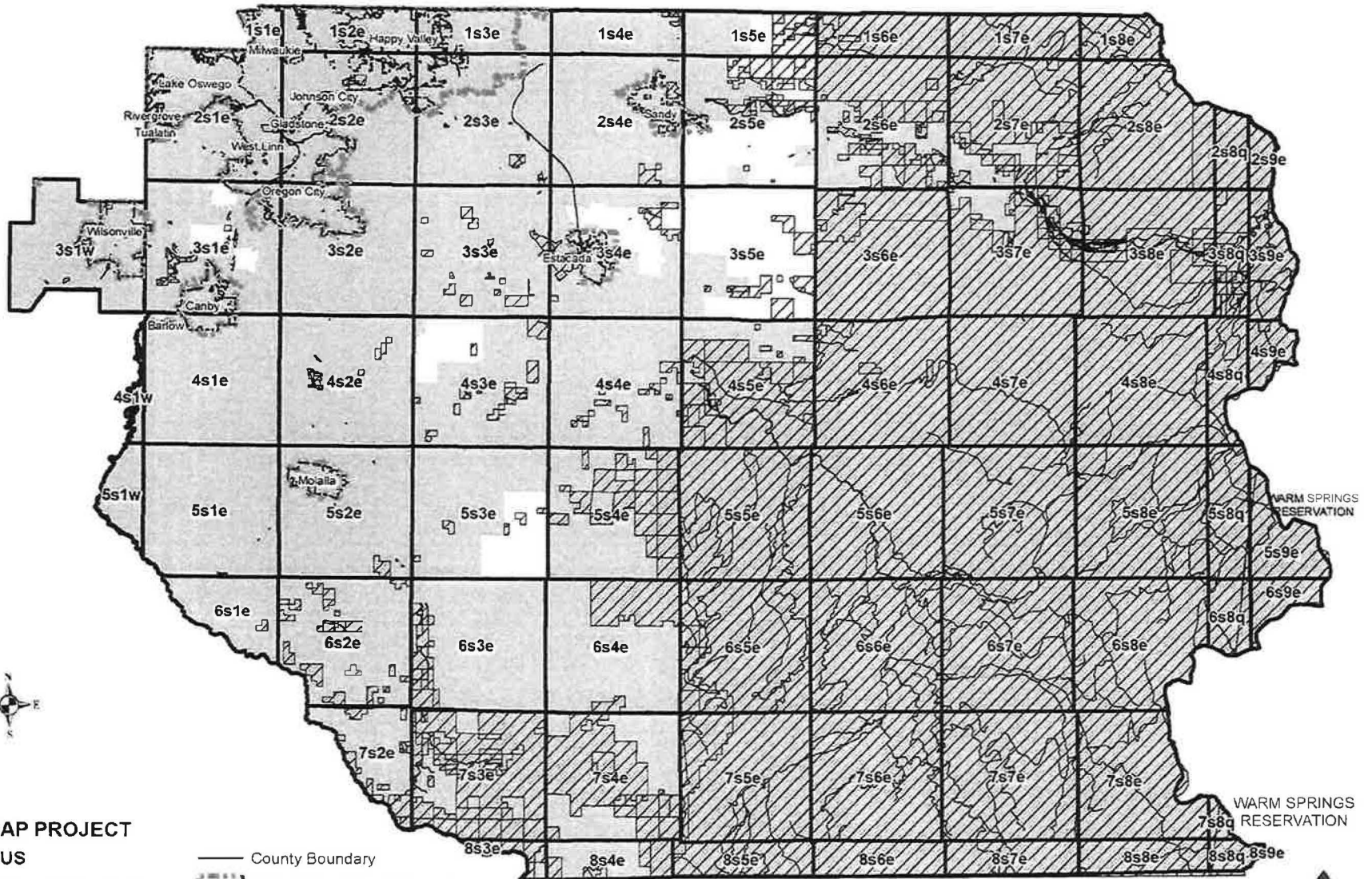
I HEREBY CERTIFY on this 21 day of March, 2018, the information contained on this form and any attachment is complete and accurate to the best of my knowledge.

Signature: _____

Printed Name: Eric Bohard Title: Technical Services Manager

¹“Minority persons” are defined in SB 463 (2013 Regular Session) as women, persons with disabilities (as defined in ORS 174.107), African-Americans, Hispanics, Asians or Pacific Islanders, American Indians and Alaskan Natives.

ATTACHMENT 1 ORMAP PROJECT STATUS MARCH 2018



ORMAP PROJECT STATUS

- Completed or In Progress
- Not Started
- Metro Urban Growth Boundary
- County Boundary
- USFS, BLM, and ODF Resource Lands





NORTH CLACKAMAS
PARKS & RECREATION DISTRICT

Administration

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

July 12, 2018

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

Members of the Board:

Approval of a Grant Agreement with the Oregon State Marine Board (OSMB)
as part of the Maintenance Assistance Program (MAP) for FY 2018-19

Purpose/ Outcomes	Allows NCPRD to participate in the OSMB's Maintenance Assistance Program (MAP) for FY 2018-19, which reimburses the District for maintenance of boating facilities.
Dollar Amount and Fiscal Impact	This Grant Agreement represents an additional \$4,750 of revenue.
Funding Source	A total of \$3,166.67 is required in matching funds, which will come from the NCPRD General Fund for the Maintenance Division.
Duration	July 1, 2018 through June 30, 2019
Previous Board Action	This grant award is reviewed and renewed annually by the Board.
Strategic Plan Alignment	<ul style="list-style-type: none"> - Building public trust through good government - Ensuring safe, healthy and secure communities
Contact Person	Scott Archer, <i>Director</i> , 503-742-4421 Kevin Cayson, <i>Park and Facilities Manager</i> , 503-794-8030

BACKGROUND:p

The North Clackamas Parks and Recreation District requests the approval of a grant agreement with the Oregon State Marine Board (OSMB) as part of its Maintenance Assistance Program (MAP) for FY 2018-19. The District has been awarded this grant on an annual basis since 1998.

The renewal of this grant allows the Oregon State Marine Board to assist NCPRD with maintenance funding at Milwaukie Bay Park (formerly Riverfront Park), which is managed by the District. This grant comes with a maximum value of \$4,750 and requires a match of \$3,166.67 from the NCPRD General Fund.

RECOMMENDATION:

Staff recommend the Board approve the grant agreement and authorize the Business and Community Services Director or their designee to execute the agreement and any documents necessary to effectuate the same.

ATTACHMENTS:

1. Allocation Certification Agreement Maintenance Assistance Program (MAP) 2018-19
2. Award Letter from Oregon State Marine Board
3. Approved Grant Application Lifecycle Form

Respectfully submitted,

Scott Archer, Director
North Clackamas Parks and Recreation District

**NORTH CLACKAMAS PARK DISTRICT
ALLOCATION CERTIFICATION AGREEMENT
MAINTENANCE ASSISTANCE PROGRAM (MAP) FY19**

This Maintenance Assistance Program (MAP) Allocation Certification Agreement is entered into by and between the State of Oregon, acting by and through the Oregon State Marine Board, hereinafter called "OSMB" and North Clackamas Park District, hereinafter called the "Recipient." In accordance with OAR 250-14-004, the parties agree to the following:

I. The Recipient certifies that:

A. A budget has been adopted that includes the MAP allocation amount of \$4,750.00 state funds for the fiscal year period of July 1, 2018, to June 30, 2019; and

B. The following Site Inventory lists facilities and site elements maintained by the Recipient; and

Site Inventory						
Site Name: Milwaukie Riverfront Park			Use Fee: \$0.00	Fee Reduction: 0%		
Funding Source: MAP	Size /	Points	Seasons	Months	Seasonal	Fee
Feature	Quantity	Possible	of Use*	of Use	Point Value	Adjusted
Flush Restroom		12	PSO-	9	\$1,050.00	\$1,050.00
Vegetation Maintenance		6	PSO	12	\$600.00	\$600.00
Garbage Can or Dumpster		6	PSO	12	\$600.00	\$600.00
Single Car Parking Stalls	19	0			\$0.00	\$0.00
Boat Trailer Stalls	20	12	PSO	12	\$1,200.00	\$1,200.00
Hard Surface Ramp, 1 Lane		6	PSO	12	\$600.00	\$600.00
Boarding Dock, total linear feet	220	7	PSO	12	\$700.00	\$700.00
<u>MAP Allocation for 7 site elements at Milwaukie Riverfront Park</u>					Allocation Subtotal:	\$4,750.00
					Fee Adjustment:	\$0.00
*Seasons of Use: P=Peak, S=Shoulder, O=Off; Minus (-) denotes partial season					MAP Grant:	\$4,750.00
Total Grant for North Clackamas Park District (1 site)				Total Allocation:	\$4,750.00	

C. MAP funds will be spent only to maintain improved marine facilities identified in the Site Inventory in accordance with MAP procedures and policies; and

D. During the season of use identified on the Site Inventory the facilities will be open and maintained for public use; and

E. The amount of any user fee, identified on the Site Inventory, that is presently charged or will be charged during the fiscal year, includes the highest of any entrance, day use, launch ramp, parking, transient moorage, or other fees paid, excluding annual passes or donations, and no fee will be charged for any vessel waste disposal system or floating restroom; and

F. OSMB will have access to all eligible boating facilities and maintenance expenditure and performance records upon request and the Recipient will cooperate during any audit; and

G. MAP funds will not exceed sixty-percent of the overall maintenance cost of eligible boating facilities; and

H. Matching funds do not include any cash or in-kind activities expended on campgrounds, marinas,

fuel stations, trails, picnic shelters, swim areas, or other large day-use components. The percentage of shared use has been documented for areas such as restrooms and parking that serve eligible marine facilities and other park uses; and

- I. MAP funds are principally targeted for labor, supplies, or contract services that will be expended at the eligible marine facilities. Expenditures for program administration, supervision, or other general service assessments will be limited to a maximum of fifteen-percent; and
 - J. MAP funds will not be expended for capital construction projects or used as match to other grants.
- II. The Recipient agrees:
- A. To provide a minimum of \$3,166.67 matching resources for state MAP funds.
 - B. That the MAP Program is designed to supplement funds expended at eligible marine facilities and the intent is to assist in improving the quality of maintenance at the facilities identified on the Site Inventory.
 - C. To immediately notify OSMB of any changes in operation or maintenance practices, fees, season of use, or public access. The Recipient agrees to reimburse OSMB any MAP funds deemed an overpayment as a result of such changes.
 - D. To reimburse OSMB any excess MAP funds not expended within the fiscal year that exceed the ten-percent maximum carry forward amount.
 - E. To provide at the end of the fiscal year an expenditure report for maintenance and operations outlining labor, supplies, materials, and services for all facilities identified on the Site Inventory.
- II. OSMB certifies that:
- A. It is authorized by ORS 830.150(2)(a) to provide MAP funds for annual maintenance of improved boating facilities.
 - B. It has sufficient MAP funds available within its current biennial budget and has authorized expenditure of MAP funds to the Recipient for the eligible marine facilities identified on the Site Inventory.

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

OSMB: State of Oregon, acting by and through its Oregon State Marine Board

RECIPIENT:
North Clackamas Park District

By: _____
(Signature)

By: _____
(Signature)

By: _____ Larry Warren _____
(Printed Name)

By: _____
(Printed Name)

By: _____ Director _____
(Title)

By: _____
(Title)

By: _____
(Date)

By: _____
(Date)

File: 150



Oregon

Kate Brown, Governor

State Marine Board

435 Commercial St. NE, Suite 400
P.O. Box 14145
Salem, OR 97309-5065
(503) 378-8587
Fax (503) 378-4597



May 22, 2018

Kevin Cayson, Park Maintenance Supervisor
North Clackamas Park District
150 Beaver Creek Rd.
Oregon City, OR 97045

Re: FY19 Maintenance Assistance Program (MAP) grant

Dear Mr. Cayson;

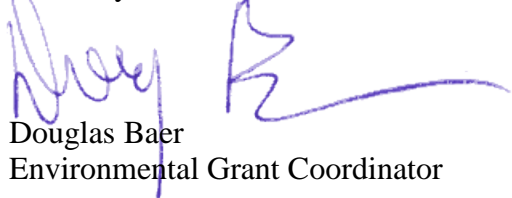
North Clackamas Park District has been tentatively selected to continue receiving a MAP grant from the Oregon State Marine Board. Grant funds are only for supplemental routine maintenance expenses at improved public boating facilities from July 1, 2018 through June 30, 2019. The grant would require a minimum 40% local match.

To accept the MAP grant award you must formally agree to participate in this voluntary program. You must certify that you agree to comply with program rules. At the end of the year, you must also provide a report detailing your maintenance expenses from both local funds and grant funds.

If you choose to accept the grant award and participate in MAP for FY19, you must sign the attached MAP Allocation Certification Agreement and return it via email by August 1, 2018.

Thank you for continued your support of for Oregon boaters. Please contact me at douglas.baer@oregon.gov or 503-378-2603 if you have any questions.

Sincerely,



Douglas Baer
Environmental Grant Coordinator

Encl.: MAP Allocation Certification Agreement

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: NCPRD - Maintenance Division Application for: Subrecipient funds Direct Grant
Grant Renewal? Yes No

Name of Funding Opportunity: Oregon2018-19 Maintenance Assistance Program (MAP) Grant

Funding Source: Federal State Local: _____

Requestor Information (Name of staff person initiating form): Kevin Cayson

Requestor Contact Information: 503-794-8030

Department Fiscal Representative: Laura Zentner, BCS Deputy Director, x4351

Program Name or Number (please specify): North Clackamas Parks and Recreation District, Maintenance Division (113-5400-07702

Brief Description of Project:

North Clackamas Park District has been tentatively selected to receive a MAP grant from the Oregon State Marine Board. Grant funds could be used to supplement routine maintenance expenses at improved public boating facilities from July 1, 2017 through June 30, 2018 (FY18). The allocation calculated by OSMB for FY 17/18 is \$4,750 with \$3,166.67 in NCPRD matching funds.

Name of Funding (Granting) Agency: Oregon State Marine Board

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

Website: <http://www.oregon.gov/OSMB/Pages/Facilities.aspx>
Contact: Douglas Baer, OSMB Environmental Grants Coordinator
(503) 378 2603; PO Box 14145, Salem OR 97309

OR

Application Packet Attached: Yes No

Completed By: N/A Date _____

** 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: _____

CFDA(s), if applicable: _____

Announcement Date: N/A

Announcement/Opportunity #: _____

Grant Category/Title: Maintenance Assistance Program (MAP) Max Award Value: \$ 4,750.00

Allows Indirect/Rate: N/A Match Requirement: \$ 3,166.67

Application Deadline: Application not required Other Deadlines: _____

Grant Start Date: 7/1/2018 Other Deadline Description: _____

Grant End Date: 6/30/2019

Completed By: _____

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 support the Department's Mission/Purpose/Goals?*

This annual grant renewal provides financial assistance to NCPRD in maintaining the boat launch at Milwaukie Riverfront Park, a site managed by NCPRD.

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

This grant supports NCPRD's mission by promoting access to parks and recreation opportunities, such as boating. The grant agreement goes directly to the guiding purpose of the Maintenance Division, allowing the District to better maintain public facilities.

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

We are the Parks provider for the City of Milwaukie (owner of Milwaukie Riverfront Park). As parks and recreational professionals, we are the agency best suited to perform this work.

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

The objectives of the grant are to acquire, improve, and maintain boating facilities that serve recreational boaters. NCPRD plans to meet this objective by using the grant funds to maintain the boat dock and launch area at Milwaukie Riverfront Park.

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 grant contributes to the NCPRD Maintenance program which serves to maintain NCPRD's parks and facilities.

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 grant requires maintenance staff to perform the required maintenance on the boating facility. NCPRD's Proposed 2018-19 Budget includes 13.88 program staff (8.88 regular full-time employees and 5.0 temporary or part-time employees).

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?*

N/A - No partners.

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

N/A - Not a pilot project.

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 - Not a new program or grant agreement.

Collaboration

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

N/A - No collaboration between County departments is necessary in the execution of this grant agreement.

Reporting Requirements

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

NCPRD must immediately notify OSMB of any changes in operation or maintenance practices, fees, season of use, or public access.

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?

This is an annual grant NCPRD has been awarded for the last 10+ years. It is a successful grant and allows NCPRD to supplement funds expended at NCPRD-managed boating facilities.

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

NCPRD must agree to provide an expenditure report for maintenance and operations outlining labor, supplies, materials, and services for all facilities identified on the Site Inventory at the end of the fiscal year (2018-19).

Fiscal

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

Yes. NCPRD must expend funds to maintain the boat facilities regardless. The grant simply subsidizes that work that NCPRD does already.

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

NCPRD General Fund Dollars as approved in the 2018-19 NCPRD Proposed Budget.

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

Yes. A minimum of \$3,166.67 of matching resources are required. These matching funds do not include any cash or in-kind activities expended on campgrounds, marinas, fuel stations, trails, picnic shelters, swim areas, or other large day-use components.

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

Continuous - On an annual basis.

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?

No.

Program Approval:

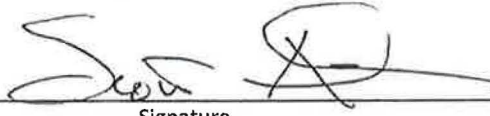
Kevin Ayson
Name (Typed/Printed)


6/25/18
Date

K-A
Signature

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

Section IV: Approvals

DIVISION DIRECTOR OR ASSISTANT DIRECTOR (or designee, if applicable)		
Scott Archer	6/25/2018	
Name (Typed/Printed)	Date	Signature

DEPARTMENT DIRECTOR		
Laura Zentner	6/25/18	
Name (Typed/Printed)	Date	Signature

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 type="checkbox"/>	Denied: <input type="checkbox"/>
Donald Krupp	6/27/2018	
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:

County Administration Attestation

County Administration: re-route to department contact when fully approved.

Department: keep original with your grant file.



July 12, 2018

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

Members of the Board:

Approval of the Third Amendment to a Lease Agreement with Phoenix Investment Group

Purpose/Outcomes	Continuation of the lease agreement for the District's Maintenance Shop located at 6199 SE Lake Rd, Milwaukie, Oregon 97222.
Dollar Amount and Fiscal Impact	\$273,366
Funding Source	NCPRD General Fund 113-5400-07702-438190-82306
Duration	January 1, 2019 through December 31, 2021
Previous Board Action	<i>7/17/2012 Policy Session</i> – Directed staff to proceed with lease negotiations with Phoenix Investment Group <i>12/06/2012 Business Meeting</i> – Approved Lease Agreement for NCPRD Maintenance Shop
Strategic Plan Alignment	Ensure safe, healthy and secure communities – Allows NCPRD to house staff, equipment and resources to maintain a safe and well maintained park system.
Contact Person	Scott Archer, <i>NCPRD Director</i> , 503-742-4421 Kevin Cayson, <i>Parks and Facilities Manager</i> , 503-794-8030

BACKGROUND:

From 1996 to 2012, NCPRD's maintenance operations were based at a shared space in Milwaukie that they were rapidly outgrowing. With direction from the Board, the District evaluated numerous alternatives for relocating the shop and discussed these options with the Board during a study session on July 17, 2012. The Board directed staff to move forward with a three-year lease agreement at that time. NCPRD entered into the lease with Phoenix Investment Group Inc. and moved operations to its current location—6199 SE Lake Rd, Milwaukie, Oregon—in December of 2012.

NCPRD park maintenance and natural resource operations are currently located in this leased facility. This facility is centrally located and houses all the District's maintenance vehicles and equipment. The space also provides much-needed indoor shop space to repair and maintain the District's equipment and other assets, as well as office space for maintenance and natural resources staff based at the shop.

On June 6, 2015, NCPRD extended the original lease agreement an additional three years, through December 2018. While NCPRD is still to exploring opportunities to locate or build an owned maintenance facility, particularly following the acquisition of three additional properties from the North Clackamas School District, no determinations have been made.

At this time, the District anticipates remaining in the current leased location for the term of this lease amendment. This third amendment would extend the lease agreement through December 2021.

RECOMMENDATION:

Staff recommend the Board approve the Third Amendment/Extension to the Lease Agreement with Phoenix Investment Group and delegate authority to the BCS Director or designee to effectuate any document necessary to effectuate the same.

ATTACHMENTS:

1. Third Amendment/Extension to Lease Agreement with Phoenix Investment Group
2. Second Amendment/Extension to Lease Agreement with Phoenix Investment Group
3. Original Lease Agreement between Phoenix Investment Group and North Clackamas Parks and Recreation District

Respectfully submitted,

Scott Archer, Director
North Clackamas Parks and Recreation District

**THIRD AMENDMENT/ EXTENSION
TO
LEASE AGREEMENT
BETWEEN
PHOENIX INVESTMENT GROUP, INC.
AND
NORTH CLACKAMAS PARKS & RECREATION DISTRICT**

This is a Third Amendment /Extension to that certain Lease Agreement originally dated effective as of the 15th day of December, 2012, subsequently amended by a First Amendment thereto dated to be effective as of December 26, 2012 and expiring on December 31, 2015; and further amended by a Second Amendment thereto dated to be effective as of December 31, 2015 and expiring as of December 31, 2018. The Lease, the First Amendment thereto and the Second Amendment thereto shall be collectively referred to herein as the “**Lease**”. The Lease is by and between Phoenix Investment Group, Inc. defined as the “**Landlord**” and North Clackamas Parks & Recreation District defined as the “**Tenant**”. Landlord and Tenant are jointly referred to as the “**Parties**”.

1. Extension. The Lease specifically contains no further/additional option or right to renew or extend the Lease beyond the current expiration date of December 31, 2018. Notwithstanding that provision, the Landlord and Tenant agree to the following changes:

a. Section 2.1 of the Lease is amended by deleting it in its entirety and adding in lieu thereof the following:

2.1 **Term.** Tenant shall lease the Premises for a term of 36 months beginning January 1, 2019 and ending December 31, 2021 (“**Term**”). Unless the context requires otherwise, “**Term**” shall run from January 1, 2019 through December 31, 2021 and the Renewal Term of 36 months if timely and properly exercised by Tenant and accepted by Landlord as provided hereinafter shall run from January 1, 2022 through December 31, 2024.

b. Section 2.1 of the Lease is amended by deleting it in its entirety and adding in lieu thereof the following:

2.2 **Renewal.** If the Lease is not in default at the time the option is exercised and is not in default when the Renewal Term begins, Tenant shall have the option to renew this Lease for one (1) successive term of three (3) years, only upon the following terms and conditions:

2.2.1 The renewal term shall commence on January 1, 2022 and expire December 31, 2024 (“**Renewal Term**”); and

2.2.2 The renewal option may only be exercised by written notice to Landlord received by Landlord not later than **July 2, 2021**; and

2.2.3 Not later than September 1, 2021, the Landlord notifies Tenant in writing that the Landlord agrees to extend the Lease for the Renewal Term. The Landlord’s written notice to Tenant that Landlord agrees to the extension, shall be sufficient to make the Lease binding for the Renewal Term on both Parties without further act of either of the Parties except the following terms, conditions and provisions shall apply for the Renewal Term:

2.2.3.1. The terms and conditions of the Lease for the Renewal Term shall be

identical with those of the Term **except:** (i) monthly Basic Rent will increase as set out in paragraph numbered 2 of this Third Amendment/Extension; (ii) Additional Rent will increase in accordance with the Landlord's notices as provided in the Lease; (iii) the Security Deposit will increase as set out in paragraph numbered 4 of this Third Amendment/Extension; and (iv) Tenant will have no other option to renew/extend this Lease.

2. Basic Rent on Renewal. Section 3.1 of the Lease is deleted in its entirety and in lieu thereof is added the following:

<u>Basic Rent for Calendar Year</u>	<u>Monthly Amount</u>
2019	\$6,770
2020	\$6,973
2021	\$7,182

<u>Basic Rent for Renewal Term¹</u>	<u>Monthly Amount</u>
2022	\$7,397
2023	\$7,619
2024	\$7,848

¹ if timely exercised and accepted by Landlord as provided in 2.2.3 above.

3. Additional Rent. Until the notice in Section 3.2 of the Lease is given, the Additional Rent is \$600.00 for every calendar month of the Term and if timely exercised and accepted by Landlord, the Renewal Term, and is payable with and in addition to each monthly Basic Rent payment.

4. Deposit. The Security Deposit set out in Section 4 of the Lease is increased to \$7,182. The difference [\$609] between the current Security Deposit [\$6,573] and the Security Deposit for the renewal [\$7,182] shall be paid to Landlord not later than November 1, 2018. If the option to renew is timely exercised by Tenant and accepted by Landlord as provided herein, then the Tenant shall, by November 1, 2021, pay an additional Security Deposit amount of \$666 to Landlord.

5. No Improvements. Landlord has not agreed to make any improvements to the Leased Premises during the Term or the Renewal Term, if any.

6. Affirmation of other terms. Except as otherwise amended herein, the Lease remains in full force and effect. If there is a conflict between the terms of the Lease and this Third Amendment / Extension, the terms of this Third Amendment / Extension control.

Phoenix Investment Group, Inc.

North Clackamas Parks & Recreation District

By: Todd Call, President

By:

Authorized Signer

**SECOND AMENDMENT/ EXTENSION
TO
LEASE AGREEMENT
BETWEEN
PHOENIX INVESTMENT GROUP, INC.
AND
NORTH CLACKAMAS PARKS & RECREATION DISTRICT**

This is a Second Amendment /Extension to that certain Lease Agreement originally dated effective as of the 15th day of December, 2012 and subsequently amended to be effective as of December 26, 2012 between Phoenix Investment Group, Inc. defined as the "**Landlord**" therein and North Clackamas Parks & Recreation District defined as the "**Tenant**" therein. Landlord and Tenant are jointly referred to as the "**Parties**". The Lease and the First Amendment thereto shall be together referred to herein as the "**Lease**".

1. **Extension.** Section 2.2 of the Lease provides for a single three (3) year extension of the Term upon terms, provisions and conditions set forth therein. The Landlord acknowledges the timely exercise of the option to renew the Lease. The expiration date of the Lease will now be December 31, 2018. There is no further/additional option or right to renew or extend the Lease beyond December 31, 2018.

2. **Basic Rent on Renewal.** Beginning with the January 1, 2016 payment, Basic Rent increases to \$6,196 per calendar month for 2016; to \$6,382 per calendar month for 2017; and to \$6,573 per calendar month for 2018 [Amending Section 3.1 of the Lease]. All Basic Rent increases are effective as of January 1 of each calendar year of the Renewal Term and without further notice to Tenant.

3. **Additional Rent.** Until the notice in Section 3.2 of the Lease is given, the Additional Rent remains at the sum of \$600 per calendar month, payable with and in addition to each monthly Basic Rent payment.

4. **Deposit.** The Security Deposit set out in Section 4 of the Lease is increased to \$6,573. The difference between the current Security Deposit [\$6,016] and the Security Deposit on Renewal [\$557] shall be paid to Landlord not later than November 1, 2015 as set out in the Lease.

5. **No Improvements.** Landlord has not agreed to make any improvements to the Premises.


6. **Affirmation of other terms.** Except as otherwise amended herein, the Lease remains in full force and effect. If there is a conflict between the terms of the Lease and this Second Amendment / Extension, the terms of this Second Amendment / Extension control.

Phoenix Investment Group, Inc.

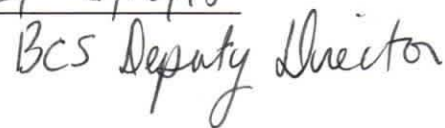


By: Todd Call, President
Dated:

North Clackamas Parks & Recreation District



By: Gary Barth, Director
Dated:



RECORDING MEMO

New Agreement/Contract
Amendment/Change Order Original Number
Policy, Reports

ORIGINATING COUNTY

DEPARTMENT:

NCPRD

PURCHASING FOR:

Maintenance Shop Lease

OTHER PARTY TO

CONTRACT/AGREEMENT:

Phoenix Investment Group, Inc.

BOARD AGENDA DATE:

12/06/2012

AGENDA ITEM NUMBER:

2012-113

PURPOSE:

Finalize negotiations and execute the Lease Agreement for NCPRD Maintenance Shop

Please return to Patrizia Zamboni Coash, NCPRD Administration after recording.

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

2012-4791

12/27/2012 09:00:01 AM

BEFORE THE BOARD OF
NORTH CLACKAMAS PARKS AND RECREATION DISTRICT
OF CLACKAMAS COUNTY, STATE OF OREGON

In the matter of Authorizing
Execution of Lease Agreement
for NCPRD Maintenance Facility



Order No: 2012 - 113
(Page 1 of 1)

This matter comes before the Board of County Commissioners of Clackamas County, Oregon (the "Board"), acting as the Board of Directors for the North Clackamas Parks and Recreation District ("NCPRD") at its regularly scheduled meeting on December 6, 2012.

WHEREAS, NCPRD has negotiated with Phoenix Investment Group, Inc., ("Landlord") for the lease of 6199 SE Lake Road, Milwaukie, Oregon ("Facility") for a term of three years ("Lease"); and

WHEREAS, the Board desires the leasing of the Facility and utilization of the space by NCPRD maintenance staff; and

WHEREAS, to promote efficient government and timely progress on leasing and moving into the Facility, the Board desires to delegate final signing authority to the Director of NCPRD or his designee.

NOW, THEREFORE, IT IS HEREBY ORDERED, that the Director of North Clackamas Parks and Recreation District, or his designee, be and hereby is authorized to finalize negotiations and execute the Lease Agreement, and any and all other agreements or documents necessary to effectuate the timely leasing and moving into the Facility.

Dated this 6th day of December, 2012

CLACKAMAS COUNTY BOARD OF COMMISSIONERS acting as the governing body of the North Clackamas Parks & Recreation District


Chair


Recording Secretary

LEASE AGREEMENT

THIS LEASE AGREEMENT is made effective the 15th day of December, 2012, by and between Phoenix Investment Group, Inc., an Oregon corporation, hereinafter called the ("Landlord") and North Clackamas Parks & Recreation District, a county service district, hereinafter called the ("Tenant"). Landlord and Tenant may be jointly referred to herein as the 'parties' or individually referred to as a 'party'.

Landlord and Tenant hereby agree as follows:

1. **Description.** When used in the Lease Agreement the term "Leased Premises" or "Premises" shall describe a portion of the premises located at 6199 SE Lake Road, Milwaukie, Oregon 97222, in the County of Clackamas, pictorially represented on Exhibit A (attached hereto and hereby incorporated by reference) as Tract 2, and consisting of approximately 1.85 acres, and improved with a shop facility/warehouse, a general office, and asphalt yard. Landlord owns the adjacent real property represented on Exhibit A as Tracts 1 and 3 (herein sometimes collectively referred to as the "Adjacent Property" or individually as "Tract 1" or "Tract 3"). On the Premises there is a truck scale, the general location of which is depicted on Exhibit A. Tenant is not authorized to use the truck scales and Tenant shall permit the use of the truck scales by other tenants. Tenant shall not interfere with such right to use the truck scales, including the right of ingress and egress over the Premises for access to the truck scales.

Access to Tracts 1, 2 and 3 is by a common entrance, as shown in Exhibit A by the word "gate." Tracts 1, 2 and 3 shall each have the right to use the common entrance and the common roadway that serves Tracts 1, 2 and 3 which generally follows the line dividing Tract 1 from Tracts 2 and 3 on Exhibit A.

2. Term and Renewal.

2.1 **Term.** Tenant shall lease the Premises for a term of 36 months beginning December 15, 2012 and ending December 14, 2015 ("Term"). Unless the context requires otherwise, "Term" shall include the initial Term of 36 months and the renewal term of 36 month if timely and properly exercised. p efforts.

2.2 **Renewal.** If the Lease is not in default at the time the option is exercised and is not in default when the renewal Term begins, Tenant shall have the option to renew this Lease for one (1) successive term of three (3) years, as follows:

2.2.1 The renewal term shall commence on the day following expiration of the initial Term.

2.2.2 The renewal option may be exercised by written notice to Landlord given not less than 180 days prior to the last day of the initial Term. The giving of such notice shall be sufficient to make the Lease binding for the renewal Term on both parties without further act of the parties subject to the rental increase for the renewal Term.

The terms and conditions of the Lease for the renewal Term shall be identical with the Term **except:** monthly Basic Rent will increase; and Additional Rent will increase; and Tenant will have no other option to renew this Lease. Monthly Basic Rent for the renewal term shall be at the market rate that Landlord then charges as mutually agreed by the parties; provided, however, that in no event shall: (1) the initial monthly Basic Rent for the renewal Term exceed the lesser of: the cumulative increase in the Portland, Oregon Consumer Price Index (CPI) all urban consumers, all items on the 1982 = 100 base compounded for the three years of the initial Term or three percent (3%) per year compounded increase in the Basic Rent during the initial Term; but (2) the Basic Rent for the renewal Term will not be lower than \$6,016 per calendar month. The monthly Basic Rent for each year of the renewal Term will increase by 3%.

304 762

3. **Rent.**

3.1 **Basic Rent.** During the Term of the Lease Agreement, Tenant shall pay to the Landlord Basic Rent as follows:

Months 1-12 \$5,579

Months 13-24 \$5,747

Months 25-36 \$6,016

Basic Rent shall be paid in advance on the first day of each calendar month to the address of Landlord set out below or such other address as Landlord provides. Base Rent and Additional Rent shall be prorated as of the date of commencement and expiration if not on the first day of a calendar month.

3.2 **Additional Rent.** All taxes, insurance costs, utility charges, reasonable common area expenses, reasonable maintenance expenses for the Premises paid for by the Landlord, and any other sum which Tenant is required to pay Landlord or third parties by this Lease shall be Additional Rent. Currently, Additional Rent is charged at the rate of approximately \$0.11 per square foot but such amount for the Additional Rent is not fixed for the Term or the renewal Term and Landlord shall give Tenant at least thirty (30) days prior written notice of an increase in the Additional Rent amount. The Additional Rent is intended to compensate Landlord for all expenses relating to the Premises that Landlord pays or incurs such that the Lease is to be triple net meaning that taxes, insurance and all expenses of the Premises are charged to Tenant through the Additional Rent charges. The expenses on the Premises and the Adjacent Property shall be allocated as follows: 57.94% to the Tract 1, 28.17% to the Premises, and 13.89% to Tract 3. Any property tax reductions experienced by the Landlord because of Tenant's status as a municipal corporation shall be fully passed through to the Tenant alone and reduce its share of the triple net charges due.

4. **Deposit.** Upon execution of this Lease, Tenant shall pay to Landlord the total sum of \$12,810. The amount consists of the first month's rent of \$5,579, the first month's Additional Rent of \$1,215 and an additional sum of \$6,016 (the \$6,016 is a "Security Deposit").

The Security Deposit is held by Landlord to secure the faithful performance by Tenant of each term, covenant, and condition of this Lease. If Tenant at any time shall fail to make any payment or fail to keep or perform any term, covenant, and condition on Tenant's part to be made or performed or kept under this Lease, Landlord may, but shall not be obligated, to and without waiving or releasing Tenant from any obligation under this Lease, use, apply or retain the whole or any part of the Security Deposit: (i) to the extent of any sum due to Landlord; (ii) to make any required payment on Tenant's behalf; or (iii) to compensate Landlord for any loss, damage, attorneys' fees or expense sustained by Landlord due to Tenant's default as determined pursuant to Section 28. In such event, Tenant shall, within five days written demand by Landlord, remit to Landlord sufficient funds to restore the Security Deposit to its original sum; Tenant's failure to do so shall be a material breach of this Lease. Landlord shall not be required to keep the Security Deposit separate from Landlord's general funds, and Tenant shall not be entitled to interest on such deposit. If Tenant complies fully with all the terms, covenants, and conditions of this Lease, and at the end of the term of this Lease, leaves the Premises in the condition required by this Lease, then the Security Deposit, less any sums owing to Landlord, shall be returned to Tenant. The amount of the Security Deposit will increase to the amount of the last month's Basic Rent that the Tenant is to pay for the renewal Term and is due and payable on the first day of November, 2015.

5. **Use.**

5.1 **Permitted Use.** The Premises shall be used only for Tenant's service and maintenance facility and related office uses reasonably related thereto, and for no other purpose without the prior written consent of the Landlord.

5.2 **Restrictions on Use.** In connection with use of the Premises, Tenant shall:

5.2.1 Conform to all applicable laws and regulations, as they now exist or may exist in the future, including but not limited to all Environmental Laws, regulations and ordinances, of any public authority affecting Tenant's use of the Premises, and correct at Tenant's own expense any failure of compliance created through Tenant's fault or by reason of Tenant's use.

5.2.2 Refrain from any activity which would increase the costs to Landlord to insure the Premises against casualty losses;

5.2.3 Except as may be permitted under Section 5.1, refrain from any activity which would be reasonably offensive to Landlord and/or users of the Adjacent Property.

5.2.4 Refrain from making any marks on or attaching any sign, insignia, antenna, aerial, or other device to the exterior or interior walls, windows, or roof of the Premises without the prior written consent of Landlord, which will not be unreasonably withheld. Landlord has consented to installation of a sign on the fascia of the building provided Landlord is given accurate schematics and layout of the signs. No lighted signs, of any type, are permitted. Landlord's approval is contingent of Tenant obtaining appropriate governmental approval for the signage.

5.2.5 Refrain from discharging onto the Premises or Adjacent Property any Hazardous Material or waste or any toxic substance as defined by any law, rule, regulation or governmental regulatory body. For the purposes of this section, the proper storage, care, transport, use, generation, and/or disposal (collectively "Use") of any hazardous substance or material shall not be a "discharge" provided Tenant's Use shall be in conformance with all applicable laws, rules and regulations, including Environmental Laws and Tenant shall use the highest degree of care in the use, handling, storage and/or disposal of Hazardous Materials;

5.2.6 Conduct Tenant's operations in an environmentally clean and safe manner in compliance with all Environmental Laws as defined herein.

304 765

5.2.7 Restrict all parking of vehicles of the Tenant, its agents or employees that are visitors or users of the Premises to the Leased Premises.

5.2.8 Not interfere with and to allow free access to the truck scales at all times.

6. **Taxes and Utilities.**

6.1 **Property Taxes.** Tenant shall pay as due all taxes on Tenant's personal property located on the Premises. Landlord and Tenant agree that the payment of real property taxes by Tenant is normal and that not paying real property taxes may result in a below market rent. If Tenant wants a full or partial property tax exemption on either Tenant's personal or real property taxes, Tenant is responsible to obtain any such exemption at Tenant's sole cost and expense. As used herein, real property taxes include any fee or charge relating to the ownership, use, or rental of the Premises, other than taxes on the net income of Landlord or Tenant.

6.2 **Special Assessments.** If an assessment for a public improvement is made against the Premises, Landlord may elect to cause such assessment to be paid in installments, in which case all of the installments payable during the Term shall be treated the same as the real property taxes.

6.3 **New Charges or Fees.** If a new charge or fee relating to the ownership or use of the Premises or the receipt of rental therefrom or in lieu of property taxes is assessed or imposed, then, to the extent permitted by law, Tenant shall pay such charge or fee. Tenant, however, shall have no obligation to pay any income, profits, or franchise tax levied on the net income derived by Landlord from this Lease.

6.4 **Utilities. Separately from the Additional Rent,** Tenant shall pay for all utilities, including without limitation, gas, heat, light, power, telephone, cable, internet, telecommunication, sewer, landscaping, and other utilities and services supplied to the Premises,

together with any taxes thereon.

7. **Landlord's Repairs and Maintenance.**

7.1 **During Term of Lease.** Subject to Tenant complying with Section 5.2, Landlord shall maintain in good condition the structural components of the Premises and the HVAC system and the plumbing provided any repairs and/or replacements are not required because of negligence or intentional acts or failure to act by the Tenant. Such maintenance, repair and/or replacement for the Premises are a charge passed through to Tenant as a part of the Additional Rent which shall be adjusted by the Landlord at least annually. All such charges for common areas, as the Landlord determines, are part of the Additional Rent. For purposes of this Subparagraph 7.1 "structural components" are the foundations, bearing and exterior walls (but not painting), and the roof of the Premises.

7.2 **Prior to Lease Commencement.** Landlord shall deliver the Premises to Tenant broom-clean and ready for occupancy with all water, sewer, electrical, gas, HVAC, roof and foundation systems in good working order and condition. Other than the provisions in the first sentence of this subparagraph, the Tenant takes the Premises AS-IS, WHERE-IS, and the Landlord has no obligation to make any Tenant improvements except the Landlord shall decommission the existing bridge crane.

8. **Tenant's Repairs and Maintenance.** Tenant shall maintain and keep the Premises and appurtenances thereto in the same condition as when received, except as otherwise provided in this Lease. Tenant shall surrender the Premises to Landlord in at least as good condition as when received, normal wear and tear excepted. Tenant shall be liable to Landlord for any damage to the Premises, including the truck scales and/or resulting from a breach of this Lease or the negligence or willful acts or omissions of Tenant, its agents and employees. Tenant's repair and maintenance obligation includes, but is not limited to: (a) the

repair of the asphalt yard areas (including repair of "spidering" as it occurs); (b) the exterior paint, as needed; (c) the interior paint, as needed; (d) all glass; (e) interior wall repair; (f) plumbing from the fixture to the sewer line; and (g) all other areas of the Premises except for those maintenance obligations specifically reserved to Landlord.

9. **Alterations**. Landlord must grant prior written approval to any alterations, additions, or changes made by Tenant to the Premises, which approval shall not be unreasonably withheld or unreasonably conditioned. At the time Landlord consents to any such alterations, additions, or changes to be made or placed in or on the Premises by Tenant, Landlord and Tenant shall agree as to whether such alterations may be removed by Tenant at the termination of this Lease. If such alterations are removed, the Tenant shall be responsible to restore the Premises to such a condition as to comply with this Lease.

10. **Insurance and Indemnity**.

Liability Insurance. Tenant shall, at Tenant's sole cost and expense, obtain and keep in force during the term of this Lease a liability self insurance, with single limit Bodily Injury and Property Damage coverage for the protection of Landlord and Tenant, against any liability arising out of the ownership, use, occupancy or maintenance of the Premises and all areas appurtenant thereto. Such self insurance shall be in an amount not less than \$1,000,000.00 per occurrence. The policy shall also insure performance by Tenant of the indemnity provisions of this Lease. The limits of said self insurance shall not, however, limit the liability of Tenant hereunder. Tenant shall provide reasonable evidence that Landlord is an additional insured on Tenant's self insurance and an additional insured for any reinsurance that Tenant has for claims over one million dollars.

10.2 Property Insurance. The Landlord shall obtain and keep in force at all times during the term of this Lease a policy or policies of insurance covering loss or damage to the Premises, with extended coverage and loss of rents for the full replacement value of the Premises.

Such insurance shall provide for payment of loss there under to Landlord or to the holders of mortgages or deeds of trust on the Premises. Tenant shall insure its own personal property as it deems appropriate and Landlord has no liability for any loss and/or damages to Tenant's personal property. Landlord reserves the right to pass through the costs of the property insurance for the Premises to Tenant.

10.3 Insurance Policies. Tenant shall not do or permit to be done anything which shall invalidate the insurance policies referred to herein.

10.4 Indemnity. Except to the extent arising out of Landlord's willful or gross negligent acts, Tenant shall indemnify, save, defend and hold harmless Landlord from and against any and all claims arising from Tenant's use of the Premises or from the conduct of Tenant's business or from any other activity, work, or things done, permitted or suffered by Tenant in or about the Premises or elsewhere, and shall further indemnify, save and defend and hold harmless Landlord from and against any and all claims arising from any breach or default in the performance of any obligation on Tenant's part to be performed under the terms of this Lease, or arising from any negligence or act of the Tenant, or any of Tenant's agents, contractors, or employees, and from and against all costs, expenses, damages and liabilities incurred in the defense of any such claim or any action or proceeding brought thereon; and in case any action or proceeding be brought against Landlord by reason of any such claim, Tenant upon notice from Landlord shall defend the same at Tenant's expense.

10.5 Waiver of Subrogation. Neither the Landlord nor the Tenant shall be liable to the other for loss arising out of damage to or destruction of the Leased Premises, or the contents of any thereof, when such loss is caused by any of the perils which are or could be included within or insured against by a standard form of fire insurance with extended coverage. All such claims for any and all loss, however caused, hereby are waived. Said absence of liability shall exist whether or not the damage or destruction is caused by the negligence of either Landlord or

Tenant, or by any of their respective invitees, servants or employees. It is the intent and agreement of the Landlord and Tenant that the insurance carriers of the Landlord or Tenant shall not be entitled to subrogation under any circumstances against any party to this Lease. Neither the Landlord nor the Tenant shall have any interest or claim in the other's insurance policy or policies, or the proceeds thereof, unless specifically covered therein as a joint assured.

11. **Destruction of the Premises.** If, during the Term or any renewal hereof, the Premises or part thereof is destroyed or damaged, the Tenant shall give immediate notice thereof to Landlord. Upon payment of the insurance proceeds to Landlord, Landlord will use the insurance proceeds or such amount of the insurance proceeds as necessary to repair the damage unless this Lease is terminated as hereinafter provided. If the Premises are damaged to the extent that continued use during the course of repair would be reasonably impracticable, or if the damage exceeds fifty percent (50%) of the then value of the structure before the damage, and occurs within one (1) year before the end of the then-current Term of this Lease, then the Lease may be terminated by either the Tenant or the Landlord by written notice to the other within thirty (30) days of the damage. In the case of such termination, Landlord and Tenant shall have no further obligation under this Lease except that Tenant shall pay rent accrued through the date of the termination. Rent shall be partially abated during the repair of any damage to the extent the Premises are untenable, except that there shall be no rent abatement where the damage occurred as the result of the fault of Tenant. If Tenant has allowed the insurance to lapse or if the insurance proceeds are inadequate to repair and/or restore the Premises, Tenant shall be solely responsible for all expenses to restore the Premises to the same condition as the Premises were in prior to the loss.

12. **Condemnation.** If the Premises, or a substantial portion of the Premises, is taken under the power of eminent domain or under the threat of the exercise of such power for any

public or quasi-public use, such that its continued use by Tenant would be reasonably impracticable, then this Lease may be terminated as of the date the use of the Premises becomes impracticable. In case of such termination, Landlord and Tenant shall have no further obligations under this Lease except Tenant shall pay rent accrued through the date of termination. Any award or payment for taking or threatening to take all or a portion of the Premises shall be the property of Landlord.

13. **Default of Tenant.**

13.1 **Defaults.** The occurrence of any one or more of the following events shall constitute a material default and breach of this Lease by Tenant:

13.1.1 The vacation or abandonment of the Premises by Tenant.

13.1.2 The failure by Tenant to make any payment of Rent or any Additional Rent or other payment required to be made by Tenant hereunder, as and when due, where such failure shall continue for a period of ten (10) days after written notice thereof from Landlord to Tenant, provided, however, that Landlord shall not be obligated to send Tenant notice of nonpayment of Rent or Additional Rent any more frequently than once in any 12 month period. No notice is required for the second failure to pay Rent or Additional Rent in such 12 month period and Landlord may immediately seek its default remedies.

13.1.3 The failure by Tenant to observe or perform any of the covenants, conditions or provisions of this Lease to be observed or performed by Tenant, other than described in paragraph 13.1.2 above, where such failure shall continue for a period of thirty (30) days after written notice thereof from Landlord to Tenant; provided, however, that if the nature of Tenant's default is such that more than thirty (30) days are reasonably required for its cure, then Tenant shall not be deemed to be in default if Tenant commenced such cure within said 30-day period and thereafter diligently prosecutes such cure to completion.

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13.1.4 (i) The making by Tenant of any general arrangement or assignment for the benefit of creditors; (ii) Tenant becomes a "debtor" as defined in 11 U.S.C. §101 or any successor statute thereto (unless, in the case of a petition filed against Tenant, the same is dismissed within 60 days); (iii) the appointment of a trustee or receiver to take possession of substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease, where possession is not restored to Tenant within 30 days; or (iv) the attachment, execution or other judicial seizure of substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease, where such seizure is not discharged within 30 days. Provided, however, in the event that any provision of this paragraph is contrary to any applicable law, such provision shall be of no force or effect.

14. **Remedies on Default.**

14.1 **Termination.** In the event of a default the Lease may be terminated at the option of Landlord by notice in writing to Tenant. If the Lease is not terminated by election of Landlord or otherwise, Landlord shall be entitled to recover damages from Tenant for the default. If the Lease is terminated, Tenant's liability to Landlord for damages shall survive such termination, and Landlord may reenter and take possession of the Premises. Landlord will give Tenant thirty (30) days written notice to remove all of Tenant's property from the Premises and if Tenant fails to remove any property left on the Premises, Landlord is entitled to remove the property from the Premises and dispose of such property. The Tenant is not excused from paying the Rent and Additional Rent for that time period nor is such period an extension of the Lease. Tenant shall maintain all insurance coverage during such period.

14.2 **Reletting.** Following reentry or abandonment, Landlord may relet the Premises and may make any suitable alterations or refurbish the Premises, or both, or change the character or use of the Premises, but Landlord shall not be required to relet for any use

or purpose other than that specified in the Lease or which Landlord may reasonably consider injurious to the Premises, or to any tenant which Landlord may reasonably consider objectionable. Landlord may relet all or part of the Premises, alone or in conjunction with other properties, for a term longer or shorter than the term of this Lease, upon any reasonable terms and conditions, including the granting of some rent-free occupancy or other rent concession.

14.3 **Damages.** In the event of termination on default Landlord shall be entitled to recover the following amounts as damages:

14.3.1 The loss of the rent reserved under the Lease, as and when such rent becomes due, from the date of default until a new tenant begins paying rent, or the Tenant proves with the exercise of reasonable efforts that a new tenant could have been secured.

14.3.2 The reasonable costs of reentry and reletting including without limitation the cost of any cleanup, refurbishing, removal and disposal of Tenant's property and fixtures, or any other expense occasioned by Tenant's failure to quit the premises upon termination and to leave them in the required condition, any remodeling and/or construction costs, court costs, broker commissions, including the portion of the leasing commission prorated over the Term as it applies to the unexpired Term of this Lease on default and advertising costs.

14.3.3 Other damages as permitted by law.

14.4 **Right To Sue More Than Once.** Landlord may sue periodically to recover damages during the period corresponding to the remainder of the Term, and no action for damages shall bar a later action for damages subsequently accruing.

14.5 **Remedies Cumulative.** The foregoing remedies shall be in addition to and shall not exclude any other remedy available to Landlord under applicable law.

14.6 **Default by Landlord.** Landlord shall not be in default unless Landlord fails

to perform obligations required of Landlord within thirty (30) days after Tenant sends written notice to Landlord specifying how Landlord has failed to perform such obligation; provided, however, that if the nature of Landlord's obligation is such that more than thirty (30) days are required for performance then Landlord shall not be in default if Landlord commences performance within such 30-day period and thereafter diligently prosecutes the same to completion.

14.7 Interest and Late Charges. Any rent or other payment required by Tenant by this Lease shall, if not paid within ten (10) days after its due date, bear interest at the rate of six percent (6%) per annum from the due date until paid. In addition, if any installment of Rent, Additional Rent or any other sum due from Tenant shall not be received by Landlord or Landlord's designee within ten (10) days after such amount shall be due, then, without any requirement for notice to Tenant, Tenant shall pay to Landlord a late charge equal to 5% of such overdue amount as compensation to Landlord for additional costs incurred by Landlord by reason of said late payment. The parties hereby agree that such late charge by Landlord shall in no event constitute a waiver of Tenant's default with respect to such overdue amount, nor prevent Landlord from exercising any of the other rights and remedies granted hereunder is not a penalty.

14.8 Impounds. In the event that a late charge is payable hereunder, whether or not collected, for three (3) installments of rent or any other monetary obligation of Tenant under the terms of this Lease, Tenant shall pay to Landlord, if Landlord shall so request, in addition to any other payments required under this Lease, a monthly advance installment, payable at the same time as the monthly Basic Rent, as estimated by Landlord, for real property tax and insurance expenses on the Premises which are payable by Tenant under the terms of this lease if any. Such fund shall be established to insure payment when due, before delinquency, of any or all such real property taxes and insurance premiums. If the amounts paid to Landlord by Tenant under the provisions of this paragraph are insufficient to discharge the obligations of Tenant to pay such

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real property taxes and insurance premiums as the same become due, Tenant shall pay to Landlord, upon Landlord's demand, such additional sums necessary to pay such obligations. All moneys paid to Landlord under this paragraph may be intermingled with other moneys of Landlord and shall not bear interest. In the event of a default in the obligations of Tenant to perform under this Lease, then any balance remaining from funds paid to Landlord under the provisions of this paragraph may, at the option of Landlord, be applied to the payment of any monetary default of Tenant in lieu of being applied to the payment of real property tax and insurance premiums.

15. Cooperation. Tenant shall cooperate with Landlord to insure the right of all tenants of the Adjacent Property are respected and observed and interfere with such tenants. Landlord shall make all reasonable efforts to insure that the tenants of the Adjacent Property cooperate to insure the rights of Tenant.

16. Compliance.

16.1 Law. Tenant shall, at Tenant's expense, comply promptly with all applicable statutes, ordinances, rules, regulations, orders, covenants and restrictions of record, and requirements in effect during the term or any part of the term hereof, regulating the Premises and the use by Tenant of the Premises. Tenant shall not use nor permit the use of the Premises in any manner that will tend to create waste or a nuisance.

16.2 Environmental Compliance. Tenant shall, at Tenant's own expense, comply with any current or future environmental statutes, ordinances, rules, regulations, and orders affecting Tenant's use of or operation at the Premises ("Environmental Laws"). Tenant shall, at Tenant's own expense, make all submissions to, provide all information to, and comply with all requirements of the appropriate governmental authority (the "Authority") under the Environmental Laws. Should the Authority determine that a plan for investigation, monitoring, cleanup,

containment, removal, storage or restoration work ("Remedial Work") be prepared and undertaken at the Premises or Adjacent Property because of any spills or discharges of hazardous materials, substances or wastes, or toxic substances (collectively "Hazardous Materials"), including but not limited to, petroleum-based products at the Premises which are caused by Tenant, its agents, its employees, or other parties during the term of this Lease, then Tenant shall, at Tenant's own expense, prepare and submit the required plans for the Remedial Work, including any required financial assurances to the Authority and Landlord and carry out the plans to the satisfaction of the Authority and Landlord. Tenant's obligations under this paragraph shall arise if there is any event or occurrence at the Premises caused by Tenant, its agents, employees or other parties, which requires compliance with the Environmental Laws. At no expense to Landlord, Tenant shall promptly provide all information requested by Landlord for preparation of affidavits and other documents required by Landlord to determine the applicability of the Environmental Laws to the Premises, and shall sign the affidavits and other documents promptly when requested to do so by Landlord. Tenant shall indemnify, defend and hold harmless Landlord from all fines, suits, procedures, claims, actions, cost, injury, damage, loss, expense, liabilities, diminution in property value, having litigation costs, remediation charges, monitoring and attorney's fees of any kind arising out of or in any way connected with any spills or discharges of Hazardous Materials, including but not limited, to petroleum-based products at the Premises caused by Tenant, Tenant's agents, Tenant's employees or other parties during the term of this Lease and from all fines, suits, procedures, claims, actions cost, loss, expense, injury, damage, liabilities, and attorney's fees of any kind arising out of Tenant's failure to provide all information, make all submissions and take all actions, including Remedial Work, required by the Authority under the Environmental Laws as a result of spills or discharges at the Premises or the Adjacent Property caused by the Tenant, its agents, its employees or other parties. Tenant's failure to abide by

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the terms of this paragraph shall be restrainable by injunction. The Indemnity provision of this Lease shall apply to all Tenant's obligations under this Section 16.

Tenant shall not install and/or use any underground or aboveground storage tanks for any purpose.

16.3 Monitoring and Reporting Requirements.

16.3.1 Tenant shall promptly supply Landlord with any documents, correspondence and submissions made by Tenant to any Authority that requires submission of any information concerning environmental matters or Hazardous Substances, materials or wastes or toxic substances.

16.3.2 Tenant shall promptly furnish to Landlord true and complete copies of any documents, correspondence and submissions provided by Tenant to the appropriate Authority and any notices, documents, reports, directives and correspondence provided by the Authority to Tenant. Tenant shall also promptly furnish to Landlord true and complete copies of all sampling, tests and other investigation results obtained from any samples, tests and other investigation taken at and around the Premises and the Adjacent Property.

16.4 Conditions Precedent to Assignment and Sublease.

Notwithstanding subparagraph 24.2, if Landlord consents to any assignment or sublet of the Leased Premises under paragraph 24, Tenant shall remain responsible for all obligations under this Section 16.

16.5 Surrender.

16.5.1 On the last day of any Term hereof, or on any sooner termination, Tenant shall, at Tenant's own expense, have complied with any Environmental Laws affecting Tenant's usage or operation at the Premises.

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16.5.2 If at any time Landlord causes the Premises to be sampled, tested or otherwise investigated for environmental taints, and the sampling, tests, or other investigations indicate that Hazardous Materials or other adverse environmental conditions are present at the Premises and that release or discharge of the Hazardous Materials or other adverse environmental conditions occurred during this Lease, then in addition to being responsible to pay for the investigation and cleanup of such releases or discharges or other adverse environmental conditions, Tenant shall pay for the cost of the sampling, testing and other investigation.

17. **Successor Parties.** This Lease, and all provisions thereof, shall be binding upon and inure to the benefit of the heirs, administrators, executors, and permitted successors and assigns of the parties hereto.

18. **Notices.** All notices as required by any of the terms and conditions of this Lease Agreement shall be deemed given when notice is prepared, adequately addressed, and deposited in the United States Mail, postage prepaid. Notice to Landlord and Tenant are adequately addressed as follows:

Landlord	Phoenix Investment Group, Inc. 16074 SE 106 th Ave., #100 Clackamas, Oregon 97015
Tenant	North Clackamas Parks and Recreation District 150 Beaver Creek Rd., 4 th Floor Oregon City, OR 97045 Attn: Director

19. [Intentionally Omitted]

20. **Time of Essence.** Time is of the essence.

21. **Subordination.**

21.1 This Lease, at Landlord's option, shall be subordinate to any ground lease,

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mortgage, deed of trust or any other hypothecation or security now or hereafter placed upon the real property of which the Premises are a part and to any and all advances made on the security thereof and to all renewals, modifications, consolidations, replacements and extensions thereof. Notwithstanding such subordination, Tenant's right to quiet possession of the Premises shall not be disturbed if Tenant is not in default and so long as Tenant shall pay the rent and observe and perform all of the provisions of this Lease, unless this Lease is otherwise terminated pursuant to its terms. If any mortgagee, trustee or ground landlord shall elect to have this Lease prior to the lien of its mortgage, deed of trust or ground lease, and shall give written notice thereof to Tenant, this Lease shall be deemed prior to such mortgage, deed of trust, or ground lease, whether this lease is dated prior or subsequent to the date of said mortgage, deed of trust or ground lease or the date of recording thereof.

21.2 Tenant agrees to execute any documents required to effectuate an attornment, subordination or to make this Lease prior to the lien of any mortgage, deed of trust or ground lease, as the case may be. Should Tenant fail to execute such documents within 10 days after written demand, Landlord may execute such documents on behalf of Tenant as Tenant's attorney-in-fact.

22. Estoppel Certificate.

22.1 Tenant shall at any time upon not less than ten (10) days' prior written notice from Landlord execute, acknowledge and deliver to Landlord a statement in writing (i) certifying that this Lease is unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying that this Lease, as so modified, is in full force and effect) and the date to which the rent and other charges are paid in advance, if any, and (ii) acknowledging that there are not, to Tenant's knowledge, any uncured defaults on the part of Landlord hereunder, or specifying such defaults if any defaults are claimed. Any such

statement may be conclusively relied upon by any prospective purchaser or encumbrances of the Premises.

22.2 At Landlord's option, Tenant's failure to deliver such statement within such time shall be conclusive upon Tenant (i) that this Lease is in full force and effect, without modification, (ii) that there are no uncured defaults in Landlord's performance, and (iii) that not more than one month's rent has been paid in advance.

22.3 If Landlord desires to finance, refinance, or sell the Premises, or any part thereof, Tenant hereby agrees to deliver to any lender or purchaser designated by Landlord such financial statements of Tenant as may be reasonably required by such lender or purchaser at Landlord's cost. Such statements shall include the past three years' publicly available audited financial statements of Tenant.

23. Landlord's Access. Landlord and Landlord's agents shall have the right to enter the Premises at reasonable times and upon reasonable notice for the purpose of inspecting the same, doing any repairs, replacements or monitoring that Landlord deems necessary, showing the same to prospective purchasers, lenders, or tenants, and making such alterations, repairs, improvements or additions to the Premises as Landlord may deem necessary or desirable, or as are Landlord's responsibility hereunder. Landlord may at any time place on or about the Premises any "For Sale" signs and Landlord may at any time during the last year of the Term hereof place on or about the Premises any "For Lease" signs, all without rebate of rent or liability to Tenant.

24. Assignment and Sublease.

24.1 Landlord's Consent Required. Tenant shall not voluntarily or by operation of law assign, transfer, mortgage, sublet, or otherwise transfer or encumber all or any part of Tenant's interest in this Lease or in the Premises, without Landlord's prior written consent, which

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consent shall not be unreasonably withheld.

24.2 No Release of Tenant. Landlord's consent to subletting or assignment shall not necessarily release Tenant of Tenant's obligation or alter the primary liability of Tenant to pay the Rent and Additional Rent and to perform all other obligations to be performed by Tenant hereunder, but shall be in accordance with the terms and conditions of any consent to sublease or assignment agreement the Landlord and Tenant may execute. The acceptance of Rent and/or Additional Rent by Landlord from any other person and/or entity shall not be deemed consent to any subsequent assignment or subletting. In the event of default by any assignee of Tenant or any successor of Tenant, in the performance of any of the terms hereof, Landlord may proceed directly against Tenant without the necessity of exhausting remedies against said assignee.

24.3 Involuntary Assignment in Bankruptcy. If this Lease is deemed to be property of the Tenant or of the estate of Tenant within the meaning of the Bankruptcy Code 11 USC §101, et seq. (the "Bankruptcy Code") any and all monies or other considerations constituting Landlord's property under the preceding sentence not paid or delivered to Landlord shall be held and remain the exclusive property of Landlord and shall not constitute property of Tenant or of the estate of Tenant within the meaning of the Bankruptcy Code. Any and all monies or other considerations constituting Landlord's property under the preceding sentence not paid or delivered to Landlord shall be held in trust for the benefit of Landlord and be promptly paid or delivered to Landlord. Any person or entity to which this Lease is assigned pursuant to the provisions of the Bankruptcy Code, 11 U.S.C. §101 et seq. shall be deemed without further act or deed to assume all of the obligations arising under this Lease. Any such assignee shall upon demand execute and deliver to Landlord an instrument confirming such assumption.

24.4 Holdover

24.4.1 If Landlord withholds its consent to a holdover tenancy by Tenant

and Tenant does not vacate the Premises at the time required, such holdover shall be deemed wrongful and Landlord shall have the option to treat Tenant as a tenant from month to month, subject to all of the provisions of this lease except the provisions for term and renewal and at a rental rate equal to 150 percent of the rent last paid by Tenant during the Term, or to eject Tenant from the Premises and recover damages caused by wrongful holdover. Failure of Tenant to remove fixtures, furniture, furnishings, or trade fixtures that Tenant is required to remove under this lease shall constitute a failure to vacate to which this section shall apply.

24.4.2 Should the parties agree to a holdover tenancy by Tenant, such holdover shall be on a month-to-month basis on the same terms and conditions, including Rent and Additional Rent. The tenancy shall be terminable upon thirty (30) days written notice by either party.

24.4.3 Attorney's Fees. In the event Tenant shall assign or sublet the Premises or request the consent of Landlord to any assignment or subletting or if Tenant shall request the consent of Landlord for any act Tenant proposes to do then Tenant shall pay Landlord's reasonable attorneys fees and other costs incurred in connection therewith to the extent they exceed \$200.

25. **Survival.** The provisions of Sections 5.2.1, 5.2.4, 5.2.5, 5.2.6, 6.1, 6.4, 8, 9, 10 14.3 and 16 survive the expiration or earlier termination of the Lease.

26. **Broker.** Landlord represents and warrants to Tenant, and Tenant represents and warrants to Landlord, that no broker or finder has been engaged by them, respectively, except for Capacity Commercial Group who represented Landlord and except for KW Commercial who represented Tenant. Upon full execution of this Lease and payment of the Deposit, Landlord shall pay to Capacity Commercial Group the total sum of \$6,243.12 and to Keller Williams Commercial the total sum of \$6,243.12. These payments are the only amounts

28.2 Binding Arbitration. After exhaustion of the preceding processes, any remaining dispute shall be submitted to binding arbitration under the jurisdiction of the Circuit Court of the State of Oregon for Clackamas County.


IN WITNESS WHEREOF, the respective parties have executed this Lease as of the day and year first written above.

Phoenix Investment Group, Inc.

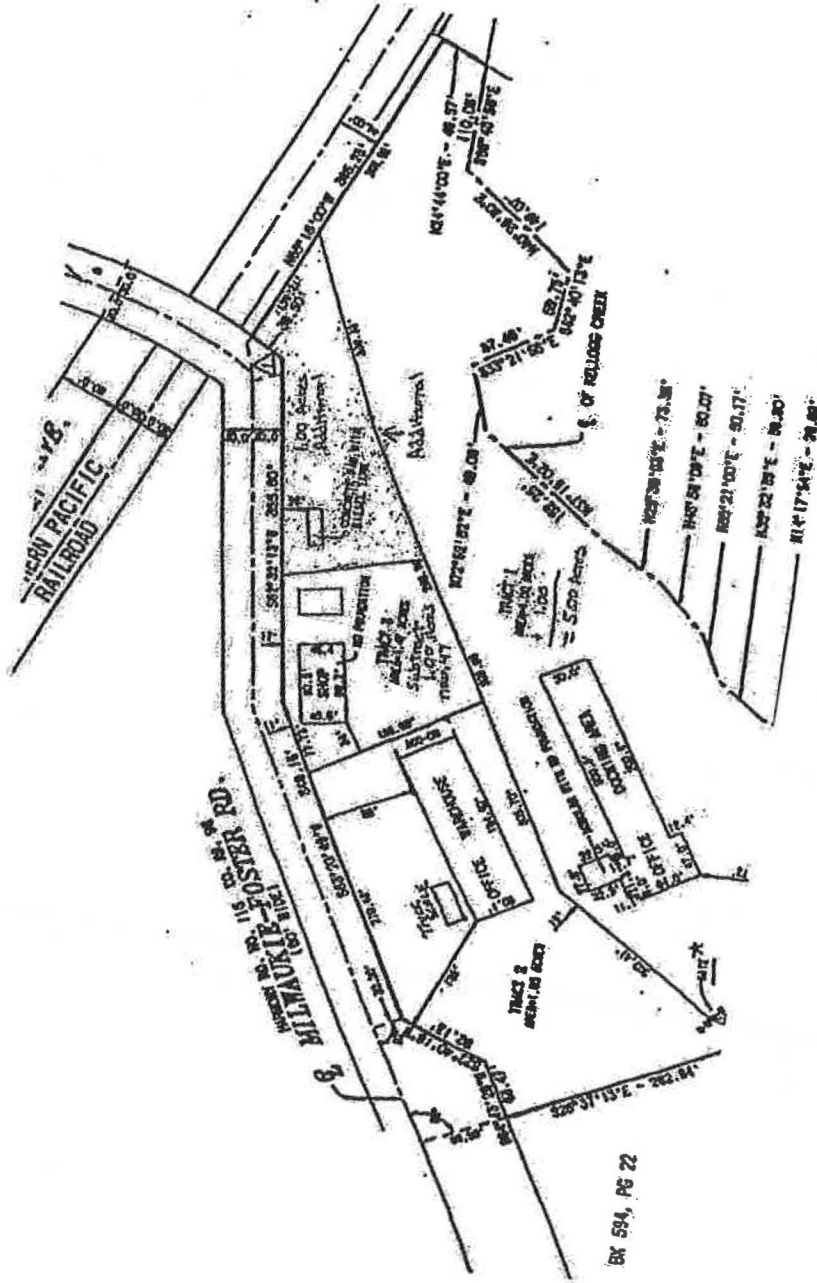


By: Todd Call, President

North Clackamas Parks and Recreation District



By: Gary Barth, Director



EX 584, PG 22



DAN JOHNSON
MANAGER

DEVELOPMENT AGENCY

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

July 12, 2018

Board of County Commissioners
Development Agency Board

Members of the Board:

Approval of an Amendment to the Intergovernmental Agreement with
Water Environment Services and Transfer of Easements for
Wetland Mitigation Services and Option to Purchase Property

Purpose/Outcome	Execution of an amendment to the intergovernmental agreement (“IGA”) with Water Environment Services (“WES”) and easements required to be provided under the terms of the IGA.
Dollar Amount and Fiscal Impact	No Fiscal Impact. Approximately \$330,000 in value was exchanged from each agency to the other under the original IGA
Funding Source	No Fiscal Impact. The value provided by each agency to the other is equivalent.
Duration	Ten years from the effective date of the IGA or at the time the wetland mitigation requirements have been completed by WES, whichever is sooner. The easements to be accepted by WES are permanent.
Previous Board Action/Review	Original Intergovernmental Agreement with WES approved by the Board on July 27, 2017.
Strategic Plan Alignment	Grow a vibrant economy Build a strong infrastructure Honor, utilize, promote and invest in our natural resources
Contact Person	Dave Queener, Development Agency Program Supervisor 503.742.4322 Ron Wierenga, Water Environment Services, 503-742-4581

BACKGROUND:

In January 2012, Clackamas County Service District No. 1 (“CCSD #1”) purchased a 15-acre property owned by the Carli family to construct a regional stormwater facility in support of water quality and stream health. The project also fulfills state and federal regulatory requirements to improve stormwater treatment in older areas that drain to urban creeks, like Carli Creek, which discharges into the Clackamas River. The main elements of the Carli Creek Enhancement and Water Quality Project (“Carli Creek Project”) include:

- 1) Re-routing stormwater conveyance systems along SE 120th St and SE Capps Road;
- 2) Regional water quality treatment facility;
- 3) Wetlands and upland habitat enhancement; and
- 4) Carli Creek habitat restoration for fish.

On July 27, 2017, the Development Agency and CCSD #1 executed an IGA to facilitate the Carli Creek Project by accommodating the construction of a new stormwater pipeline to divert runoff currently discharged to Carli Creek to the new water quality treatment facility. The new stormwater pipeline is located on adjacent property to the east of the Carli Creek Project site. The adjacent property is currently owned by the Clackamas County Development Agency. The Development Agency is under contract to sell the adjacent property as a part of the Capps Road/Clackamas Industrial Area Opportunity Project. In order to fill wetlands on this property to facilitate development, the Agency is required to perform wetland mitigation. This mitigation has been incorporated as part of the Carli Creek Project.

CCSD #1 and the Development Agency identified a number of benefits in the coordination of these projects which will result in cost savings and efficiencies for both agencies. Accordingly, the Development Agency agreed to grant certain easements and transferred certain parcels of land to CCSD #1 in exchange for CCSD #1 incorporating and managing the wetland mitigation as part of the Carli Creek Project and granting an option to the Development Agency to allow them exclusive rights to purchase certain property owned by CCSD #1 adjacent to the Capps Road/Clackamas Industrial Area Opportunity Project.

On July 1, 2018, CCSD#1 assigned all of its rights and obligations under the IGA to Water Environment Services ("WES").

An amendment to the original IGA is necessary to properly identify the location of the boundary line of the Agency's property, which required CCSD#1 to adjust the location of a stormwater pipeline to ensure that the improvement did not encroach on the neighboring property. The amendment will substitute Exhibit A, which illustrates the proper location of the boundary line.

Section 2 of the IGA requires the Agency to convey a 15-foot permanent pipeline, stormwater detention, and maintenance easement to WES, along with a second 15-foot permanent access easement. The Agency and WES now wish to complete these obligations and execute the easements.

This information has been reviewed by County Counsel.

RECOMMENDATION:

Staff recommends that the Board of County Commissioners, in its capacity as the governing body of the Clackamas County Development Agency, approve the IGA amendment with Water Environment Services, and the conveyance of the easements described herein.

Respectfully submitted,

Dave Queener
Development Agency Program Supervisor

Attachments:
Amendment #1 to the Intergovernmental Agreement
Intergovernmental Agreement
Permanent Pipeline, Stormwater Detention and Maintenance Easement
Permanent Access Easement

**AMENDMENT TO THE INTERGOVERNMENTAL AGREEMENT
BETWEEN WATER ENVIRONMENT SERVICES AND
CLACKAMAS COUNTY DEVELOPMENT AGENCY FOR
CARLI CREEK RESTORATION AND MITIGATION**

THIS AMENDMENT (“Amendment”) is made and entered into by and between the Clackamas County Development Agency (hereafter called “Agency”), the urban renewal agency of Clackamas County, and Water Environment Services (hereafter called “District”), a municipal partnership entity formed pursuant to ORS Chapter 190, to update the descriptions of the easements associated with the stormwater pipeline and access road.

WHEREAS, the Agency and Clackamas County Service District No. 1 (“CCSD#1”) entered into a certain Intergovernmental Agreement, effective July 27, 2017 (the “IGA”);

WHEREAS, the IGA related to certain improvements associated with the Carli Creek Water Quality and Enhancement Project, as more particularly described in the IGA;

WHEREAS, after execution of the IGA, a question arose as to the location of the boundary line of the Agency’s property, which required CCSD#1 to adjust the location of a stormwater pipeline to ensure that the improvement did not encroach on the neighboring property;

WHEREAS, the parties desire to revise the IGA to correctly reflect the location of the stormwater pipeline and access road easement; and

WHEREAS, on July 1, 2018, Clackamas County Service District No. 1 assigned all of its rights and obligations under the IGA to District.

THEREFORE, the parties agree that the Agreement is amended as follows:

1. Exhibit A of the Agreement is hereby amended and replaced in its entirety with a revised Exhibit A-1 and Exhibit A-2, which are attached to this Amendment and fully incorporated herein.
2. Except as set forth herein, the Agreement is ratified and affirmed in all respects. No other amendment or modification of the IGA is intended or may be implied from the amendments set forth herein.

3. All terms not specifically defined herein shall be defined as set forth in the IGA.

IN WITNESS HEREOF, the Parties have executed this Amendment by the date set forth opposite their names below.

Clackamas County Development Agency

Water Environment Services

Chair

Chair

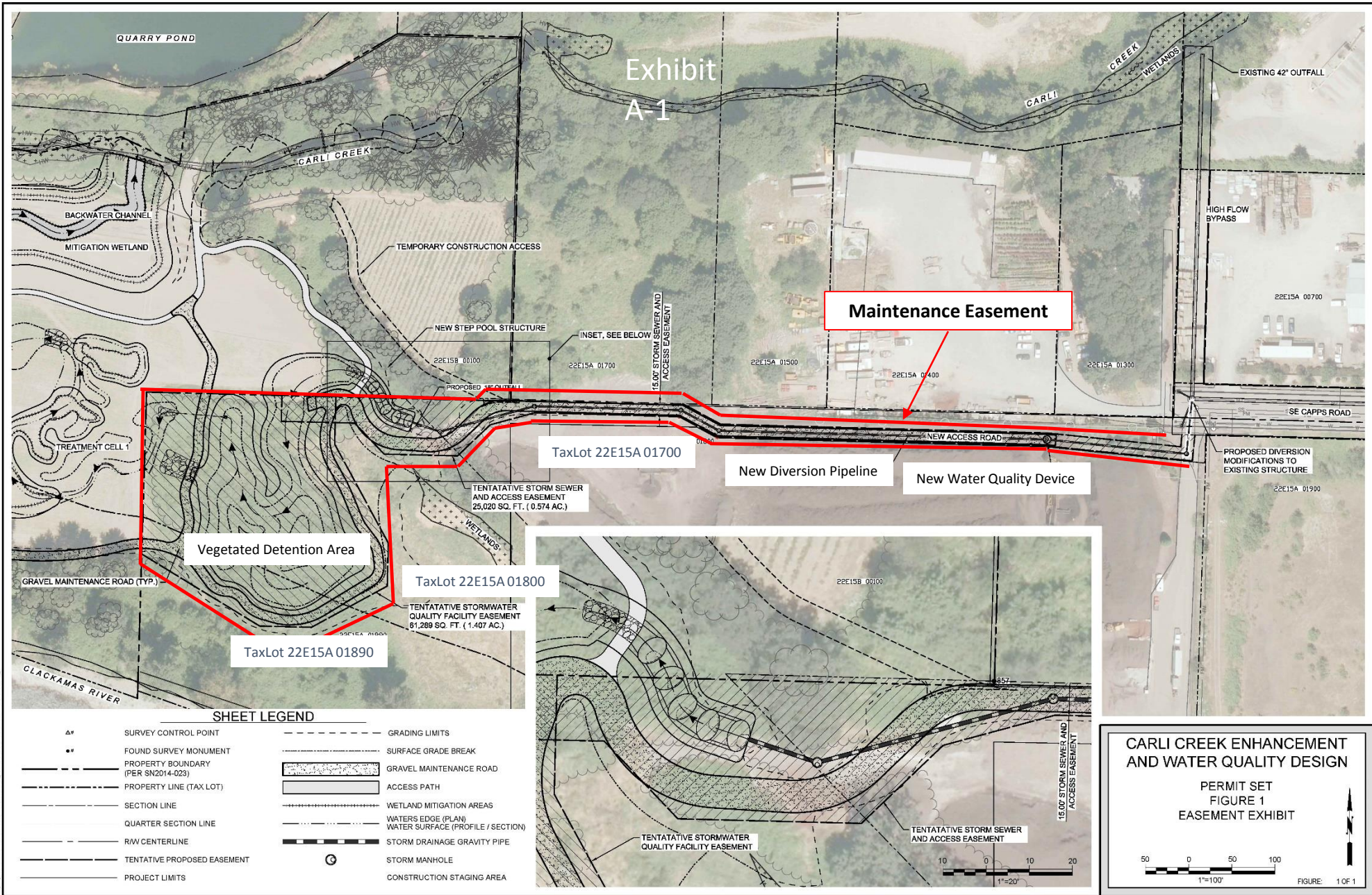
Recording Secretary

Exhibit List:

Exhibit A-1: Pipeline, Stormwater Detention, Maintenance, and Easement Map

Exhibit A-2: Access Easement Map

Exhibit A-1



SHEET LEGEND

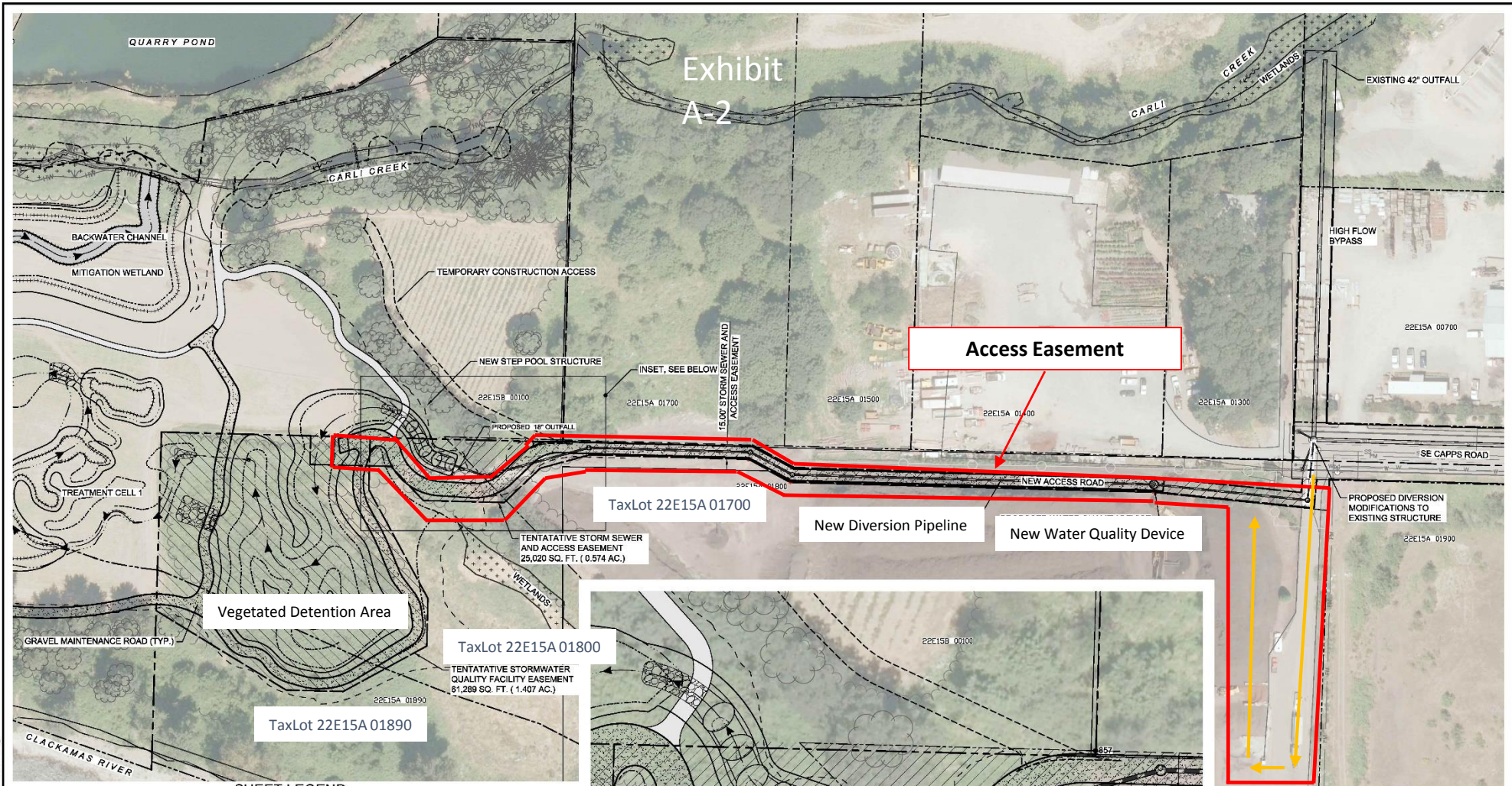
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●#	FOUND SURVEY MONUMENT	---	SURFACE GRADE BREAK
---	PROPERTY BOUNDARY (PER SN2014-023)	---	GRAVEL MAINTENANCE ROAD
---	PROPERTY LINE (TAX LOT)	---	ACCESS PATH
---	SECTION LINE	---	WETLAND MITIGATION AREAS
---	QUARTER SECTION LINE	---	WATERS EDGE (PLAN)
---	RAW CENTERLINE	---	WATER SURFACE (PROFILE / SECTION)
---	TENTATIVE PROPOSED EASEMENT	---	STORM DRAINAGE GRAVITY PIPE
---	PROJECT LIMITS	⊙	STORM MANHOLE
		---	CONSTRUCTION STAGING AREA

CARLI CREEK ENHANCEMENT AND WATER QUALITY DESIGN

PERMIT SET
FIGURE 1
EASEMENT EXHIBIT

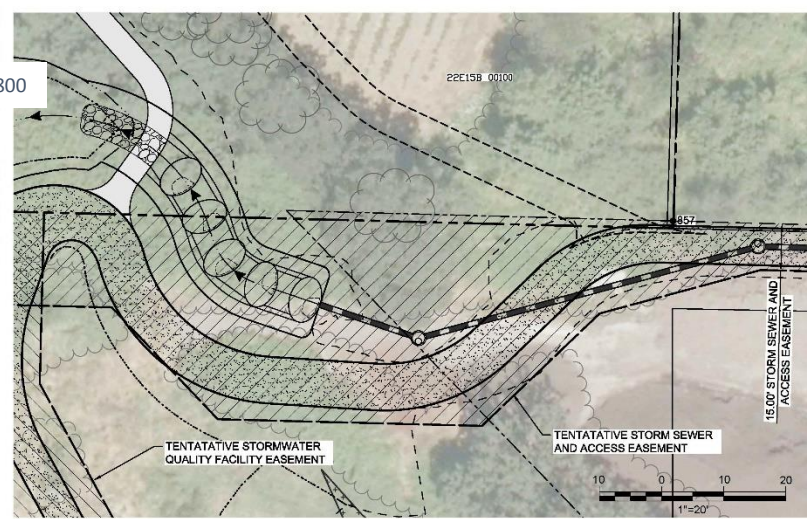
Project: March 15, 2018
 Drawing: 2018-11-15-2595-000_PDR-CARLI-CREEK-ENHANCEMENT-EXHIBIT.dwg

Exhibit A-2



SHEET LEGEND

△#	SURVEY CONTROL POINT	---	GRADING LIMITS
●#	FOUND SURVEY MONUMENT	---	SURFACE GRADE BREAK
---	PROPERTY BOUNDARY (PER SN2014-023)	▨	GRAVEL MAINTENANCE ROAD
---	PROPERTY LINE (TAX LOT)	---	ACCESS PATH
---	SECTION LINE	---	WETLAND MITIGATION AREAS
---	QUARTER SECTION LINE	---	WATER'S EDGE (PLAN)
---	R/W CENTERLINE	---	WATER SURFACE (PROFILE / SECTION)
---	TENTATIVE PROPOSED EASEMENT	---	STORM DRAINAGE GRAVITY PIPE
---	PROJECT LIMITS	⊙	STORM MANHOLE
		---	CONSTRUCTION STAGING AREA



CARLI CREEK ENHANCEMENT AND WATER QUALITY DESIGN

PERMIT SET
FIGURE 1
EASEMENT EXHIBIT

Project: March 15, 2018
 C:\env\2017\1414-15655-000\DWG\FIGURESEASMENT_EXHIBIT.dwg

Grantor: Clackamas County Development Agency		State of Oregon
Address: 150 Beaver Creek Road Oregon City, OR 97045		
Grantee: Water Environment Services		
Address: 150 Beaver Creek Road Oregon City, OR 97045		
After Recording Return to: Water Environment Services 150 Beaver Creek Road Oregon City, OR 97045		
Until a change is requested, all taxes shall be sent to: No Change		

PERMANENT NON-EXCLUSIVE ACCESS EASEMENT
(Corporate or Non Profit Grantor)

KNOW ALL PERSONS BY THESE PRESENTS, THAT Clackamas County Development Agency, the urban renewal agency of Clackamas County, a corporate body politic, (“Grantor”), for value received, hereby grants and conveys to Water Environment Services, a municipal partnership entity formed pursuant to ORS Chapter 190, (“Grantee”), its heirs, successors and assigns, a permanent non-exclusive easement for ingress and egress, in, under, upon, and across Grantor’s real property located in Clackamas County, State of Oregon, and with Grantor’s real property more particularly described as follows:

Grantor’s real property more particularly described as follows: A tract of fee land located in the NE ¼ of Section 15, T2S, R2E, WM, as more particularly described by that certain Warranty Deed recorded on October 8, 2009 as Document No. 2009-071163 in the Deed Records of Clackamas County, Oregon, and that Property Line Adjustment Deed (corrective) recorded on February 7, 2018 as Document No. 2018-008395 (the “Property”).

The Permanent Easement for ingress and egress is more particularly depicted in Figure “1” which is attached hereto and by this reference made a part hereof (the “Easement Area”).

This is a grant from one entity of Clackamas County to another in an intergovernmental transfer. Other consideration than money was the true and actual consideration for this conveyance.

Grantee shall have the right to enter upon and utilize the Easement Area for the purposes described in this document. Grantee may remove trees, shrubs, brush, paving or other materials within the Easement Area whenever necessary to accomplish these purposes. Grantee shall be responsible to restore any property disturbed by its use of the Easement Area to its original condition upon completion of their work or use and shall be responsible for any damage caused by same.

Neither Grantor nor Grantor’s successors in title shall construct or maintain any building or other structures upon the above described Easement Area which will unreasonably interfere with Grantee’s exercise of this easement.

Grantee shall be solely responsible for determining the location of all utilities in the Easement Area that may be affected by work performed in the Easement Area by or on behalf of Grantee. Grantee shall provide all required notification to the applicable utility companies and shall take all steps necessary to prevent damage to or disruption of all utilities and utility service and other equipment and systems in the Easement Area.

Except as otherwise provided, the Easement Area shall be non-exclusive. Grantor shall have the right to grant easements to others to cross or use the Easement Area now or in the future, provided the construction and installation of such do not unreasonably interfere with the repair, maintenance or operation of Grantee's facilities and related appurtenances.

Grantee covenants to and does hereby agree to indemnify, hold harmless and defend the Grantor and his successors and assigns, from and against all claims and all costs, expenses and liabilities (including reasonable attorneys' fees) incurred in connection with all claims, including any action or proceedings brought thereon, arising from or as a result of the death of any person or persons, or any accident, personal injury, loss or damage whatsoever caused to any person or entity or to the property of any person or entity as shall occur on or about the Easement Area as the result of the Grantee's exercise of the rights granted in this Agreement, or Grantee's failure to perform the obligations set forth in this Agreement. There shall be excluded from the foregoing indemnification the damages, costs and expenses to the extent that such damages, costs and expenses are caused by the negligence of Grantor, his agents, employees, representatives, or their successors and assigns.

The ingress and egress (the "Access") is currently improved and utilized and extends over the Property. Grantor hereby conveys to Grantee the right to access the Easement Area and the right to develop, operate and maintain the Access as now located on the Property for the purposes described herein. Grantee shall be solely responsible for the cost of the maintenance of the Access. Grantee shall agree to relocate the Access within a reasonable time upon written request from Grantor. Grantor shall provide an alternative route of ingress and egress on the Property which is acceptable to Grantee. Grantee shall assume the costs of relocating and reconstructing the alternative route of ingress and egress. Grantee's consent with regards to the relocation of the Access shall not be unreasonably withheld.

Statutory Land Use Disclaimer: Before signing or accepting this instrument, the person transferring fee title should inquire about the person's rights, if any, under ORS 195.300, 195.301 and 195.305 to 195.336 and Sections 5 to 11, Chapter 424, Oregon Laws 2007, Sections 2 to 9 and 17, Chapter 855, Oregon Laws 2009, and Sections 2 to 7, Chapter 8, Oregon Laws 2010. This instrument does not allow use of the property described in this instrument in violation of applicable land use laws and regulations. Before signing or accepting this instrument, the person acquiring fee title to the property should check with the appropriate city or county planning department to verify that the unit of land being transferred is a lawfully established lot or parcel, as defined in ORS 92.010 or 215.010, to verify the approved uses of the lot or parcel, to determine any limits on lawsuits against farming or forest practices, as defined in ORS 30.930, and to inquire about the rights of neighboring property owners, if any, under ORS 195.300, 195.301 and 195.305 to 195.336 and Sections 5 to 11, Chapter 424, Oregon Laws 2007, Sections 2 to 9 and 17, Chapter 855, Oregon Laws 2009, and Sections 2 to 7, Chapter 8, Oregon Laws 2010.

[Signature and Acknowledgment on Following Page]

In witness whereof, the above named Grantor has hereunto set Grantor's hand to this document on this _____ day of _____ 2018.

CLACKAMAS COUNTY DEVELOPMENT AGENCY,
the URBAN RENEWAL AGENCY OF CLACKAMAS COUNTY,
a corporate body politic under ORS Chapter 457

By: _____
Chair

STATE OF OREGON)
) ss.
County of _____)

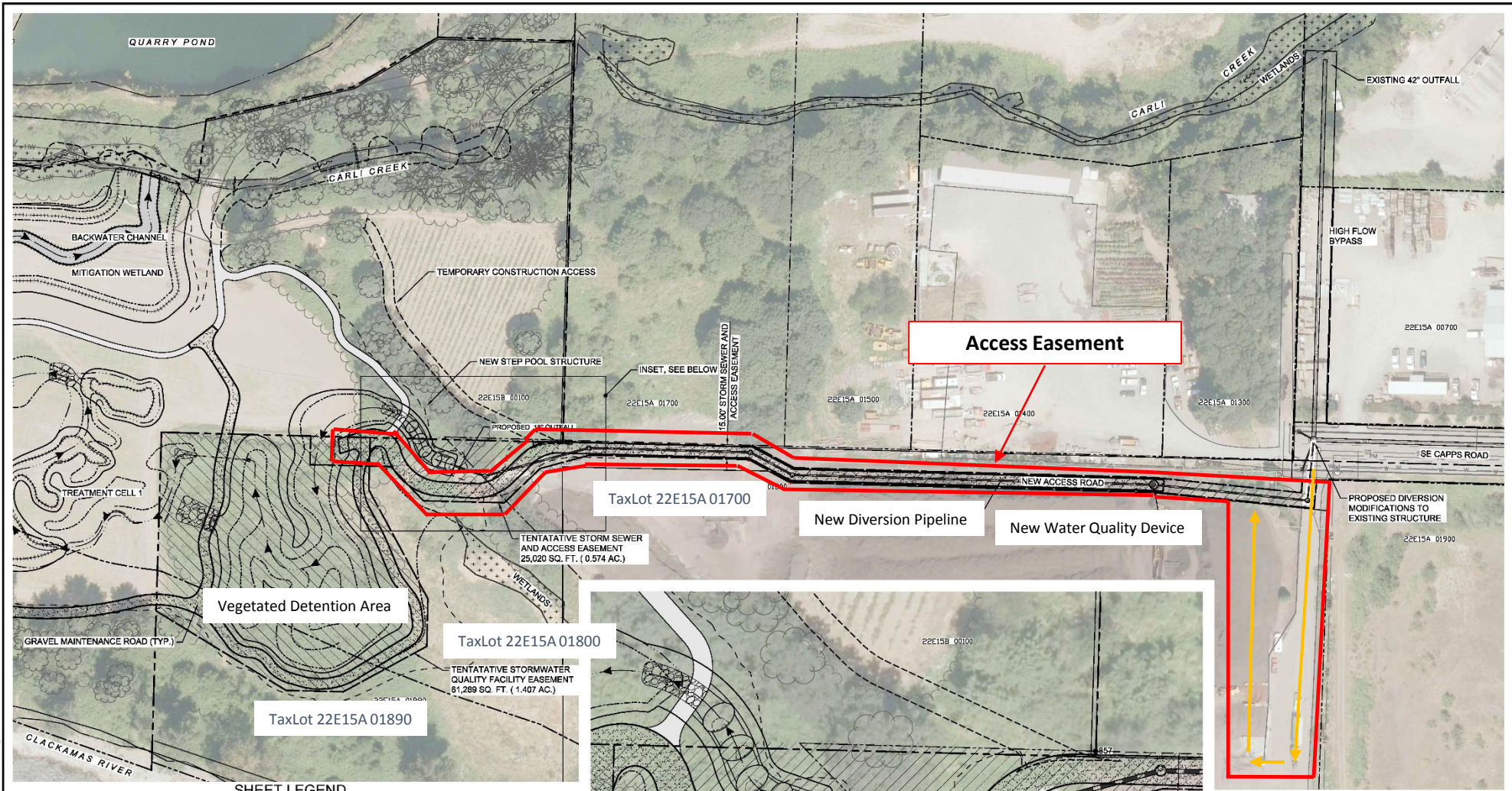
This instrument was signed and attested before me this _____ day of _____ 2018,
by _____ as Chair of the Clackamas County Development Agency.

Notary Public for State of Oregon
My Commission Expires: _____

ACCEPTED BY GRANTEE:
WATER ENVIRONMENT SERVICES,
a municipal partnership entity under ORS Chapter 190

Chair

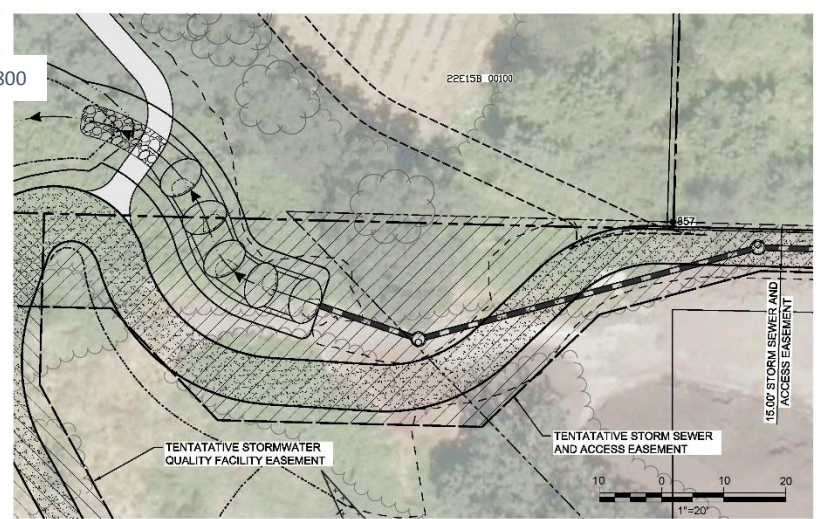
Date



Project: March 15, 2018
 Drawing: 20181115-2595-000_PDRCD000.dwg/FIGURE/EASEMENT EXHIBIT.dwg

SHEET LEGEND

▲#	SURVEY CONTROL POINT	---	GRADING LIMITS
●#	FOUND SURVEY MONUMENT	---	SURFACE GRADE BREAK
---	PROPERTY BOUNDARY (PER SN2014-023)	---	GRAVEL MAINTENANCE ROAD
---	PROPERTY LINE (TAX LOT)	---	ACCESS PATH
---	SECTION LINE	---	WETLAND MITIGATION AREAS
---	QUARTER SECTION LINE	---	WATERS EDGE (PLAN)
---	RAW CENTERLINE	---	WATER SURFACE (PROFILE / SECTION)
---	TENTATIVE PROPOSED EASEMENT	---	STORM DRAINAGE GRAVITY PIPE
---	PROJECT LIMITS	⊙	STORM MANHOLE
		---	CONSTRUCTION STAGING AREA



**CARLI CREEK ENHANCEMENT
 AND WATER QUALITY DESIGN**
 PERMIT SET
 FIGURE 1
 EASEMENT EXHIBIT

FIGURE: 1 OF 1

Grantor: Clackamas County Development Agency		State of Oregon
Address: 150 Beaver Creek Road Oregon City, OR 97045		
Grantee: Water Environment Services		
Address: 150 Beaver Creek Road Oregon City, OR 97045		
After Recording Return to: Water Environment Services 150 Beaver Creek Road Oregon City, OR 97045		
Until a change is requested, all taxes shall be sent to: No Change		

**PERMANENT NON-EXCLUSIVE PIPELINE,
STORMWATER DETENTION, MAINTENANCE**
(Corporate or Non Profit Grantor)

KNOW ALL PERSONS BY THESE PRESENTS, THAT Clackamas County Development Agency, the urban renewal agency of Clackamas County, a corporate body politic, (“Grantor”), for value received, hereby grants and conveys to Water Environment Services, a municipal partnership entity formed pursuant to ORS Chapter 190, (“Grantee”), its heirs, successors and assigns, a permanent non-exclusive easement to lay down, construct, reconstruct, replace, operate, inspect and perpetually maintain a storm water pipeline and vegetated stormwater detention facility in, under, upon, and across Grantor’s real property located in Clackamas County, State of Oregon, and with Grantor’s real property more particularly described as follows:

Grantor’s real property more particularly described as follows: A tract of fee land located in the NE ¼ of Section 15, T2S, R2E, WM, as more particularly described by that certain Warranty Deed recorded on October 8, 2009 as Document No. 2009-071163 in the Deed Records of Clackamas County, Oregon, and that Property Line Adjustment Deed (corrective) recorded on February 7, 2018 as Document No. 2018-008395 (the “Property”).

The Permanent Easement described herein is more particularly depicted in Figure “1” which is attached hereto and by this reference made a part hereof (the “Easement Area”).

This is a grant from one entity of Clackamas County to another in an intergovernmental transfer. Other consideration than money was the true and actual consideration for this conveyance.

Grantee shall have the right to enter upon and utilize the Easement Area for the purposes described in this document. Grantee may remove trees, shrubs, brush, paving or other materials within the Easement Area whenever necessary to accomplish these purposes. Except for the vegetated detention area covered by this Easement, Grantee shall be responsible to restore any property disturbed by its use of the Easement Area to its original condition upon completion of their work or use and shall be responsible for any damage caused by same.

Neither Grantor nor Grantor's successors in title shall construct or maintain any building or other structures upon the above described Easement Area which will unreasonably interfere with Grantee's exercise of this easement.

Grantee shall be solely responsible for determining the location of all utilities in the Easement Area that may be affected by work performed in the Easement Area by or on behalf of Grantee. Grantee shall provide all required notification to the applicable utility companies and shall take all steps necessary to prevent damage to or disruption of all utilities and utility service and other equipment and systems in the Easement Area.

Except as otherwise provided, the Easement Area shall be non-exclusive. Grantor shall have the right to grant easements to others to cross or use the Easement Area now or in the future, provided the construction and installation of such do not unreasonably interfere with the repair, maintenance or operation of Grantee's facilities and related appurtenances.

Grantee covenants to and does hereby agree to indemnify, hold harmless and defend the Grantor and his successors and assigns, from and against all claims and all costs, expenses and liabilities incurred in connection with all claims, including any action or proceedings brought thereon, arising from or as a result of the death of any person or persons, or any accident, personal injury, loss or damage whatsoever caused to any person or entity or to the property of any person or entity as shall occur on or about the Easement Area as the result of the Grantee's exercise of the rights granted in this Agreement, or Grantee's failure to perform the obligations set forth in this Agreement. There shall be excluded from the foregoing indemnification the damages, costs and expenses to the extent that such damages, costs and expenses are caused by the negligence of Grantor, his agents, employees, representatives, or their successors and assigns.

Statutory Land Use Disclaimer: Before signing or accepting this instrument, the person transferring fee title should inquire about the person's rights, if any, under ORS 195.300, 195.301 and 195.305 to 195.336 and Sections 5 to 11, Chapter 424, Oregon Laws 2007, Sections 2 to 9 and 17, Chapter 855, Oregon Laws 2009, and Sections 2 to 7, Chapter 8, Oregon Laws 2010. This instrument does not allow use of the property described in this instrument in violation of applicable land use laws and regulations. Before signing or accepting this instrument, the person acquiring fee title to the property should check with the appropriate city or county planning department to verify that the unit of land being transferred is a lawfully established lot or parcel, as defined in ORS 92.010 or 215.010, to verify the approved uses of the lot or parcel, to determine any limits on lawsuits against farming or forest practices, as defined in ORS 30.930, and to inquire about the rights of neighboring property owners, if any, under ORS 195.300, 195.301 and 195.305 to 195.336 and Sections 5 to 11, Chapter 424, Oregon Laws 2007, Sections 2 to 9 and 17, Chapter 855, Oregon Laws 2009, and Sections 2 to 7, Chapter 8, Oregon Laws 2010.

[Signature and Acknowledgment on Following Page]

In witness whereof, the above named Grantor has hereunto set Grantor's hand to this document on this _____ day of _____ 2018.

CLACKAMAS COUNTY DEVELOPMENT AGENCY,
the URBAN RENEWAL AGENCY OF CLACKAMAS COUNTY,
a corporate body politic under ORS Chapter 457

By: _____
Chair

STATE OF OREGON)
) ss.
County of _____)

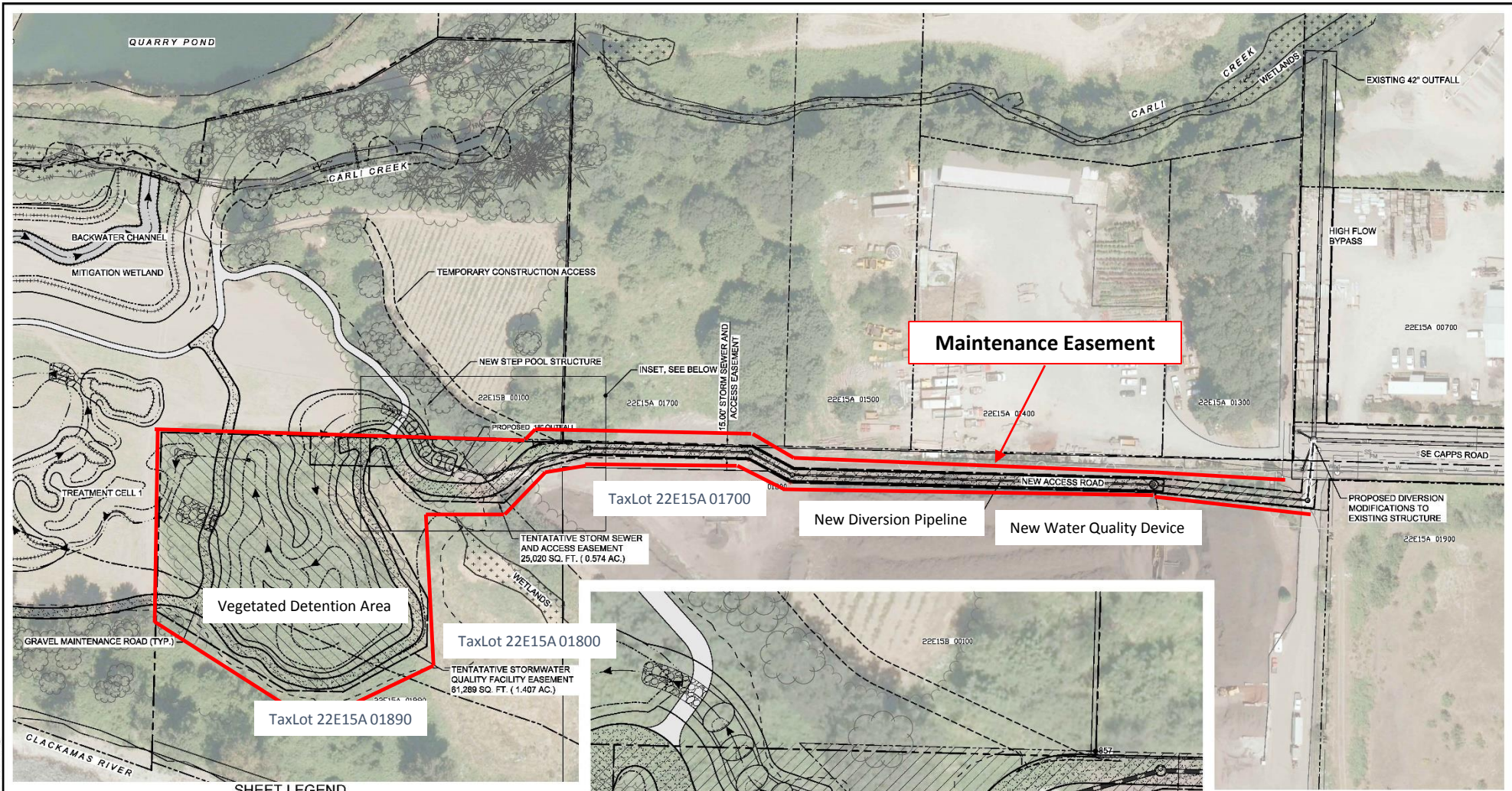
This instrument was signed and attested before me this _____ day of _____, 2018
by _____ as Chair of the Clackamas County Development Agency.

Notary Public for State of Oregon
My Commission Expires: _____

ACCEPTED BY GRANTEE:
WATER ENVIRONMENT SERVICES,
a municipal partnership entity under ORS Chapter 190

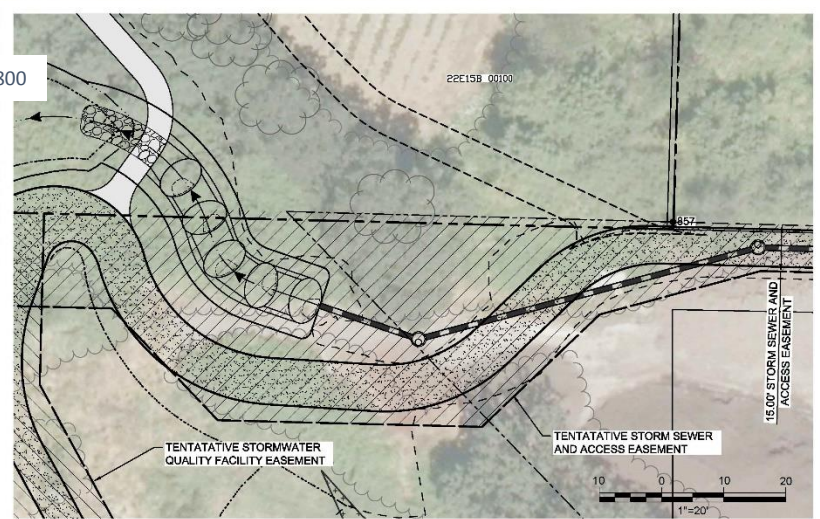
Chair

Date



SHEET LEGEND

▲#	SURVEY CONTROL POINT	---	GRADING LIMITS
●#	FOUND SURVEY MONUMENT	---	SURFACE GRADE BREAK
---	PROPERTY BOUNDARY (PER SN2014-023)	---	GRAVEL MAINTENANCE ROAD
---	PROPERTY LINE (TAX LOT)	---	ACCESS PATH
---	SECTION LINE	---	WETLAND MITIGATION AREAS
---	QUARTER SECTION LINE	---	WATERS EDGE (PLAN)
---	RAW CENTERLINE	---	WATER SURFACE (PROFILE / SECTION)
---	TENTATIVE PROPOSED EASEMENT	---	STORM DRAINAGE GRAVITY PIPE
---	PROJECT LIMITS	⊙	STORM MANHOLE
		---	CONSTRUCTION STAGING AREA



CARLI CREEK ENHANCEMENT AND WATER QUALITY DESIGN

PERMIT SET
FIGURE 1
EASEMENT EXHIBIT

FIGURE: 1 OF 1

Project: March 15, 2018
 Drawing: 20181114-12958-000_PDRCD002.dwg/FIGURE/EASEMENT EXHIBIT.dwg



Gregory L. Geist
Director

July 12, 2018

Board of County Commissioners
Water Environment Services Board

Members of the Board:

**Approval of an Amendment to the Intergovernmental Agreement with
Clackamas County Development Agency and Transfer of Easements for
Wetland Mitigation Services and Option to Purchase Property**

Purpose/Outcomes	Execution of an amendment to the intergovernmental agreement (“IGA”) with Clackamas County Development Agency (“Agency”) and easements required to be provided under the terms of the IGA.
Dollar Amount and Fiscal Impact	No Fiscal Impact. Approximately \$330,000 in value was exchanged from each agency to the other under the original IGA.
Funding Source	No Fiscal Impact. The value provided by each agency to the other is equivalent.
Duration	Ten years from the effective date of the IGA or at the time the wetland mitigation requirements have been completed by WES, whichever is sooner. The easements to be accepted by WES are permanent.
Previous Board Action	Original Intergovernmental Agreement with Agency approved by the Board on July 27 th , 2017.
Strategic Plan Alignment	Grow a vibrant economy. Build a strong infrastructure. Honor, utilize, promote and invest in our natural resources.
Contact Person	Dave Queener, Development Agency Program Supervisor, 503-742-4322 Ron Wierenga, Water Environment Services, 503-742-4581

BACKGROUND:

In January 2012, Clackamas County Service District No. 1 (“CCSD #1”) purchased a 15-acre property owned by the Carli family to construct a regional stormwater facility in support of water quality and stream health. The project also fulfills state and federal regulatory requirements to improve stormwater treatment in older areas that drain to urban creeks, like Carli Creek, which discharges into the Clackamas River. The main elements of the Carli Creek Enhancement and Water Quality Project (“Carli Creek Project”) include:

- 1) Re-routing stormwater conveyance systems along SE 120th St and SE Capps Road;
- 2) Regional water quality treatment facility;
- 3) Wetlands and upland habitat enhancement; and
- 4) Carli Creek habitat restoration for fish.

On July 27, 2017, the Development Agency and CCSD #1 executed an IGA to facilitate the Carli Creek Project by accommodating the construction of a new stormwater pipeline to divert runoff currently

discharged to Carli Creek to the new water quality treatment facility. The new stormwater pipeline is located on adjacent property to the east of the Carli Creek Project site. The adjacent property is currently owned by the Clackamas County Development Agency. The Development Agency is under contract to sell the adjacent property as a part of the Capps Road/Clackamas Industrial Area Opportunity Project. In order to fill wetlands on this property to facilitate development, the Agency is required to perform wetland mitigation. This mitigation has been incorporated as part of the Carli Creek Project.

CCSD #1 and the Development Agency identified a number of benefits in the coordination of these projects which will result in cost savings and efficiencies for both agencies. Accordingly, the Development Agency agreed to grant certain easements and transferred certain parcels of land to CCSD #1 in exchange for CCSD #1 incorporating and managing the wetland mitigation as part of the Carli Creek Project and granting an option to the Development Agency to allow them exclusive rights to purchase certain property owned by CCSD #1 adjacent to the Capps Road/Clackamas Industrial Area Opportunity Project.

On July 1, 2018, CCSD#1 assigned all of its rights and obligations under the IGA to Water Environment Services ("WES").

An amendment to the original IGA is necessary to properly identify the location of the boundary line of the Agency's property, which required CCSD#1 to adjust the location of a stormwater pipeline to ensure that the improvement did not encroach on the neighboring property. The amendment will substitute Exhibit A, which illustrates the proper location of the boundary line.

Section 2 of the IGA requires the Agency to convey a 15-foot permanent pipeline, stormwater detention, and maintenance easement to WES, along with a second 15-foot permanent access easement. The Agency and WES now wish to complete these obligations and execute the easements.

RECOMMENDATION:

Staff recommends that the Board of County Commissioners, in its capacity as the governing body of the WES, approve the IGA amendment with Clackamas County Development Agency, and the conveyance of the easements described herein.

Respectfully submitted,



Greg Geist
Director, Water Environment Services

Attachments:

- Amendment #1 to the Intergovernmental Agreement
- Intergovernmental Agreement
- Permanent Pipeline, Stormwater Detention and Maintenance Easement
- Permanent Access Easement

**AMENDMENT TO THE INTERGOVERNMENTAL AGREEMENT
BETWEEN WATER ENVIRONMENT SERVICES AND
CLACKAMAS COUNTY DEVELOPMENT AGENCY FOR
CARLI CREEK RESTORATION AND MITIGATION**

THIS AMENDMENT (“Amendment”) is made and entered into by and between the Clackamas County Development Agency (hereafter called “Agency”), the urban renewal agency of Clackamas County, and Water Environment Services (hereafter called “District”), a municipal partnership entity formed pursuant to ORS Chapter 190, to update the descriptions of the easements associated with the stormwater pipeline and access road.

WHEREAS, the Agency and Clackamas County Service District No. 1 (“CCSD#1”) entered into a certain Intergovernmental Agreement, effective July 27, 2017 (the “IGA”);

WHEREAS, the IGA related to certain improvements associated with the Carli Creek Water Quality and Enhancement Project, as more particularly described in the IGA;

WHEREAS, after execution of the IGA, a question arose as to the location of the boundary line of the Agency’s property, which required CCSD#1 to adjust the location of a stormwater pipeline to ensure that the improvement did not encroach on the neighboring property;

WHEREAS, the parties desire to revise the IGA to correctly reflect the location of the stormwater pipeline and access road easement; and

WHEREAS, on July 1, 2018, Clackamas County Service District No. 1 assigned all of its rights and obligations under the IGA to District.

THEREFORE, the parties agree that the Agreement is amended as follows:

1. Exhibit A of the Agreement is hereby amended and replaced in its entirety with a revised Exhibit A-1 and Exhibit A-2, which are attached to this Amendment and fully incorporated herein.
2. Except as set forth herein, the Agreement is ratified and affirmed in all respects. No other amendment or modification of the IGA is intended or may be implied from the amendments set forth herein.
3. All terms not specifically defined herein shall be defined as set forth in the IGA.

IN WITNESS HEREOF, the Parties have executed this Amendment by the date set forth opposite their names below.

Clackamas County Development Agency

Water Environment Services

Jim Bernard, Chair

Jim Bernard, Chair

Date _____

Date _____

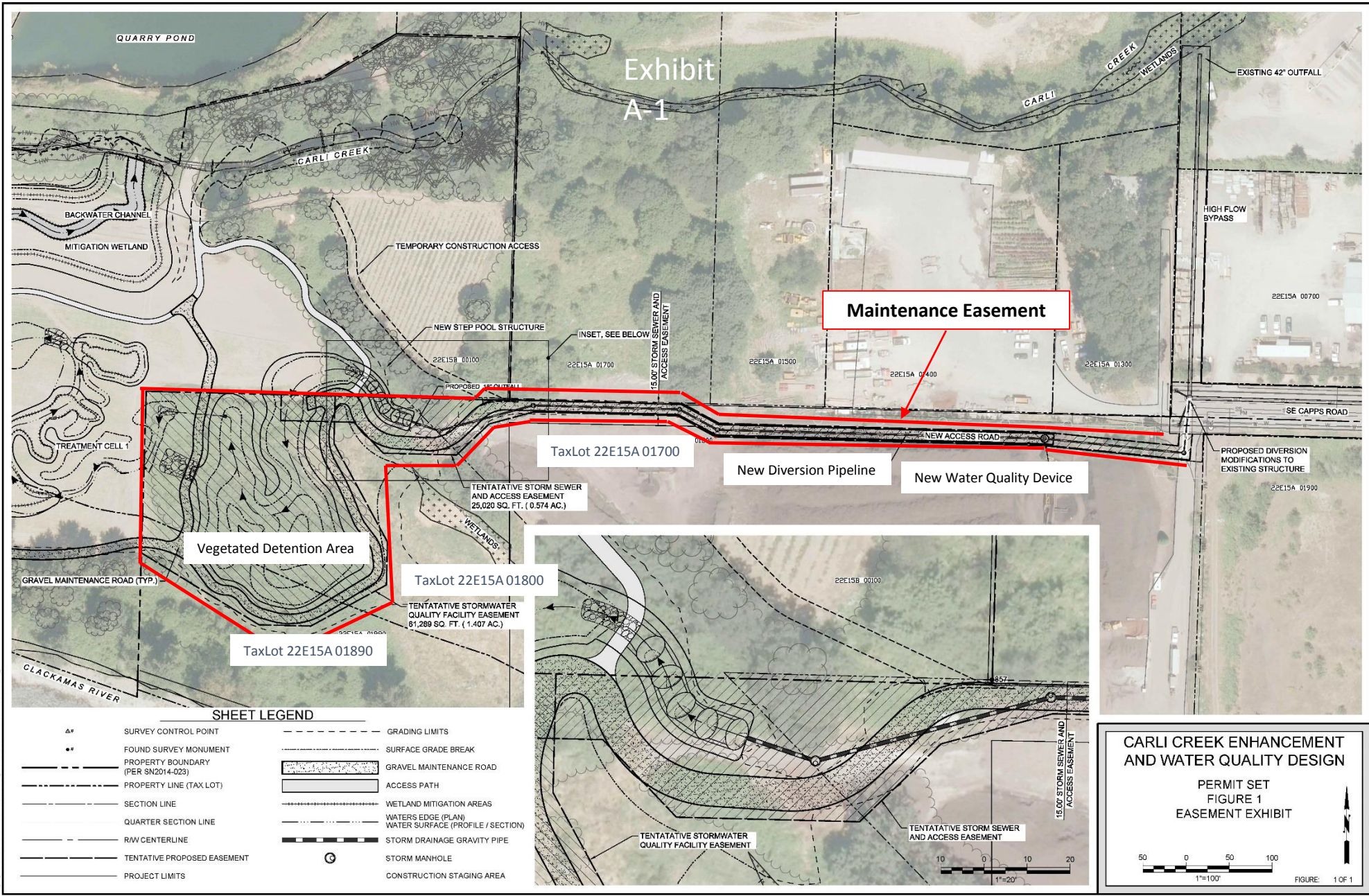
Recording Secretary

Exhibit List:

Exhibit A-1: Pipeline, Stormwater Detention, Maintenance, and Easement Map

Exhibit A-2: Access Easement Map

Exhibit A-1



SHEET LEGEND

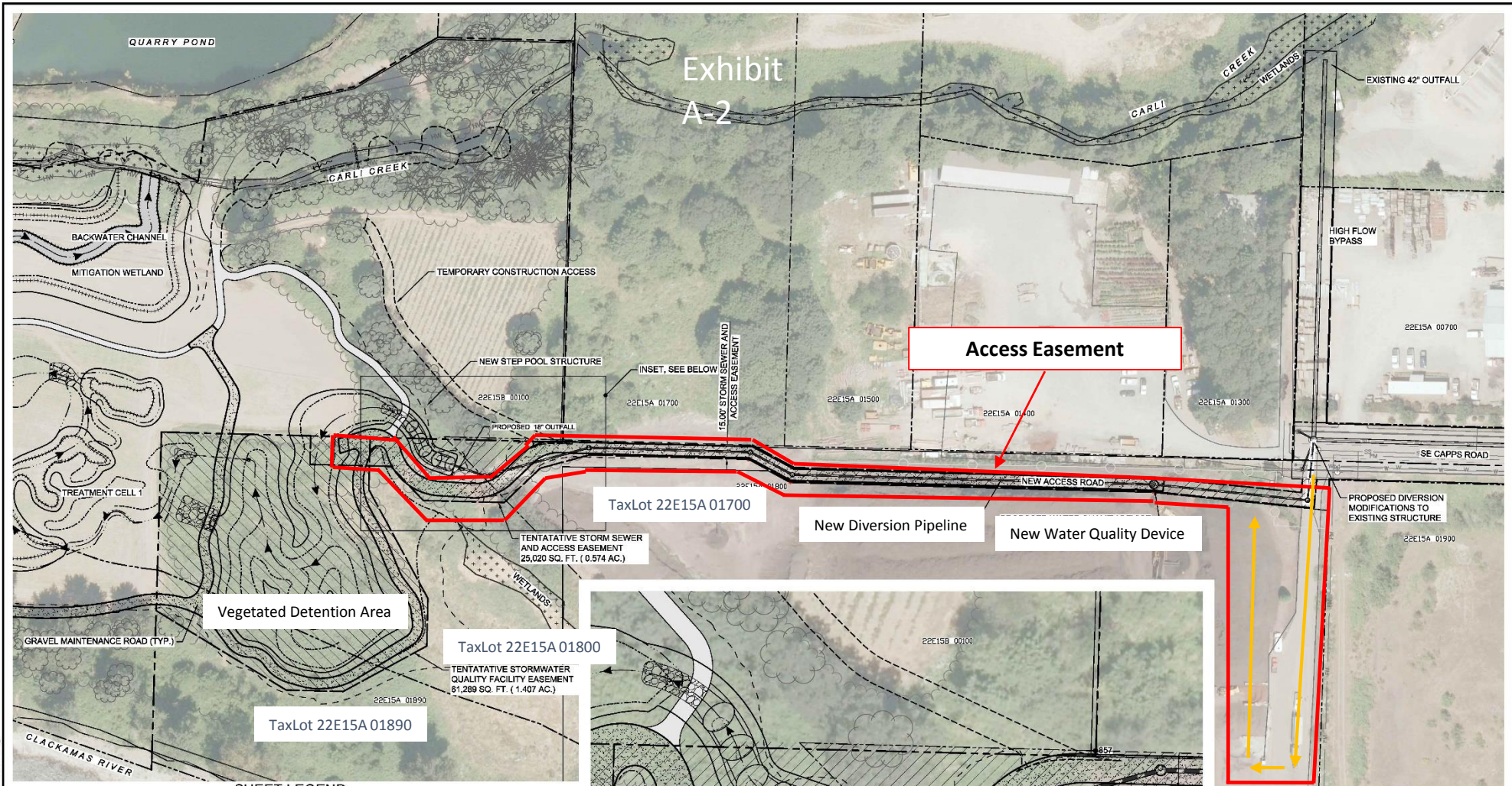
▲#	SURVEY CONTROL POINT	---	GRADING LIMITS
●#	FOUND SURVEY MONUMENT	---	SURFACE GRADE BREAK
---	PROPERTY BOUNDARY (PER SN2014-023)	---	GRAVEL MAINTENANCE ROAD
---	PROPERTY LINE (TAX LOT)	---	ACCESS PATH
---	SECTION LINE	---	WETLAND MITIGATION AREAS
---	QUARTER SECTION LINE	---	WATERS EDGE (PLAN)
---	RAW CENTERLINE	---	WATER SURFACE (PROFILE / SECTION)
---	TENTATIVE PROPOSED EASEMENT	---	STORM DRAINAGE GRAVITY PIPE
---	PROJECT LIMITS	⊙	STORM MANHOLE
		---	CONSTRUCTION STAGING AREA

CARLI CREEK ENHANCEMENT AND WATER QUALITY DESIGN

PERMIT SET
FIGURE 1
EASEMENT EXHIBIT

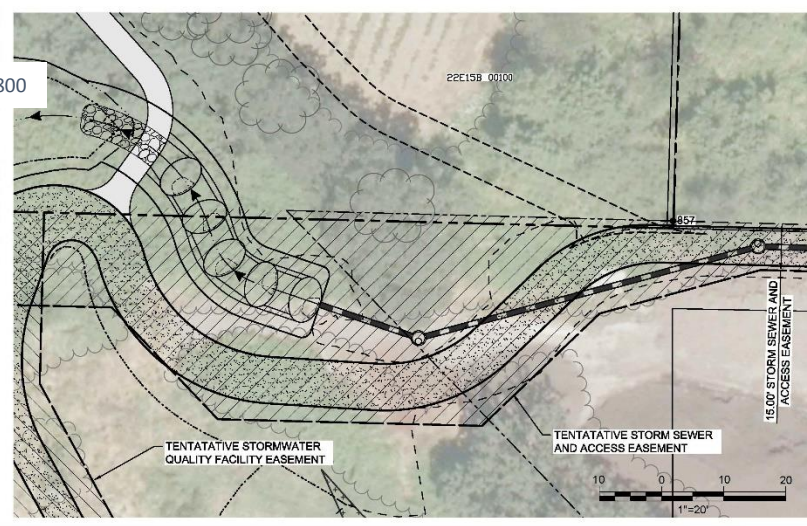
Project: March 15, 2018
 Drawing: 2018-11-15-2018-001_PDR-CARLI-CREEK-ENHANCEMENT-EXHIBIT.dwg

Exhibit A-2



SHEET LEGEND

△#	SURVEY CONTROL POINT	---	GRADING LIMITS
●#	FOUND SURVEY MONUMENT	- - - - -	SURFACE GRADE BREAK
---	PROPERTY BOUNDARY (PER SN2014-023)	▨	GRAVEL MAINTENANCE ROAD
---	PROPERTY LINE (TAX LOT)	▭	ACCESS PATH
---	SECTION LINE	▨	WETLAND MITIGATION AREAS
---	QUARTER SECTION LINE	---	WATER'S EDGE (PLAN)
---	R/W CENTERLINE	---	WATER SURFACE (PROFILE / SECTION)
---	TENTATIVE PROPOSED EASEMENT	---	STORM DRAINAGE GRAVITY PIPE
---	PROJECT LIMITS	⊙	STORM MANHOLE
			CONSTRUCTION STAGING AREA



CARLI CREEK ENHANCEMENT AND WATER QUALITY DESIGN

PERMIT SET
FIGURE 1
EASEMENT EXHIBIT

FIGURE 1 OF 1

Project: March 15, 2018
 C:\env\2017\1414-15655-000\POX\CAD\DWG\FIGURE\EASEMENT_EXHIBIT.dwg

Grantor: Clackamas County		State of Oregon
Development Agency		
Address: 150 Beaver Creek Road		
Oregon City, OR 97045		
		<i>DRAFT</i>
Grantee: Water Environment		
Services		
Address: 150 Beaver Creek Road		
Oregon City, OR 97045		
After Recording Return to:		
Water Environment Services		
150 Beaver Creek Road		
Oregon City, OR 97045		
Until a change is requested,		
all taxes shall be sent to:		
No Change		

PERMANENT NON-EXCLUSIVE ACCESS EASEMENT
(Corporate or Non Profit Grantor)

KNOW ALL PERSONS BY THESE PRESENTS, THAT Clackamas County Development Agency, the urban renewal agency of Clackamas County, a corporate body politic, (“Grantor”), for value received, hereby grants and conveys to Water Environment Services, a municipal partnership entity formed pursuant to ORS Chapter 190, (“Grantee”), its heirs, successors and assigns, a permanent non-exclusive easement for ingress and egress, in, under, upon, and across Grantor’s real property located in Clackamas County, State of Oregon, and with Grantor’s real property more particularly described as follows:

Grantor’s real property more particularly described as follows: A tract of fee land located in the NE ¼ of Section 15, T2S, R2E, WM, as more particularly described by that certain Warranty Deed recorded on October 8, 2009 as Document No. 2009-071163 in the Deed Records of Clackamas County, Oregon, and that Property Line Adjustment Deed (corrective) recorded on February 7, 2018 as Document No. 2018-008395 (the “Property”).

The Permanent Easement for ingress and egress is more particularly depicted in Figure “1” which is attached hereto and by this reference made a part hereof (the “Easement Area”).

This is a grant from one entity of Clackamas County to another in an intergovernmental transfer. Other consideration than money was the true and actual consideration for this conveyance.

Grantee shall have the right to enter upon and utilize the Easement Area for the purposes described in this document. Grantee may remove trees, shrubs, brush, paving or other materials within the Easement Area whenever necessary to accomplish these purposes. Grantee shall be responsible to restore any property disturbed by its use of the Easement Area to its original condition upon completion of their work or use and shall be responsible for any damage caused by same.

Neither Grantor nor Grantor’s successors in title shall construct or maintain any building or other structures upon the above described Easement Area which will unreasonably interfere with Grantee’s exercise of this easement.

Grantee shall be solely responsible for determining the location of all utilities in the Easement Area that may be affected by work performed in the Easement Area by or on behalf of Grantee. Grantee shall provide all required notification to the applicable utility companies and shall take all steps necessary to prevent damage to or disruption of all utilities and utility service and other equipment and systems in the Easement Area.

Except as otherwise provided, the Easement Area shall be non-exclusive. Grantor shall have the right to grant easements to others to cross or use the Easement Area now or in the future, provided the construction and installation of such do not unreasonably interfere with the repair, maintenance or operation of Grantee's facilities and related appurtenances.

Grantee covenants to and does hereby agree to indemnify, hold harmless and defend the Grantor and his successors and assigns, from and against all claims and all costs, expenses and liabilities (including reasonable attorneys' fees) incurred in connection with all claims, including any action or proceedings brought thereon, arising from or as a result of the death of any person or persons, or any accident, personal injury, loss or damage whatsoever caused to any person or entity or to the property of any person or entity as shall occur on or about the Easement Area as the result of the Grantee's exercise of the rights granted in this Agreement, or Grantee's failure to perform the obligations set forth in this Agreement. There shall be excluded from the foregoing indemnification the damages, costs and expenses to the extent that such damages, costs and expenses are caused by the negligence of Grantor, his agents, employees, representatives, or their successors and assigns.

The ingress and egress (the "Access") is currently improved and utilized and extends over the Property. Grantor hereby conveys to Grantee the right to access the Easement Area and the right to develop, operate and maintain the Access as now located on the Property for the purposes described herein. Grantee shall be solely responsible for the cost of the maintenance of the Access. Grantee shall agree to relocate the Access within a reasonable time upon written request from Grantor. Grantor shall provide an alternative route of ingress and egress on the Property which is acceptable to Grantee. Grantee shall assume the costs of relocating and reconstructing the alternative route of ingress and egress. Grantee's consent with regards to the relocation of the Access shall not be unreasonably withheld.

Statutory Land Use Disclaimer: Before signing or accepting this instrument, the person transferring fee title should inquire about the person's rights, if any, under ORS 195.300, 195.301 and 195.305 to 195.336 and Sections 5 to 11, Chapter 424, Oregon Laws 2007, Sections 2 to 9 and 17, Chapter 855, Oregon Laws 2009, and Sections 2 to 7, Chapter 8, Oregon Laws 2010. This instrument does not allow use of the property described in this instrument in violation of applicable land use laws and regulations. Before signing or accepting this instrument, the person acquiring fee title to the property should check with the appropriate city or county planning department to verify that the unit of land being transferred is a lawfully established lot or parcel, as defined in ORS 92.010 or 215.010, to verify the approved uses of the lot or parcel, to determine any limits on lawsuits against farming or forest practices, as defined in ORS 30.930, and to inquire about the rights of neighboring property owners, if any, under ORS 195.300, 195.301 and 195.305 to 195.336 and Sections 5 to 11, Chapter 424, Oregon Laws 2007, Sections 2 to 9 and 17, Chapter 855, Oregon Laws 2009, and Sections 2 to 7, Chapter 8, Oregon Laws 2010.

[Signature and Acknowledgment on Following Page]

In witness whereof, the above named Grantor has hereunto set Grantor's hand to this document on this _____ day of _____ 2018.

CLACKAMAS COUNTY DEVELOPMENT AGENCY,
the URBAN RENEWAL AGENCY OF CLACKAMAS COUNTY,
a corporate body politic under ORS Chapter 457

By: _____
Jim Bernard, Chair

STATE OF OREGON)
) ss.
County of _____)

This instrument was signed and attested before me this _____ day of _____ 2018,

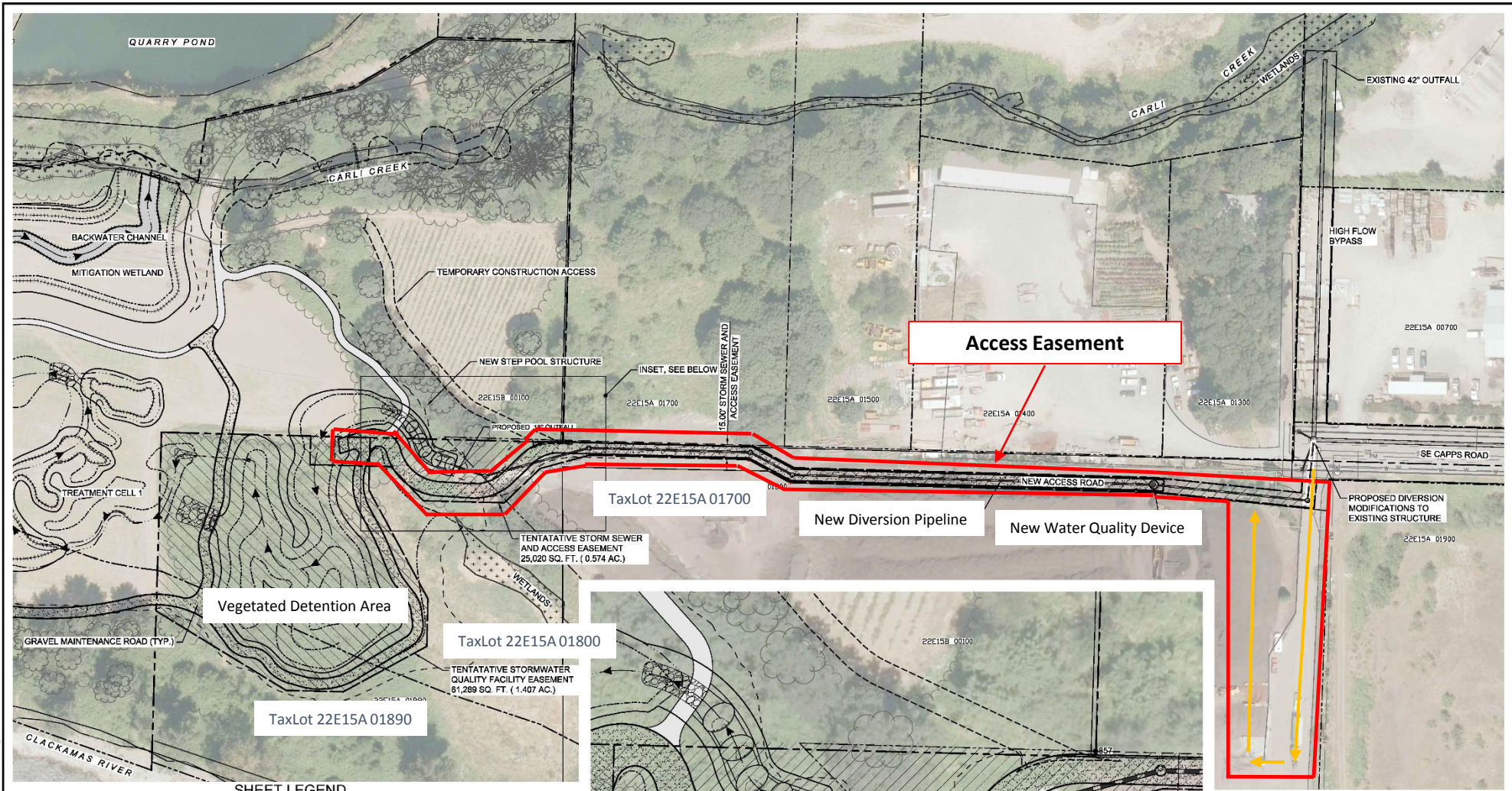
by Jim Bernard as Chair of the Clackamas County Development Agency.

Notary Public for State of Oregon
My Commission Expires: _____

ACCEPTED BY GRANTEE:
WATER ENVIRONMENT SERVICES,
a municipal partnership entity under ORS Chapter 190

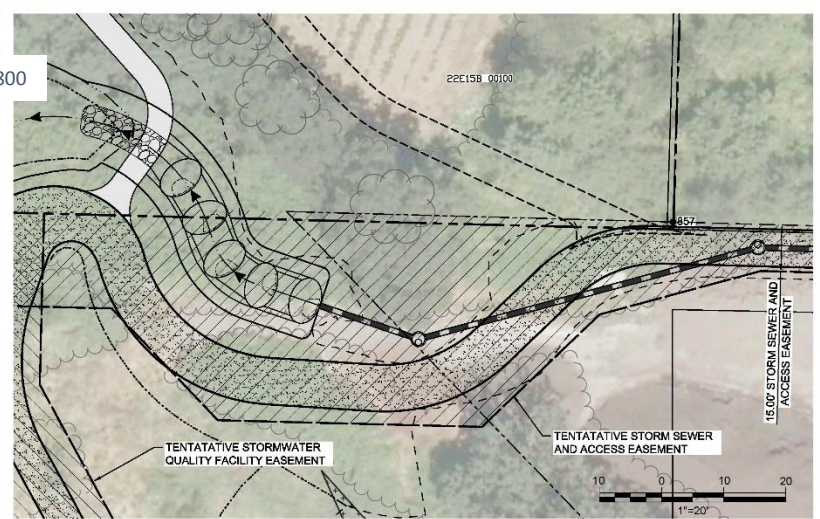
Chair

Date



SHEET LEGEND

▲#	SURVEY CONTROL POINT	---	GRADING LIMITS
●#	FOUND SURVEY MONUMENT	---	SURFACE GRADE BREAK
---	PROPERTY BOUNDARY (PER SN2014-023)	---	GRAVEL MAINTENANCE ROAD
---	PROPERTY LINE (TAX LOT)	---	ACCESS PATH
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---	RAW CENTERLINE	---	WATER SURFACE (PROFILE / SECTION)
---	TENTATIVE PROPOSED EASEMENT	---	STORM DRAINAGE GRAVITY PIPE
---	PROJECT LIMITS	ⓐ	STORM MANHOLE
			CONSTRUCTION STAGING AREA



CARLI CREEK ENHANCEMENT AND WATER QUALITY DESIGN

PERMIT SET
FIGURE 1
EASEMENT EXHIBIT

FIGURE: 1 OF 1

Project: March 15, 2018
 Drawing: 20181114-12958-000_PDRCD0001-FIGURE-EASEMENT_EXHIBIT.dwg

Grantor: Clackamas County Development Agency	State of Oregon
Address: 150 Beaver Creek Road Oregon City, OR 97045	
Grantee: Water Environment Services	
Address: 150 Beaver Creek Road Oregon City, OR 97045	
After Recording Return to: Water Environment Services 150 Beaver Creek Road Oregon City, OR 97045	
Until a change is requested, all taxes shall be sent to: No Change	

DRAFT

**PERMANENT NON-EXCLUSIVE PIPELINE,
STORMWATER DETENTION, MAINTENANCE**
(Corporate or Non Profit Grantor)

KNOW ALL PERSONS BY THESE PRESENTS, THAT Clackamas County Development Agency, the urban renewal agency of Clackamas County, a corporate body politic, (“Grantor”), for value received, hereby grants and conveys to Water Environment Services, a municipal partnership entity formed pursuant to ORS Chapter 190, (“Grantee”), its heirs, successors and assigns, a permanent non-exclusive easement to lay down, construct, reconstruct, replace, operate, inspect and perpetually maintain a storm water pipeline and vegetated stormwater detention facility in, under, upon, and across Grantor’s real property located in Clackamas County, State of Oregon, and with Grantor’s real property more particularly described as follows:

Grantor’s real property more particularly described as follows: A tract of fee land located in the NE ¼ of Section 15, T2S, R2E, WM, as more particularly described by that certain Warranty Deed recorded on October 8, 2009 as Document No. 2009-071163 in the Deed Records of Clackamas County, Oregon, and that Property Line Adjustment Deed (corrective) recorded on February 7, 2018 as Document No. 2018-008395 (the “Property”).

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This is a grant from one entity of Clackamas County to another in an intergovernmental transfer. Other consideration than money was the true and actual consideration for this conveyance.

Grantee shall have the right to enter upon and utilize the Easement Area for the purposes described in this document. Grantee may remove trees, shrubs, brush, paving or other materials within the Easement Area whenever necessary to accomplish these purposes. Except for the vegetated detention area covered by this Easement, Grantee shall be responsible to restore any property disturbed by its use of the Easement Area to its original condition upon completion of their work or use and shall be responsible for any damage caused by same.

Neither Grantor nor Grantor's successors in title shall construct or maintain any building or other structures upon the above described Easement Area which will unreasonably interfere with Grantee's exercise of this easement.

Grantee shall be solely responsible for determining the location of all utilities in the Easement Area that may be affected by work performed in the Easement Area by or on behalf of Grantee. Grantee shall provide all required notification to the applicable utility companies and shall take all steps necessary to prevent damage to or disruption of all utilities and utility service and other equipment and systems in the Easement Area.

Except as otherwise provided, the Easement Area shall be non-exclusive. Grantor shall have the right to grant easements to others to cross or use the Easement Area now or in the future, provided the construction and installation of such do not unreasonably interfere with the repair, maintenance or operation of Grantee's facilities and related appurtenances.

Grantee covenants to and does hereby agree to indemnify, hold harmless and defend the Grantor and his successors and assigns, from and against all claims and all costs, expenses and liabilities incurred in connection with all claims, including any action or proceedings brought thereon, arising from or as a result of the death of any person or persons, or any accident, personal injury, loss or damage whatsoever caused to any person or entity or to the property of any person or entity as shall occur on or about the Easement Area as the result of the Grantee's exercise of the rights granted in this Agreement, or Grantee's failure to perform the obligations set forth in this Agreement. There shall be excluded from the foregoing indemnification the damages, costs and expenses to the extent that such damages, costs and expenses are caused by the negligence of Grantor, his agents, employees, representatives, or their successors and assigns.

Statutory Land Use Disclaimer: Before signing or accepting this instrument, the person transferring fee title should inquire about the person's rights, if any, under ORS 195.300, 195.301 and 195.305 to 195.336 and Sections 5 to 11, Chapter 424, Oregon Laws 2007, Sections 2 to 9 and 17, Chapter 855, Oregon Laws 2009, and Sections 2 to 7, Chapter 8, Oregon Laws 2010. This instrument does not allow use of the property described in this instrument in violation of applicable land use laws and regulations. Before signing or accepting this instrument, the person acquiring fee title to the property should check with the appropriate city or county planning department to verify that the unit of land being transferred is a lawfully established lot or parcel, as defined in ORS 92.010 or 215.010, to verify the approved uses of the lot or parcel, to determine any limits on lawsuits against farming or forest practices, as defined in ORS 30.930, and to inquire about the rights of neighboring property owners, if any, under ORS 195.300, 195.301 and 195.305 to 195.336 and Sections 5 to 11, Chapter 424, Oregon Laws 2007, Sections 2 to 9 and 17, Chapter 855, Oregon Laws 2009, and Sections 2 to 7, Chapter 8, Oregon Laws 2010.

[Signature and Acknowledgment on Following Page]

In witness whereof, the above named Grantor has hereunto set Grantor's hand to this document on this _____ day of _____ 2018.

CLACKAMAS COUNTY DEVELOPMENT AGENCY,
the URBAN RENEWAL AGENCY OF CLACKAMAS COUNTY,
a corporate body politic under ORS Chapter 457

By: _____
Jim Bernard, Chair

STATE OF OREGON)
) ss.
County of _____)

This instrument was signed and attested before me this _____ day of _____ 2018,

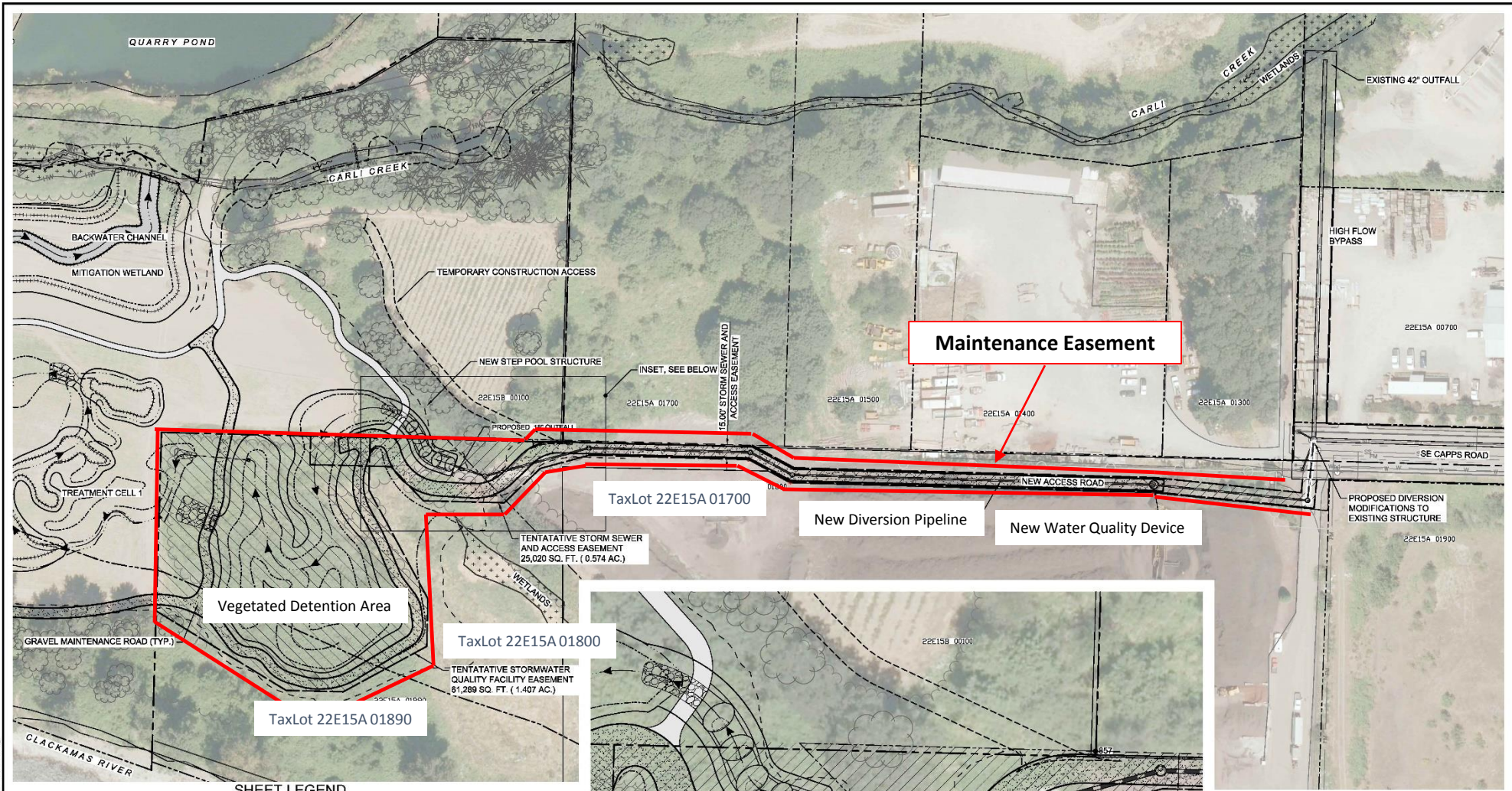
by Jim Bernard as Chair of the Clackamas County Development Agency.

Notary Public for State of Oregon
My Commission Expires: _____

ACCEPTED BY GRANTEE:
WATER ENVIRONMENT SERVICES,
a municipal partnership entity under ORS Chapter 190

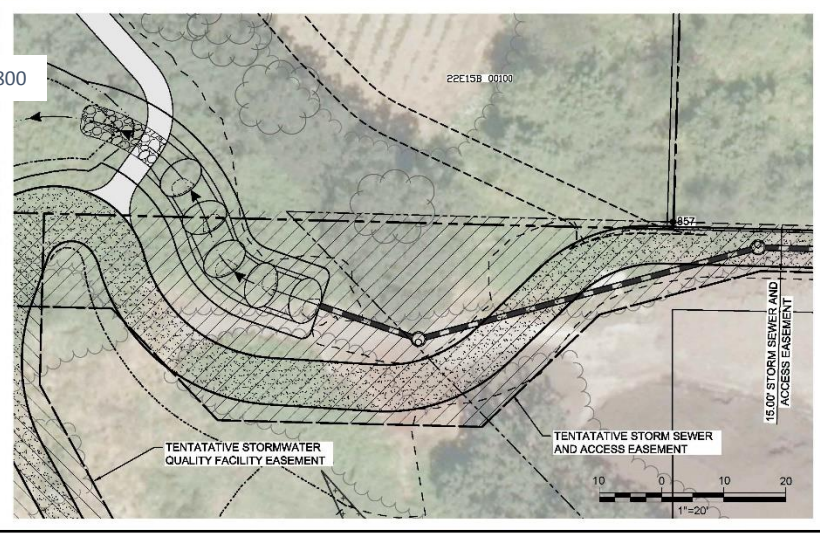
Chair

Date



SHEET LEGEND

▲#	SURVEY CONTROL POINT	---	GRADING LIMITS
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---	TENTATIVE PROPOSED EASEMENT	---	STORM DRAINAGE GRAVITY PIPE
---	PROJECT LIMITS	Ⓞ	STORM MANHOLE
		---	CONSTRUCTION STAGING AREA



CARLI CREEK ENHANCEMENT AND WATER QUALITY DESIGN

PERMIT SET
FIGURE 1
EASEMENT EXHIBIT

FIGURE: 1 OF 1

Project: March 15, 2018
 Drawing: 20181114-125950-000_PDRCD0002.dwg/FIGURE/EASEMENT EXHIBIT.dwg



Gregory L. Geist
Director

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of a Public Improvement Contract
between Water Environment Services and James W. Fowler Co.
for Tri-City Water Resource Recovery Facility (WRRF) Solids Handling Improvements Project

Purpose/Outcomes	Execution of the contract between Water Environment Services and James W. Fowler Co. for the Water Resource Recovery Facility Solids Handling Improvements Project.
Dollar Amount and Fiscal Impact	The contract amount is not to exceed \$33,473,352.00.
Funding Source	639-01-20100-481010- P632162
Duration	910 days from Notice to Proceed
Previous Board Action	N/A
Strategic Plan Assignment	<ol style="list-style-type: none">1. This project supports the WES Strategic Plan goal to provide properly functioning infrastructure.2. This project supports the County's Strategic Plan of building a strong infrastructure that delivers services to customers and honors, utilizes, promotes and invests in our natural resources.
Contact Person	Lynne Chicoine 503-742-4559, Jeff Stallard 503-742-4694

BACKGROUND:

The work under this Contract will consist of, but is not limited to furnishing all labor, material and equipment necessary to construct a new 1.3 million gallon anaerobic digester, a new Dewatering and Digester Control Building, a new digester gas purification system, a new digester gas storage system, a new 600kW cogeneration engine, refurbishment of systems in the existing Thickening Building, Cogeneration Building and two existing anaerobic digesters and associated systems including associated HVAC, odor control, electrical and plumbing elements. The Work includes constructing site roadways and site piping.

The work includes furnishing and installing related equipment, storm sewers, conduits, electrical, instrumentation and control, site work, building heating systems and other appurtenances necessary to complete the work and to provide a complete and functional system constructed in accordance with the Bidding Documents.

PROCUREMENT PROCESS:

This project was requested by Lynne Chicoine. This project was advertised in accordance with ORS and LCRB Rules on April 17, 2018. On May 24, 2018, three (3) bids were received: Slayden, \$37,876,800.00; James W. Fowler Co, \$33,473,352.00; and Stellar J, \$35,792,038.00. After review of the bids and all necessary documentation, James W. Fowler Co, was determined to be the lowest responsive bidder.

The contract was reviewed and approved by County Counsel.

RECOMMENDATION:

Staff recommends that the Board of County Commissioners of Clackamas County, acting as the governing body of Water Environment Services, approve and execute the Contract between Water Environment Services and James W. Fowler Co. for the Water Resource Recovery Facility Solids Handling Improvements Project for a total contract amount not to exceed \$33,473,352.00.

Respectfully submitted,

Greg Geist, Director
Water Environment Services

Placed on the _____ agenda by Procurement.



**WATER ENVIRONMENT SERVICES
PUBLIC IMPROVEMENT AGREEMENT**

This Public Improvement Agreement (the “Agreement”), is made by and between Water Environment Services, both political subdivisions of the State of Oregon, hereinafter called “Owner,” and **James W. Fowler**, hereinafter called the “Contractor” (collectively the “Parties”), shall become effective on the date this Agreement has been signed by all the Parties and all Owner approvals have been obtained, whichever is later.

Project Name: #2018-19 Tri-City Water Resource Recovery Facility (WRRF) Solids Handling Improvements Project (Project P632162)

1. Contract Price, Contract Documents and Work.

The Contractor, in consideration of the sum of **Thirty-Three Million Four Hundred Seventy-Three Thousand Three Hundred Fifty-Two Dollars (\$33,473,352.00)** (the "Contract Price"), to be paid to the Contractor by Owner in the manner and at the time hereinafter provided, and subject to the terms and conditions provided for in the Instructions to Bidders and other Contract Documents (as defined in the EJCDC General Conditions 2013 (“General Conditions”) and the Supplemental General Conditions), all of which are incorporated herein by reference, hereby agrees to perform all Work described and reasonably inferred from the Contract Documents on the Tri-City Water Resource Recovery Facility Solids Handling Improvements Project . The Contract Price is the amount contemplated by the Base Bid.

The following documents constitute the “Contract Documents” and are incorporated by reference in this Agreement and made a part hereof:

- Invitation to Bid
- Instructions to Bidders
- Public Improvement Agreement
- EJCDC General Conditions (2013)
- Prevailing Wage Rates
- Plans, Specifications and Drawings
- Geotechnical Data Report
- All required SRF certifications and disclosures submitted by Contractor
- Bid Bond
- Performance Bond and Payment Bond
- Supplementary Conditions
- Payroll and Certified Statement Form
- Addenda 1-4

4. Contract Dates.

COMMENCEMENT DATE: Upon Issuance of Notice to Proceed

No.	Milestone	Substantial Completion (Calendars Days from Notice to Proceed)
1	Gas Monitoring System in Existing Facilities and Install Truck Scale	120
2	Substantial Completion of Entire Contract	880
3	Final Completion of Entire Contract	910

Contractor and Owner recognize that time is of the essence of this Agreement and that Owner will suffer financial loss if the Work is not completed within the times specified in this section 4 above, plus any extensions thereof allowed in accordance with Article 11 of the General Conditions, as amended by the Supplemental General Conditions. The parties also recognize the delays, expense, and difficulties involved in proving in a legal or other dispute resolution proceeding the actual loss suffered by Owner if the Work is not completed on time. Accordingly,

instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty) Contractor shall pay Owner the following amounts for each day that expires after the time specified above:

<u>Milestone</u>	<u>Liquidated Damages per Day</u>
1. Gas Monitoring System in Existing Facilities And install truck scale	\$0
2. Substantial Completion	\$4,300
3. Final Completion	\$4,300

5. Retainage.

Prior to Final Completion, Owner shall retain from progress payments and any incentive payment, five percent of the value of the work completed.

In lieu of retainage, Contractor may elect to have accumulated funds deposited by Owner in an interest-bearing account, in accordance with ORS 279C.560. Interest on such an account would accrue to Contractor. Costs incurred by Owner as a result of this option will be deducted from Contractor's final payment.

In lieu of retainage Contractor, with the approval of Owner, may deposit a surety bond for all or any portion of the retainage in a form acceptable to Owner. Such bond and any proceeds therefrom shall be made subject to all claims and liens as provided for in ORS 279C.550 to 279C.620.

6. Change Order Authorization.

Throughout the administration of this Contract, the Owner's Project Manager for this Contract is granted the authority to authorize change orders in the field for an amount up to \$10,000. As soon as possible following the authorization, the Project Manager shall complete and submit the appropriate change order form provided by Clackamas County Procurement and obtain the signature of the Director of WES, or other authorized signatory. As soon as the Director signs off on the change order form, the Project Manager may then authorize another change order for up to \$10,000. Each change order should include the cumulative cost of the entire change and may not be artificially broken up into multiple change orders to fall under the dollar threshold listed above. The authority granted to the Project Manager is limited by the Director's authorization to amend the Contract under Clackamas County's Local Contract Review Board Rules and is subject to the discretion of the Director, who may suspend or restrict the Project Manager's ability to authorize change orders at any time for any reason.

7. Insurance Certificates.

Contractor shall furnish proof of required insurance in accordance with Paragraph 6.02 of the General Conditions and Supplemental General Conditions. Insurance certificates may be returned with the signed Agreement or may be emailed to Procurement@clackamas.us.

8. Tax Compliance.

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

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

9. Confidential Information.

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

10. Counterparts.

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

11. Integration.

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

The Agreement constitutes the entire agreement between the parties. There are no other understandings, agreements or representations, oral or written, not specified herein regarding this Agreement. Contractor, 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.

12. Assignment. No assignment by a party hereto of any rights under or interests in the Agreement shall be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, monies that may become due and monies that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment shall release or discharge the assignor from any duty or responsibility under the Agreement.

[Signature Page Follows]

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

Contractor DATA:
James W. Fowler Co.
12775 Westview Dr.
Dallas, Or 97338

Contractor CCB # 63701 Expiration Date: 1/17/2020
Oregon Business Registry # 119368-12 Entity Type: DBC State of Formation: Oregon

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

James W. Fowler Co.

Water Environment Services

Signature

Date

Chair

Date

Name / Title Printed

Recording Secretary

APPROVED AS TO FORM

County Counsel

Date



CLACKAMAS COUNTY PUBLIC IMPROVEMENT CONTRACT OPPORTUNITY

Table of Contents

Section 00 11 13	Notice of Public Improvement Contract Opportunity
Section 00 21 13	Instructions to Bidders; Qualifications Form for Externally Wrapped Prestressed Concrete Tank Construction
Section 00 41 13	Bid Form
Section 00 43 13	Bid Bond
Section 00 45 19	Non-collusion Affidavit
Section 00 45 30	Resident/Nonresident Bidder Status Form; Consent Resolution
Section 00 45 47	First Tier Subcontractor Disclosure Form; Fair Share Objectives/Good Faith Efforts; Certificate of Independent Price Determination; Prevailing Wage Agreement; List of Contacted Disadvantaged Business Enterprises
Section 00 61 13	Performance Bond; Payment Bond
Section 00 72 00	General Conditions
Section 00 73 00	Supplementary General Conditions; Projects Specifications, Volumes 1-6; Insurance

TRI-CITY SOLIDS HANDLING IMPROVEMENTS

**CLACKAMAS COUNTY
NOTICE OF PUBLIC IMPROVEMENT CONTRACT OPPORTUNITY**

**INVITATION TO BID #2018-19
Tri-City Water Resource Recovery Facility (WRRF) Solids Handling Improvements
Project (Project P632162)
April 17, 2018**

Clackamas County (“County”), on behalf of the Clackamas County Service District (“CCSD1”) and Water Environment Services (“WES”), through their Board of County Commissioners is accepting sealed bids for construction of the Tri-City Water Resource Recovery Facility (“WRRF”) Solids Handling Improvements Project (Project P632162), until 2:00 p.m. local time, on the 15th day of May, 2018. Any Bids received after the specified time and date will not be considered. No electronic submissions will be accepted. First-Tier Subcontractor Disclosure Forms must be delivered to the same location at or before 4:00 p.m. local time on the same day in a separate envelope from the bid. Bids will then be publicly opened and read aloud at 4:00 p.m. local time on Tuesday, May 15, 2018 at the Owner’s office.

DELIVER BIDS TO: Clackamas County Procurement Division attention: George Marlton, Procurement Director, Clackamas County Public Services Building, 2051 Kaen Road, Suite 497, Oregon City, Oregon 97045 (“Owner’s Office”).

The Work under this Contract will consist of, but is not limited to furnishing all labor, materials and equipment necessary to construct a new 1.3-million gallon anaerobic digester, a new Dewatering and Digester Control Building, a new digester gas purification system, a new digester gas storage system, a new 600 kW cogeneration engine, refurbishment of systems in the existing Thickening Building, Cogeneration Building and two existing anaerobic digesters and associated systems including associated HVAC, odor control, electrical and plumbing elements. The Work includes constructing site roadways and site piping.

The Work includes furnishing and installing related equipment, storm sewers, conduits, electrical, instrumentation and control, Site work, building heating systems and other appurtenances necessary to complete the Work and to provide a complete and functional system constructed in accordance with the Bidding Documents.

The Work will be completed in all respects within 910 calendar days from the date when the Contract Time commences to run.

The Site of the Work is the Tri-City Water Resource Recovery Facility (“WRRF”), located at 15941 Agnes Avenue, Oregon City, Oregon 97045 (Site).

Procurement Process Questions: Ryan Rice, 503-742-5446, rrice@clackamas.us.

Technical Questions: Brady Fuller, 541-768-3086, brady.fuller@ch2m.com.

TRI-CITY SOLIDS HANDLING IMPROVEMENTS

Mandatory Pre-Bid Conference

Prospective bidders are required to attend a pre-bid conference and site visit that will begin at 9:00 a.m. and last until approximately 11:00 a.m. local time on April 25, 2018. The conference will be held at 15941 Agnes Avenue, Oregon City, Oregon 97045 (“Site”). Attendance will be documented through a sign-in sheet prepared by the County Representative. Prospective bidders who arrive more than ten (10) minute after the started time of the meeting shall not be permitted to sign in and will not be permitted to submit a bid. Detailed technical questions may be submitted in writing but they will be answered, if warranted, by addenda later. Oral statements may not be relied upon and will not be binding or legally effective.

Funding

This project is being funded, in part, with monies made available by the Clean Water State Revolving Fund (“CWSRF”). Therefore, this Project is subject to the statutory requirements known as “American Iron and Steel” that requires all of the iron and steel products used in the Project to be produced in the United States (“American Iron and Steel Requirements”) including iron and steel products provided by the Contractor and subcontractors, unless a waiver of the requirement is approved by the State of Oregon. Certification or assurance of compliance to support a waiver of the requirement must be provided.

Prevailing Wage

Prevailing Wage Rates requirements apply to this Project because the maximum compensation for all Owner-contracted Work is more than \$50,000. Contractor and all subcontractors shall comply with the provisions of the David-Bacon Act (40 U.S.C. 3141 et seq) and ORS 279C.800 through 279C.870, and shall pay the higher of either the state or federal prevailing wage rates for the type of work being performed. The Bureau of Labor and Industries (“BOLI”) wage rates and requirements set forth in the following BOLI booklet (and any listed amendments to that booklet), which are incorporated herein by reference, apply to the Work authorized under this Agreement:

PREVAILING WAGE RATES for Public Works Contracts in Oregon, January 1, 2018, which can be downloaded at the following web address: <http://www.oregon.gov/boli/WHD/PWR/Pages/PWR-Rate-Publications---2018.aspx>.

The estimated construction cost of the Work is \$35,500,000.

TRI-CITY SOLIDS HANDLING IMPROVEMENTS

Bidding Documents can be downloaded from <http://orpin.oregon.gov/open.dll/welcome>. Prospective Bidders will need to sign in to download the information and that information will be accumulated for a Plan Holder's List. Prospective Bidders are responsible for obtaining any Addenda from Website listed above. The Owner's Website, www.clackamas.us/bids, will direct Prospective Bidders to the ORPIN website. If problems are experienced downloading the Bidding Documents, please contact Ryan Rice at 503-742-5446.

Each Bid must be submitted on the prescribed Bid Form and accompanied by Bid security as prescribed in the Instructions to Bidders. Each bid must contain a statement as to whether a Bidder is a Resident Bidder as defined by ORS 279A.120.

The Bidder shall guarantee the Lump Sum Price for a period of 60 days from the date of the Bid opening.

END OF SECTION

INSTRUCTIONS TO BIDDERS
BID #2018-19 Tri-City Water Resource Recovery Facility (WRRF) Solids Handling
Improvements Project (Project P632162)

1. DEFINED TERMS

1.1. Terms used in these Instructions to Bidders and the Invitation to Bid have the meanings indicated in the General Conditions and Supplementary Conditions. Certain additional terms used in the Bidding Documents have the meanings indicated below which are applicable to the singular and plural thereof.

1.2. Bidder – One who submits a Bid directly to Owner, as distinct from a subbidder who submits a price or quote to a Bidder.

1.3. Successful Bidder – Lowest responsible and responsive Bidder to whom Owner (on the basis of Owner’s evaluation as hereinafter provided) makes an award.

1.4. Local Contract Review Board Rules (“LCRB”) – Can be downloaded at the following address: <http://www.clackamas.us/code/documents/appendixc.pdf>.

2. COPIES OF BIDDING DOCUMENTS

2.1. Complete sets of Bidding Documents shall be used in preparing Bids. Neither Owner nor Engineer assumes responsibility for errors or misinterpretations resulting from use of incomplete sets of Bidding Documents.

Bidding Documents can be downloaded from <http://orpin.oregon.gov/open.dll/welcome>. Prospective Bidders will need to sign in to download the information and that information will be accumulated for a Plan Holder’s List. Prospective Bidders are responsible for obtaining any Addenda from Website listed above. The Owner’s Website, www.clackamas.us/bids, will direct Prospective Bidders to the ORPIN website. If problems are experienced downloading the Bidding Documents, please contact Ryan Rice at 503-742-5446.

2.2. Bidding Documents made available on the above terms are only for the purpose of obtaining Bids for the Work and do not confer a license or grant for any other use.

3. QUALIFICATIONS OF BIDDERS

3.1. To demonstrate Bidder’s qualifications to perform the Work, within 7 calendar days of Owner’s request, Bidder shall submit written evidence such as financial data, previous experience, present commitments, and such other data as may be called for in the Bidding Documents.

TRI-CITY SOLIDS HANDLING IMPROVEMENTS

3.2. In order to perform public work, Bidder and its Subcontractors, prior to award of Contract or as otherwise required by the jurisdiction, shall hold or obtain such licenses as required by State Statutes, and federal and local Laws and Regulations.

3.3. Bidder shall not be listed on the Bureau of Labor and Industries list of persons having violated prevailing wage rate laws as required in ORS 701.227.

3.4. Bidder shall not be in violation of any tax laws as required in ORS 305.385.

3.5. Bidder shall have a drug-testing program as required in ORS 279C.505.

3.6. Nothing indicated herein will prejudice Owner's right to see additional pertinent information as is provided in Article 15, Preparation of Bid.

3.7. Bidders and every Subcontractor performing Work on the Project must have filed with the Construction Contractors Board a public works bond in the amount of \$30,000 with a corporate surety authorized to do business in the State of Oregon before starting Work on the Project unless exempt under ORS 279C.836.

4. LICENSING REQUIREMENTS

4.1. In order to submit a Bid, a person, partnership, corporation, or joint venture shall have a current, valid license issued by the Oregon Construction Contractors Board, as required by ORS 701.021.

5. EXAMINATION OF BIDDING DOCUMENTS, OTHER RELATED DATA, AND SITE

5.1. Copies of reports and drawings utilized by the Engineer in preparation of the Bidding Documents will be made available by Owner to any Bidder on request at the cost of reproduction and handling, plus postage for mailing (if mailing is requested). Those reports and drawings are not part of the Bidding Documents but the technical data contained therein upon the Bidder is entitled to reasonably rely, as provided in Paragraph SC-5.03 of the Supplementary Conditions are incorporated herein by reference.

5.2. Information and data reflected in the Bidding Documents with respect to underground facilities at or contiguous to the Site are based upon information and data furnished to the Owner and Engineer by the owners of such underground facilities or others, and the Owner does not assume responsibility for the accuracy or completeness thereof unless it is expressly provided otherwise in the Supplementary Conditions.

TRI-CITY SOLIDS HANDLING IMPROVEMENTS

5.3. Provisions concerning responsibilities for the adequacy of data furnished to prospective Bidders with respect to subsurface conditions, other physical conditions, and Underground Facilities, and possible changes in the Bidding Documents due to differing or unanticipated subsurface or physical conditions appear in Paragraph 5.03 through Paragraph 5.05 of the General Conditions. Provisions concerning responsibilities for the adequacy of data furnished to prospective Bidders with respect to a Hazardous Environmental Condition at the Site, if any, and possible changes in the Contract Documents as a result of any Hazardous Environmental Condition uncovered or revealed at the Site which was not shown or indicated in the Drawings or Specifications or identified in the Contract Documents to be within the scope of the Work, appear in Paragraph 5.06 of the General Conditions.

5.4. Before submitting a Bid, each Bidder will, at Bidder's own expense, make or obtain any additional examinations, investigations, explorations, tests and studies and obtain any additional information and data which pertain to the physical conditions (surface, subsurface and underground facilities) at or contiguous to the Site or otherwise which may affect cost, progress or performance of the Work and which the Bidder deems necessary to determine its Bid for performing the Work in accordance with the time, price and other terms and conditions of the Bidding Documents.

5.5. On request, with a minimum of 2 days' advance notice, Owner will provide each Bidder access to the Site to conduct such examinations, investigations, explorations, tests, and studies as Bidder deems necessary for submission of a Bid. Location of any excavation or boring shall be subject to prior approval of Owner and applicable agencies. Bidder shall fill all holes and clean up and restore the Site to its former condition upon completion of such explorations, investigations, tests, and studies. Bidder shall comply with all applicable Laws and Regulations relative to excavation and utility locates.

5.6. It is the responsibility of each Bidder before submitting a Bid to:

5.6.1. Examine and carefully study the Bidding Documents, other related data identified in the Bidding Documents, and any Addenda.

5.6.2. Visit the Site to become familiar with and satisfy Bidder as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.

5.6.3. Become familiar with and satisfy Bidder as to all federal, state, and local Laws and Regulations that may affect cost, progress, and performance of the Work.

5.6.4. Study and carefully correlate the Bidder's observations with the Bidding Documents.

TRI-CITY SOLIDS HANDLING IMPROVEMENTS

5.6.5. Promptly give Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Bidder discovers in Bidding Documents and confirm that written resolution thereof by Engineer is acceptable to Bidder.

5.7. Submission of a Bid will constitute an incontrovertible representation by Bidder that Bidder has complied with every requirement of this article; that without exception the Bid is premised upon performing and furnishing the Work required by Bidding Documents and applying specific means, methods, techniques, sequences, and procedures of construction that may be shown or indicated or expressly required by Bidding Documents; that Bidder has given Engineer written notice of all conflicts, errors, ambiguities, and discrepancies that Bidder has discovered in Bidding Documents and the written resolutions thereof by Engineer are acceptable to Bidder; and that Bidding Documents are generally sufficient to indicate and convey understanding of terms and conditions for performing and furnishing the Work.

6. MANDATORY PREBID CONFERENCE

6.1. Prospective bidders are required to attend a pre-bid conference and site visit that will begin at 9:00 a.m. and last until approximately 11:00 a.m. local time on April 25, 2018. The conference will be held at 15941 Agnes Avenue, Oregon City, Oregon 97045 (site). Attendance will be documented through a sign-in sheet prepared by the county representative. Prospective bidders who arrive more than ten (10) minutes after the started time of the meeting shall not be permitted to sign in and will not be permitted to submit a bid. Detailed technical questions may be submitted in writing but they will be answered, if warranted, by addenda later. Oral statements may not be relied upon and will not be binding or legally effective.

7. SITE AND OTHER AREAS

7.1. The Site is identified in the Bidding Documents. Easements for permanent structures or permanent changes in existing facilities are to be obtained and paid for by Owner, unless otherwise provided in the Bidding Documents. All additional lands and access thereto required for temporary construction facilities, construction equipment, or storage of materials and equipment to be incorporated in the Work are to be obtained and paid for by Contractor.

8. ENVIRONMENTAL AND NATURAL RESOURCES LAWS AND REGULATIONS

8.1. Bidder's attention is directed to the General Requirements and Supplementary Conditions for ordinances and regulations dealing with the prevention of pollution and preservation of natural resources which may affect the performance of the Work. Bidder shall take such ordinances and regulations into consideration in preparation and submission of its Bid.

TRI-CITY SOLIDS HANDLING IMPROVEMENTS

9. INTERPRETATIONS AND ADDENDA

9.1. All questions about the technical meaning or technical intent of the Bidding Documents are to be submitted to Engineer in writing only (i.e., mail or email). All questions pertaining to administrative matters are to be submitted to the Owner in writing only (i.e., mail or email) Additions, deletions or revisions to the Bidding Documents considered necessary by Engineer or Owner in response to such questions will be issued by Addenda will be posted on the Owner's website. Questions received less than 7 calendar days prior to the date for opening of Bids may not be answered. Only questions answered by Addenda will be binding. Oral and other interpretations or clarifications will be without legal effect.

9.2. Addenda may also be issued to make other additions, deletions or revision to the Bidding Documents.

9.3. Bidders shall acknowledge receipt of all Addenda on the Bid Form in the appropriate space.

10. BID SECURITY

10.1. Each Bid must be accompanied by either 1) a cashier's check or a certified check drawn on a bank authorized to do business in the State of Oregon, or 2) a Bid bond described hereinafter, executed in favor of the Owner, for an amount equal to ten percent (10%) of the total amount Bid as a guarantee that, if awarded the contract, the Bidder will execute the contract and provide a performance bond and payment bond as required. The successful Bidder's check or Bid bond will be retained until the Bidder has entered into a contract satisfactory to Owner and furnished a one hundred percent (100%) performance bond and one hundred percent (100%) payment bond. The Owner reserves the right to hold the Bid security as described in Article 10 hereof. Should the successful Bidder fail to execute and deliver the contract as provided for in Article 20 hereof, including a satisfactory performance bond and payment bond within seven (7) calendar days after the Bid has been accepted by the Owner, then the contract award made to such Bidder may be considered canceled and the Bid security may be forfeited at the option of the Owner. The date of the acceptance of the Bid and the award of the contract as contemplated by the Bidding Documents shall mean the date of acceptance specified in the Notice of Intent to Award.

10.2. Bid security of other Bidders whom Owner believes do not have a reasonable chance of receiving the award will be returned after Bid opening. All other Bid securities will be held until the Agreement has been finally executed. They will then be returned to the respective Bidders whose Bids they accompany.

TRI-CITY SOLIDS HANDLING IMPROVEMENTS

11. CONTRACT TIMES

11.1. The number of days within which milestones are to be achieved and the Work is to be substantially completed and ready for final payment are set forth in the Agreement.

12. LIQUIDATED DAMAGES

12.1. Provisions for liquidated damages are set forth in the Agreement.

13. SUBCONTRACTORS, SUPPLIERS, AND OTHERS

13.1. Oregon Revised Statutes (“ORS”) 279C.370 requires Bidders for public improvement projects exceeding \$100,000 in Contract Price to submit First-Tier Subcontractor Disclosure Form with Bid, or within 2 working hours of Bid closing. Disclosure form identifies first-tier Subcontractors that will furnish labor or labor and materials equal to 5 percent of Contract Price or \$15,000, whichever is greater, or \$350,000, regardless of percentage of Contract Price. If no Subcontractors are subject to the disclosure requirements, “NONE” shall be indicated on the form to be provided. Disclosure form not submitted with Bid or within 2 working hours of Bid closing will cause Bid to be considered nonresponsive.

13.2. Supplemental Qualification form for Externally Wrapped Prestressed Concrete Tank Contractor shall be submitted by 4:00 p.m. on May 1st to be considered. A list of prequalified contractors will be provided within 48 hours of the submission time.

14. WAGE RATES

14.1. The Work under these Bidding Documents is to be paid for by public funds. This is a public works project subject to the state prevailing rates of wage under ORS 279C.800 to ORS 279C.870. Unless otherwise exempt, Contractor and any Subcontractors must pay workers in each trade or occupation that Contractor or its Subcontractors or other person who is a party to the Contract uses in performing all or a part of the Contract not less than the applicable minimum Oregon prevailing wage rates in accordance with ORS 279C.838 and ORS 279C.840, or the Davis Bacon Act (40 USCA Section 3141 et seq.). The applicable Oregon minimum prevailing wage rates for such workers are contained in the Bureau of Labor and Industries (BOLI) booklet (and any listed amendments to that booklet), which are incorporated herein by reference, apply to the Work authorized under this Agreement and entitled: PREVAILING WAGE RATES for Public Works Contracts in Oregon, January 1, 2018, which can be downloaded at the following web address: http://www.oregon.gov/boli/WHD/PWR/Pages/pwr_state.aspx.

TRI-CITY SOLIDS HANDLING IMPROVEMENTS

- 14.2. Oregon Statutes require that Bids for public work, including those public work projects financed by federal funds and subject to the Davis Bacon Act, shall include a statement by Bidder that it will include in its Agreement the provisions of ORS 279C.840 or 40 USCA Section 3141. When the Bid Form in the Bidding Documents contains a statement of Bidder's declaration of compliance with ORS 279C.840 or 40 USCA Section 3141, the Bidder's signing of the Bid constitutes compliance with this Oregon Statute. If the Bid Form does not contain such statement, each Bidder shall submit with its Bid for the Work, a separately signed statement that it will include the provisions of ORS 279C.840 or 40 USCA Section 3141 in the Agreement.
- 14.3. Owner shall be responsible for paying the fee required by ORS 279C.825(1) to the Commissioner of Bureau of Labor and Industries.
15. PREPARATION OF BID
- 15.1. The Bid shall be submitted on the Bid Forms herein. All blanks on the Bid Form shall be completed by typing or printing with ink and the Bid Form signed in ink. All price information shall be shown in both words and figures where required. The Bid shall be submitted in a sealed which shall be plainly marked in the upper left hand corner with the name and address of the Bidder and shall bear the words "BID FOR" followed by the title of the Bidding Documents for the Work, the name of the Owner, the address where Bids are to be delivered or mailed and the date and hour of the Bids. If the Bid is sent through the mail or other delivery system, the sealed envelope shall be enclosed in a separate envelope with the notation "BID ENCLOSED" on the face of it.
- 15.1. First-Tier Subcontractor Disclosure Forms must be delivered to the same location for delivery of the Bids within 2 hours of the specified time for receipt of Bids.
- 15.2. SRF forms to be submitted in compliance with SRF requirements.
- 15.2.1. Attachment 3 – List of Contacted Disadvantaged Business Enterprises (DBE).
- 15.2.2. Attachment 10 – Certification of Independent Price Determination.
- 15.2.3. Attachment 11 – Prevailing Wage Agreement (Davis Bacon).
- 15.3. Each Bid must identify whether the Bidder is a resident bidder, as defined by ORS 279A.120, by completing and submitting the Resident/Nonresident Bidder Status Form.
- 15.4. Bidder shall complete the Noncollusion Affidavit and submit it with its Bid.

TRI-CITY SOLIDS HANDLING IMPROVEMENTS

15.5. The Bid Form contains a Major Equipment Schedule with alternatives for certain Manufacturers or Suppliers acceptable to Owner. Bidders shall submit a bid price to furnish and install the first listed alternative (Alternative A) in each section to be considered responsive. Bidders may also submit a bid price for one or more of the listed alternatives in each section. Bidder may propose and price an “or-equal” alternative when indicated. Owner will award the contract to the lowest responsive, responsible bidder submitting the lowest Base Bid Amount, which is the sum of Lump Sum Subtotal, Total of Extended Bid Unit Prices, and the Major Equipment Schedule Subtotal. After award of the Contract, Owner will select the alternatives to be furnished and installed based on cost quality and other factors that best serve the interest of the Owner. The final Contract Price will be the sum of the Lump Sum Work and the total cost of the Major Equipment Alternatives selected by Owner.

15.6. The design is based on the first (Alternative A) listed Manufacturer or Supplier for each item. The costs associated with the furnishing and installing each proposed item shall be included in the “Bid Amount” column. If the Owner selected a Bidder-proposed alternative Manufacturer or Supplier for an item other than Alternative A, the Bidder shall furnish and install the equipment for the Amount Bid indicated, including the cost of: 1) any required engineering redesign; 2) any electrical, mechanical, structural modifications to adjacent and interfacing equipment necessary to make the several parts fit together; 3) licensing fee; and 4) additional construction and other costs resulting from the allowed alternative.

15.7. A Bid by a corporation shall be executed in the corporate name by the president or a vice president or other corporate officer accompanied by evidence of authority to sign. The corporate seal shall be affixed and attested by the secretary or an assistant secretary. The corporate address and state of incorporation shall be shown.

15.8. A Bid by a partnership shall be executed in the partnership name and signed by a partner (whose title must appear under the signature), accompanied by evidence of authority to sign. The official address of the partnership shall be shown.

15.9. A Bid by a limited liability company shall be executed in the name of the firm by a member and accompanied by evidence of authority to sign. The state of formation of the firm and the official address of the firm shall be shown.

15.10. A Bid by a joint venture shall be executed by each joint venturer in the manner indicated on the Bid Form. The official address of the joint venture shall be shown.

15.11. All names shall be typed or printed in ink below the signatures.

15.12. The Bid shall contain an acknowledgement of receipt of all Addenda; the numbers of which shall be filled in on the Bid Form.

TRI-CITY SOLIDS HANDLING IMPROVEMENTS

15.13. Postal and e-mail addresses and telephone number for communications regarding the Bid shall be shown.

16. EVALUATION OF BIDS

16.1. Owner will evaluate Bids to determine which responsible Bidder has made the lowest responsive Bid. Owner will make this evaluation in accordance with the Bidding Documents and applicable law. Owner may reject a Bid when it is in the public interest to do so, or when Owner finds the Bidder has not demonstrated its responsibility to Owner as required by ORS 279C.375(3)(b) or is not the lowest responsible bidder as that term is used in any applicable Owner's Purchasing Rules and ORS 279A.010(1)(r). Owner may also reject Bids from Bidders declared ineligible under ORS 279C.860, from Bidders listed as not qualified by the State of Oregon Construction Contractors Board, from Bidders that have not met the requirements of ORS 279A.105(1), (2) or (3), and for other circumstances that indicate acceptance of the Bid may impair the integrity of the selection process.

16.2. Owner reserves its right to reject any or all Bids, including without limitation the right to reject any or all nonconforming, nonresponsive, unbalanced or conditional Bids, and to reject the Bid of any Bidder if Owner believes that it would not be in the public interest to make an award to that Bidder, whether because the Bid is not responsive or the Bidder is unqualified or of doubtful financial ability or fails to meet any other pertinent standard or criteria established by Owner. Owner reserves the right to reject all Bids and rebid the Project if it is in the public interest to do so in accordance with ORS 279C.395. Owner also reserves the right to waive all informalities not involving price, time, or changes in the Work.

16.3. In evaluating Bids, Owner will consider the qualifications of Bidders, whether or not the Bids comply with the prescribed requirements, and such alternates, unit prices, and other data, as may be requested in the Bid Form or prior to the Notice of Award. Owner shall have the right to accept alternates in any order or combination, unless otherwise provided in the Bidding Documents.

16.4. Owner may consider the qualifications and experience of Subcontractors, Suppliers, and other persons and organizations proposed for those portions of the Work for which the identity was required. Owner also may consider the operating costs, maintenance requirements, performance data, and guarantees of major items of materials and equipment proposed for incorporation in the Work when such data are required to be submitted prior to the Notice of Award.

16.5. Owner may conduct such investigations as Owner deems necessary to assist in Bid evaluation and to establish responsibility, qualifications, and financial ability of Bidders, proposed Subcontractors, Suppliers, and other persons and organizations to execute Work in accordance with the Bidding Documents to Owner's satisfaction within the prescribed time.

TRI-CITY SOLIDS HANDLING IMPROVEMENTS

16.6. In determining the lowest responsible Bidder, Owner will for the purpose of awarding the Contract, add a percent increase on the Bid of a nonresident Bidder equal to the percent, if any, of the preference given to that Bidder in the state in which the Bidder resides.

16.7. If, at the time this Contract is to be awarded, the total of the lowest acceptable Bid exceeds the funds then estimated by Owner as available, Owner may reject all Bids or take such other action as best serves Owner's interests.

16.8. In the event of failure of the Successful Bidder to sign the Agreement and provide acceptable Performance and Payment Bond(s), insurance certificate(s), and other required documents, Owner may award the Contract to the next lowest responsive, responsible Bidder.

17. SUBMISSION OF BID

17.1. The Bid shall be sealed in delivered by the time and to the place stipulated in the Invitation to Bid. It is the Bidder's sole responsibility to see that its Bid is received in proper time and at the proper place.

18. MODIFICATION AND WITHDRAWAL OF BID

18.1. A Bid withdrawn by the Bidder by means of a written request signed by the Bidder or its properly authorized representative. Such written request must be delivered to the place stipulated in the Invitation to Bid for receipt of Bids prior to the scheduled closing time for receipt of Bids.

18.2. If within 24 hours after Bids are opened any Bidder files a duly signed written notice with Owner and promptly thereafter demonstrates to the reasonable satisfaction of Owner that there was a material and substantial mistake in the preparation of its Bid as determined by Oregon law, Bidder may withdraw its Bid, and the Bid security will be returned. Thereafter, if the Work is rebid, that Bidder will be disqualified from further bidding on the Work to be provided under the Contract Documents.

19. AWARD OF CONTRACT

19.1. Award of the Contract, if awarded, will be made to the lowest responsive, responsible Bidder whose Bid complies with the requirements of the Bidding Documents. Unless otherwise specified, any such award will be made within the period stated in the Advertisement to Bid that the Bids are to remain open. Unless otherwise indicated, a single award will be made for all the Bid items in an individual Bid Schedule. In the event the Work is contained in more than one Bid Schedule, Owner will award all Schedules.

TRI-CITY SOLIDS HANDLING IMPROVEMENTS

20. SIGNING OF AGREEMENT

20.1. The Owner will provide the successful Bidder with the required number of unsigned counterparts of the Agreement along with the other Contract Documents that are identified in the Agreement as attached thereto. Within seven (7) calendar days thereafter, Successful Bidder shall execute the forms as provided, including a performance bond and a payment bond from a Surety Company licensed to do surety business in the State of Oregon. The executed contract forms shall be delivered to the Owner in the number called for and to the location as instructed by the Owner.

21. RETAINAGE

21.1. Provisions concerning retainage and Contractor's rights to deposit securities in lieu of retainage, if applicable, are set forth in the Agreement.

22. CLARIFICATION OR PROTEST OF THE SOLICITATION DOCUMENT OR SPECIFICATIONS

22.1. Any request for clarification or protest of the solicitation document or specifications must be submitted in the manner provided for in the applicable section of the LCRB Rules to the Procurement Representative referenced in the Notice of Public Improvement Contract Opportunity.

22.2. A protest of the Solicitation Document must be received within seven (7) business days of the issuance of the Bid or within three (3) business days of issuance of an addendum.

22.3. Requests for clarification may be submitted no less than five (5) business days prior to the Bid Closing Date.

23. PROTEST OF INTENT TO AWARD

23.1. Owner will name the apparent successful Bidder in a "Notice of Intent to Award" letter. Identification of the apparent successful Bidder is procedural only and creates no right in the named Bidder to the award of the contract. Competing Bidders will be notified by publication of the Notice of Intent to Award on the Clackamas County Procurement Website of the selection of the apparent successful Bidder(s) and Bidders shall be given seven (7) calendar days from the date on the "Notice of Intent to Award" letter to review the file at the Procurement Division office and file a written protest of award, pursuant to C-049-0450. Any award protest must be in writing and must be delivered by hand delivery or mail to the Procurement Division Director at: Procurement Division, 2051 Kaen Road, Oregon City, OR 97045.

END OF SECTION

**QUALIFICATION FORM FOR EXTERNALLY
WRAPPED PRESTRESSED CONCRETE TANK CONSTRUCTION**

The Owner requires the following statement pertaining to relevant construction experience to be completed and submitted by prospective contractors bidding on this Work.

The following form shall be completely filled out and submitted in accordance with the Advertisement for Bids and Instructions to Bidders. Bids received proposing a subcontractor not prequalified will be considered unresponsive and/or unqualified and will be subject to rejection. Owner will provide a list of all prequalified contractors for the externally wrapped prestressed concrete tank construction within 48 hours of the required submission time for this prequalification form.

The information submitted in this form will be regarded as confidential to the extent of the law.

To qualify for this Project the Tank Subcontractor shall meet the following minimum qualifications:

- A. Shall be fully responsible for the prestressed concrete tank construction.
- B. Shall have successfully completed at least three AWWA D110 Type I externally wrapped prestressed concrete tanks within the last 5 years.
- C. Commit a field superintendent with successful experience relevant to this Project. The field superintendent shall have had the following specific experience:
 1. Field superintendent shall have been the person in charge of at least two externally wrapped prestressed concrete tanks in the last 5 years that have been successfully completed prior to bidding this Project. The completed prestressed concrete tank structures shall have included cast-in-place concrete core walls, exterior wrapped prestressing, vertical prestressing units inside walls, with wall base joint detail similar to that shown for this Project, and concrete floor slabs with contraction, construction and/or control joints similar to those shown for this Project.
 2. The field superintendent may be employed by the Tank Subcontractor or the Prestressing Subcontractor. In either case, the General Contractor shall be responsible for ensuring that the field superintendent is on the Project Site full-time and in responsible charge during all prestressed concrete tank construction activities

TRI-CITY WRRF SOLIDS HANDLING IMPROVEMENTS

- D. The Tank Subcontractor shall independently meet all requirements above and may be the same firm as the Prestressing Subcontractor listed below.
- E. Commit a Prestressing Subcontractor who will provide the system meeting the substance of the Specifications and Drawings and whose system has been successfully used on structures of similar size and capacity. The Prestressing Subcontractor shall have at least 10 years' acceptable experience on reservoirs of the size and type contemplated for this Project. Prestressing Subcontractors who are considered prequalified and have the specified equipment to perform the prestressing work are:
 - 1. DN Tanks, Inc., 351 Cypress Lane, El Cajon, CA 92020.
- F. Be capable of providing appropriate bonding and insurance.

**QUALIFICATION FORM FOR EXTERNALLY
WRAPPED PRESTRESSED CONCRETE TANK CONSTRUCTION**

The Owner requires the following statement pertaining to relevant construction experience to be completed and submitted by prospective contractors bidding on this Work.

The following form shall be completely filled out and submitted in accordance with the Advertisement for Bids and Instructions to Bidders. Bids received proposing a subcontractor not prequalified will be considered unresponsive and/or unqualified and will be subject to rejection. Owner will provide a list of all prequalified contractors for the externally wrapped prestressed concrete tank construction within 48 hours of the required submission time for this prequalification form.

The information submitted in this form will be regarded as confidential to the extent of the law.

To qualify for this Project the Tank Subcontractor shall meet the following minimum qualifications:

- A. Shall be fully responsible for the prestressed concrete tank construction.
- B. Shall have successfully completed at least three AWWA D110 Type I externally wrapped prestressed concrete tanks within the last 5 years.
- C. Commit a field superintendent with successful experience relevant to this Project. The field superintendent shall have had the following specific experience:
 1. Field superintendent shall have been the person in charge of at least two externally wrapped prestressed concrete tanks in the last 5 years that have been successfully completed prior to bidding this Project. The completed prestressed concrete tank structures shall have included cast-in-place concrete core walls, exterior wrapped prestressing, vertical prestressing units inside walls, with wall base joint detail similar to that shown for this Project, and concrete floor slabs with contraction, construction and/or control joints similar to those shown for this Project.
 2. The field superintendent may be employed by the Tank Subcontractor or the Prestressing Subcontractor. In either case, the General Contractor shall be responsible for ensuring that the field superintendent is on the Project Site full-time and in responsible charge during all prestressed concrete tank construction activities

TRI-CITY WRRF SOLIDS HANDLING IMPROVEMENTS

- D. The Tank Subcontractor shall independently meet all requirements above and may be the same firm as the Prestressing Subcontractor listed below.
- E. Commit a Prestressing Subcontractor who will provide the system meeting the substance of the Specifications and Drawings and whose system has been successfully used on structures of similar size and capacity. The Prestressing Subcontractor shall have at least 10 years' acceptable experience on reservoirs of the size and type contemplated for this Project. Prestressing Subcontractors who are considered prequalified and have the specified equipment to perform the prestressing work are:
 - 1. DN Tanks, Inc., 351 Cypress Lane, El Cajon, CA 92020.
- F. Be capable of providing appropriate bonding and insurance.

TRI-CITY WRRF SOLIDS HANDLING IMPROVEMENTS

QUALIFICATION FORM

Submit to:

Clackamas County Water Environment Services
Attn: Ryan Rice

Application for Externally Wrapped Prestressed Concrete Tank Qualification Submitted by:

Name of Organization (General Contractor): Ward-Henshaw Construction Co; Inc.
Type of Organization (Corporation, Partnership, or Individual): Corporation
Address: PO Box 950 / 505 N. Baker Drive Canby, OR 97013

1. What is the name and address of the Tank Subcontractor proposed for this Project?

Ward-Henshaw Construction Co; Inc.

PO Box 950 / 505 N. Baker Drive Canby, OR 97013

2. How many years has this organization been in business under present business name and engaged in construction of the proposed type and size of this tank?

40 Years

3. List the AWWA D110 Type I externally wrapped prestressed concrete tank construction projects the Tank Subcontractor has completed in the last 5 years that are similar in type and size to the work proposed herein. (Provide an attachment if additional space is required.)

Contract Amount	Type and Volume of Tank	When Completed	Name and Address of Owner Contact Person and Phone Number
See Attached			

TRI-CITY WRRF SOLIDS HANDLING IMPROVEMENTS

4. Has Tank Subcontractor ever failed to complete any work awarded to them? No.

Is yes, provide Project name, date, and explain reasons for failing to complete work.

5. Name the field superintendent who will be in direct charge of externally wrapped prestressed concrete tank construction if awarded this Contract and state his/her successful experience relevant to this Project in the last 5 years. Indicate the name of the Owner, contact person, phone number, and date for each project listed, if not provided above in Question 3.

A) Jay Osborn*: 1) Garden Home Reservoir; 2) Vilas Water Storage Reservoir

B) Dan Gerritsen*: 1) Division Street Reservoir; 2) Grants Pass Reservoir

C) Wade Hillard*: 1) Waluga Reservoir 2; 2) Thompson Hill Reservoir; 3) Will Crandall Reservoir

* All 3 superintendents are proposed since the schedule of the Digester Construction is unknown. Please see attached project experience listing for each superintendent per question 3.

6. List below the contracts to which the Tank Subcontractor was party, during the previous 10 years which were involved in litigation of any type.

None

7. What is the name and address of the Prestressing Contractor proposed for this Project?

DN Tanks Inc. PO Box 696 / 351 Cypress Lane El Cajon, CA 92020

TRI-CITY WRRF SOLIDS HANDLING IMPROVEMENTS

8. If Prestressing Contractor is different from the one(s) indicated above as being prequalified, list a minimum of five structures on which the proposed Prestressing Contractor's system has been used successfully and in a manner meeting the substance of the Specification requirements: (Provide an attachment if additional space is required.)

Name and Address of Owner	Completion Date	Type, Volume, Diameter and Wall Height of Tank
Not Applicable		

9. If Prestressing Contractor is different from the one(s) indicated above as being prequalified, submit with this Qualification Form, the Prestressing Subcontractor's descriptive write-up of the wrapping, the vertical prestressing, and the shotcreting machinery used on structures in above question and proposed for use if awarded this Contract.

The undersigned hereby declares that the foregoing statements are true and correct.

Signed at 11:30 AM this 26th day of April, in the year 2018

By: 

Title: Vice President

Date: April 26, 2018

WARD-HENSHAW CONSTRUCTION QUALIFYING TANK EXPERIENCE OVER LAST 5 YEARS
Note: All Reservoir Projects listed are AWWA D110 Type I Prestressed Concrete Tanks

Name of Project	Tank Size	Project Owner	Location	Construction Cost	Engineer	Date Completed
Division Street 6.0 MG Prestressed Tank & Booster Pump Station Project Mgr. - Al Oest Superintendent - Dan Gerritsen	6.0 MG	Skagit PUD #1 1415 Freeway Drive PO Box 1436 Mount Vernon, WA 98273 (360) 424-7104 Brandt Barnes	Mount Vernon, WA	7,309,541	Murray, Smith & Associates 2707 Colby Avenue Everett, WA 98201 (425) 252-9003 Chris Hiatt	Sep. 2017
Waluga Reservoir No. 2 3.5 MG Prestressed Reservoir Project Mgr. - Al Oest Superintendent. - Wade Hillard Assistant Super - Ed Wilson	3.5MG	Lake Oswego-Tigard Water Partnership 4101 Kruse Way Lake Oswego, OR 97034 (503) 718-2699 Rob Murchison	Lake Oswego, OR	7,309,541	Black & Veatch 5885 Meadows aroad, Suite 700 Lake Oswego, OR 97035 (503) 443-4400 Sean Goris	June 2015
Thompson Hill Zone 4 Reservoir 3.0 MG Prestressed Reservoir Project Mgr. - Michael Eubanks Superintendent - Wade Hillard	3.0MG	City of Kennewick P.O. Box 6108 Kennewick, WA 99336-0108 (509) 585-4301 Gary Deardorff	Kennewick, WA	1,982,331	RH2 Engineering, Inc. 22722 29th Drive SE, Ste 210 Bothell, WA 98021 (425) 951-5452 Paul Cross	Nov. 2014
Garden Home Reservoir 1.75MG Prestressed Reservoir Project Mgr. - Al Oest Superintendent. - Jay Osborn	1.75MG	Tualatin Valley Water District 1850 S.W. 170th Ave Beaverton, OR 97006 (503) 642-1511 Peter Boone	Portland, OR	2,987,422	OBEC Consulting Engineers 920 Country Club Rd, Suite 100B Eugene, OR 97401 (541) 683-6090 Pete Slocum	June 2014
Grants Pass Reservoir No. 3 5.0MG Prestressed Reservoir Project Mgr. - Al Oest Superintendent - Dan Gerritsen	5.0MG	City of Grants Pass 101 NW "A" Street Grants Pass, OR 97526 (541) 450-6113 Joey Wright	Grants Pass, OR	4,763,703	Murray, Smith & Associates 121 SW Salmon, Suite 900 Portland, OR 97204 (503) 225-9010 Brian Ginter	June 2014
Vilas Water Storage Reservoir and Pump Station 2.5MG New Prestressed Reservoir Project Mgr. - Michael Eubanks Superintendent. - Jay Osborn	2.5MG	City of Central Point 140 S Third Street Central Point, OR 97502 (541) 423-1017 Matt Samitore	Central Point, OR	4,867,770	Brown & Caldwell 6500 SW Macadam Ave., Ste 200 Portland, OR 97239 (503) 224-7005 Tom Lebo	March 2013
Will Crandall Reservoir & Pump Station 10.0MG New Prestressed Reservoir Project Mgr. - Al Oest Superintendent - Wade Hillard	10.0MG	City of Hillsboro 150 East Main Street Hillsboro, OR 97123 (503) 615-6708 Tyler Wubbena	Hillsboro, OR	19,492,337	CH2M Hill 2020 SW 4th Ave., 3rd Floor Portland, OR 97209 (503) 235-5000 Brad Phelps	Sep. 2013

TRI-CITY SOLIDS HANDLING IMPROVEMENTS

NOTE TO BIDDER: Use typewriter or ink for completing this Bid Form.

**BID FORM
(STIPULATED PRICE BASIS)**

PROJECT: #2018-19 Tri-City Water Resource Recovery Facility (WRRF) Solids Handling Improvements Project (Project P632162)
BID CLOSING: May 22, 2018, 2:00 p.m., Pacific Time
BID OPENING: May 22, 2018, 4:00 p.m., Pacific Time

1. BID RECIPIENT

1.1. This Bid is submitted to:

Owner: Clackamas County
Procurement Division – Attention George Marlton
Address: 2051 Kaen Road, Suite 497, Oregon City, OR 97045

Project Identification: Tri-City Water Resource Recovery Facility (“WRRF”) Solids Handling Improvements Project (Project P632162)

1.2. The undersigned Bidder proposes and agrees, if this Bid is accepted, to enter into an Agreement with Owner in the form included in the Bidding Documents to perform all Work as specified or indicated in the Bidding Documents for the prices and within the times indicated in this Bid and in accordance with the other terms and conditions of the Bidding Documents.

2. BIDDER’S ACKNOWLEDGEMENTS

2.1. Bidder accepts all of the terms and conditions of the Instructions to Bidders, including without limitation those dealing with the disposition of Bid security. This Bid will remain subject to acceptance for 60 days after the Bid opening, or for such longer period of time that Bidder may agree to in writing upon request of Owner.

3. BIDDER’S REPRESENTATIONS

3.1. In submitting this Bid, Bidder represents that:

3.1.1. Bidder has examined and carefully studied the Bidding Documents, the other related data identified in the Bidding Documents, and the following Addenda, receipt of which is hereby acknowledged.

<u>Addendum No.</u>	<u>Addendum Date</u>
1	April 26, 2018

TRI-CITY SOLIDS HANDLING IMPROVEMENTS

Addendum No.	Addendum Date
2	May 3, 2018
3	May 11, 2018
4	May 17, 2018

(Bidder shall insert number of each Addendum received.)

3.1.2. Bidder has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.

3.1.3. Bidder is familiar with and is satisfied as to all Laws and Regulations that may affect cost, progress, and performance of the Work.

3.1.4. Bidder has carefully studied: i) reports of explorations and tests of subsurface conditions at or contiguous to the Site and drawings of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities) which have been identified in Paragraph 5.03 of the Supplementary Conditions as containing reliable “technical data.”; and ii) reports and drawings of Hazardous Environmental Conditions, if any, at the Site that have been identified in Paragraph 5.06 of the Supplementary Conditions as containing reliable “technical data.”

3.1.5. Bidder has considered the information known to Bidder; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Bidding Documents; and the Site-related reports and drawings identified in the Bidding Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Bidder, including applying the specific means, methods, techniques, sequences, and procedures of construction expressly required by the Bidding Documents; and (3) Bidder’s safety precautions and programs.

3.1.6. Based on information and observations referred to in paragraph above, Bidder does not consider that further examinations, investigations, explorations, tests, studies, or data are necessary for the determination of this Bid for performance of the Work at the price(s) Bid and within the times required, and in accordance with the other terms and conditions of the Bidding Documents.

TRI-CITY SOLIDS HANDLING IMPROVEMENTS

3.1.7. Bidder is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Bidding Documents.

3.1.8. Bidder has given Engineer written notice of conflicts, errors, ambiguities, or discrepancies that Bidder has discovered in the Bidding Documents, and the written resolution thereof by Engineer is acceptable to Bidder.

3.1.9. The Bidding Documents are generally sufficient to indicate and convey understanding of terms and conditions for the performance of the Work for which this Bid is submitted.

3.1.10. Bidder by signing below hereby attests or affirms under penalty of perjury: That I am authorized to act on behalf of the Contractor in this matter, that I have authority and knowledge regarding payment of taxes, and that Contractor is to the best of my knowledge, not in violation of any Oregon tax Laws. For the purposes of this certification, "Oregon Tax Law" means a state tax imposed by ORS 320.005 to 320.150; ORS 403.200 to 403.250; ORS Chapters 1118, 314, 316, 317, 318, 320, 321, 323, the elderly rental assistance program under ORS 310.630 to 310.706; and any local tax law administered by the Oregon Department of Revenue under ORS 305.620.

4. BIDDER'S CERTIFICATION

4.1. Bidder certifies:

4.1.1. This Bid is genuine and not made in the interest of or on behalf of any undisclosed individual or entity and is not submitted in conformity with any collusive agreement or rules of any group, association, organization or corporation;

4.1.2. The Undersigned certifies that it has not discriminated against minority, women, or emerging small businesses in obtaining any subcontracts for this project;

4.1.3. Bidder has not directly or indirectly induced or solicited any other Bidder to submit a false or sham Bid;

4.1.4. Bidder has not solicited or induced any individual or entity to refrain from bidding; and

TRI-CITY SOLIDS HANDLING IMPROVEMENTS

4.1.5. Bidder has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for the Contract. For the purposes of this paragraph:

4.1.5.1. "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the bidding process;

4.1.5.2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process to the detriment of Owner, (b) to establish Bid prices at artificial noncompetitive levels, or (c) to deprive Owner of the benefits of free and open competition;

4.1.5.3. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish Bid prices at artificial, noncompetitive levels; and

4.1.5.4. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

4.1.6. Required sales and use taxes are included in the stated Bid prices for the Work unless provision is made herein for the Bidder to separately itemize the estimated amount of sales tax or if Instructions to Bidders state Owner is tax exempt.

4.1.7. Bidder accepts the provisions required by ORS 279C.800 through ORS 279C.870 and the Davis Bacon Act (40 USC 276a) relating to prevailing wage rates and that Bidder shall make applicable restitution to the Oregon Bureau of Labor and Industries Commissioner in accordance with ORS 279C.825.

4.1.8. Neither Bidder nor their Subcontractors are on the Bureau of Labor and Industries list of persons having violated prevailing wage rate laws.

4.1.9. Bidder has not discriminated against minority, women, or emerging small business enterprises in obtaining required subcontracts.

4.1.10. Bidder has established a drug-testing program for employees per ORS 279C.505.

TRI-CITY SOLIDS HANDLING IMPROVEMENTS

4.1.11. The successful Bidder hereby certifies that all subcontractors who will perform construction work as described in ORS 701.005(2) were registered with the Construction Contractors Board in accordance with ORS 701.035 to ORS 701.055 at the time the subcontractor(s) made a bid to work under the contract.

4.1.12. The Undersigned further agrees that the Bid Security accompanying the Bid is left in escrow with Clackamas County; that the amount thereof is the measure of liquidated damages which the Owner will sustain by the failure of the Undersigned to execute and deliver the above-named Contract Form, Performance Bond and Payment Bond, each as published, and that if the Undersigned defaults in either executing the Contract Form or providing the Performance Bond and Payment Bond within twenty (20) calendar days after receiving the Contract forms, then the Bid Security shall become the property of the Owner at the Owner's option; but if the Bid is not accepted within thirty (30) calendar days of the time set for the opening of the Bids, or if the Undersigned executes and timely delivers said Contract Form, Performance Bond and Payment Bond, the Bid Security shall be returned.

4.1.13. The successful Bidder hereby certifies that, in compliance with the Worker's Compensation Law of the State of Oregon, its Worker's Compensation Insurance provider is SAIF Corporation, Policy No. 812482, and that Contractor shall submit Certificates of Insurance as required.

4.1.14. Bidder by signing below hereby attests or affirms under penalty of perjury: That I am authorized to act on behalf of the contractor in this matter that I have authority and knowledge regarding payment of taxes, and that Contractor is to the best of my knowledge, not in violation of any Oregon tax Laws. For the purposes of this certification, "Oregon Tax Law" means a state tax imposed by ORS 320.005 to 320.150; ORS 403.200 to 403.250; ORS Chapters 118, 314, 316, 317, 318, 320, 321, 323, the elderly rental assistance program under ORS 310.630 to 310.706; and any local tax law administered by the Oregon Department of Revenue under ORS 305.620.

5. BASIS OF BIDS

5.1. Bidder shall complete the Work in accordance with the Contract Documents for the following price(s):

5.2. Lump Sum Bid Price: \$ 29,124,000.00

5.3. Unit Price Bid Schedule:

5.3.1. Unit prices have been computed in accordance with Paragraph 13.03.C of the General Conditions.

TRI-CITY SOLIDS HANDLING IMPROVEMENTS

5.3.2. Bidder acknowledges that estimated quantities are not guaranteed, and are solely for the purpose of comparison of Bids, and final payment for all unit price Bid items will be based on actual quantities, determined as provided in the Contract Documents.

5.3.3 Unit Price Bid Schedule					
Item No.	Description	Estimated Quantity	Unit	Bid Unit Price	Extended Bid Unit Price
5.3.3.1	Helical Piles per Section 31 63 13	120	FT	\$ 125	\$ 15,000

5.3.3.2 Total of Extended Bid Unit Prices:

Subtotal \$ 15,000.00

5.4. Major Equipment Schedule:

5.4.1. Bidder agrees to accept as full payment for furnishing the items listed, and any Work necessary to install the items, for the unit prices included in the "Bid Column" column for each item.

5.4.2. Additional instructions for the Bidders are as follows:

5.4.2.1. Bidder must provide a Bid Amount for all Item A products, to be considered responsive.

5.4.2.2. The Bid Amount price shall include the number of units in the Bidding Documents and all associated equipment and systems identified in the specification sections listed as the responsibility of the equipment manufacturer.

5.4.2.3. Bidder Proposed Alternative:

5.4.2.3.1. Bidder may propose an "or-equal" alternate by including the Manufacturer's or Supplier's name and model number for items where a blank has been provided.

5.4.2.3.2. Evaluation and selection of alternatives will be made after selection of the Contractor.

5.4.2.3.3. Selection of the alternate to be provided will be made by Owner from those priced by Bidder as best serves the interest of Owner.

TRI-CITY SOLIDS HANDLING IMPROVEMENTS

5.4.2.3.4. Include in the Alternative Amount for Bidder-proposed alternates the cost of Work and redesign and construction changes, including, but not limited to, electrical, mechanical, structural, and any other modifications to the Work necessary to make the several parts fit together and perform as specified. In addition to cost changes, please include any potential impacts to schedule as well.

5.4.2.3.5. Any schedule delays caused by Owner's selection of an alternate other than Item A will not constitute grounds for a contract adjustment.

5.4.2.3.6. The Bidder must include the subtotal cost of all the "A" listed items in this Section in the blank space provided.

5.4.3. Major Equipment Schedule			
Section 46 76 36, Dewatered Biosolids Inclined Conveyor System, and Section 46 76 37, Dewatered Biosolids Storage and Loadout System			
Item	Manufacturer or Supplier	Alternative Amount	Bid Amount
A	Jim Myers and Sons, Inc. (JMS)		\$ 1,070,000
B	BioSec Enviro. Inc.	\$ 950,000 ^{1,070,000}	
C	n/a	\$ n/a	
Section 44 46 27, Digester Gas Treatment System			
Item	Manufacturer or Supplier	Alternative Amount	Bid Amount
A	Unison Solutions, Inc.		\$ 924,000
B	n/a	\$ n/a	
C	n/a	\$ n/a	
Section 44 46 30, Cogeneration Engine System			
Item	Manufacturer or Supplier	Alternative Amount	Bid Amount
A	GE Jenbacher		\$ 1,275,000
B	Caterpillar	\$ 1,078,700	
C	n/a	\$ n/a	
Section 46 76 33, Dewatering Centrifuges			

TRI-CITY SOLIDS HANDLING IMPROVEMENTS

5.4.3. Major Equipment Schedule			
Item	Manufacturer or Supplier	Alternative Amount	Bid Amount
A	GEA-Westfalia Separator, Inc.		\$ 765,352-
B	Alfa Laval, Inc.	\$ 926,000-	
C	n/a	\$ n/a	
Section 44 42 56.13, Progressing Cavity Pumps			
Item	Manufacturer or Supplier	Alternative Amount	Bid Amount
A	Moyno		\$ 370,000- ^{300,000-}
B	Seepex	\$ 311,650-	
C	netz.ch	\$ 242,500-	

5.4.4. Major Equipment Schedule Subtotal (Sum of amounts for Section 46 76 36 and Section 46 76 37, Item A, Section 44 46 27, Item A, Section 44 46 30, Item A, Section 46 76 33, Item A, and Section 44 42.56.13, Item A):

Subtotal: \$ ~~4,404,352.00~~^{MP} 4,334,352.00

5.5. Base Bid Summary:

5.5.1. Base Bid Summary: Enter amounts from previous Subtotals:

Line Item	Description	Amount
5.2.	Lump Sum Subtotal	\$ 29,124,000-
5.3.3.2	Total of Extended Bid Unit Prices Subtotal	\$ 15,000.00
5.4.4	Major Equipment Schedule Subtotal	\$ 4,334,352.00 4,404,352.00 ^{MP}

5.5.2. Base Bid (Total of Above): \$ _____

MP 29,33,473,352.00
(figures)

Thirty three million three hundred twenty three thousand three hundred sixty-two dollars and 00/100
(words)

The amount in words takes precedence.

TRI-CITY SOLIDS HANDLING IMPROVEMENTS

6. TIME OF COMPLETION

6.1. Bidder agrees the Work, and any Milestones specified in Section 01 31 13, Project Coordination, will be substantially complete and will be completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions on or before the dates, or within the number of calendar days, indicated in the Agreement.

6.2. Bidder agrees the Work will be substantially complete within 880 calendar days after the date when the Contract Times commence to run as provided in Paragraph 4.01 of the General Conditions, and will be completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions within 910 calendar days after the date when the Contract Times commence to run.

6.3. Bidder accepts the provisions of the Agreement as to liquidated damages in the event of failure to complete the Work, and any specified Milestones, within the Contract Times.

7. ATTACHMENTS TO THIS BID

7.1. The following documents are submitted with and made a condition of this Bid:

7.1.1. Required Bid security in the form of Bid Bond.

7.1.2. Resident/Non-Resident Bidder Status Form.

7.1.3. Forms from CWSRF-Funded Construction Project Contract:

7.1.3.1. Attachment 3 – List of Contacted Disadvantaged Business Enterprises (DBE).

7.1.3.2. Attachment 10 – Certification of Independent Price Determination.

7.1.3.3. Attachment 11 – Prevailing Wage Agreement (Davis Bacon).

7.1.3.4. Fair Share Objectives, Six Good Faith Efforts, Contract Administration and Language.

7.1.4. First Tier Subcontractor Disclosure Form (required within 2 hours of Bid closing).

7.1.5. Noncollusion Affidavit.

TRI-CITY SOLIDS HANDLING IMPROVEMENTS

8. DEFINED TERMS

8.1. The terms used in this Bid with initial capital letters have the meanings stated in the Instructions to Bidders, the General Conditions, and the Supplementary Conditions.

9. BID SUBMITTAL

9.1. This Bid submitted by:

If Bidder is:

An Individual

Name (typed or printed): n/a

By (signature): _____

Doing business as: _____

A Partnership

Partnership Name: n/a (SEAL)

By: _____
(Signature of general partner – attach evidence of authority to sign)

Name (typed or printed): _____

A Corporation

Corporation Name: James W. Fowler Co. (SEAL)

State of Incorporation: Oregon

Type (General Business, Professional, Service, Limited Liability): General Business

By: _____
(Signature – attach evidence of authority to sign)

Name (typed or printed): James W. Fowler

Title: President (CORPORATE SEAL)

Attest: _____ John B. Fowler
(Signature of Corporate Secretary)

TRI-CITY SOLIDS HANDLING IMPROVEMENTS

Date of Qualification to do business in Oregon is:

February 3, 1977 _____.

A Joint Venture

Joint Venturer Name: n/a _____ (SEAL)

By: _____

(Signature of joint venture partner – attach evidence of authority to sign)

Name (typed or printed): _____

Title: _____

(Each joint venturer must sign. The manner of signing for each individual, partnership, and corporation that is a party to the joint venture should be in the manner indicated above.)

Bidder's Business Address: James W. Fowler Co. _____

12775 Westview Drive, Dallas, OR 97338 _____

Phone No.: (503) 623-5373 _____ FAX No.: (503) 623-9117 _____

E-mail: pattis@jwfowler.com _____

SUBMITTED on May 24 _____, 2018 _____

Oregon Contractor's License No.: 63701 _____

Contractor's License Class (where applicable): CCB _____

Bidder is an Oregon company as defined in ORS 279A.120.

Yes No

END OF SECTION

TRI-CITY SOLIDS HANDLING IMPROVEMENTS

BID BOND

**PROJECT NAME: #2018-19 TRI-CITY WATER RESOURCE RECOVERY
FACILITY (WRRF) SOLIDS HANDLING IMPROVEMENTS PROJECT
(PROJECT P632162)**

We, James W. Fowler Co., as "Principal,"
(Name of Principal)

and Liberty Mutual Insurance Company, as Massachusetts Corporation,
(Name of Surety)

authorized to transact Surety business in Oregon, as "Surety," hereby jointly and severally bind ourselves, our respective heirs, executors, administrators, successors and assigns to pay unto Water Environment Services ("Obligee") the sum of (\$ _____)

Ten Percent (10%) of the Total Amount of Bid---
dollars.

WHEREAS, the condition of the obligation of this bond is that Principal has submitted its proposal or bid to an agency of the Obligee in response to Obligee's procurement document (No. 2018-19) for the project identified above which proposal or bid is made a part of this bond by reference, and Principal is required to furnish bid security in an amount equal to ten (10%) percent of the total amount of the bid pursuant to the procurement document.

NOW, THEREFORE, if the Obligee shall accept the bid of the Principal and the Principal shall enter into a Contract with the Obligee in accordance with the terms of such bid, and give such bond or bonds as may be specified in the bidding or Contract Documents with good and sufficient surety for the faithful performance of such Contract and for the prompt payment of labor and material furnished in the prosecution thereof, or in the event of the failure of the Principal to enter such Contract and give such bond or bonds, if the Principal shall pay to the Obligee the difference not to exceed the penalty hereof between the amount specified in said bid and such larger amount for which the Obligee may in good faith contract with another party to perform the Work covered by said bid, then this obligation shall be null and void, otherwise to remain in full force and effect.

TRI-CITY SOLIDS HANDLING IMPROVEMENTS

IN WITNESS WHEREOF, we have caused this instrument to be executed and sealed by our duly authorized legal representatives this 22nd day of May, 2018.

Principal: James W. Fowler Co.

Surety: Liberty Mutual Insurance Company

By: James W. Fowler Signature

By: Attorney-In-Fact Deanna M. French

President
Official Capacity

Deanna M. French
Name

Attest: [Signature]
Corporation Secretary

2233 112th Ave. N.E.
Address

Bellevue WA 98004
City State Zip

(425) 709-3600 (425) 709-7467
Phone Fax

END OF SECTION

THIS POWER OF ATTORNEY IS NOT VALID UNLESS IT IS PRINTED ON RED BACKGROUND.

This Power of Attorney limits the acts of those named herein, and they have no authority to bind the Company except in the manner and to the extent herein stated.

Certificate No. 8016528

Liberty Mutual Insurance Company
The Ohio Casualty Insurance Company West American Insurance Company

POWER OF ATTORNEY

KNOWN ALL PERSONS BY THESE PRESENTS: That The Ohio Casualty Insurance Company is a corporation duly organized under the laws of the State of New Hampshire, that Liberty Mutual Insurance Company is a corporation duly organized under the laws of the State of Massachusetts, and West American Insurance Company is a corporation duly organized under the laws of the State of Indiana (herein collectively called the "Companies"), pursuant to and by authority herein set forth, does hereby name, constitute and appoint, Guy Armfield; John Claeys; Scott Fisher; Deanna M. French; Elizabeth R. Hahn; Roger Kaltenbach; Ronald J. Lange; Andrew P. Larsen; Susan B. Larson; Scott McGilvray; Mindee L. Rankin; Jana M. Roy; Jill A. Wallace

all of the city of Bellevue, state of WA each individually if there be more than one named, its true and lawful attorney-in-fact to make, execute, seal, acknowledge and deliver, for and on its behalf as surety and as its act and deed, any and all undertakings, bonds, recognizances and other surety obligations, in pursuance of these presents and shall be as binding upon the Companies as if they have been duly signed by the president and attested by the secretary of the Companies in their own proper persons.

IN WITNESS WHEREOF, this Power of Attorney has been subscribed by an authorized officer or official of the Companies and the corporate seals of the Companies have been affixed thereto this 21st day of February, 2018



The Ohio Casualty Insurance Company
Liberty Mutual Insurance Company
West American Insurance Company

By: David M. Carey
David M. Carey, Assistant Secretary

STATE OF PENNSYLVANIA ss
COUNTY OF MONTGOMERY

On this 21st day of February, 2018, before me personally appeared David M. Carey, who acknowledged himself to be the Assistant Secretary of Liberty Mutual Insurance Company, The Ohio Casualty Company, and West American Insurance Company, and that he, as such, being authorized so to do, execute the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my notarial seal at King of Prussia, Pennsylvania, on the day and year first above written.



COMMONWEALTH OF PENNSYLVANIA
Notarial Seal
Teresa Pastella, Notary Public
Upper Merion Twp., Montgomery County
My Commission Expires March 28, 2021
Member, Pennsylvania Association of Notaries

By: Teresa Pastella
Teresa Pastella, Notary Public

This Power of Attorney is made and executed pursuant to and by authority of the following By-laws and Authorizations of The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company which resolutions are now in full force and effect reading as follows:

ARTICLE IV – OFFICERS – Section 12. Power of Attorney. Any officer or other official of the Corporation authorized for that purpose in writing by the Chairman or the President, and subject to such limitation as the Chairman or the President may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Corporation to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact, subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Corporation by their signature and execution of any such instruments and to attach thereto the seal of the Corporation. When so executed, such instruments shall be as binding as if signed by the President and attested to by the Secretary. Any power or authority granted to any representative or attorney-in-fact under the provisions of this article may be revoked at any time by the Board, the Chairman, the President or by the officer or officers granting such power or authority.

ARTICLE XIII – Execution of Contracts – SECTION 5. Surety Bonds and Undertakings. Any officer of the Company authorized for that purpose in writing by the chairman or the president, and subject to such limitations as the chairman or the president may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Company by their signature and execution of any such instruments and to attach thereto the seal of the Company. When so executed such instruments shall be as binding as if signed by the president and attested by the secretary.

Certificate of Designation – The President of the Company, acting pursuant to the Bylaws of the Company, authorizes David M. Carey, Assistant Secretary to appoint such attorneys-in-fact as may be necessary to act on behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations.

Authorization – By unanimous consent of the Company's Board of Directors, the Company consents that facsimile or mechanically reproduced signature of any assistant secretary of the Company, wherever appearing upon a certified copy of any power of attorney issued by the Company in connection with surety bonds, shall be valid and binding upon the Company with the same force and effect as though manually affixed.

I, Renee C. Llewellyn, the undersigned, Assistant Secretary, The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company do hereby certify that the original power of attorney of which the foregoing is a full, true and correct copy of the Power of Attorney executed by said Companies, is in full force and effect and has not been revoked.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seals of said Companies this 22nd day of May, 2018



By: Renee C. Llewellyn
Renee C. Llewellyn, Assistant Secretary

Not valid for mortgage, note, loan, letter of credit, currency rate, interest rate or residual value guarantees.

To confirm the validity of this Power of Attorney call 1-610-832-8240 between 9:00 am and 4:30 pm EST on any business day.

TRI-CITY SOLIDS HANDLING IMPROVEMENTS

**NONCOLLUSION AFFIDAVIT
FOR**

**Tri-City Water Resource Recovery Facility (WRRF)
Solids Handling Improvements Project, Project P632162**

State of Polk)
) ss.
County of Oregon)

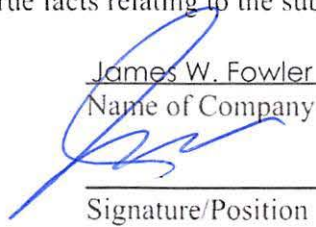
I state that I am President (Title) of James W. Fowler Co. (Name of Firm) and being first duly sworn, depose and say that I am authorized to make this Affidavit on behalf of this firm and its owners, directors, and officers.

I state that:


- (1) The price(s) and amount of this Bid have been arrived at independently and without consultation, communication or agreement with any other contractor, Bidder or potential Bidder, except as disclosed on the attached appendix;
- (2) Neither the price(s) nor other information included in this Bid have been disclosed to any other firm or person who is a Bidder or potential Bidder, and that they will not be disclosed prior to the award of the Project(s);
- (3) No attempt has been made or will be made to induce any firm or person to refrain from submitting a Bid, or to submit a Bid containing less competitive terms than those contained in this Bid;
- (4) The Bid of this firm is made in good faith and not pursuant to any agreement or discussion with, or inducement from, any firm or person to submit a complementary or other noncompetitive proposal; and
- (5) James W. Fowler Co. (Name of this Firm), its affiliates, subsidiaries, officers, directors and employees are not currently under investigation by any governmental agency and have not in the last four years been convicted of or found liable for any act prohibited by State or Federal law in any jurisdiction, involving conspiracy or collusion with respect to proposing on any public contract, except as described on the attached appendix.

TRI-CITY SOLIDS HANDLING IMPROVEMENTS

I state that James W. Fowler Co.(Name of this Firm) understands and acknowledges that the above representations are material and important, and will be relied on by Water Environment Services and Clackamas County Service District No. 1 in awarding the contract(s) for which this Bid is submitted. I understand and this firm understands that any misstatement in this Affidavit is and shall be treated as fraudulent concealment from Water Environment Services and Clackamas County Service District No. 1 of the true facts relating to the submission of Bids for this Project.

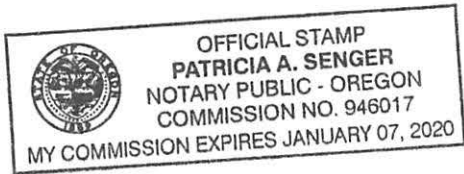
James W. Fowler Co.
Name of Company

/James W. Fowler, President
Signature/Position

Sworn to and subscribed before me this 24th day of May, 2018, by

Patti Senger


Notary Public for Oregon

This Commission Expires: January 07, 2020



RESIDENT/NONRESIDENT BIDDER STATUS FORM

**Tri-City Water Resource Recovery Facility (WRRF)
Solids Handling Improvements Project, Project P632162**

Oregon law (ORS 279A.120) requires Owner, in determining the lowest responsible bidder, to add a percent increase on the bid of a nonresident bidder equal to the percent, if any, of the preference given to bidders in the state in which that bidder resides. Consequently, each bidder must indicate whether it is a resident or nonresident bidder. A resident bidder is a bidder who has paid unemployment taxes or income taxes in Oregon during the 12 calendar months immediately preceding submission of this bid, and has a business address in Oregon, and has stated in its bid whether the bidder is a "resident bidder." A "nonresident bidder" is a bidder who is not a resident bidder.

The undersigned bidder states that it is: (check one)


1. A resident bidder _____ ✓ _____
2. A nonresident bidder _____

Indicate state in which bidder resides: Oregon

CONSTRUCTION CONTRACTOR'S LICENSING

Oregon law requires all contractors to be licensed with the Construction Contractors Board in order to submit a Bid to do work and to do work as a contractor. The undersigned Bidder states it is now licensed with the Oregon Construction Contractors Board.

Indicate Bidder's Construction Contractors Board License No. _____63701_____.


_____/James W. Fowler, President
Signature of Bidder

END OF SECTION

CONSENT RESOLUTION

WHEREAS, the undersigned are all of the Directors of James W. Fowler Co., an Oregon corporation (the "Corporation"); and

WHEREAS, the undersigned wish to take the action as hereinafter set forth pursuant to the Oregon Business Corporation Act; and

WHEREAS, pursuant to Article IV, Section 2 of the Bylaws of the Corporation, the President is empowered to sign, execute and bind the Corporation to contracts in the course of the business of the Corporation; and

WHEREAS, due to the exigencies of operating the business of the Corporation, it is not always possible for the President, James W. Fowler, or one of the officers, John B. Fowler, Executive Vice President/Secretary, and Candace J. Fowler, Treasurer, to evaluate and sign each individual contract which may be of interest or benefit to the Corporation; and

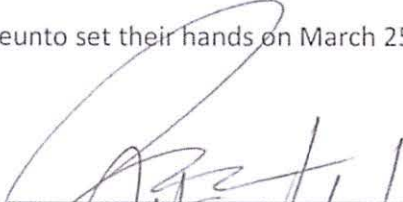
WHEREAS, pursuant to Article IV, Section 6 of the Bylaws of the Corporation, the Board of Directors in its discretion may appoint additional officers or agents of the Corporation and may prescribe the duties thereof; and

WHEREAS, the Directors of the Corporation wish to appoint Wayne Howden the Controller of the Corporation as Assistant Secretary and authorize him to cause the Corporation to enter into contracts in the regular course of business of the Corporation, to prepare and submit bids on behalf of the Corporation and to sign and execute contracts on behalf of the Corporation.

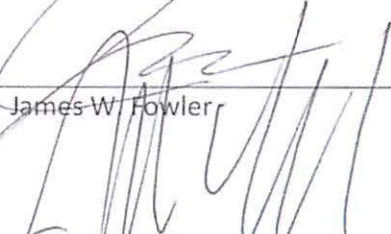
NOW, THEREFORE, the following resolutions are unanimously adopted:

RESOLVED, that in addition to the current officers of the Corporation, namely James W. Fowler, President; John B. Fowler, Executive Vice-President; and Candace J. Fowler, Vice-President and Treasurer, Wayne Howden, Assistant Secretary are each authorized to execute any and all documents for and on behalf of the Corporation, including without limitation bids, contracts, insurance applications, bonding applications, and similar and related documents.

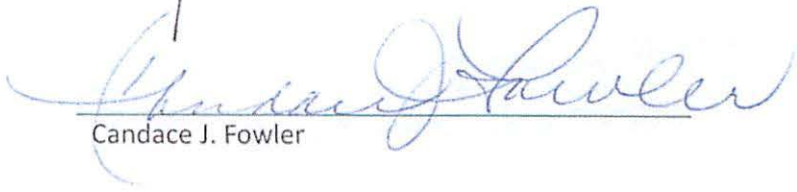
IN WITNESS WHEREOF, the undersigned have hereunto set their hands on March 25, 2014.



James W. Fowler



John B. Fowler



Candace J. Fowler

TRI-CITY SOLIDS HANDLING IMPROVEMENTS

FIRST-TIER SUBCONTRACTOR DISCLOSURE FORM

PROJECT NAME: James W. Fowler Co.

BID #: 2018-19 BID CLOSING: Date: May 24, 2018 Time: 2:00 PM

This form shall be submitted at the location specified in the Advertisement/Invitation to Bid within 2 working hours after the advertised Bid closing time on advertised Bid closing date.

List below the name of each Subcontractor that will be furnishing labor or labor and materials and that is required to be disclosed, the category of work that Subcontractor will be performing, and dollar value of subcontract. Enter "NONE" if there are no Subcontractors that need to be disclosed. (Attach additional sheets if needed.)

	NAME	DOLLAR VALUE	CATEGORY OF WORK
1)	<u>Pacific Foundation</u>	<u>\$ 543,344.78</u>	<u>Secant Pile</u>
2)	<u>Team Electric</u>	<u>\$ 4,065,290.00</u>	<u>Electrical & Instrumentation</u>
3)	<u>HVAC Inc</u>	<u>\$ 1,806,549.00</u>	<u>HVAC</u>
4)	<u>The Rodriguez Corporation</u>	<u>1,128,965.00</u>	<u>Painting / Coating</u>
5)	<u>ABC Roofing</u>	<u>\$ 1,040,020.00</u>	<u>Roofing</u>
6)	<u>Ward-Henshaw Const. Co. Inc.</u>	<u>\$ 2,159,000.00</u>	<u>Prestressed Concrete Tank</u>
7)	_____	_____	_____
8)	_____	_____	_____

Failure to submit this form by the disclosure deadline will result in a nonresponsive Bid. A nonresponsive Bid will not be considered for award.

FORM SUBMITTED BY (BIDDER NAME): James W. Fowler Co.

CONTACT NAME: Patti Senger PHONE NO.: (503) 623-5373

END OF SECTION



Fair Share Objectives, Six Good-Faith Efforts, Contract Administration and Contract Language

This form must be completed by the loan recipient, prime contractor and any subcontractor who will further subcontract on the Clean Water State Revolving Fund project within the scope of the CWSRF loan. All boxes in this attachment must be initialed and the bottom signed. One completed attachment for the prime contractor must be submitted as part of the bid/proposal to the loan recipient. One completed attachment for each subcontractor who will further subcontract must be submitted before the contract award. A copy of those must be included in the contract copy to DEQ, along with one attachment initialed and signed by the loan recipient.

A handwritten signature in black ink, appearing to be 'Jy', is written over a horizontal line.

Fair Share Objectives

The loan recipient accepts the following Fair Share Objectives for the CWSRF-funded project and must employ the six good-faith efforts to achieve these percentages in disadvantaged business enterprises participation:

Supplies: 0.43% MBE 1.28% WBE
Services: 2.58% MBE 4.45% WBE
Equipment: 1.08% MBE 2.69% WBE

A handwritten signature in black ink, appearing to be 'Jy', is written over a horizontal line.

MBE/WBE Certification

All Minority Business Enterprises and Woman Business Enterprises must be certified by Oregon's [Office of Minority, Women and Emerging Small Businesses](#) or by the state in which they are located. This office administers the Disadvantaged Business Enterprise, Minority Business Enterprise/Women Business Enterprise, and Emerging Small Business programs.


A handwritten signature in black ink, appearing to be 'Jy', is written over a horizontal line.


Six Good-Faith Efforts


The good-faith efforts are required methods to ensure that all DBEs have the opportunity to compete for procurements funded by the Clean Water State Revolving Fund. The loan recipient and their prime contractor are required to:

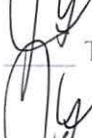
1. Ensure DBEs are made aware of contracting opportunities to the fullest extent practicable through outreach and recruitment activities. For Indian tribal, state and local government recipients, this will include placing DBEs on solicitation lists and soliciting them whenever they're potential sources.
2. Make information on forthcoming opportunities available to DBEs and arrange time frames for contracts and establish delivery schedules, where the requirements permit, in a way that encourages and facilitates participation by DBEs in the competitive process. This includes, whenever possible, posting solicitations for bids or proposals for a minimum of 30 calendar days before the bid or proposal closing date.
3. Consider in the contracting process whether firms competing for large contracts could subcontract with DBEs. For Indian tribal, state and local government recipients, this will include dividing total requirements when economically feasible into smaller tasks or quantities to permit maximum participation by DBEs in the competitive process.
4. Encourage contracting with a consortium of DBEs when a contract is too large for one of these firms to handle individually.
5. Use the services and assistance of the federal Small Business Administration, Minority Business Development Agency of the U.S. Department of Commerce, and the state Office of Minority, Women and Emerging Small Business.
6. If the prime contractor awards subcontracts, require the prime contractor to take steps 1 through 5 above.

Contract Administration

 The Loan Recipient must require its prime contractor to employ the six good faith efforts even if the prime contractor has achieved its fair share objectives.

 If a DBE subcontractor fails to complete work under the subcontract for any reason, the Loan Recipient must require the prime contractor to employ the six good faith efforts if soliciting a replacement subcontractor.

 The Loan Recipient must require its prime contractor to pay its subcontractor for satisfactory performance no more than 30 days from the prime contractor's receipt of payment from the Loan Recipient.

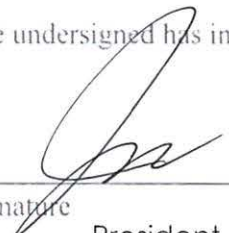
 The Loan Recipient must require written notification from its prime contractor prior to any termination of a DBE subcontractor for convenience by the prime contractor.

Specific Contract Language

All contracts between the Loan Recipient and prime contractor, and prime contractor and subcontractors must include the following statement required by 40 CFR Part 33:

"The contractor shall not discriminate on the basis of race, color, national origin or sex in the performance of this contract. The contractor shall carry out applicable requirements of 40 CFR part 33 in the award and administration of contracts awarded under EPA financial assistance agreements. Failure by the contractor to carry out these requirements is a material breach of this contract which may result in the termination of this contract or other legally available remedies."

The undersigned has initialed the items above and understands the resulting responsibility for each item.

 _____ /James W. Fowler _____ May 24, 2018 _____
 Signature _____ Date
 President

 Title James W. Fowler Co. _____

 Company

DEQ will review the bid/proposal package. Failure of the Loan Recipient and its prime contractor to demonstrate a good faith effort to meet the fair share objectives will prevent DEQ concurrence with the contract award. As a result, DEQ will not reimburse the contractor's subsequent payment requests.

Certificate of Independent Price Determination



State of Oregon
Department of
Environmental
Quality

The prime contractor must sign this form and submit it as part of its bid proposal to the Clean Water State Revolving Fund loan recipient. A copy of this signed form must be included in the contract copy between the loan recipient and the selected prime contractor that the loan recipient submits to DEQ. The prime contractor must obtain a signed copy of this form from each subcontractor, and retain them in the prime contractor's contract file.

Bidder's

Name: James W. Fowler Co.

Address: 12775 Westview Drive, Dallas, OR 97338

a. The bid offeror certifies that:

1. The prices in this offer have been arrived at independently without, for the purpose of restricting competition, any consultation, communication or agreement with any other offeror or competitor relating to:
 - i. Those prices
 - ii. Intention to submit an offer
 - iii. Methods or factors used to calculate the prices offered
2. The prices in this offer have not been and will not be knowingly disclosed by the offeror, directly or indirectly, to any other offeror or competitor before bid opening (in the case of a sealed bid solicitation) or contract award (in the case of a negotiated solicitation) unless otherwise required by law
3. No attempt has been or will be made by the offeror to induce any other concern to submit or not to submit an offer for the purpose of restricting competition.

b. Each signature on the offer is considered to be a certification by the signatory that the signatory:

1. Is the person in the offeror's organization responsible for determining the prices being offered in this bid or proposal, and that the signatory has not participated and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) above; or
2.
 - i. Has been authorized, in writing, to act as agent for the following principals in certifying that those principals have not participated, and will not participate, in any action contrary to subparagraphs (a)(1) through (a)(3) above:
 - ii. As an authorized agent, certifies that the principals named below have not participated, and will not participate, in any action contrary to subparagraph (a)(1) through (a)(3) above; and
 - iii. As an agent, has not personally participated, and will not participate, in any action contrary to subparagraphs (a)(1) through (a)(3) above.
3. If the offeror deletes or modifies subparagraph (a)(2) above, the offeror must furnish with its offer a signed statement setting forth in detail the circumstances of the disclosure.

Insert full name of person(s) in the offeror's organization responsible for determining the prices offered in this bid or proposal, and the title of his or her position in the offeror's organization:

Full Name of Person(s) in the Offeror's Organization	Title	Date
<u>John B. Fowler</u>	<u>Executive Vice President</u>	<u>May 24, 2018</u>
<u>Jack Miller</u>	<u>Chief Estimator</u>	<u>May 24, 2018</u>

Prevailing Wage Agreement



State of Oregon
Department of
Environmental
Quality

The loan recipient, prime contractor and subcontractors all must initial and sign this form. The prime contractor copy must be submitted as part of the bid/proposal to the loan recipient. A copy of this form signed by the loan recipient and the prime contractor must be submitted with the contract copy to DEQ. The prime contractor must obtain a signed copy of this form from each subcontractor and retain them in the prime contractor's contract file.

[Signature] The undersigned understands that this public works project is funded in whole or in part by the Clean Water State Revolving Fund and is subject to the prevailing wage requirements of Oregon's Bureau of Labor and Industry (BOLI) and the requirements of the Davis-Bacon Act.

[Signature] The undersigned agrees that, notwithstanding any other provision of law, all laborers and mechanics employed on the project must be paid wages at rates not less than those prevailing on projects of a similar character in the locality, as determined by the United States Secretary of Labor, or the Commissioner of the Oregon Bureau of Labor and Industries, whichever is higher. ORS 279C.838; OAR 839-025-0035(2)

When a public works project is subject to both the state (BOLI) and federal (Davis-Bacon) prevailing wage rate laws, contractors and subcontractors must pay the higher of either the state or federal prevailing wage rates for the type of work being performed. ORS 279C.838; OAR 839-025-0035(2)

Davis Bacon

[Signature] Davis-Bacon applies to all treatment works construction projects for the entirety of the construction activities financed by a CWSRF loan through the completion of construction, no matter when construction commences.

[Signature] The Loan Agreement includes specific Davis-Bacon terms and conditions contract language that must be passed through to the prime contractor and all subcontractors in their contracts over \$2,000.

[Signature] The Secretary of Labor's determination, regarding the prevailing wages applicable in the state of Oregon, are located at: <http://www.wdol.gov/>. The prevailing wages are those in effect at the time of contract award. Wages obtained through this web link should be printed at the time of contract award and included in procurement documents and all contracts resulting from the procurements.

[Signature] The loan recipient or the prime contractor on behalf of the loan recipient maintains on-going wage information as a requirement of the CWSRF funding of a project subject to Davis-Bacon. The CWSRF program suggests using the wage matrix tool at this link <http://www.deq.state.or.us/wq/loans/constructionForms.htm> and instructions for the wage matrix at this link <http://www.deq.state.or.us/wq/loans/docs/WageMatrixInst.pdf>

[Signature] The loan recipient conducts at least one set of wage interviews with a representative group of workers during the project construction. The loan recipient must conduct additional interviews if there is any reason to suspect a contractor or their subcontractor is at risk for violating wage requirements. As provided in 29 CFR 5.6(a)(6), all interviews must be conducted in confidence. The loan recipient must use Standard Form 1445 or equivalent documentation to memorialize the interviews.

Oregon Bureau of Labor and Industry

BOLI prevailing wage rates apply to projects over \$50,000. Oregon prevailing wage rate regulations require every contractor or subcontractor employing workers on a public works project must pay to such workers no less than the applicable prevailing rate of wage for each trade or occupation, as determined by the commissioner, in which the workers are employed. OAR 839-025-0035.

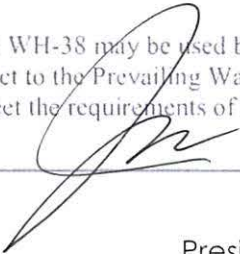
The wage rates identified by the Commissioner of the Oregon BOLI are located at http://www.oregon.gov/boli/WHD/PWR/Pages/pwr_state.aspx

The prevailing wage rates in effect at the time the bid specifications are first advertised are the BOLI wage rates that apply for the duration of the project. Prevailing wages obtained through the BOLI websites must be included in the bid solicitation and incorporated in all contracts resulting from the procurements.

All contractors and subcontractors shall file, with the Construction Contractors Board, a \$30,000 public works bond with a corporate surety authorized to do business in this state. ORS 279C.836 The bond must provide that the contractor or subcontractor will pay claims ordered by BOLI to workers performing labor upon public works projects. It must be filed before starting work on a contract or subcontract for the project.

Payroll/Certified Statement (form WH-38)

Form WH-38 may be used by contractors for reporting their payroll as required by ORS 279C.845 on public works projects subject to the Prevailing Wage Rate Law. This form has not been officially approved by the USDOL, however it is designed to meet the requirements of the federal Davis-Bacon Act as well. [Prevailing Wage Rate Forms](#).


 _____ /James W. Fowler _____ May 24, 2018 _____
 Signature Date

 President Title

 James W. Fowler Co. _____
 Company

Prevailing Wage Crosswalk Table

	BOLI	Davis-Bacon
Projects it applies to		all treatment works construction projects for the entirety of the construction activities financed by a CWSRF loan through the completion of construction, no matter when construction commences
Project cost thresholds	projects over \$50,000	contracts and subcontracts over \$2,000
Where to find wage rates	http://www.oregon.gov/boli/WHD/PWR/Pages/pwr_state.aspx	http://www.wdol.gov/
When wages are in effect	at the time the bid specifications are first advertised	at the time of contract award
Forms	Payroll/Certified Statement (form WH-38) Prevailing Wage Rate Forms .	1. Payroll/Certified Statement (form WH-38) Prevailing Wage Rate Forms 2. DEQ wage matrix form 3. Standard Form 1445 or equivalent documentation to memorialize the interviews.
Bonds	\$30,000 public works bond	

BID #2018-19

Tri-City WRRF Solids Handling Improvements; Mandatory Pre-bid meeting attendance log; April 25, 2018, 9:00 am

No.	Name	Affiliation (name of firm)	Contact phone and email
16	Dick McElligott	JW Fowler	Dickm@jwfowler.com Estimating@jwfowler.com
17	Jim Coskey	JBI	Jimcoskey@jbiwater.com
18	Mike Brye	Camp Creek Electric	Mike@campcreekelectric.com
19	Bob Richardson	Tice Electric Co	Bohr@ticeelectric.com
20	Steven Urdahl	Xylem, Inc.	Steven.urdahl@xyleminc.com
21	Mark Hoover	Slayden Constructors, Inc.	Markh@slayden.com
22	Rocky Pietz	Slayden Constructors, Inc.	Rocky.Pietz@stantec.com
23	Thomas Miller	EC Company	Thomas.Miller@ecpowerslife.com

TRI-CITY WRRF SOLIDS HANDLING IMPROVEMENTS

ADDENDUM NO. 1
TO THE CONTRACT DOCUMENTS
for the construction of
Tri-City WRRF Solids Handling Improvements

Date: April 26, 2018
Project No.: 692260

To All Planholders and/or Prospective Bidders:

The following changes, additions, and/or deletions are hereby made a part of the Contract Documents for the construction of Tri-City WRRF Solids Handling Improvements dated April 2018 as fully and completely as if the same were fully set forth therein:

A. PART 1, BIDDING AND CONTRACTING REQUIREMENTS

1. Section 00 21 13, Instructions to Bidders. Page 4, Article 6, Mandatory Prebid Conference. ADD the following sentence to the end of Paragraph 6.1:
 - a. "An additional optional site tour for prospective Bidders will be held on May 3, 2018, 10:00 a.m. to 11:00 a.m. at the Tri-City WRRF, 15941 S. Agnes Avenue, Oregon City, OR 97045. This site visit is non-mandatory and is provided as an additional opportunity for prospective Bidders to tour the project site during the bid period. All Bidders shall have attended the mandatory pre-bid conference as indicated."

All Bidders shall acknowledge receipt and acceptance of this Addendum No. 1 in the Bid Form or by submitting the Addendum with the bid package. Bid Forms submitted without acknowledgment or without this Addendum will be considered in nonconformance.

CH2M HILL

R. Brady Fuller, P.E.
Project Manager

END OF ADDENDUM NO. 1

TRI-CITY WRRF SOLIDS HANDLING IMPROVEMENTS

ADDENDUM NO. 2
TO THE CONTRACT DOCUMENTS
for the construction of
Tri-City WRRF Solids Handling Improvements

Date: May 3, 2018
Project No.: 692260

To All Planholders and/or Prospective Bidders:

The following changes, additions, and/or deletions are hereby made a part of the Contract Documents for the construction of Tri-City WRRF Solids Handling Improvements dated April 2018 as fully and completely as if the same were fully set forth therein:

A. BIDDING AND CONTRACTING REQUIREMENTS

1. Section 00 11 13, Invitation to Bid.
 - a. Page 1. In the first paragraph, first sentence, DELETE “15th” and REPLACE with “22nd”. In the last sentence, DELETE “15” and REPLACE with “22”.
 - b. Page 2, Paragraph Prevailing Wage. In the first paragraph, ADD the following after the second sentence:

“Also comply with all the requirements set forth in Appendix E: Davis-Bacon Provision.”
2. Section 00 21 13, Instructions to Bidders. Page 7.
 - a. Article 14 Wage Rates. ADD the following:

“14.4. Contractor must also comply with the requirements set forth in Appendix E: Davis-Bacon Provision.”
 - b. Article 15 Preparation of Bid, Paragraph 15.2. ADD the following:

“15.2.4. Fair Share Objectives, Six Good Faith Efforts, Contract Administration and Language.”
3. Section 00 41 13, Bid Form. DELETE in its entirety and REPLACE as herein attached.

TRI-CITY WRRF SOLIDS HANDLING IMPROVEMENTS

ADDENDUM NO. 3
TO THE CONTRACT DOCUMENTS
for the construction of
Tri-City WRRF Solids Handling Improvements

Date: May 11, 2018
Project No.: 692260

To All Planholders and/or Prospective Bidders:

The following changes, additions, and/or deletions are hereby made a part of the Contract Documents for the construction of Tri-City WRRF Solids Handling Improvements dated April 2018 as fully and completely as if the same were fully set forth therein:

A. CHANGES TO PRIOR ADDENDA

1. Addendum No. 2, page 1:
 - a. Item No. A.1, Section 00 11 13, Invitation to Bid, page 1. In the first paragraph, first sentence, DELETE “22nd” and REPLACE with “24th”. In the last sentence, DELETE “22” and REPLACE with “24”.
 - b. Item No. A.3: In Section 00 41 13, Bid Form, page 1, DELETE the Bid Closing date “May 22, 2018” and REPLACE with “May 24, 2018.” DELETE the Bid Opening date “May 22, 208” and REPLACE with “May 24, 2018.”

B. BIDDING AND CONTRACTING REQUIREMENTS

1. Section 00 21 13, Instructions to Bidders.
 - a. Page 6, Article 13 Subcontractors, Suppliers, and Others. ADD the following:

“13.3. The following firms have been prequalified for the externally wrapped prestressed concrete tank construction.

No.	Firm Name	Address, Phone, and email
1	Marion Construction Company	14835 S.E. 82nd Drive Clackamas, OR 97015 (503) 581-1920 info@marionconst.com
2	Ward-Henshaw Construction	505 N. Baker Drive Canby, OR 97013 (503) 266-1986 h20tanks@ward-henshaw.com

TRI-CITY WRRF SOLIDS HANDLING IMPROVEMENTS

ADDENDUM NO. 4
TO THE CONTRACT DOCUMENTS
for the construction of
Tri-City WRRF Solids Handling Improvements

Date: May 17, 2018
Project No.: 692260

To All Planholders and/or Prospective Bidders:

The following changes, additions, and/or deletions are hereby made a part of the Contract Documents for the construction of Tri-City WRRF Solids Handling Improvements dated April 2018 as fully and completely as if the same were fully set forth therein:

A. CHANGES TO PRIOR ADDENDA:

1. Addendum No. 2, page 3. Section 01 31 13, Project Coordination.
 - a. Page 2, Article 1.02 Related Work at Site, Paragraph C, Power. DELETE Item No. 2.a in its entirety and replace with the following:
 - “a. Install metering equipment in new service disconnects.”
 - b. Page 3, Article 1.03 Utility Notification and Coordination. DELETE Paragraph A.4 in its entirety.
 - c. Page 6, Article 1.06 General Work Sequencing Constraints.
 - 1) ADD the following Paragraph B.4.d:
 - “d. Demolish existing dewatered biosolids cake conveyors and loadout facility.”
 - 2) DELETE Paragraph B.5.c in its entirety.
 - d. Article 1.07 Facility Operations and Work Sequence.
 - 1) Paragraph F, Work Sequence.
 - a) Page 11. ADD Item No. 6.b.3)b):
 - “b. Demolish existing dewatered biosolids cake conveyors and loadout facility.”
 - b) Page 11. DELETE Item No. 6.b.3)f): (Demolish existing dewatered biosolids cake conveyors and loadout facility).

List of Contacted Disadvantaged Business Enterprises

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State of Oregon
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Completed by: John B. Fowler, Executive Vice President

Name of Business	Certification #	Contact Person	Phone Number	Date of Contact	Reason for Non-Participation
3 Diamond Construction, LLC DBE	9339	Ofelia Lara	5037346323	Email: 4/26/2018 1:42:03 PM Fax: 4/26/2018 2:53:55 PM Phone: 4/27/2018 1:47:21 PM	Phone 1: May be interested, not sure. Number not available at the moment. Result: Did not respond, did not submit quote
A2 Fabrication, Inc. WBE	2070	Gail Schmidt	5037712000	Email: 4/26/2018 1:42:03 PM Fax: 4/26/2018 1:45:38 PM Phone: 4/27/2018 1:48:35 PM	Phone 1: May be interested in submitting a quote. Left a voicemail with all the project details. Result: Did not respond, did not submit quote
Affinity Steel, Inc. WBE	7594	Patricia Evanson	5035775780	Email: 4/26/2018 1:42:03 PM Fax: 4/26/2018 1:45:51 PM Phone: 4/27/2018 1:51:23 PM	Phone 1: May be interested in submitting a quote. Left a voicemail with all the project details. Result: Did not respond, did not submit quote
AFFORDABLE ELECTRIC INC MBE	4027	Jean Wildy Malary	5033056979	Email: 4/26/2018 1:42:03 PM Fax: 4/26/2018 1:46:23 PM Phone: 4/27/2018 1:56:56 PM	Phone 1: No, not submitting a quote for this project. Result: Did not submit quote
AM Contracting LLC WBE	9536	Amanda Hoyt	5037302517	Email: 4/26/2018 1:42:03 PM Fax: 4/26/2018 1:46:16 PM Phone: 4/27/2018 1:59:55 PM 5/11/2018 8:18 AM	Phone 1: May be interested in submitting a quote. Left a voicemail with all the project details. Phone 2: Talked to Amanda Result: No, not submitting a quote

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Name of Business	Certification #	Contact Person	Phone Number	Date of Contact	Reason for Non-Participation
Andersen Heating, Inc MBE	8561	Art Andersen	5038410742	Email: 4/26/2018 1:42:03 PM Fax: 4/26/2018 1:46:10 PM Phone: 4/27/2018 2:03:40 PM 5/11/2018 8:20 AM	Phone 1: May be interested in submitting a quote. Left a voicemail with all the project details. Phone 2: Talked to Mark Result: Requested invitation resent. They will respond if interested.
AZURI CONSTRUCTION, INC. DBE	238	Jose Figueroa	5032898431	Email: 4/26/2018 1:42:03 PM Fax: Phone: 4/27/2018 2:07:24 PM	Phone 1: Unable to confirm whether they are interested in submitting a quote. The call would not connect. Result: Did not respond, did not submit quote
Braun Construction & Design L.L.C. WBE	5786	Jeanie Braun	5036386406	Email: 4/26/2018 1:42:03 PM Fax: 4/26/2018 1:46:09 PM Phone: 4/27/2018 2:09:27 PM 5/11/2018 8:25AM	Phone 1: Re-sent an email to be.braunconstruction@gmail.com. They will take a look at it and respond if interested. Phone 2: Talked to Camille Result: No, not submitting a quote for this project.
By Design Steel Services, LLC WBE	11196	Patrice Siminoe	5037299900	Email: 4/26/2018 1:42:03 PM Fax: 4/26/2018 2:52:44 PM Phone: 4/27/2018 2:10:42 PM	Phone 1: May be interested in submitting a quote. Left a voicemail with all the project details. Result: Did not respond, did not submit quote
C & L Metal Sales, LLC DBE	3255	Cindy Scott	5032888922	Email: 4/26/2018 1:42:03 PM Fax: 4/26/2018 1:45:35 PM Phone: 4/27/2018 2:12:31 PM 5/11/2018 8:32 PM	Phone 1: May be interested, not sure. Estimator out of the office. Please call back. Phone 2: Talked to Cinty Result: They are still deciding whether they are interested in this project.

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Name of Business	Certification #	Contact Person	Phone Number	Date of Contact	Reason for Non-Participation
CAROLYNE BRUSH WBE	4149	Carolyne Brush	5039612949	Email: 4/26/2018 1:42:03 PM Fax: 4/26/2018 2:52:23 PM Phone: 4/27/2018 2:14:36 PM 5/11/2018 8:32 AM	Phone 1: May be interested in submitting a quote. Left a voicemail with all the project details. Phone 2: Talked to Receptionist Result: No, not submitting a quote for this project.
CASA BONITA LLC DBE	8558	Omar Martinez Barrera	5039564866	Email: 4/26/2018 1:42:03 PM Fax: 4/26/2018 2:09:11 PM Phone: 4/27/2018 2:16:12 PM	Phone 1: No, not submitting a quote for this project. Result: Did not submit quote
CASCADE FLOORING, LLC WBE	4121	Tracey Palmer	5036583828	Email: 4/26/2018 1:42:03 PM Fax: 4/26/2018 1:46:10 PM Phone: 4/27/2018 2:17:12 PM	Phone 1: Unable to confirm whether they are interested in submitting a quote. This is the wrong phone number. Result: Did not respond, did not submit quote
CBK CONSTRUCTORS, LLC WBE	6079	Christina Beko	5038661305	Email: 4/26/2018 1:42:03 PM Fax: 4/26/2018 1:45:55 PM Phone: 4/27/2018 2:20:01 PM	Phone 1: Unable to confirm whether they are interested in submitting a quote. No one picked up and the call did not connect to a voicemail. Result: Did not respond, did not submit quote
CEARLEY CONSTRUCTION LLC MBE	9582	Jeremy Cearley	5039841147	Email: 4/26/2018 1:42:03 PM Fax: 4/26/2018 1:51:04 PM Phone: 4/27/2018 2:20:59 PM 5/11/2018 8:38 AM	Phone 1: May be interested in submitting a quote. Left a voicemail with all the project details. Phone 2: Talked to Jeremy Result: No, not submitting a quote for this project.

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CEJA'S COMMERCIAL INTERIORS, INC. MBE	8667	Jose Ceja Alvarez	5032092343	Email: 4/26/2018 1:42:03 PM Fax: 4/26/2018 1:45:33 PM Phone: 4/27/2018 2:22:45 PM 5/11/2018 8:40 AM	Phone 1: Re-sent an email to the address on record. They will take a look at it and respond if interested. Phone 2: Talked to Estimator Result: No, not submitting a quote for this project.
Centurion Fire Protection, LLC WBE	9680	Jill Barker	5038940563	Email: 4/26/2018 1:42:03 PM Fax: 4/26/2018 1:59:58 PM Phone: 4/27/2018 2:26:51 PM 5/11/2018 8:41 AM	Phone 1: May be interested in submitting a quote. Left a voicemail with all the project details. Phone 2: Talked to Estimator Result: No, not submitting a quote for this project.
CHE Group, LLC DBE	9307	Heather Jones	5033072132	Email: 4/26/2018 1:42:03 PM Fax: 4/26/2018 1:46:10 PM Phone: 4/27/2018 2:35:10 PM	Phone 1: May be interested in submitting a quote. Left a voicemail with all the project details. Result: Did not respond, did not submit quote
Corpac Construction Company WBE	8325	Trisha Cauthorn	5417407929	Email: 4/26/2018 1:42:03 PM Fax: 4/26/2018 2:52:18 PM Phone: 4/27/2018 2:37:24 PM	Phone 1: Unable to confirm whether they are interested in submitting a quote. The call would not connect. Result: Did not respond, did not submit quote
Croteau Electrical Consulting and Design MBE	10071	Scott Croteau	5035500548	Email: 4/26/2018 1:42:03 PM Fax: 4/26/2018 1:55:35 PM Phone: 4/27/2018 2:38:56 PM	Phone 1: May be interested in submitting a quote. Left a voicemail with all the project details. Result: Did not respond, did not submit quote

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CUTTER CONSTRUCTION CO INC WBE	4140	Lori Pottratz	5039695116	Email: 4/26/2018 1:42:03 PM Fax: 4/26/2018 1:46:02 PM Phone: 4/27/2018 2:42:28 PM	Phone 1: Unable to confirm whether they are interested in submitting a quote. The call would not connect. Result: Did not respond, did not submit quote
D & F Plumbing, Co. WBE	7402	Sandi Warren	5032820993	Email: 4/26/2018 1:42:03 PM Fax: 4/26/2018 2:52:24 PM Phone: 4/27/2018 2:44:50 PM 5/11/2018 8:55 AM	Phone 1: Re-sent a fax to davidm@d-f-plumbing.com. They will take a look at it and respond if interested. Phone 2: Talked to Randy Result: Re-sent fax to Randy, he will respond if interested.
Dailey's Trucking, Excavating & Paving, LLC WBE	5224	Elizabeth Dailey	5036688105	Email: 4/26/2018 1:42:03 PM Fax: 4/26/2018 1:46:11 PM Phone: 4/27/2018 2:45:53 PM	Phone 1: May be interested, not sure. Number not available at the moment. Result: Did not respond, did not submit quote
Dirt and Aggregate Interchange, Inc. MBE	493	Henry Pelfrey	5036615093	Email: 4/26/2018 1:42:03 PM Fax: 4/26/2018 1:46:23 PM Phone: 4/27/2018 2:46:49 PM	Phone 1: No, not submitting a quote for this project. Result: Did not submit quote
Eddy Excavation, LLC MBE	5970	Troy Eddy	5037098340	Email: 4/26/2018 1:42:03 PM Fax: 4/26/2018 2:55:01 PM Phone: 4/27/2018 2:47:27 PM	Phone 1: Unable to confirm whether they are interested in submitting a quote. The call would not connect. Result: Did not respond, did not submit quote

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ENERGY COMFORT & CONSTRUCTION LLC WBE	5931	Garciela Pepelaskov	5036573434	Email: 4/26/2018 1:42:03 PM Fax: 4/26/2018 2:52:22 PM Phone: 4/27/2018 2:48:52 PM	Phone 1: Unable to confirm whether they are interested in submitting a quote. No one picked up and the call did not connect to a voicemail. Result: Did not respond, did not submit quote
Evergeren Developers llc MBE	10912	Jeremy Tjaden	5036554005	Email: 4/26/2018 1:42:03 PM Fax: Phone: 4/27/2018 2:49:54 PM	Phone 1: May be interested in submitting a quote. Left a voicemail with all the project details. Result: Did not respond, did not submit quote
Faison Construction, Inc. DBE	2768	James Faison	5034930684	Email: 4/26/2018 1:42:03 PM Fax: 4/26/2018 1:45:28 PM Phone: 4/27/2018 2:54:49 PM	Phone 1: Unable to confirm whether they are interested in submitting a quote. No one picked up and the call did not connect to a voicemail. Result: Did not respond, did not submit quote
FIRST INSTALLATION REPAIR & SERVICE TODAY, INC. DBE	600	Robert Huckaby	5032888732	Email: 4/26/2018 1:42:03 PM Fax: 4/26/2018 1:45:48 PM Phone: 4/27/2018 2:56:01 PM	Phone 1: No, not submitting a quote for this project. The project is outside of their scope of work. Result: Did not submit quote
Fox Erosion Control and Landscape, Inc. DBE	10599	Jane Marsh	5036548816	Email: 4/26/2018 1:42:03 PM Fax: 4/26/2018 1:46:18 PM Phone: 4/27/2018 2:56:32 PM	Phone 1: May be interested, not sure. Reached voicemail but unable to leave a message. Result: Did not respond, did not submit quote

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Franklin Kumar Rowlett MBE	6569	Franklin Rowlett	5038877592	Email: 4/26/2018 1:42:03 PM Fax: Phone: 4/27/2018 2:58:11 PM 5/11/2018 10:03 AM	Phone 1: May be interested in submitting a quote. Left a voicemail with all the project details. Phone 2: Talked to Estimator Result: No, not submitting a quote for this project.
G&L EXTERIORS, INC. MBE	6311	Gregory Richards	5035729614	Email: 4/26/2018 1:42:03 PM Fax: 4/26/2018 1:45:53 PM Phone: 4/27/2018 2:59:23 PM	Phone 1: May be interested in submitting a quote. Left a voicemail with all the project details. Result: Did not respond, did not submit quote
Gibson Door & Millwork, Inc. DBE	646	Bryna Gibson	5037888080	Email: 4/26/2018 1:42:03 PM Fax: 4/26/2018 1:45:47 PM Phone: 4/27/2018 3:01:55 PM	Phone 1: They have not had a chance to review the invitation yet. They will look at it and respond if interested. Result: Did not respond, did not submit quote
Green Deconstruction Services, Inc. WBE	6269	Bonnie Lane	5032364299	Email: 4/26/2018 1:42:03 PM Fax: 4/26/2018 1:46:18 PM Phone: 4/27/2018 3:04:30 PM 5/11/2018 10:10 AM	Phone 1: May be interested in submitting a quote. Left a voicemail with all the project details. Phone 2: Talked to Barbara Result: Requested re-send invitation via email, will respond if interested.
Green Depot OR Pacific Coast LLC WBE	9959	Sarah Beatty	7187822991	Email: 4/26/2018 1:42:03 PM Fax: 4/26/2018 1:45:56 PM Phone: 4/27/2018 3:06:11 PM	Phone 1: May be interested in submitting a quote. Left a voicemail with all the project details. Result: Did not respond, did not submit quote

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Name of Business	Certification #	Contact Person	Phone Number	Date of Contact	Reason for Non-Participation
Greenlife Construction Inc. MBE	3431	Gilbert Martin	5036588759	Email: 4/26/2018 1:42:03 PM Fax: 4/26/2018 1:45:38 PM Phone: 4/27/2018 3:08:20 PM	Phone 1: May be interested in submitting a quote. Left a voicemail with all the project details. Result: Did not respond, did not submit quote
Hal's Construction, Inc. WBE	2315	Doris Hickman	5036564999	Email: 4/26/2018 1:42:03 PM Fax: 4/26/2018 1:46:52 PM Phone: 4/27/2018 3:09:54 PM 5/11/2018 10:20 AM	Phone 1: Re-sent an email to the address on record. They will take a look at it and respond if interested. Phone 2: Talked to Katlyn Result: Provided all the project details, they will submit a quote if interested.
Happy Valley Air Conditioning LLC MBE	7501	Jeff Topkok	5035440713	Email: 4/26/2018 1:42:03 PM Fax: 4/26/2018 2:53:35 PM Phone: 4/27/2018 3:12:22 PM	Phone 1: Unable to confirm whether they are interested in submitting a quote. This is the wrong phone number. Result: Did not respond, did not submit quote
INTERIOR/EXTERIOR SPECIALIST L.L.C. WBE	5158	Joy Wiberg	5037797829	Email: 4/26/2018 1:42:03 PM Fax: 4/26/2018 1:49:42 PM Phone: 4/27/2018 3:14:06 PM	Phone 1: Unable to confirm whether they are interested in submitting a quote. The voicemail inbox is full. Result: Did not respond, did not submit quote
INTERLAKEN, INC. WBE	4005	Kendall Miller	5036747460	Email: 4/26/2018 1:42:03 PM Fax: 4/26/2018 1:46:19 PM Phone: 4/27/2018 3:17:10 PM	Phone 1: Re-sent an email to andy@interlaken-inc.com. They will take a look at it and respond if interested. Result: Did not respond, did not submit quote

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Name of Business	Certification #	Contact Person	Phone Number	Date of Contact	Reason for Non-Participation
IRON HORSE EXCAVATION, L.L.C. WBE	7618	June Kalkhoven	5037807124	Email: 4/26/2018 1:42:03 PM Fax: 4/26/2018 1:45:27 PM Phone: 4/27/2018 3:18:01 PM 5/11/2018 10:29 AM	Phone 1: Unable to confirm whether they are interested in submitting a quote. The call would not connect. Phone 2: Talked to Receptionist Result: No, not submitting a quote for this project.
J M FLOORING INSTALLATIONS, LLC MBE	8003	Jesus Meraz-Felix	5037209864	Email: 4/26/2018 1:42:03 PM Fax: 4/26/2018 2:53:45 PM Phone: 4/27/2018 3:18:44 PM	Phone 1: May be interested in submitting a quote. Left a voicemail with all the project details. Result: Did not respond, did not submit quote
J.A CONSTRUCTION LLC MBE	10943	Juan Pedro Aguiar-Navarro	5039898268	Email: 4/26/2018 1:42:03 PM Fax: Phone: 4/27/2018 3:21:11 PM	Phone 1: May be interested in submitting a quote. Left a voicemail with all the project details. Result: Did not respond, did not submit quote
Janet Turner Engineering, LLC WBE	10714	Janet Turner	5415100878	Email: 4/26/2018 1:42:03 PM Fax: 4/26/2018 1:46:30 PM Phone: 4/27/2018 3:23:12 PM	Phone 1: May be interested in submitting a quote. Left a voicemail with all the project details. Result: Did not respond, did not submit quote
JEFFREY J. ARRIETA MBE	4719	Jeffrey Arrieta	5032633721	Email: 4/26/2018 1:42:03 PM Fax: 4/26/2018 1:45:59 PM Phone: 4/27/2018 3:24:07 PM	Phone 1: May be interested in submitting a quote. Left a voicemail with all the project details. Result: Did not respond, did not submit quote

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Name of Business	Certification #	Contact Person	Phone Number	Date of Contact	Reason for Non-Participation
JR Concrete Construction, LLC DBE	8673	Tautalano Falepapalangi	5039544237	Email: 4/26/2018 1:42:03 PM Fax: 4/26/2018 2:52:37 PM Phone: 4/27/2018 3:27:18 PM	Phone 1: Unable to confirm whether they are interested in submitting a quote. The voicemail inbox is full. Result: Did not respond, did not submit quote
K & B Quality Excavating, LLC DBE	9326	Kevin Rariden	5412702083	Email: 4/26/2018 1:42:03 PM Fax: 4/26/2018 1:46:22 PM Phone: 4/27/2018 3:28:23 PM	Phone 1: They have not had a chance to review the invitation yet. They will look at it and respond if interested. Result: Did not respond, did not submit quote
KAPLAN-STEIN INTERIORS LLC DBE	4870	Allan Cowley	5037570612	Email: 4/26/2018 1:42:03 PM Fax: 4/26/2018 2:00:30 PM Phone: 4/27/2018 3:29:31 PM	Phone 1: May be interested in submitting a quote. Left a voicemail with all the project details. Result: Did not respond, did not submit quote
KO CONSTRUCTION, LLC MBE	8084	Marco Rojas	5033305533	Email: 4/26/2018 1:42:03 PM Fax: 4/26/2018 2:52:29 PM Phone: 4/27/2018 3:30:40 PM 5/11/2018 10:38 AM	Phone 1: May be interested in submitting a quote. Left a voicemail with all the project details. Phone 2: Talked to Estimator Result: No, not submitting a quote for this project.
LAUZON CONTRACTING, LLC WBE	5550	Nancy Lauzon	5034825445	Email: 4/26/2018 1:42:03 PM Fax: 4/26/2018 1:45:52 PM Phone: 4/27/2018 3:32:04 PM	Phone 1: May be interested, not sure. Estimator out of the office. Please call back next week. Result: Did not respond, did not submit quote

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Name of Business	Certification #	Contact Person	Phone Number	Date of Contact	Reason for Non-Participation
Liberty Steel Erectors, Inc. DBE	123	Gilbert Carreon	5032547346	Email: 4/26/2018 1:42:03 PM Fax: 4/26/2018 1:46:39 PM Phone: 4/27/2018 3:33:49 PM	Phone 1: No, not submitting a quote for this project. Result: Did not respond, did not submit quote
Linda S. Jensen WBE	5065	Linda Jensen	5037537311	Email: 4/26/2018 1:42:03 PM Fax: 4/26/2018 1:46:33 PM Phone: 4/27/2018 3:35:01 PM 5/11/2018 10:41 AM	Phone 1: Unable to confirm whether they are interested in submitting a quote. The call would not connect. Phase 2: Talked to Receptionist Result: No, not submitting a quote for this project.
Meshier Supply Co. WBE	2760	Barbara Longaker	5032364148	Email: 4/26/2018 1:42:03 PM Fax: 4/26/2018 1:46:42 PM Phone: 4/27/2018 3:35:59 PM	Phone 1: No, not submitting a quote for this project. Result: Did not submit quote
Milwaukie Floors & More LLC WBE	11224	Donna Kangieser	9712338969	Email: 4/26/2018 1:42:03 PM Fax: 4/26/2018 2:52:35 PM Phone: 4/27/2018 3:37:14 PM	Phone 1: Unable to confirm whether they are interested in submitting a quote. The call would not connect. Result: Did not respond, did not submit quote
MTZ DEMOLITION CONTRACTOR, INC. WBE	8765	Rosa Martinez	5035057781	Email: 4/26/2018 1:42:03 PM Fax: 4/26/2018 1:45:49 PM Phone: 4/27/2018 3:38:27 PM	Phone 1: May be interested in submitting a quote. Left a voicemail with all the project details. Result: Did not respond, did not submit quote

List of Contacted Disadvantaged Business Enterprises

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State of Oregon
Department of
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Completed by: John B. Fowler, Executive Vice President

Name of Business	Certification #	Contact Person	Phone Number	Date of Contact	Reason for Non-Participation
Munitor Construction LLC MBE	3414	Harley Meservey	5037108933	Email: 4/26/2018 1:42:03 PM Fax: 4/26/2018 1:45:35 PM Phone: 4/27/2018 3:40:09 PM	Phone 1: May be interested in submitting a quote. Left a voicemail with all the project details. Result: Did not respond, did not submit quote
Myron Robinson Construction LLC DBE	6082	Myron Robinson	5035164747	Email: 4/26/2018 1:42:03 PM Fax: 4/26/2018 2:54:57 PM Phone: 4/27/2018 3:41:06 PM 5/11/2018 11:01 AM	Phone 1: May be interested in submitting a quote. Left a voicemail with all the project details. Phone 2: Talked to Estimator Result: No, not submitting a quote for this project.
NORTHWEST INFRASTRUCTURE, LLC MBE	1773	Michael Martin	5032356392	Email: 4/26/2018 1:42:03 PM Fax: 4/26/2018 1:45:52 PM Phone: 4/27/2018 3:42:40 PM	Phone 1: May be interested in submitting a quote. Left a voicemail with all the project details. Result: Did not respond, did not submit quote
Omega Metal Manufacturing LLC WBE	9335	Victoria Wriglesworth	5037806607	Email: 4/26/2018 1:42:03 PM Fax: 4/26/2018 1:59:26 PM Phone: 4/27/2018 3:45:52 PM	Phone 1: May be interested in submitting a quote. Left a voicemail with all the project details. Result: Did not respond, did not submit quote
O'Neill Construction Group, Inc. MBE	2007	Maurice Rahming	5034936045	Email: 4/26/2018 1:42:03 PM Fax: 4/26/2018 1:46:00 PM Phone: 4/27/2018 3:44:11 PM	Phone 1: May be interested in submitting a quote. Left a voicemail with all the project details. Result: Did not respond, did not submit quote

List of Contacted Disadvantaged Business Enterprises

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Name of Business	Certification #	Contact Person	Phone Number	Date of Contact	Reason for Non-Participation
Ortiz and Associates, Inc. MBE	1968	Baltazar Ortiz	5036684114	Email: 4/26/2018 1:42:03 PM Fax: 4/26/2018 1:46:09 PM Phone: 4/27/2018 3:48:39 PM 5/11/2018 11:05 AM	Phone 1: Unable to confirm whether they are interested in submitting a quote. No one picked up and the call did not connect to a voicemail. Phone 2: Talked to Receptionist Result: No, not submitting a quote for this project.
Pacific Northwest Electric Inc. MBE	6287	John Ramirez	5036571188	Email: 4/26/2018 1:42:03 PM Fax: 4/26/2018 1:45:51 PM Phone: 4/27/2018 3:49:46 PM	Phone 1: No, not submitting a quote for this project. Result: Did not submit quote
PACIFIC RIM SERVICE AND CONSTRUCTION COMPANY, INC. MBE	4376	Benjamin Hwee	5032361119	Email: 4/26/2018 1:42:03 PM Fax: 4/26/2018 1:45:40 PM Phone: 4/27/2018 3:50:30 PM	Phone 1: May be interested in submitting a quote. Left a voicemail with all the project details. Result: Did not respond, did not submit quote
Pacificmark Construction Corp. MBE	2810	Mark Matthews	5032083355	Email: 4/26/2018 1:42:03 PM Fax: 4/26/2018 1:46:01 PM Phone: 4/27/2018 3:51:37 PM 5/11/2018 11:04 AM	Phone 1: May be interested in submitting a quote. Left a voicemail with all the project details. Phone 2: Talked to Receptionist Result: No, not submitting a quote for this project.
PDX DRYWALL, LLC MBE	6223	Tito Romayor	5035938650	Email: 4/26/2018 1:42:03 PM Fax: Phone: 4/27/2018 3:54:11 PM	Phone 1: May be interested in submitting a quote. Left a voicemail with all the project details. Result: Did not respond, did not submit quote

List of Contacted Disadvantaged Business Enterprises

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Name of Business	Certification #	Contact Person	Phone Number	Date of Contact	Reason for Non-Participation
PIPE TECH, INC. MBE	9950	Duane H. Hickson Jr.	5032346041	Email: 4/26/2018 1:42:03 PM Fax: 4/26/2018 1:46:10 PM Phone: 4/27/2018 3:55:23 PM	Phone 1: May be interested, not sure. Number is invalid. Result: Did not respond, did not submit quote
PLUMBING CONCEPTS INC. MBE	5271	Jesse Zamudio	5036585232	Email: 4/26/2018 1:42:03 PM Fax: 4/26/2018 1:45:35 PM Phone: 4/27/2018 3:56:10 PM	Phone 1: Unable to confirm whether they are interested in submitting a quote. No one picked up and the call did not connect to a voicemail. Result: Did not respond, did not submit quote
PRECISION FIBER, INC. WBE	2460	Angela Church	5039088148	Email: 4/26/2018 1:42:03 PM Fax: Phone: 4/27/2018 3:56:55 PM	Phone 1: They have not had a chance to review the invitation yet. They will look at it and respond if interested. Result: Did not respond, did not submit quote
Presto Homes, Inc. MBE	9057	Jorge Peraza-Carillo	5037190267	Email: 4/26/2018 1:42:03 PM Fax: 4/26/2018 1:49:26 PM Phone: 4/27/2018 3:57:32 PM	Phone 1: Unable to confirm whether they are interested in submitting a quote. The call would not connect. Result: Did not respond, did not submit quote
PROFESSIONAL LATH AND PLASTER LLC DBE	4823	Nathaniel Hartley	9252072899	Email: 4/26/2018 1:42:03 PM Fax: Phone: 4/27/2018 3:59:09 PM 5/11/2018 10:59 AM	Phone 1: Re-sent an email to the address on record. They will take a look at it and respond if interested. Phone 2: Talk to Receptionist Result: No, not submitting a quote for this project.

List of Contacted Disadvantaged Business Enterprises

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Name of Business	Certification #	Contact Person	Phone Number	Date of Contact	Reason for Non-Participation
PROFESSIONAL MINORITY GROUP, INC. WBE	3516	Ramon Martinez	5037615924	Email: 4/26/2018 1:42:03 PM Fax: 4/26/2018 1:47:00 PM Phone: 4/27/2018 4:00:11 PM 5/11/2018 10:58 AM	Phone 1: May be interested in submitting a quote. Left a voicemail with all the project details. Phone 2: Talked to Receptionist Result: Requested re-send invitation, they will respond if interested.
Pure Commercial Plumbing LLC WBE	7583	Ginger Hessler	5035458007	Email: 4/26/2018 1:42:03 PM Fax: 4/26/2018 1:46:09 PM Phone: 4/27/2018 4:02:24 PM 5/11/2018 10:57 AM	Phone 1: May be interested in submitting a quote. Left a voicemail with all the project details. Phone 2: Talked to Receptionist Result: No, not submitting a quote for this project.
R & L Classique Floors, Inc. DBE	2771	Judith Huck	5032556775	Email: 4/26/2018 1:42:03 PM Fax: 4/26/2018 1:45:27 PM Phone: 4/27/2018 4:04:32 PM	Phone 1: May be interested in submitting a quote. Left a voicemail with all the project details. Result: Did not respond, did not submit quote
Raimore Construction, LLC MBE	3527	Jeffrey Moreland	5034933533	Email: 4/26/2018 1:42:03 PM Fax: 4/26/2018 1:46:33 PM Phone: 4/27/2018 4:06:19 PM	Phone 1: May be interested in submitting a quote. Left a voicemail with all the project details. Result: Did not respond, did not submit quote
River City NW Mechanical, LLC MBE	10531	Keoni Simpson	5035919950	Email: 4/26/2018 1:42:03 PM Fax: Phone: 4/27/2018 4:09:47 PM	Phone 1: Re-sent an email to ian@rivercitynwmechanical.com. They will take a look at it and respond if interested. Result: Did not respond, did not submit quote

List of Contacted Disadvantaged Business Enterprises

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Name of Business	Certification #	Contact Person	Phone Number	Date of Contact	Reason for Non-Participation
RUDMAR, INC. MBE	8756	Rudyard Bocala	5032627032	Email: 4/26/2018 1:42:03 PM Fax: 4/26/2018 1:45:55 PM Phone: 4/27/2018 4:10:49 PM	Phone 1: May be interested in submitting a quote. Left a voicemail with all the project details. Result: Did not respond, did not submit quote
Ruffin Enterprises, Inc. WBE	1215	Denise Shaw	5037748090	Email: 4/26/2018 1:42:03 PM Fax: 4/26/2018 1:45:56 PM Phone: 4/27/2018 4:12:06 PM	Phone 1: May be interested in submitting a quote. Left a voicemail with all the project details. Result: Did not respond, did not submit quote
Star Flatwork LLC MBE	5664	Manuel Estrella	5034811174	Email: 4/26/2018 1:42:03 PM Fax: 4/26/2018 2:54:22 PM Phone: 4/27/2018 4:13:12 PM 5/11/2018 10:49 AM	Phone 1: May be interested, not sure. Unable to connect call due to bad connection. Phone 2: Talked to Receptionist Result: No, not submitting a quote for this project.
T EDGE CONSTRUCTION, INC. WBE	8864	Tammy Edgerly	5037606504	Email: 4/26/2018 1:42:03 PM Fax: 4/26/2018 2:52:22 PM Phone: 4/27/2018 4:14:04 PM	Phone 1: May be interested in submitting a quote. Left a voicemail with all the project details. Result: Did not respond, did not submit quote
TERRA DOLCE CONSULTANTS, INC. WBE	6128	Cynthia Hovind	5035025114	Email: 4/26/2018 1:42:03 PM Fax: 4/26/2018 1:46:16 PM Phone: 4/27/2018 4:14:40 PM	Phone 1: May be interested in submitting a quote. Left a voicemail with all the project details. Result: Did not respond, did not submit quote

List of Contacted Disadvantaged Business Enterprises

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Name of Business	Certification #	Contact Person	Phone Number	Date of Contact	Reason for Non-Participation
The Rodriguez Corporation DBE	1900	Fernando Rodriguez	5032450679	Email: 4/26/2018 1:42:03 PM Fax: 4/26/2018 1:52:03 PM Phone: 4/27/2018 4:16:00 PM <i>5/24/2018 1:03pm</i>	Phone 1: May be interested in submitting a quote. Left a voicemail with all the project details. Result: Did not respond, did not submit quote <i>submitted quote</i>
THE STRATEGIC GROUP, LLC DBE	5306	Joe Tshribi	5034880933	Email: 4/26/2018 1:42:03 PM Fax: 4/26/2018 2:14:22 PM Phone: 4/27/2018 4:17:13 PM	Phone 1: Unable to confirm whether they are interested in submitting a quote. No one picked up and the call did not connect to a voicemail. Result: Did not respond, did not submit quote
Valgreen Painting WBE	10973	Eva Arechiga	9712226759	Email: 4/26/2018 1:42:03 PM Fax: Phone: 4/27/2018 4:17:54 PM	Phone 1: May be interested in submitting a quote. Left a voicemail with all the project details. Result: Did not respond, did not submit quote
VERA CONSTRUCTION LLC MBE	9722	Joshua Vera	8058680253	Email: 4/26/2018 1:42:03 PM Fax: 4/26/2018 1:58:29 PM Phone: 4/27/2018 4:19:14 PM	Phone 1: May be interested in submitting a quote. Left a voicemail with all the project details. Result: Did not respond, did not submit quote
VIP INDUSTRIAL SUPPLY, LLC MBE	6811	Mikal Shabazz	5037055300	Email: 4/26/2018 1:42:03 PM Fax: 4/26/2018 1:45:59 PM Phone: 4/27/2018 4:20:17 PM	Phone 1: May be interested in submitting a quote. Left a voicemail with all the project details. Result: Did not respond, did not submit quote

List of Contacted Disadvantaged Business Enterprises

The prime contractor must complete this form and submit it to the Clean Water State Revolving Fund loan recipient as part of its bid/proposal to the loan recipient. A copy must be included in the contract copy to DEQ.



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Environmental
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Completed by: John B. Fowler, Executive Vice President

Name of Business	Certification #	Contact Person	Phone Number	Date of Contact	Reason for Non-Participation
W. E. Given Contracting, Inc. WBE	1474	Patricia Given	5036553662	Email: 4/26/2018 1:42:03 PM Fax: 4/26/2018 1:45:50 PM Phone: 4/27/2018 4:21:51 PM 5/11/2018 10:37 AM	Phone 1: Unable to confirm whether they are interested in submitting a quote. No one picked up and the call did not connect to a voicemail. Phone 2: Talked to Receptionist Result: No, not submitting a quote for this project.
WHOLE BUILDING SOLUTIONS LLC WBE	8410	Christine McKinley	5038883864	Email: 4/26/2018 1:42:03 PM Fax: 4/26/2018 2:52:19 PM Phone: 4/27/2018 4:22:14 PM	Phone 1: May be interested in submitting a quote. Left a voicemail with all the project details. Result: Did not respond, did not submit quote
WILLIAM CREEL CONSTRUCTION INC. WBE	6769	Dana Creel	5034212073	Email: 4/26/2018 1:42:03 PM Fax: 4/26/2018 1:56:15 PM Phone: 4/27/2018 4:23:12 PM	Phone 1: May be interested in submitting a quote. Left a voicemail with all the project details. Result: Did not respond, did not submit quote
Xavier Environmental Inc. MBE	5610	John Harding	5032363796	Email: 4/26/2018 1:42:03 PM Fax: 4/26/2018 1:45:49 PM Phone: 4/27/2018 4:26:00 PM	Phone 1: No, not submitting a quote for this project. The project is outside of their scope of work. Result: Did not submit quote
Zana Construction Company WBE	7599	Seyon Belai	5036591347	Email: 4/26/2018 1:42:03 PM Fax: 4/26/2018 1:45:37 PM Phone: 4/27/2018 4:27:16 PM	Phone 1: May be interested in submitting a quote. Left a voicemail with all the project details. Result: Did not respond, did not submit quote

PERFORMANCE BOND FORM

Bond No.: _____

Solicitation #: 2018-19

Project Name: Tri-City Water Resource Recovery Facility (WRRF) Solids Handling Improvements Project (Project P632162)

_____ (Surety #1)	Bond Amount No. 1:	\$ _____
_____ (Surety #2)*	Bond Amount No. 2:*	\$ _____
<i>* If using multiple sureties</i>	Total Penal Sum of Bond:	\$ _____

We, _____ as Principal, and the above identified Surety(ies), authorized to transact surety business in Oregon, as Surety, hereby jointly and severally bind ourselves, our respective heirs, executors, administrators, successors and assigns firmly by these presents to pay unto Water Environment Services (referred to as "District"), the sum of (Total Penal Sum of Bond) \$ _____ (Provided, that we the Sureties bind ourselves in such sum "jointly and severally" as well as "severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as is set forth opposite the name of such Surety); and

WHEREAS, the Principal has entered into a contract with the District, along with the plans, specifications, terms and conditions of which are contained in the above-referenced Project Contract Documents; and

WHEREAS, the terms and conditions of the contract, together with applicable plans, standard specifications, special provisions, schedule of performance, and schedule of contract prices, are made a part of this Performance Bond by reference, whether or not attached to the contract (all hereafter called "Contract"); and

WHEREAS, the Principal has agreed to perform the Contract in accordance with the terms, conditions, requirements, plans and specifications, and all authorized modifications of the Contract which increase the amount of the work, the amount of the Contract, or constitute an authorized extension of the time for performance, notice of any such modifications hereby being waived by the Surety:

NOW, THEREFORE, THE CONDITION OF THIS BOND IS SUCH that if the Principal herein shall faithfully and truly observe and comply with the terms, conditions and provisions of the Contract, in all respects, and shall well and truly and fully do and perform all matters and things undertaken by Contractor to be performed under the Contract, upon the terms set forth therein, and within the time prescribed therein, or as extended as provided in the Contract, with or without notice to the Sureties, and shall defend, indemnify, and save harmless the District and Clackamas County and their elected officials, officers, employees and agents, against any direct or indirect damages or claim of every kind and description that shall be suffered or claimed to be suffered in connection with or arising out of the performance of the Contract by the Principal or its subcontractors, and shall in all respects perform said contract according to law, then this obligation is to be void; otherwise, it shall remain in full force and effect for so long as any term of the Contract remains in effect.

TRI-CITY SOLIDS HANDLING IMPROVEMENTS

If the District determines that any of the above conditions have not been met, the District may require payment under this bond at its sole and absolute discretion and Surety shall issue prompt payment of the full value of this bond without set-off or dispute or requirement for an opportunity to cure.

Nonpayment of the bond premium will not invalidate this bond nor shall the District, be obligated for the payment of any premiums.

This bond is given and received under authority of Oregon Revised Statutes Chapter 279A, 279B, and 279C and the Clackamas County Local Contractor Review Board Rules, the provisions of which hereby are incorporated into this bond and made a part hereof.

IN WITNESS WHEREOF, WE HAVE CAUSED THIS INSTRUMENT TO BE EXECUTED AND SEALED BY OUR DULY AUTHORIZED LEGAL REPRESENTATIVES.

Dated this _____ day of _____, 20____.

PRINCIPAL: _____

By: _____

Signature

Official Capacity

Attest: _____

Corporation Secretary

SURETY: _____

[Add signatures for each if using multiple bonds]

BY ATTORNEY-IN-FACT:

[Power-of-Attorney must accompany each bond]

Name

Signature

Address

City

State

Zip

Phone

Fax

END OF SECTION

TRI-CITY SOLIDS HANDLING IMPROVEMENTS

PAYMENT BOND FORM

Bond No.: _____

Solicitation: #2018-19

Project Name: Tri-City Water Resource Recovery Facility (WRRF) Solids Handling Improvements Project (Project P632162)

_____ (Surety #1)	Bond Amount No. 1:	\$ _____
_____ (Surety #2)*	Bond Amount No. 2:*	\$ _____
* <i>If using multiple sureties</i>	Total Penal Sum of Bond:	\$ _____

We, _____, as Principal, and the above identified Surety(ies), authorized to transact surety business in Oregon, as Surety, hereby jointly and severally bind ourselves, our respective heirs, executors, administrators, successors and assigns firmly by these presents to pay unto Water Environment Services (referred to as "District"), the sum of (Total Penal Sum of Bond) _____ (Provided, that we the Sureties bind ourselves in such sum "jointly and severally" as well as "severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as is set forth opposite the name of such Surety); and

WHEREAS, the Principal has entered into a contract with the District, along with the plans, specifications, terms and conditions of which are contained in above-referenced Project Contract Documents; and

WHEREAS, the terms and conditions of the contract, together with applicable plans, standard specifications, special provisions, schedule of performance, and schedule of contract prices, are made a part of this Payment Bond by reference, whether or not attached to the contract (all hereafter called "Contract"); and

WHEREAS, the Principal has agreed to perform the Contract in accordance with the terms, conditions, requirements, plans and specifications, and schedule of contract prices which are set forth in the Contract and any attachments, and all authorized modifications of the Contract which increase the amount of the work, or the cost of the Contract, or constitute authorized extensions of time for performance of the Contract, notice of any such modifications hereby being waived by the Surety:

NOW, THEREFORE, THE CONDITION OF THIS BOND IS SUCH that if the Principal shall faithfully and truly observe and comply with the terms, conditions and provisions of the Contract, in all respects, and shall well and truly and fully do and perform all matters and things by it undertaken to be performed under said Contract and any duly authorized modifications that are made, upon the terms set forth therein, and within the time prescribed therein, or as extended therein as provided in the Contract, with or without notice to the Sureties, and shall defend, indemnify, and save harmless the District and Clackamas County and their elected officials, officers, employees and agents, against any claim for direct or indirect damages of every kind and description that shall be suffered or claimed to be suffered in connection with or arising out of the performance of the Contract by the Contractor or its subcontractors, and shall promptly pay all persons supplying labor, materials or both to the Principal or its subcontractors for prosecution of the work provided in the Contract; and shall promptly pay all contributions due the State Industrial Accident Fund and the State Unemployment Compensation Fund

TRI-CITY SOLIDS HANDLING IMPROVEMENTS

from the Principal or its subcontractors in connection with the performance of the Contract; and shall pay over to the Oregon Department of Revenue all sums required to be deducted and retained from the wages of employees of the Principal and its subcontractors pursuant to ORS 316.167, and shall permit no lien nor claim to be filed or prosecuted against the District on account of any labor or materials furnished; and shall do all things required of the Principal by the laws of this State, then this obligation shall be void; otherwise, it shall remain in full force and effect for so long as any term of the Contract remains in effect.

If the District determines that any of the above conditions have not been met, the District may require payment under this bond at its sole and absolute discretion and Surety shall issue prompt payment of the full value of this bond without set-off or dispute or requirement for an opportunity to cure.

Nonpayment of the bond premium will not invalidate this bond nor shall the District be obligated for the payment of any premiums.

This bond is given and received under authority of Oregon Revised Statutes Chapter 279C and the Clackamas County Local Contractor Review Board Rules, the provisions of which hereby are incorporated into this bond and made a part hereof.

IN WITNESS WHEREOF, WE HAVE CAUSED THIS INSTRUMENT TO BE EXECUTED AND SEALED BY OUR DULY AUTHORIZED LEGAL REPRESENTATIVES:

Dated this _____ day of _____, 20____.

PRINCIPAL: _____

By: _____

Signature

Official Capacity

Attest: _____

Corporation Secretary

SURETY: _____

[Add signatures for each if using multiple bonds]

BY ATTORNEY-IN-FACT:

[Power-of-Attorney must accompany each bond]

Name

Signature

Address

TRI-CITY SOLIDS HANDLING IMPROVEMENTS

City State Zip

Phone Fax

END OF SECTION

STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

Prepared by



Issued and Published Jointly by



These General Conditions have been prepared for use with the Agreement Between Owner and Contractor for Construction Contract (EJCDC® C-520, Stipulated Sum, or C-525, Cost-Plus, 2013 Editions). Their provisions are interrelated and a change in one may necessitate a change in the other.

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(703) 684-2882
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(202) 347-7474
www.acec.org

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STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

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ARTICLE 1 – DEFINITIONS AND TERMINOLOGY

1.01 *Defined Terms*

- A. Wherever used in the Bidding Requirements or Contract Documents, a term printed with initial capital letters, including the term's singular and plural forms, will have the meaning indicated in the definitions below. In addition to terms specifically defined, terms with initial capital letters in the Contract Documents include references to identified articles and paragraphs, and the titles of other documents or forms.
1. *Addenda*—Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Requirements or the proposed Contract Documents.
 2. *Agreement*—The written instrument, executed by Owner and Contractor, that sets forth the Contract Price and Contract Times, identifies the parties and the Engineer, and designates the specific items that are Contract Documents.
 3. *Application for Payment*—The form acceptable to Engineer which is to be used by Contractor during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Contract Documents.
 4. *Bid*—The offer of a Bidder submitted on the prescribed form setting forth the prices for the Work to be performed.
 5. *Bidder*—An individual or entity that submits a Bid to Owner.
 6. *Bidding Documents*—The Bidding Requirements, the proposed Contract Documents, and all Addenda.
 7. *Bidding Requirements*—The advertisement or invitation to bid, Instructions to Bidders, Bid Bond or other Bid security, if any, the Bid Form, and the Bid with any attachments.
 8. *Change Order*—A document which is signed by Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the Contract Times, or other revision to the Contract, issued on or after the Effective Date of the Contract.
 9. *Change Proposal*—A written request by Contractor, duly submitted in compliance with the procedural requirements set forth herein, seeking an adjustment in Contract Price or Contract Times, or both; contesting an initial decision by Engineer concerning the requirements of the Contract Documents or the acceptability of Work under the Contract Documents; challenging a set-off against payments due; or seeking other relief with respect to the terms of the Contract.
 10. *Claim*—(a) A demand or assertion by Owner directly to Contractor, duly submitted in compliance with the procedural requirements set forth herein: seeking an adjustment of Contract Price or Contract Times, or both; contesting an initial decision by Engineer concerning the requirements of the Contract Documents or the acceptability of Work under the Contract Documents; contesting Engineer's decision regarding a Change Proposal; seeking resolution of a contractual issue that Engineer has declined to address; or seeking other relief with respect to the terms of the Contract; or (b) a demand or assertion by Contractor directly to Owner, duly submitted in compliance with the procedural requirements set forth herein, contesting Engineer's decision regarding a Change Proposal; or seeking resolution of a contractual issue that Engineer has declined to address. A demand for money or services by a third party is not a Claim.
 11. *Constituent of Concern*—Asbestos, petroleum, radioactive materials, polychlorinated biphenyls (PCBs), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. ("CERCLA"); (b) the Hazardous Materials Transportation Act, 49 U.S.C. §§5501 et seq.; (c) the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. ("RCRA"); (d) the Toxic Substances Control Act, 15 U.S.C.

- §§2601 et seq.; (e) the Clean Water Act, 33 U.S.C. §§1251 et seq.; (f) the Clean Air Act, 42 U.S.C. §§7401 et seq.; or (g) any other federal, state, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.
12. *Contract*—The entire and integrated written contract between the Owner and Contractor concerning the Work.
 13. *Contract Documents*—Those items so designated in the Agreement, and which together comprise the Contract.
 14. *Contract Price*—The money that Owner has agreed to pay Contractor for completion of the Work in accordance with the Contract Documents. .
 15. *Contract Times*—The number of days or the dates by which Contractor shall: (a) achieve Milestones, if any; (b) achieve Substantial Completion; and (c) complete the Work.
 16. *Contractor*—The individual or entity with which Owner has contracted for performance of the Work.
 17. *Cost of the Work*—See Paragraph 13.01 for definition.
 18. *Drawings*—The part of the Contract that graphically shows the scope, extent, and character of the Work to be performed by Contractor.
 19. *Effective Date of the Contract*—The date, indicated in the Agreement, on which the Contract becomes effective.
 20. *Engineer*—The individual or entity named as such in the Agreement.
 21. *Field Order*—A written order issued by Engineer which requires minor changes in the Work but does not change the Contract Price or the Contract Times.
 22. *Hazardous Environmental Condition*—The presence at the Site of Constituents of Concern in such quantities or circumstances that may present a danger to persons or property exposed thereto. The presence at the Site of materials that are necessary for the execution of the Work, or that are to be incorporated in the Work, and that are controlled and contained pursuant to industry practices, Laws and Regulations, and the requirements of the Contract, does not establish a Hazardous Environmental Condition.
 23. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, statutes, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
 24. *Liens*—Charges, security interests, or encumbrances upon Contract-related funds, real property, or personal property.
 25. *Milestone*—A principal event in the performance of the Work that the Contract requires Contractor to achieve by an intermediate completion date or by a time prior to Substantial Completion of all the Work.
 26. *Notice of Award*—The written notice by Owner to a Bidder of Owner’s acceptance of the Bid.
 27. *Notice to Proceed*—A written notice by Owner to Contractor fixing the date on which the Contract Times will commence to run and on which Contractor shall start to perform the Work.
 28. *Owner*—The individual or entity with which Contractor has contracted regarding the Work, and which has agreed to pay Contractor for the performance of the Work, pursuant to the terms of the Contract.
 29. *Progress Schedule*—A schedule, prepared and maintained by Contractor, describing the sequence and duration of the activities comprising the Contractor’s plan to accomplish the Work within the Contract Times.
 30. *Project*—The total undertaking to be accomplished for Owner by engineers, contractors, and others, including planning, study, design, construction, testing, commissioning, and start-up, and of which the Work to be performed under the Contract Documents is a part.
 31. *Project Manual*—The written documents prepared for, or made available for, procuring and constructing

- the Work, including but not limited to the Bidding Documents or other construction procurement documents, geotechnical and existing conditions information, the Agreement, bond forms, General Conditions, Supplementary Conditions, and Specifications. The contents of the Project Manual may be bound in one or more volumes.
32. *Resident Project Representative*—The authorized representative of Engineer assigned to assist Engineer at the Site. As used herein, the term Resident Project Representative or “RPR” includes any assistants or field staff of Resident Project Representative.
 33. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and that establish the standards by which such portion of the Work will be judged.
 34. *Schedule of Submittals*—A schedule, prepared and maintained by Contractor, of required submittals and the time requirements for Engineer’s review of the submittals and the performance of related construction activities.
 35. *Schedule of Values*—A schedule, prepared and maintained by Contractor, allocating portions of the Contract Price to various portions of the Work and used as the basis for reviewing Contractor’s Applications for Payment.
 36. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information that are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work. Shop Drawings, whether approved or not, are not Drawings and are not Contract Documents.
 37. *Site*—Lands or areas indicated in the Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements, and such other lands furnished by Owner which are designated for the use of Contractor.
 38. *Specifications*—The part of the Contract that consists of written requirements for materials, equipment, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable to the Work.
 39. *Subcontractor*—An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work.
 40. *Substantial Completion*—The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms “substantially complete” and “substantially completed” as applied to all or part of the Work refer to Substantial Completion thereof.
 41. *Successful Bidder*—The Bidder whose Bid the Owner accepts, and to which the Owner makes an award of contract, subject to stated conditions.
 42. *Supplementary Conditions*—The part of the Contract that amends or supplements these General Conditions.
 43. *Supplier*—A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or a Subcontractor.
 44. *Technical Data*—Those items expressly identified as Technical Data in the Supplementary Conditions, with respect to either (a) subsurface conditions at the Site, or physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities) or (b) Hazardous Environmental Conditions at the Site. If no such express identifications of Technical Data have been made with respect to conditions at the Site, then the data contained in boring logs, recorded measurements of subsurface water levels, laboratory test results, and other factual, objective information regarding conditions at the Site that are set forth in any geotechnical or environmental report prepared for the Project and made

available to Contractor are hereby defined as Technical Data with respect to conditions at the Site under Paragraphs 5.03, 5.04, and 5.06.

45. *Underground Facilities*—All underground pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any encasements containing such facilities, including but not limited to those that convey electricity, gases, steam, liquid petroleum products, telephone or other communications, fiber optic transmissions, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.
46. *Unit Price Work*—Work to be paid for on the basis of unit prices.
47. *Work*—The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction; furnishing, installing, and incorporating all materials and equipment into such construction; and may include related services such as testing, start-up, and commissioning, all as required by the Contract Documents.
48. *Work Change Directive*—A written directive to Contractor issued on or after the Effective Date of the Contract, signed by Owner and recommended by Engineer, ordering an addition, deletion, or revision in the Work.

1.02 Terminology

- A. The words and terms discussed in the following paragraphs are not defined but, when used in the Bidding Requirements or Contract Documents, have the indicated meaning.
- B. Intent of Certain Terms or Adjectives:
 1. The Contract Documents include the terms “as allowed,” “as approved,” “as ordered,” “as directed” or terms of like effect or import to authorize an exercise of professional judgment by Engineer. In addition, the adjectives “reasonable,” “suitable,” “acceptable,” “proper,” “satisfactory,” or adjectives of like effect

or import are used to describe an action or determination of Engineer as to the Work. It is intended that such exercise of professional judgment, action, or determination will be solely to evaluate, in general, the Work for compliance with the information in the Contract Documents and with the design concept of the Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective is not intended to and shall not be effective to assign to Engineer any duty or authority to supervise or direct the performance of the Work, or any duty or authority to undertake responsibility contrary to the provisions of Article 10 or any other provision of the Contract Documents.

C. Day:

1. The word “day” means a calendar day of 24 hours measured from midnight to the next midnight.

D. Defective:

1. The word “defective,” when modifying the word “Work,” refers to Work that is unsatisfactory, faulty, or deficient in that it:
 - a. does not conform to the Contract Documents; or
 - b. does not meet the requirements of any applicable inspection, reference standard, test, or approval referred to in the Contract Documents; or
 - c. has been damaged prior to Engineer’s recommendation of final payment (unless responsibility for the protection thereof has been assumed by Owner at Substantial Completion in accordance with Paragraph 15.03 or 15.04).

E. Furnish, Install, Perform, Provide:

1. The word “furnish,” when used in connection with services, materials, or equipment, shall mean to supply and deliver said services, materials, or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.

2. The word “install,” when used in connection with services, materials, or equipment, shall mean to put into use or place in final position said services, materials, or equipment complete and ready for intended use.
 3. The words “perform” or “provide,” when used in connection with services, materials, or equipment, shall mean to furnish and install said services, materials, or equipment complete and ready for intended use.
 4. If the Contract Documents establish an obligation of Contractor with respect to specific services, materials, or equipment, but do not expressly use any of the four words “furnish,” “install,” “perform,” or “provide,” then Contractor shall furnish and install said services, materials, or equipment complete and ready for intended use.
- F. Unless stated otherwise in the Contract Documents, words or phrases that have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with such recognized meaning.

ARTICLE 2 – PRELIMINARY MATTERS

2.01 *Delivery of Bonds and Evidence of Insurance*

- A. *Bonds:* When Contractor delivers the executed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner such bonds as Contractor may be required to furnish.
- B. *Evidence of Contractor’s Insurance:* When Contractor delivers the executed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner, with copies to each named insured and additional insured (as identified in the Supplementary Conditions or elsewhere in the Contract), the certificates and other evidence of insurance required to be provided by Contractor in accordance with Article 6.
- C. *Evidence of Owner’s Insurance:* After receipt of the executed counterparts of the Agreement and all required bonds and insurance documentation, Owner shall promptly deliver to Contractor, with copies to each named insured and additional insured (as identified in the Supplementary Conditions or otherwise), the certificates and other evidence of

insurance required to be provided by Owner under Article 6.

2.02 *Copies of Documents*

- A. Owner shall furnish to Contractor four printed copies of the Contract (including one fully executed counterpart of the Agreement), and one copy in electronic portable document format (PDF). Additional printed copies will be furnished upon request at the cost of reproduction.
- B. Owner shall maintain and safeguard at least one original printed record version of the Contract, including Drawings and Specifications signed and sealed by Engineer and other design professionals. Owner shall make such original printed record version of the Contract available to Contractor for review. Owner may delegate the responsibilities under this provision to Engineer.

2.03 *Before Starting Construction*

- A. *Preliminary Schedules:* Within 10 days after the Effective Date of the Contract (or as otherwise specifically required by the Contract Documents), Contractor shall submit to Engineer for timely review:
 1. a preliminary Progress Schedule indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract;
 2. a preliminary Schedule of Submittals; and
 3. a preliminary Schedule of Values for all of the Work which includes quantities and prices of items which when added together equal the Contract Price and subdivides the Work into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work.

2.04 *Preconstruction Conference; Designation of Authorized Representatives*

- A. Before any Work at the Site is started, a conference attended by Owner, Contractor, Engineer, and others as appropriate will be held to establish a working understanding among the parties as to the Work and to discuss the schedules referred to in Paragraph

2.03.A, procedures for handling Shop Drawings, Samples, and other submittals, processing Applications for Payment, electronic or digital transmittals, and maintaining required records.

- B. At this conference Owner and Contractor each shall designate, in writing, a specific individual to act as its authorized representative with respect to the services and responsibilities under the Contract. Such individuals shall have the authority to transmit and receive information, render decisions relative to the Contract, and otherwise act on behalf of each respective party.

2.05 *Initial Acceptance of Schedules*

- A. At least 10 days before submission of the first Application for Payment a conference, attended by Contractor, Engineer, and others as appropriate, will be held to review for acceptability to Engineer as provided below the schedules submitted in accordance with Paragraph 2.03.A. Contractor shall have an additional 10 days to make corrections and adjustments and to complete and resubmit the schedules. No progress payment shall be made to Contractor until acceptable schedules are submitted to Engineer.
 - 1. The Progress Schedule will be acceptable to Engineer if it provides an orderly progression of the Work to completion within the Contract Times. Such acceptance will not impose on Engineer responsibility for the Progress Schedule, for sequencing, scheduling, or progress of the Work, nor interfere with or relieve Contractor from Contractor's full responsibility therefor.
 - 2. Contractor's Schedule of Submittals will be acceptable to Engineer if it provides a workable arrangement for reviewing and processing the required submittals.
 - 3. Contractor's Schedule of Values will be acceptable to Engineer as to form and substance if it provides a reasonable allocation of the Contract Price to the component parts of the Work.

2.06 *Electronic Transmittals*

- A. Except as otherwise stated elsewhere in the Contract, the Owner, Engineer, and Contractor may transmit, and shall accept, Project-related correspondence, text, data, documents, drawings, information, and graphics, including but not limited to Shop Drawings and other submittals, in electronic

media or digital format, either directly, or through access to a secure Project website.

- B. If the Contract does not establish protocols for electronic or digital transmittals, then Owner, Engineer, and Contractor shall jointly develop such protocols.
- C. When transmitting items in electronic media or digital format, the transmitting party makes no representations as to long term compatibility, usability, or readability of the items resulting from the recipient's use of software application packages, operating systems, or computer hardware differing from those used in the drafting or transmittal of the items, or from those established in applicable transmittal protocols.

ARTICLE 3 – DOCUMENTS: INTENT, REQUIREMENTS, REUSE

3.01 *Intent*

- A. The Contract Documents are complementary; what is required by one is as binding as if required by all.
- B. It is the intent of the Contract Documents to describe a functionally complete project (or part thereof) to be constructed in accordance with the Contract Documents.
- C. Unless otherwise stated in the Contract Documents, if there is a discrepancy between the electronic or digital versions of the Contract Documents (including any printed copies derived from such electronic or digital versions) and the printed record version, the printed record version shall govern.
- D. The Contract supersedes prior negotiations, representations, and agreements, whether written or oral.
- E. Engineer will issue clarifications and interpretations of the Contract Documents as provided herein.

3.02 *Reference Standards*

- A. Standards Specifications, Codes, Laws and Regulations
 - 1. Reference in the Contract Documents to standard specifications, manuals, reference standards, or codes of any technical society, organization, or association, or to Laws or Regulations, whether such reference be specific or by implication, shall mean the standard specification, manual, reference

standard, code, or Laws or Regulations in effect at the time of opening of Bids (or on the Effective Date of the Contract if there were no Bids), except as may be otherwise specifically stated in the Contract Documents.

2. No provision of any such standard specification, manual, reference standard, or code, or any instruction of a Supplier, shall be effective to change the duties or responsibilities of Owner, Contractor, or Engineer, or any of their subcontractors, consultants, agents, or employees, from those set forth in the part of the Contract Documents prepared by or for Engineer. No such provision or instruction shall be effective to assign to Owner, Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of the part of the Contract Documents prepared by or for Engineer.

3.03 *Reporting and Resolving Discrepancies*

A. Reporting Discrepancies:

1. *Contractor's Verification of Figures and Field Measurements:* Before undertaking each part of the Work, Contractor shall carefully study the Contract Documents, and check and verify pertinent figures and dimensions therein, particularly with respect to applicable field measurements. Contractor shall promptly report in writing to Engineer any conflict, error, ambiguity, or discrepancy that Contractor discovers, or has actual knowledge of, and shall not proceed with any Work affected thereby until the conflict, error, ambiguity, or discrepancy is resolved, by a clarification or interpretation by Engineer, or by an amendment or supplement to the Contract Documents issued pursuant to Paragraph 11.01.
2. *Contractor's Review of Contract Documents:* If, before or during the performance of the Work, Contractor discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents, or between the Contract

Documents and (a) any applicable Law or Regulation, (b) actual field conditions, (c) any standard specification, manual, reference standard, or code, or (d) any instruction of any Supplier, then Contractor shall promptly report it to Engineer in writing. Contractor shall not proceed with the Work affected thereby (except in an emergency as required by Paragraph 7.15) until the conflict, error, ambiguity, or discrepancy is resolved, by a clarification or interpretation by Engineer, or by an amendment or supplement to the Contract Documents issued pursuant to Paragraph 11.01.

3. Contractor shall not be liable to Owner or Engineer for failure to report any conflict, error, ambiguity, or discrepancy in the Contract Documents unless Contractor had actual knowledge thereof.

B. Resolving Discrepancies:

1. Except as may be otherwise specifically stated in the Contract Documents, the provisions of the part of the Contract Documents prepared by or for Engineer shall take precedence in resolving any conflict, error, ambiguity, or discrepancy between such provisions of the Contract Documents and:
 - a. the provisions of any standard specification, manual, reference standard, or code, or the instruction of any Supplier (whether or not specifically incorporated by reference as a Contract Document); or
 - b. the provisions of any Laws or Regulations applicable to the performance of the Work (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Law or Regulation).

3.04 *Requirements of the Contract Documents*

- A. During the performance of the Work and until final payment, Contractor and Owner shall submit to the Engineer all matters in question concerning the requirements of the Contract Documents (sometimes referred to as requests for information or interpretation—RFIs), or relating to the acceptability of the Work under

the Contract Documents, as soon as possible after such matters arise. Engineer will be the initial interpreter of the requirements of the Contract Documents, and judge of the acceptability of the Work thereunder.

- B. Engineer will, with reasonable promptness, render a written clarification, interpretation, or decision on the issue submitted, or initiate an amendment or supplement to the Contract Documents. Engineer's written clarification, interpretation, or decision will be final and binding on Contractor, unless it appeals by submitting a Change Proposal, and on Owner, unless it appeals by filing a Claim.
- C. If a submitted matter in question concerns terms and conditions of the Contract Documents that do not involve (1) the performance or acceptability of the Work under the Contract Documents, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, then Engineer will promptly give written notice to Owner and Contractor that Engineer is unable to provide a decision or interpretation. If Owner and Contractor are unable to agree on resolution of such a matter in question, either party may pursue resolution as provided in Article 12.

3.05 *Reuse of Documents*

- A. Contractor and its Subcontractors and Suppliers shall not:
 - 1. have or acquire any title to or ownership rights in any of the Drawings, Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of Engineer or its consultants, including electronic media editions, or reuse any such Drawings, Specifications, other documents, or copies thereof on extensions of the Project or any other project without written consent of Owner and Engineer and specific written verification or adaptation by Engineer; or
 - 2. have or acquire any title or ownership rights in any other Contract Documents, reuse any such Contract Documents for any purpose without Owner's express written consent, or violate any copyrights pertaining to such Contract Documents.
- B. The prohibitions of this Paragraph 3.05 will survive final payment, or termination of the Contract. Nothing herein shall preclude

Contractor from retaining copies of the Contract Documents for record purposes.

ARTICLE 4 – COMMENCEMENT AND PROGRESS OF THE WORK

4.01 *Commencement of Contract Times; Notice to Proceed*

- A. The Contract Times will commence to run on the thirtieth day after the Effective Date of the Contract or, if a Notice to Proceed is given, on the day indicated in the Notice to Proceed. A Notice to Proceed may be given at any time within 30 days after the Effective Date of the Contract. In no event will the Contract Times commence to run later than the sixtieth day after the day of Bid opening or the thirtieth day after the Effective Date of the Contract, whichever date is earlier.

4.02 *Starting the Work*

- A. Contractor shall start to perform the Work on the date when the Contract Times commence to run. No Work shall be done at the Site prior to such date.

4.03 *Reference Points*

- A. Owner shall provide engineering surveys to establish reference points for construction which in Engineer's judgment are necessary to enable Contractor to proceed with the Work. Contractor shall be responsible for laying out the Work, shall protect and preserve the established reference points and property monuments, and shall make no changes or relocations without the prior written approval of Owner. Contractor shall report to Engineer whenever any reference point or property monument is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points or property monuments by professionally qualified personnel.

4.04 *Progress Schedule*

- A. Contractor shall adhere to the Progress Schedule established in accordance with Paragraph 2.05 as it may be adjusted from time to time as provided below.
 - 1. Contractor shall submit to Engineer for acceptance (to the extent indicated in Paragraph 2.05) proposed adjustments in the Progress Schedule that will not result in changing the Contract Times.

2. Proposed adjustments in the Progress Schedule that will change the Contract Times shall be submitted in accordance with the requirements of Article 11.
- B. Contractor shall carry on the Work and adhere to the Progress Schedule during all disputes or disagreements with Owner. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, or during any appeal process, except as permitted by Paragraph 16.04, or as Owner and Contractor may otherwise agree in writing.

4.05 *Delays in Contractor's Progress*

- A. If Owner, Engineer, or anyone for whom Owner is responsible, delays, disrupts, or interferes with the performance or progress of the Work, then Contractor shall be entitled to an equitable adjustment in the Contract Times and Contract Price. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times.
- B. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for delay, disruption, or interference caused by or within the control of Contractor. Delay, disruption, and interference attributable to and within the control of a Subcontractor or Supplier shall be deemed to be within the control of Contractor.
- C. If Contractor's performance or progress is delayed, disrupted, or interfered with by unanticipated causes not the fault of and beyond the control of Owner, Contractor, and those for which they are responsible, then Contractor shall be entitled to an equitable adjustment in Contract Times. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times. Such an adjustment shall be Contractor's sole and exclusive remedy for the delays, disruption, and interference described in this paragraph. Causes of delay, disruption, or interference that may give rise to an adjustment in Contract Times under this paragraph include but are not limited to the following:
1. severe and unavoidable natural catastrophes such as fires, floods, epidemics, and earthquakes;
 2. abnormal weather conditions;
 3. acts or failures to act of utility owners (other than those performing other work at or adjacent to the Site by arrangement with the Owner, as contemplated in Article 8); and
 4. acts of war or terrorism.
- D. Delays, disruption, and interference to the performance or progress of the Work resulting from the existence of a differing subsurface or physical condition, an Underground Facility that was not shown or indicated by the Contract Documents, or not shown or indicated with reasonable accuracy, and those resulting from Hazardous Environmental Conditions, are governed by Article 5.
- E. Paragraph 8.03 governs delays, disruption, and interference to the performance or progress of the Work resulting from the performance of certain other work at or adjacent to the Site.
- F. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for any delay, disruption, or interference if such delay is concurrent with a delay, disruption, or interference caused by or within the control of Contractor.
- G. Contractor must submit any Change Proposal seeking an adjustment in Contract Price or Contract Times under this paragraph within 30 days of the commencement of the delaying, disrupting, or interfering event.

**ARTICLE 5 – AVAILABILITY OF LANDS;
SUBSURFACE AND PHYSICAL CONDITIONS;
HAZARDOUS ENVIRONMENTAL CONDITIONS**

5.01 *Availability of Lands*

- A. Owner shall furnish the Site. Owner shall notify Contractor of any encumbrances or restrictions not of general application but specifically related to use of the Site with which Contractor must comply in performing the Work.
- B. Upon reasonable written request, Owner shall furnish Contractor with a current statement of record legal title and legal description of the lands upon which permanent improvements are to be made and Owner's interest therein as necessary for giving notice of or filing a mechanic's or construction lien against such lands in accordance with applicable Laws and Regulations.

- C. Contractor shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

5.02 *Use of Site and Other Areas*

A. Limitation on Use of Site and Other Areas:

- 1. Contractor shall confine construction equipment, temporary construction facilities, the storage of materials and equipment, and the operations of workers to the Site, adjacent areas that Contractor has arranged to use through construction easements or otherwise, and other adjacent areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and such other adjacent areas with construction equipment or other materials or equipment. Contractor shall assume full responsibility for (a) damage to the Site; (b) damage to any such other adjacent areas used for Contractor's operations; (c) damage to any other adjacent land or areas; and (d) for injuries and losses sustained by the owners or occupants of any such land or areas; provided that such damage or injuries result from the performance of the Work or from other actions or conduct of the Contractor or those for which Contractor is responsible.
- 2. If a damage or injury claim is made by the owner or occupant of any such land or area because of the performance of the Work, or because of other actions or conduct of the Contractor or those for which Contractor is responsible, Contractor shall (a) take immediate corrective or remedial action as required by Paragraph 7.12, or otherwise; (b) promptly attempt to settle the claim as to all parties through negotiations with such owner or occupant, or otherwise resolve the claim by arbitration or other dispute resolution proceeding, or at law; and (c) to the fullest extent permitted by Laws and Regulations, indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against any such claim, and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all

court or arbitration or other dispute resolution costs) arising out of or relating to any claim or action, legal or equitable, brought by any such owner or occupant against Owner, Engineer, or any other party indemnified hereunder to the extent caused directly or indirectly, in whole or in part by, or based upon, Contractor's performance of the Work, or because of other actions or conduct of the Contractor or those for which Contractor is responsible.

- B. *Removal of Debris During Performance of the Work:* During the progress of the Work the Contractor shall keep the Site and other adjacent areas free from accumulations of waste materials, rubbish, and other debris. Removal and disposal of such waste materials, rubbish, and other debris shall conform to applicable Laws and Regulations.
- C. *Cleaning:* Prior to Substantial Completion of the Work Contractor shall clean the Site and the Work and make it ready for utilization by Owner. At the completion of the Work Contractor shall remove from the Site and adjacent areas all tools, appliances, construction equipment and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.
- D. *Loading of Structures:* Contractor shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall Contractor subject any part of the Work or adjacent structures or land to stresses or pressures that will endanger them.

5.03 *Subsurface and Physical Conditions*

- A. *Reports and Drawings:* The Supplementary Conditions identify:
 - 1. those reports known to Owner of explorations and tests of subsurface conditions at or adjacent to the Site;
 - 2. those drawings known to Owner of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities); and
 - 3. Technical Data contained in such reports and drawings.
- B. *Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the accuracy of the Technical Data expressly identified in the Supplementary Conditions

with respect to such reports and drawings, but such reports and drawings are not Contract Documents. If no such express identification has been made, then Contractor may rely upon the accuracy of the Technical Data (as defined in Article 1) contained in any geotechnical or environmental report prepared for the Project and made available to Contractor. Except for such reliance on Technical Data, Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, with respect to:

1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto; or
2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or
3. any Contractor interpretation of or conclusion drawn from any Technical Data or any such other data, interpretations, opinions, or information.

5.04 Differing Subsurface or Physical Conditions

A. *Notice by Contractor:* If Contractor believes that any subsurface or physical condition that is uncovered or revealed at the Site either:

1. is of such a nature as to establish that any Technical Data on which Contractor is entitled to rely as provided in Paragraph 5.03 is materially inaccurate; or
2. is of such a nature as to require a change in the Drawings or Specifications; or
3. differs materially from that shown or indicated in the Contract Documents; or
4. is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents;

then Contractor shall, promptly after becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any Work in connection therewith (except in an emergency as required by Paragraph 7.15), notify Owner

and Engineer in writing about such condition. Contractor shall not further disturb such condition or perform any Work in connection therewith (except with respect to an emergency) until receipt of a written statement permitting Contractor to do so.

B. *Engineer's Review:* After receipt of written notice as required by the preceding paragraph, Engineer will promptly review the subsurface or physical condition in question; determine the necessity of Owner's obtaining additional exploration or tests with respect to the condition; conclude whether the condition falls within any one or more of the differing site condition categories in Paragraph 5.04.A above; obtain any pertinent cost or schedule information from Contractor; prepare recommendations to Owner regarding the Contractor's resumption of Work in connection with the subsurface or physical condition in question and the need for any change in the Drawings or Specifications; and advise Owner in writing of Engineer's findings, conclusions, and recommendations.

C. *Owner's Statement to Contractor Regarding Site Condition:* After receipt of Engineer's written findings, conclusions, and recommendations, Owner shall issue a written statement to Contractor (with a copy to Engineer) regarding the subsurface or physical condition in question, addressing the resumption of Work in connection with such condition, indicating whether any change in the Drawings or Specifications will be made, and adopting or rejecting Engineer's written findings, conclusions, and recommendations, in whole or in part.

D. Possible Price and Times Adjustments:

1. Contractor shall be entitled to an equitable adjustment in Contract Price or Contract Times, or both, to the extent that the existence of a differing subsurface or physical condition, or any related delay, disruption, or interference, causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:

- a. such condition must fall within any one or more of the categories described in Paragraph 5.04.A;
- b. with respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will

be subject to the provisions of Paragraph 13.03; and,

- c. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times.
2. Contractor shall not be entitled to any adjustment in the Contract Price or Contract Times with respect to a subsurface or physical condition if:
 - a. Contractor knew of the existence of such condition at the time Contractor made a commitment to Owner with respect to Contract Price and Contract Times by the submission of a Bid or becoming bound under a negotiated contract, or otherwise; or
 - b. the existence of such condition reasonably could have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site and contiguous areas expressly required by the Bidding Requirements or Contract Documents to be conducted by or for Contractor prior to Contractor's making such commitment; or
 - c. Contractor failed to give the written notice as required by Paragraph 5.04.A.
 3. If Owner and Contractor agree regarding Contractor's entitlement to and the amount or extent of any adjustment in the Contract Price or Contract Times, or both, then any such adjustment shall be set forth in a Change Order.
 4. Contractor may submit a Change Proposal regarding its entitlement to or the amount or extent of any adjustment in the Contract Price or Contract Times, or both, no later than 30 days after Owner's issuance of the Owner's written statement to Contractor regarding the subsurface or physical condition in question.

5.05 *Underground Facilities*

- A. *Contractor's Responsibilities:* The information and data shown or indicated in the Contract Documents with respect to existing

Underground Facilities at or adjacent to the Site is based on information and data furnished to Owner or Engineer by the owners of such Underground Facilities, including Owner, or by others. Unless it is otherwise expressly provided in the Supplementary Conditions:

1. Owner and Engineer do not warrant or guarantee the accuracy or completeness of any such information or data provided by others; and
 2. the cost of all of the following will be included in the Contract Price, and Contractor shall have full responsibility for:
 - a. reviewing and checking all information and data regarding existing Underground Facilities at the Site;
 - b. locating all Underground Facilities shown or indicated in the Contract Documents as being at the Site;
 - c. coordination of the Work with the owners (including Owner) of such Underground Facilities, during construction; and
 - d. the safety and protection of all existing Underground Facilities at the Site, and repairing any damage thereto resulting from the Work.
- B. *Notice by Contractor:* If Contractor believes that an Underground Facility that is uncovered or revealed at the Site was not shown or indicated in the Contract Documents, or was not shown or indicated with reasonable accuracy, then Contractor shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by Paragraph 7.15), identify the owner of such Underground Facility and give written notice to that owner and to Owner and Engineer.
 - C. *Engineer's Review:* Engineer will promptly review the Underground Facility and conclude whether such Underground Facility was not shown or indicated in the Contract Documents, or was not shown or indicated with reasonable accuracy; obtain any pertinent cost or schedule information from Contractor; prepare recommendations to Owner regarding the Contractor's resumption of Work in connection with the Underground Facility in question; determine the extent, if any, to

which a change is required in the Drawings or Specifications to reflect and document the consequences of the existence or location of the Underground Facility; and advise Owner in writing of Engineer's findings, conclusions, and recommendations. During such time, Contractor shall be responsible for the safety and protection of such Underground Facility.

D. *Owner's Statement to Contractor Regarding Underground Facility:* After receipt of Engineer's written findings, conclusions, and recommendations, Owner shall issue a written statement to Contractor (with a copy to Engineer) regarding the Underground Facility in question, addressing the resumption of Work in connection with such Underground Facility, indicating whether any change in the Drawings or Specifications will be made, and adopting or rejecting Engineer's written findings, conclusions, and recommendations in whole or in part.

E. Possible Price and Times Adjustments:

1. Contractor shall be entitled to an equitable adjustment in the Contract Price or Contract Times, or both, to the extent that any existing Underground Facility at the Site that was not shown or indicated in the Contract Documents, or was not shown or indicated with reasonable accuracy, or any related delay, disruption, or interference, causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:
 - a. Contractor did not know of and could not reasonably have been expected to be aware of or to have anticipated the existence or actual location of the Underground Facility in question;
 - b. With respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraph 13.03;
 - c. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times; and
 - d. Contractor gave the notice required in Paragraph 5.05.B.

2. If Owner and Contractor agree regarding Contractor's entitlement to and the amount or extent of any adjustment in the Contract Price or Contract Times, or both, then any such adjustment shall be set forth in a Change Order.
3. Contractor may submit a Change Proposal regarding its entitlement to or the amount or extent of any adjustment in the Contract Price or Contract Times, or both, no later than 30 days after Owner's issuance of the Owner's written statement to Contractor regarding the Underground Facility in question.

5.06 *Hazardous Environmental Conditions at Site*

A. *Reports and Drawings:* The Supplementary Conditions identify:

1. those reports and drawings known to Owner relating to Hazardous Environmental Conditions that have been identified at or adjacent to the Site; and
2. Technical Data contained in such reports and drawings.

B. *Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the accuracy of the Technical Data expressly identified in the Supplementary Conditions with respect to such reports and drawings, but such reports and drawings are not Contract Documents. If no such express identification has been made, then Contractor may rely on the accuracy of the Technical Data (as defined in Article 1) contained in any geotechnical or environmental report prepared for the Project and made available to Contractor. Except for such reliance on Technical Data, Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors with respect to:

1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences and procedures of construction to be employed by Contractor and safety precautions and programs incident thereto; or
2. other data, interpretations, opinions and information contained in such reports or shown or indicated in such drawings; or

3. any Contractor interpretation of or conclusion drawn from any Technical Data or any such other data, interpretations, opinions or information.
- C. Contractor shall not be responsible for removing or remediating any Hazardous Environmental Condition encountered, uncovered, or revealed at the Site unless such removal or remediation is expressly identified in the Contract Documents to be within the scope of the Work.
- D. Contractor shall be responsible for controlling, containing, and duly removing all Constituents of Concern brought to the Site by Contractor, Subcontractors, Suppliers, or anyone else for whom Contractor is responsible, and for any associated costs; and for the costs of removing and remediating any Hazardous Environmental Condition created by the presence of any such Constituents of Concern.
- E. If Contractor encounters, uncovers, or reveals a Hazardous Environmental Condition whose removal or remediation is not expressly identified in the Contract Documents as being within the scope of the Work, or if Contractor or anyone for whom Contractor is responsible creates a Hazardous Environmental Condition, then Contractor shall immediately: (1) secure or otherwise isolate such condition; (2) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by Paragraph 7.15); and (3) notify Owner and Engineer (and promptly thereafter confirm such notice in writing). Owner shall promptly consult with Engineer concerning the necessity for Owner to retain a qualified expert to evaluate such condition or take corrective action, if any. Promptly after consulting with Engineer, Owner shall take such actions as are necessary to permit Owner to timely obtain required permits and provide Contractor the written notice required by Paragraph 5.06.F. If Contractor or anyone for whom Contractor is responsible created the Hazardous Environmental Condition in question, then Owner may remove and remediate the Hazardous Environmental Condition, and impose a set-off against payments to account for the associated costs.
- F. Contractor shall not resume Work in connection with such Hazardous Environmental Condition or in any affected area until after Owner has obtained any required permits related thereto, and delivered written notice to Contractor either (1) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work, or (2) specifying any special conditions under which such Work may be resumed safely.
- G. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times, or both, as a result of such Work stoppage or such special conditions under which Work is agreed to be resumed by Contractor, then within 30 days of Owner's written notice regarding the resumption of Work, Contractor may submit a Change Proposal, or Owner may impose a set-off.
- H. If after receipt of such written notice Contractor does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, then Owner may order the portion of the Work that is in the area affected by such condition to be deleted from the Work, following the contractual change procedures in Article 11. Owner may have such deleted portion of the Work performed by Owner's own forces or others in accordance with Article 8.
- I. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition, provided that such Hazardous Environmental Condition (1) was not shown or indicated in the Drawings, Specifications, or other Contract Documents, identified as Technical Data entitled to limited reliance pursuant to Paragraph 5.06.B, or identified in the Contract Documents to be included within the scope of the Work, and (2) was not created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 5.06.H shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.
- J. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and

hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the failure to control, contain, or remove a Constituent of Concern brought to the Site by Contractor or by anyone for whom Contractor is responsible, or to a Hazardous Environmental Condition created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 5.06.J shall obligate Contractor to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

- K. The provisions of Paragraphs 5.03, 5.04, and 5.05 do not apply to the presence of Constituents of Concern or to a Hazardous Environmental Condition uncovered or revealed at the Site.

ARTICLE 6 – BONDS AND INSURANCE

6.01 *Performance, Payment, and Other Bonds*

- A. Contractor shall furnish a performance bond and a payment bond, each in an amount at least equal to the Contract Price, as security for the faithful performance and payment of all of Contractor's obligations under the Contract. These bonds shall remain in effect until one year after the date when final payment becomes due or until completion of the correction period specified in Paragraph 15.08, whichever is later, except as provided otherwise by Laws or Regulations, the Supplementary Conditions, or other specific provisions of the Contract. Contractor shall also furnish such other bonds as are required by the Supplementary Conditions or other specific provisions of the Contract.
- B. All bonds shall be in the form prescribed by the Contract except as provided otherwise by Laws or Regulations, and shall be executed by such sureties as are named in "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (as amended and supplemented) by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury. A bond signed by

an agent or attorney-in-fact must be accompanied by a certified copy of that individual's authority to bind the surety. The evidence of authority shall show that it is effective on the date the agent or attorney-in-fact signed the accompanying bond.

- C. Contractor shall obtain the required bonds from surety companies that are duly licensed or authorized in the jurisdiction in which the Project is located to issue bonds in the required amounts.
- D. If the surety on a bond furnished by Contractor is declared bankrupt or becomes insolvent, or its right to do business is terminated in any state or jurisdiction where any part of the Project is located, or the surety ceases to meet the requirements above, then Contractor shall promptly notify Owner and Engineer and shall, within 20 days after the event giving rise to such notification, provide another bond and surety, both of which shall comply with the bond and surety requirements above.
- E. If Contractor has failed to obtain a required bond, Owner may exclude the Contractor from the Site and exercise Owner's termination rights under Article 16.
- F. Upon request, Owner shall provide a copy of the payment bond to any Subcontractor, Supplier, or other person or entity claiming to have furnished labor or materials used in the performance of the Work.

6.02 *Insurance—General Provisions*

- A. Owner and Contractor shall obtain and maintain insurance as required in this Article and in the Supplementary Conditions.
- B. All insurance required by the Contract to be purchased and maintained by Owner or Contractor shall be obtained from insurance companies that are duly licensed or authorized, in the state or jurisdiction in which the Project is located, to issue insurance policies for the required limits and coverages. Unless a different standard is indicated in the Supplementary Conditions, all companies that provide insurance policies required under this Contract shall have an A.M. Best rating of A-VII or better.
- C. Contractor shall deliver to Owner, with copies to each named insured and additional insured (as identified in this Article, in the Supplementary Conditions, or elsewhere in the Contract), certificates of insurance establishing that Contractor has obtained and is maintaining the policies, coverages, and

endorsements required by the Contract. Upon request by Owner or any other insured, Contractor shall also furnish other evidence of such required insurance, including but not limited to copies of policies and endorsements, and documentation of applicable self-insured retentions and deductibles. Contractor may block out (redact) any confidential premium or pricing information contained in any policy or endorsement furnished under this provision.

- D. Owner shall deliver to Contractor, with copies to each named insured and additional insured (as identified in this Article, the Supplementary Conditions, or elsewhere in the Contract), certificates of insurance establishing that Owner has obtained and is maintaining the policies, coverages, and endorsements required of Owner by the Contract (if any). Upon request by Contractor or any other insured, Owner shall also provide other evidence of such required insurance (if any), including but not limited to copies of policies and endorsements, and documentation of applicable self-insured retentions and deductibles. Owner may block out (redact) any confidential premium or pricing information contained in any policy or endorsement furnished under this provision.
- E. Failure of Owner or Contractor to demand such certificates or other evidence of the other party's full compliance with these insurance requirements, or failure of Owner or Contractor to identify a deficiency in compliance from the evidence provided, shall not be construed as a waiver of the other party's obligation to obtain and maintain such insurance.
- F. If either party does not purchase or maintain all of the insurance required of such party by the Contract, such party shall notify the other party in writing of such failure to purchase prior to the start of the Work, or of such failure to maintain prior to any change in the required coverage.
- G. If Contractor has failed to obtain and maintain required insurance, Owner may exclude the Contractor from the Site, impose an appropriate set-off against payment, and exercise Owner's termination rights under Article 16.
- H. Without prejudice to any other right or remedy, if a party has failed to obtain required insurance, the other party may elect to obtain equivalent insurance to protect such other

party's interests at the expense of the party who was required to provide such coverage, and the Contract Price shall be adjusted accordingly.

- I. Owner does not represent that insurance coverage and limits established in this Contract necessarily will be adequate to protect Contractor or Contractor's interests.
- J. The insurance and insurance limits required herein shall not be deemed as a limitation on Contractor's liability under the indemnities granted to Owner and other individuals and entities in the Contract.

6.03 *Contractor's Insurance*

- A. *Workers' Compensation:* Contractor shall purchase and maintain workers' compensation and employer's liability insurance for:
 - 1. claims under workers' compensation, disability benefits, and other similar employee benefit acts.
 - 2. United States Longshoreman and Harbor Workers' Compensation Act and Jones Act coverage (if applicable).
 - 3. claims for damages because of bodily injury, occupational sickness or disease, or death of Contractor's employees (by stop-gap endorsement in monopolist worker's compensation states).
 - 4. Foreign voluntary worker compensation (if applicable).
- B. *Commercial General Liability—Claims Covered:* Contractor shall purchase and maintain commercial general liability insurance, covering all operations by or on behalf of Contractor, on an occurrence basis, against:
 - 1. claims for damages because of bodily injury, sickness or disease, or death of any person other than Contractor's employees.
 - 2. claims for damages insured by reasonably available personal injury liability coverage.
 - 3. claims for damages, other than to the Work itself, because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom.
- C. *Commercial General Liability—Form and Content:* Contractor's commercial liability policy shall be written on a 1996 (or later) ISO

commercial general liability form (occurrence form) and include the following coverages and endorsements:

1. Products and completed operations coverage:
 - a. Such insurance shall be maintained for three years after final payment.
 - b. Contractor shall furnish Owner and each other additional insured (as identified in the Supplementary Conditions or elsewhere in the Contract) evidence of continuation of such insurance at final payment and three years thereafter.
 2. Blanket contractual liability coverage, to the extent permitted by law, including but not limited to coverage of Contractor's contractual indemnity obligations in Paragraph 7.18.
 3. Broad form property damage coverage.
 4. Severability of interest.
 5. Underground, explosion, and collapse coverage.
 6. Personal injury coverage.
 7. Additional insured endorsements that include both ongoing operations and products and completed operations coverage through ISO Endorsements CG 20 10 10 01 and CG 20 37 10 01 (together); or CG 20 10 07 04 and CG 20 37 07 04 (together); or their equivalent.
 8. For design professional additional insureds, ISO Endorsement CG 20 32 07 04, "Additional Insured—Engineers, Architects or Surveyors Not Engaged by the Named Insured" or its equivalent.
- D. *Automobile liability:* Contractor shall purchase and maintain automobile liability insurance against claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance, or use of any motor vehicle. The automobile liability policy shall be written on an occurrence basis.
- E. *Umbrella or excess liability:* Contractor shall purchase and maintain umbrella or excess liability insurance written over the underlying employer's liability, commercial general liability, and automobile liability insurance described in the paragraphs above. Subject to industry-standard exclusions, the coverage
- afforded shall follow form as to each and every one of the underlying policies.
- F. *Contractor's pollution liability insurance:* Contractor shall purchase and maintain a policy covering third-party injury and property damage claims, including clean-up costs, as a result of pollution conditions arising from Contractor's operations and completed operations. This insurance shall be maintained for no less than three years after final completion.
- G. *Additional insureds:* The Contractor's commercial general liability, automobile liability, umbrella or excess, and pollution liability policies shall include and list as additional insureds Owner and Engineer, and any individuals or entities identified in the Supplementary Conditions; include coverage for the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of all such additional insureds; and the insurance afforded to these additional insureds shall provide primary coverage for all claims covered thereby (including as applicable those arising from both ongoing and completed operations) on a non-contributory basis. Contractor shall obtain all necessary endorsements to support these requirements.
- H. *Contractor's professional liability insurance:* If Contractor will provide or furnish professional services under this Contract, through a delegation of professional design services or otherwise, then Contractor shall be responsible for purchasing and maintaining applicable professional liability insurance. This insurance shall provide protection against claims arising out of performance of professional design or related services, and caused by a negligent error, omission, or act for which the insured party is legally liable. It shall be maintained throughout the duration of the Contract and for a minimum of two years after Substantial Completion. If such professional design services are performed by a Subcontractor, and not by Contractor itself, then the requirements of this paragraph may be satisfied through the purchasing and maintenance of such insurance by such Subcontractor.
- I. *General provisions:* The policies of insurance required by this Paragraph 6.03 shall:
1. include at least the specific coverages provided in this Article.

2. be written for not less than the limits of liability provided in this Article and in the Supplementary Conditions, or required by Laws or Regulations, whichever is greater.
3. contain a provision or endorsement that the coverage afforded will not be canceled, materially changed, or renewal refused until at least 10 days prior written notice has been given to Contractor. Within three days of receipt of any such written notice, Contractor shall provide a copy of the notice to Owner, Engineer, and each other insured under the policy.
4. remain in effect at least until final payment (and longer if expressly required in this Article) and at all times thereafter when Contractor may be correcting, removing, or replacing defective Work as a warranty or correction obligation, or otherwise, or returning to the Site to conduct other tasks arising from the Contract Documents.
5. be appropriate for the Work being performed and provide protection from claims that may arise out of or result from Contractor's performance of the Work and Contractor's other obligations under the Contract Documents, whether it is to be performed by Contractor, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable.

J. The coverage requirements for specific policies of insurance must be met by such policies, and not by reference to excess or umbrella insurance provided in other policies.

6.04 *Owner's Liability Insurance*

- A. In addition to the insurance required to be provided by Contractor under Paragraph 6.03, Owner, at Owner's option, may purchase and maintain at Owner's expense Owner's own liability insurance as will protect Owner against claims which may arise from operations under the Contract Documents.
- B. Owner's liability policies, if any, operate separately and independently from policies required to be provided by Contractor, and Contractor cannot rely upon Owner's liability

policies for any of Contractor's obligations to the Owner, Engineer, or third parties.

6.05 *Property Insurance*

A. *Builder's Risk:* Unless otherwise provided in the Supplementary Conditions, Contractor shall purchase and maintain builder's risk insurance upon the Work on a completed value basis, in the amount of the full insurable replacement cost thereof (subject to such deductible amounts as may be provided in the Supplementary Conditions or required by Laws and Regulations). This insurance shall:

1. include the Owner and Contractor as named insureds, and all Subcontractors, and any individuals or entities required by the Supplementary Conditions to be insured under such builder's risk policy, as insureds or named insureds. For purposes of the remainder of this Paragraph 6.05, Paragraphs 6.06 and 6.07, and any corresponding Supplementary Conditions, the parties required to be insured shall collectively be referred to as "insureds."
2. be written on a builder's risk "all risk" policy form that shall at least include insurance for physical loss or damage to the Work, temporary buildings, falsework, and materials and equipment in transit, and shall insure against at least the following perils or causes of loss: fire; lightning; windstorm; riot; civil commotion; terrorism; vehicle impact; aircraft; smoke; theft; vandalism and malicious mischief; mechanical breakdown, boiler explosion, and artificially generated electric current; earthquake; volcanic activity, and other earth movement; flood; collapse; explosion; debris removal; demolition occasioned by enforcement of Laws and Regulations; water damage (other than that caused by flood); and such other perils or causes of loss as may be specifically required by the Supplementary Conditions. If insurance against mechanical breakdown, boiler explosion, and artificially generated electric current; earthquake; volcanic activity, and other earth movement; or flood, are not commercially available under builder's risk policies, by endorsement or otherwise, such insurance may be provided through other insurance policies acceptable to Owner and Contractor.

3. cover, as insured property, at least the following: (a) the Work and all materials, supplies, machinery, apparatus, equipment, fixtures, and other property of a similar nature that are to be incorporated into or used in the preparation, fabrication, construction, erection, or completion of the Work, including Owner-furnished or assigned property; (b) spare parts inventory required within the scope of the Contract; and (c) temporary works which are not intended to form part of the permanent constructed Work but which are intended to provide working access to the Site, or to the Work under construction, or which are intended to provide temporary support for the Work under construction, including scaffolding, form work, fences, shoring, falsework, and temporary structures.
 4. cover expenses incurred in the repair or replacement of any insured property (including but not limited to fees and charges of engineers and architects).
 5. extend to cover damage or loss to insured property while in temporary storage at the Site or in a storage location outside the Site (but not including property stored at the premises of a manufacturer or Supplier).
 6. extend to cover damage or loss to insured property while in transit.
 7. allow for partial occupation or use of the Work by Owner, such that those portions of the Work that are not yet occupied or used by Owner shall remain covered by the builder's risk insurance.
 8. allow for the waiver of the insurer's subrogation rights, as set forth below.
 9. provide primary coverage for all losses and damages caused by the perils or causes of loss covered.
 10. not include a co-insurance clause.
 11. include an exception for ensuing losses from physical damage or loss with respect to any defective workmanship, design, or materials exclusions.
 12. include performance/hot testing and start-up.
 13. be maintained in effect, subject to the provisions herein regarding Substantial Completion and partial occupancy or use of the Work by Owner, until the Work is complete.
- B. *Notice of Cancellation or Change:* All the policies of insurance (and the certificates or other evidence thereof) required to be purchased and maintained in accordance with this Paragraph 6.05 will contain a provision or endorsement that the coverage afforded will not be canceled or materially changed or renewal refused until at least 10 days prior written notice has been given to the purchasing policyholder. Within three days of receipt of any such written notice, the purchasing policyholder shall provide a copy of the notice to each other insured.
 - C. *Deductibles:* The purchaser of any required builder's risk or property insurance shall pay for costs not covered because of the application of a policy deductible.
 - D. *Partial Occupancy or Use by Owner:* If Owner will occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work as provided in Paragraph 15.04, then Owner (directly, if it is the purchaser of the builder's risk policy, or through Contractor) will provide notice of such occupancy or use to the builder's risk insurer. The builder's risk insurance shall not be canceled or permitted to lapse on account of any such partial use or occupancy; rather, those portions of the Work that are occupied or used by Owner may come off the builder's risk policy, while those portions of the Work not yet occupied or used by Owner shall remain covered by the builder's risk insurance.
 - E. *Additional Insurance:* If Contractor elects to obtain other special insurance to be included in or supplement the builder's risk or property insurance policies provided under this Paragraph 6.05, it may do so at Contractor's expense.
 - F. *Insurance of Other Property:* If the express insurance provisions of the Contract do not require or address the insurance of a property item or interest, such as tools, construction equipment, or other personal property owned by Contractor, a Subcontractor, or an employee of Contractor or a Subcontractor, then the entity or individual owning such property item will be responsible for deciding whether to insure it, and if so in what amount.

6.06 *Waiver of Rights*

- A. All policies purchased in accordance with Paragraph 6.05, expressly including the builder's risk policy, shall contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any insureds thereunder, or against Engineer or its consultants, or their officers, directors, members, partners, employees, agents, consultants, or subcontractors. Owner and Contractor waive all rights against each other and the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work; and, in addition, waive all such rights against Engineer, its consultants, all Subcontractors, all individuals or entities identified in the Supplementary Conditions as insureds, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, under such policies for losses and damages so caused. None of the above waivers shall extend to the rights that any party making such waiver may have to the proceeds of insurance held by Owner or Contractor as trustee or fiduciary, or otherwise payable under any policy so issued.
- B. Owner waives all rights against Contractor, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, for:
 - 1. loss due to business interruption, loss of use, or other consequential loss extending beyond direct physical loss or damage to Owner's property or the Work caused by, arising out of, or resulting from fire or other perils whether or not insured by Owner; and
 - 2. loss or damage to the completed Project or part thereof caused by, arising out of, or resulting from fire or other insured peril or cause of loss covered by any property insurance maintained on the completed Project or part thereof by Owner during partial occupancy or use pursuant to Paragraph 15.04, after Substantial Completion pursuant to Paragraph 15.03, or after final payment pursuant to Paragraph 15.06.

- C. Any insurance policy maintained by Owner covering any loss, damage or consequential loss referred to in Paragraph 6.06.B shall contain provisions to the effect that in the event of payment of any such loss, damage, or consequential loss, the insurers will have no rights of recovery against Contractor, Subcontractors, or Engineer, or the officers, directors, members, partners, employees, agents, consultants, or subcontractors of each and any of them.
- D. Contractor shall be responsible for assuring that the agreement under which a Subcontractor performs a portion of the Work contains provisions whereby the Subcontractor waives all rights against Owner, Contractor, all individuals or entities identified in the Supplementary Conditions as insureds, the Engineer and its consultants, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, relating to, or resulting from any of the perils or causes of loss covered by builder's risk insurance and any other property insurance applicable to the Work.

6.07 *Receipt and Application of Property Insurance Proceeds*

- A. Any insured loss under the builder's risk and other policies of insurance required by Paragraph 6.05 will be adjusted and settled with the named insured that purchased the policy. Such named insured shall act as fiduciary for the other insureds, and give notice to such other insureds that adjustment and settlement of a claim is in progress. Any other insured may state its position regarding a claim for insured loss in writing within 15 days after notice of such claim.
- B. Proceeds for such insured losses may be made payable by the insurer either jointly to multiple insureds, or to the named insured that purchased the policy in its own right and as fiduciary for other insureds, subject to the requirements of any applicable mortgage clause. A named insured receiving insurance proceeds under the builder's risk and other policies of insurance required by Paragraph 6.05 shall distribute such proceeds in accordance with such agreement as the parties in interest may reach, or as otherwise required under the dispute resolution provisions of this Contract or applicable Laws and Regulations.

- C. If no other special agreement is reached, the damaged Work shall be repaired or replaced, the money so received applied on account thereof, and the Work and the cost thereof covered by Change Order, if needed.

ARTICLE 7 – CONTRACTOR’S RESPONSIBILITIES

7.01 *Supervision and Superintendence*

- A. Contractor shall supervise, inspect, and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. Contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction.
- B. At all times during the progress of the Work, Contractor shall assign a competent resident superintendent who shall not be replaced without written notice to Owner and Engineer except under extraordinary circumstances.

7.02 *Labor; Working Hours*

- A. Contractor shall provide competent, suitably qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. Contractor shall at all times maintain good discipline and order at the Site.
- B. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Site shall be performed during regular working hours, Monday through Friday. Contractor will not perform Work on a Saturday, Sunday, or any legal holiday. Contractor may perform Work outside regular working hours or on Saturdays, Sundays, or legal holidays only with Owner’s written consent, which will not be unreasonably withheld.

7.03 *Services, Materials, and Equipment*

- A. Unless otherwise specified in the Contract Documents, Contractor shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, testing, start up, and completion of the Work, whether or

not such items are specifically called for in the Contract Documents.

- B. All materials and equipment incorporated into the Work shall be of good quality and new, except as otherwise provided in the Contract Documents. All special warranties and guarantees required by the Specifications shall expressly run to the benefit of Owner. If required by Engineer, Contractor shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment.
- C. All materials and equipment shall be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable Supplier, except as otherwise may be provided in the Contract Documents.

7.04 *“Or Equals”*

- A. Whenever an item of material or equipment is specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular Supplier, the Contract Price has been based upon Contractor furnishing such item as specified. The specification or description of such an item is intended to establish the type, function, appearance, and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent, or “or equal” item is permitted, Contractor may request that Engineer authorize the use of other items of material or equipment, or items from other proposed suppliers under the circumstances described below.
 - 1. If Engineer in its sole discretion determines that an item of material or equipment proposed by Contractor is functionally equal to that named and sufficiently similar so that no change in related Work will be required, Engineer shall deem it an “or equal” item. For the purposes of this paragraph, a proposed item of material or equipment will be considered functionally equal to an item so named if:
 - a. in the exercise of reasonable judgment Engineer determines that:
 - 1) it is at least equal in materials of construction, quality, durability, appearance,

- strength, and design characteristics;
- 2) it will reliably perform at least equally well the function and achieve the results imposed by the design concept of the completed Project as a functioning whole;
 - 3) it has a proven record of performance and availability of responsive service; and
 - 4) it is not objectionable to Owner.
- b. Contractor certifies that, if approved and incorporated into the Work:
- 1) there will be no increase in cost to the Owner or increase in Contract Times; and
 - 2) it will conform substantially to the detailed requirements of the item named in the Contract Documents.
- B. *Contractor's Expense:* Contractor shall provide all data in support of any proposed "or equal" item at Contractor's expense.
- C. *Engineer's Evaluation and Determination:* Engineer will be allowed a reasonable time to evaluate each "or-equal" request. Engineer may require Contractor to furnish additional data about the proposed "or-equal" item. Engineer will be the sole judge of acceptability. No "or-equal" item will be ordered, furnished, installed, or utilized until Engineer's review is complete and Engineer determines that the proposed item is an "or-equal", which will be evidenced by an approved Shop Drawing or other written communication. Engineer will advise Contractor in writing of any negative determination.
- D. *Effect of Engineer's Determination:* Neither approval nor denial of an "or-equal" request shall result in any change in Contract Price. The Engineer's denial of an "or-equal" request shall be final and binding, and may not be reversed through an appeal under any provision of the Contract Documents.
- E. *Treatment as a Substitution Request:* If Engineer determines that an item of material or equipment proposed by Contractor does not qualify as an "or-equal" item, Contractor may

request that Engineer considered the proposed item as a substitute pursuant to Paragraph 7.05.

7.05 *Substitutes*

- A. Unless the specification or description of an item of material or equipment required to be furnished under the Contract Documents contains or is followed by words reading that no substitution is permitted, Contractor may request that Engineer authorize the use of other items of material or equipment under the circumstances described below. To the extent possible such requests shall be made before commencement of related construction at the Site.
1. Contractor shall submit sufficient information as provided below to allow Engineer to determine if the item of material or equipment proposed is functionally equivalent to that named and an acceptable substitute therefor. Engineer will not accept requests for review of proposed substitute items of material or equipment from anyone other than Contractor.
 2. The requirements for review by Engineer will be as set forth in Paragraph 7.05.B, as supplemented by the Specifications, and as Engineer may decide is appropriate under the circumstances.
 3. Contractor shall make written application to Engineer for review of a proposed substitute item of material or equipment that Contractor seeks to furnish or use. The application:
 - a. shall certify that the proposed substitute item will:
 - 1) perform adequately the functions and achieve the results called for by the general design,
 - 2) be similar in substance to that specified, and
 - 3) be suited to the same use as that specified.
 - b. will state:
 - 1) the extent, if any, to which the use of the proposed substitute item will necessitate a change in Contract Times,

- 2) whether use of the proposed substitute item in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with Owner for other work on the Project) to adapt the design to the proposed substitute item, and
 - 3) whether incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty.
- c. will identify:
- 1) all variations of the proposed substitute item from that specified, and
 - 2) available engineering, sales, maintenance, repair, and replacement services.
- d. shall contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including but not limited to changes in Contract Price, shared savings, costs of redesign, and claims of other contractors affected by any resulting change.
- B. *Engineer's Evaluation and Determination:* Engineer will be allowed a reasonable time to evaluate each substitute request, and to obtain comments and direction from Owner. Engineer may require Contractor to furnish additional data about the proposed substitute item. Engineer will be the sole judge of acceptability. No substitute will be ordered, furnished, installed, or utilized until Engineer's review is complete and Engineer determines that the proposed item is an acceptable substitute. Engineer's determination will be evidenced by a Field Order or a proposed Change Order accounting for the substitution itself and all related impacts, including changes in Contract Price or Contract Times. Engineer will advise Contractor in writing of any negative determination.
- C. *Special Guarantee:* Owner may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitute.
- D. *Reimbursement of Engineer's Cost:* Engineer will record Engineer's costs in evaluating a substitute proposed or submitted by Contractor. Whether or not Engineer approves a substitute so proposed or submitted by Contractor, Contractor shall reimburse Owner for the reasonable charges of Engineer for evaluating each such proposed substitute. Contractor shall also reimburse Owner for the reasonable charges of Engineer for making changes in the Contract Documents (or in the provisions of any other direct contract with Owner) resulting from the acceptance of each proposed substitute.
- E. *Contractor's Expense:* Contractor shall provide all data in support of any proposed substitute at Contractor's expense.
- F. *Effect of Engineer's Determination:* If Engineer approves the substitution request, Contractor shall execute the proposed Change Order and proceed with the substitution. The Engineer's denial of a substitution request shall be final and binding, and may not be reversed through an appeal under any provision of the Contract Documents. Contractor may challenge the scope of reimbursement costs imposed under Paragraph 7.05.D, by timely submittal of a Change Proposal.
- 7.06 *Concerning Subcontractors, Suppliers, and Others*
- A. Contractor may retain Subcontractors and Suppliers for the performance of parts of the Work. Such Subcontractors and Suppliers must be acceptable to Owner.
- B. Contractor shall retain specific Subcontractors, Suppliers, or other individuals or entities for the performance of designated parts of the Work if required by the Contract to do so.
- C. Subsequent to the submittal of Contractor's Bid or final negotiation of the terms of the Contract, Owner may not require Contractor to retain any Subcontractor, Supplier, or other individual or entity to furnish or perform any of the Work against which Contractor has reasonable objection.
- D. Prior to entry into any binding subcontract or purchase order, Contractor shall submit to Owner the identity of the proposed Subcontractor or Supplier (unless Owner has already deemed such proposed Subcontractor or Supplier acceptable, during the bidding process or otherwise). Such proposed Subcontractor or Supplier shall be deemed

acceptable to Owner unless Owner raises a substantive, reasonable objection within five days.

- E. Owner may require the replacement of any Subcontractor, Supplier, or other individual or entity retained by Contractor to perform any part of the Work. Owner also may require Contractor to retain specific replacements; provided, however, that Owner may not require a replacement to which Contractor has a reasonable objection. If Contractor has submitted the identity of certain Subcontractors, Suppliers, or other individuals or entities for acceptance by Owner, and Owner has accepted it (either in writing or by failing to make written objection thereto), then Owner may subsequently revoke the acceptance of any such Subcontractor, Supplier, or other individual or entity so identified solely on the basis of substantive, reasonable objection after due investigation. Contractor shall submit an acceptable replacement for the rejected Subcontractor, Supplier, or other individual or entity.
- F. If Owner requires the replacement of any Subcontractor, Supplier, or other individual or entity retained by Contractor to perform any part of the Work, then Contractor shall be entitled to an adjustment in Contract Price or Contract Times, or both, with respect to the replacement; and Contractor shall initiate a Change Proposal for such adjustment within 30 days of Owner's requirement of replacement.
- G. No acceptance by Owner of any such Subcontractor, Supplier, or other individual or entity, whether initially or as a replacement, shall constitute a waiver of the right of Owner to the completion of the Work in accordance with the Contract Documents.
- H. On a monthly basis Contractor shall submit to Engineer a complete list of all Subcontractors and Suppliers having a direct contract with Contractor, and of all other Subcontractors and Suppliers known to Contractor at the time of submittal.
- I. Contractor shall be fully responsible to Owner and Engineer for all acts and omissions of the Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work just as Contractor is responsible for Contractor's own acts and omissions.
- J. Contractor shall be solely responsible for scheduling and coordinating the work of

Subcontractors, Suppliers, and all other individuals or entities performing or furnishing any of the Work.

- K. Contractor shall restrict all Subcontractors, Suppliers, and such other individuals or entities performing or furnishing any of the Work from communicating with Engineer or Owner, except through Contractor or in case of an emergency, or as otherwise expressly allowed herein.
- L. The divisions and sections of the Specifications and the identifications of any Drawings shall not control Contractor in dividing the Work among Subcontractors or Suppliers or delineating the Work to be performed by any specific trade.
- M. All Work performed for Contractor by a Subcontractor or Supplier shall be pursuant to an appropriate contractual agreement that specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of Owner and Engineer.
- N. Owner may furnish to any Subcontractor or Supplier, to the extent practicable, information about amounts paid to Contractor on account of Work performed for Contractor by the particular Subcontractor or Supplier.
- O. Nothing in the Contract Documents:
 - 1. shall create for the benefit of any such Subcontractor, Supplier, or other individual or entity any contractual relationship between Owner or Engineer and any such Subcontractor, Supplier, or other individual or entity; nor
 - 2. shall create any obligation on the part of Owner or Engineer to pay or to see to the payment of any money due any such Subcontractor, Supplier, or other individual or entity except as may otherwise be required by Laws and Regulations.

7.07 *Patent Fees and Royalties*

- A. Contractor shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product, or device is specified in the Contract Documents for use in the performance of the Work and if, to the actual

knowledge of Owner or Engineer, its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by Owner in the Contract Documents.

- B. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, and its officers, directors, members, partners, employees, agents, consultants, and subcontractors from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device specified in the Contract Documents, but not identified as being subject to payment of any license fee or royalty to others required by patent rights or copyrights.
- C. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device not specified in the Contract Documents.

7.08 *Permits*

- A. Unless otherwise provided in the Contract Documents, Contractor shall obtain and pay for all construction permits and licenses. Owner shall assist Contractor, when necessary, in obtaining such permits and licenses. Contractor shall pay all governmental charges and inspection fees necessary for the prosecution of the Work which are applicable at the time of the submission of Contractor's Bid (or when Contractor became bound under a negotiated contract). Owner shall pay all charges of

utility owners for connections for providing permanent service to the Work.

7.09 *Taxes*

- A. Contractor shall pay all sales, consumer, use, and other similar taxes required to be paid by Contractor in accordance with the Laws and Regulations of the place of the Project which are applicable during the performance of the Work.

7.10 *Laws and Regulations*

- A. Contractor shall give all notices required by and shall comply with all Laws and Regulations applicable to the performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, neither Owner nor Engineer shall be responsible for monitoring Contractor's compliance with any Laws or Regulations.
- B. If Contractor performs any Work or takes any other action knowing or having reason to know that it is contrary to Laws or Regulations, Contractor shall bear all resulting costs and losses, and shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such Work or other action. It shall not be Contractor's responsibility to make certain that the Work described in the Contract Documents is in accordance with Laws and Regulations, but this shall not relieve Contractor of Contractor's obligations under Paragraph 3.03.
- C. Owner or Contractor may give notice to the other party of any changes after the submission of Contractor's Bid (or after the date when Contractor became bound under a negotiated contract) in Laws or Regulations having an effect on the cost or time of performance of the Work, including but not limited to changes in Laws or Regulations having an effect on procuring permits and on sales, use, value-added, consumption, and other similar taxes. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times resulting from such changes, then within 30 days of

such notice Contractor may submit a Change Proposal, or Owner may initiate a Claim.

7.11 *Record Documents*

- A. Contractor shall maintain in a safe place at the Site one printed record copy of all Drawings, Specifications, Addenda, Change Orders, Work Change Directives, Field Orders, written interpretations and clarifications, and approved Shop Drawings. Contractor shall keep such record documents in good order and annotate them to show changes made during construction. These record documents, together with all approved Samples, will be available to Engineer for reference. Upon completion of the Work, Contractor shall deliver these record documents to Engineer.

7.12 *Safety and Protection*

- A. Contractor shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. Such responsibility does not relieve Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with applicable safety Laws and Regulations. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury, or loss to:
 - 1. all persons on the Site or who may be affected by the Work;
 - 2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and
 - 3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, other work in progress, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.
- B. Contractor shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection. Contractor shall notify Owner; the owners of adjacent property, Underground Facilities, and other utilities; and other contractors and utility owners performing work at or adjacent to the Site, when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and

replacement of their property or work in progress.

- C. Contractor shall comply with the applicable requirements of Owner's safety programs, if any. The Supplementary Conditions identify any Owner's safety programs that are applicable to the Work.
- D. Contractor shall inform Owner and Engineer of the specific requirements of Contractor's safety program with which Owner's and Engineer's employees and representatives must comply while at the Site.
- E. All damage, injury, or loss to any property referred to in Paragraph 7.12.A.2 or 7.12.A.3 caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by Contractor at its expense (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of Owner or Engineer or anyone employed by any of them, or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of Contractor or any Subcontractor, Supplier, or other individual or entity directly or indirectly employed by any of them).
- F. Contractor's duties and responsibilities for safety and protection shall continue until such time as all the Work is completed and Engineer has issued a notice to Owner and Contractor in accordance with Paragraph 15.06.B that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).
- G. Contractor's duties and responsibilities for safety and protection shall resume whenever Contractor or any Subcontractor or Supplier returns to the Site to fulfill warranty or correction obligations, or to conduct other tasks arising from the Contract Documents.

7.13 *Safety Representative*

- A. Contractor shall designate a qualified and experienced safety representative at the Site whose duties and responsibilities shall be the prevention of accidents and the maintaining and supervising of safety precautions and programs.

7.14 *Hazard Communication Programs*

- A. Contractor shall be responsible for coordinating any exchange of material safety data sheets or other hazard communication information required to be made available to or exchanged between or among employers at the Site in accordance with Laws or Regulations.

7.15 *Emergencies*

- A. In emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, Contractor is obligated to act to prevent threatened damage, injury, or loss. Contractor shall give Engineer prompt written notice if Contractor believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby or are required as a result thereof. If Engineer determines that a change in the Contract Documents is required because of the action taken by Contractor in response to such an emergency, a Work Change Directive or Change Order will be issued.

7.16 *Shop Drawings, Samples, and Other Submittals*

- A. Shop Drawing and Sample Submittal Requirements:

1. Before submitting a Shop Drawing or Sample, Contractor shall have:
 - a. reviewed and coordinated the Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents;
 - b. determined and verified all field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information with respect thereto;
 - c. determined and verified the suitability of all materials and equipment offered with respect to the indicated application, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work; and
 - d. determined and verified all information relative to Contractor's responsibilities for means, methods, techniques,

sequences, and procedures of construction, and safety precautions and programs incident thereto.

2. Each submittal shall bear a stamp or specific written certification that Contractor has satisfied Contractor's obligations under the Contract Documents with respect to Contractor's review of that submittal, and that Contractor approves the submittal.
3. With each submittal, Contractor shall give Engineer specific written notice of any variations that the Shop Drawing or Sample may have from the requirements of the Contract Documents. This notice shall be set forth in a written communication separate from the Shop Drawings or Sample submittal; and, in addition, in the case of Shop Drawings by a specific notation made on each Shop Drawing submitted to Engineer for review and approval of each such variation.

- B. *Submittal Procedures for Shop Drawings and Samples:* Contractor shall submit Shop Drawings and Samples to Engineer for review and approval in accordance with the accepted Schedule of Submittals. Each submittal will be identified as Engineer may require.

1. Shop Drawings:
 - a. Contractor shall submit the number of copies required in the Specifications.
 - b. Data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show Engineer the services, materials, and equipment Contractor proposes to provide and to enable Engineer to review the information for the limited purposes required by Paragraph 7.16.D.
2. Samples:
 - a. Contractor shall submit the number of Samples required in the Specifications.
 - b. Contractor shall clearly identify each Sample as to material, Supplier, pertinent data such as catalog numbers, the use for which

intended and other data as Engineer may require to enable Engineer to review the submittal for the limited purposes required by Paragraph 7.16.D.

3. Where a Shop Drawing or Sample is required by the Contract Documents or the Schedule of Submittals, any related Work performed prior to Engineer's review and approval of the pertinent submittal will be at the sole expense and responsibility of Contractor.
- C. *Other Submittals:* Contractor shall submit other submittals to Engineer in accordance with the accepted Schedule of Submittals, and pursuant to the applicable terms of the Specifications.
- D. *Engineer's Review:*
1. Engineer will provide timely review of Shop Drawings and Samples in accordance with the Schedule of Submittals acceptable to Engineer. Engineer's review and approval will be only to determine if the items covered by the submittals will, after installation or incorporation in the Work, conform to the information given in the Contract Documents and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.
 2. Engineer's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction or to safety precautions or programs incident thereto.
 3. Engineer's review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.
 4. Engineer's review and approval of a Shop Drawing or Sample shall not relieve Contractor from responsibility for any variation from the requirements of the Contract Documents unless Contractor has complied with the requirements of Paragraph 7.16.A.3 and Engineer has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample. Engineer will document any such approved variation from the requirements of the Contract Documents in a Field Order.
5. Engineer's review and approval of a Shop Drawing or Sample shall not relieve Contractor from responsibility for complying with the requirements of Paragraph 7.16.A and B.
 6. Engineer's review and approval of a Shop Drawing or Sample, or of a variation from the requirements of the Contract Documents, shall not, under any circumstances, change the Contract Times or Contract Price, unless such changes are included in a Change Order.
 7. Neither Engineer's receipt, review, acceptance or approval of a Shop Drawing, Sample, or other submittal shall result in such item becoming a Contract Document.
 8. Contractor shall perform the Work in compliance with the requirements and commitments set forth in approved Shop Drawings and Samples, subject to the provisions of Paragraph 7.16.D.4.
- E. *Resubmittal Procedures:*
1. Contractor shall make corrections required by Engineer and shall return the required number of corrected copies of Shop Drawings and submit, as required, new Samples for review and approval. Contractor shall direct specific attention in writing to revisions other than the corrections called for by Engineer on previous submittals.
 2. Contractor shall furnish required submittals with sufficient information and accuracy to obtain required approval of an item with no more than three submittals. Engineer will record Engineer's time for reviewing a fourth or subsequent submittal of a Shop Drawings, sample, or other item requiring approval, and Contractor shall be responsible for Engineer's charges to Owner for such time. Owner may impose a set-off against payments due to Contractor to secure reimbursement for such charges.
 3. If Contractor requests a change of a previously approved submittal item, Contractor shall be responsible for Engineer's charges to Owner for its review time, and Owner may impose a set-off against payments due to

Contractor to secure reimbursement for such charges, unless the need for such change is beyond the control of Contractor.

7.17 *Contractor's General Warranty and Guarantee*

- A. Contractor warrants and guarantees to Owner that all Work will be in accordance with the Contract Documents and will not be defective. Engineer and its officers, directors, members, partners, employees, agents, consultants, and subcontractors shall be entitled to rely on Contractor's warranty and guarantee.
- B. Contractor's warranty and guarantee hereunder excludes defects or damage caused by:
 - 1. abuse, modification, or improper maintenance or operation by persons other than Contractor, Subcontractors, Suppliers, or any other individual or entity for whom Contractor is responsible; or
 - 2. normal wear and tear under normal usage.
- C. Contractor's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents or a release of Contractor's obligation to perform the Work in accordance with the Contract Documents:
 - 1. observations by Engineer;
 - 2. recommendation by Engineer or payment by Owner of any progress or final payment;
 - 3. the issuance of a certificate of Substantial Completion by Engineer or any payment related thereto by Owner;
 - 4. use or occupancy of the Work or any part thereof by Owner;
 - 5. any review and approval of a Shop Drawing or Sample submittal;
 - 6. the issuance of a notice of acceptability by Engineer;
 - 7. any inspection, test, or approval by others; or
 - 8. any correction of defective Work by Owner.
- D. If the Contract requires the Contractor to accept the assignment of a contract entered

into by Owner, then the specific warranties, guarantees, and correction obligations contained in the assigned contract shall govern with respect to Contractor's performance obligations to Owner for the Work described in the assigned contract.

7.18 *Indemnification*

- A. To the fullest extent permitted by Laws and Regulations, and in addition to any other obligations of Contractor under the Contract or otherwise, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the performance of the Work, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom but only to the extent caused by any negligent act or omission of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work or anyone for whose acts any of them may be liable.
- B. In any and all claims against Owner or Engineer or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors by any employee (or the survivor or personal representative of such employee) of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under Paragraph 7.18.A shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Contractor or any such Subcontractor, Supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.
- C. The indemnification obligations of Contractor under Paragraph 7.18.A shall not extend to the liability of Engineer and Engineer's officers, directors, members, partners, employees,

agents, consultants and subcontractors arising out of:

1. the preparation or approval of, or the failure to prepare or approve maps, Drawings, opinions, reports, surveys, Change Orders, designs, or Specifications; or
2. giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage.

7.19 *Delegation of Professional Design Services*

- A. Contractor will not be required to provide professional design services unless such services are specifically required by the Contract Documents for a portion of the Work or unless such services are required to carry out Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. Contractor shall not be required to provide professional services in violation of applicable Laws and Regulations.
- B. If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of Contractor by the Contract Documents, Owner and Engineer will specify all performance and design criteria that such services must satisfy. Contractor shall cause such services or certifications to be provided by a properly licensed professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to Engineer.
- C. Owner and Engineer shall be entitled to rely upon the adequacy, accuracy, and completeness of the services, certifications, or approvals performed by such design professionals, provided Owner and Engineer have specified to Contractor all performance and design criteria that such services must satisfy.
- D. Pursuant to this paragraph, Engineer's review and approval of design calculations and design drawings will be only for the limited purpose of checking for conformance with performance and design criteria given and the design concept expressed in the Contract

Documents. Engineer's review and approval of Shop Drawings and other submittals (except design calculations and design drawings) will be only for the purpose stated in Paragraph 7.16.D.1.

- E. Contractor shall not be responsible for the adequacy of the performance or design criteria specified by Owner or Engineer.

ARTICLE 8 – OTHER WORK AT THE SITE

8.01 *Other Work*

- A. In addition to and apart from the Work under the Contract Documents, the Owner may perform other work at or adjacent to the Site. Such other work may be performed by Owner's employees, or through contracts between the Owner and third parties. Owner may also arrange to have third-party utility owners perform work on their utilities and facilities at or adjacent to the Site.
- B. If Owner performs other work at or adjacent to the Site with Owner's employees, or through contracts for such other work, then Owner shall give Contractor written notice thereof prior to starting any such other work. If Owner has advance information regarding the start of any utility work at or adjacent to the Site, Owner shall provide such information to Contractor.
- C. Contractor shall afford each other contractor that performs such other work, each utility owner performing other work, and Owner, if Owner is performing other work with Owner's employees, proper and safe access to the Site, and provide a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work. Contractor shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. Contractor shall not endanger any work of others by cutting, excavating, or otherwise altering such work; provided, however, that Contractor may cut or alter others' work with the written consent of Engineer and the others whose work will be affected.
- D. If the proper execution or results of any part of Contractor's Work depends upon work performed by others under this Article 8, Contractor shall inspect such other work and promptly report to Engineer in writing any delays, defects, or deficiencies in such other

work that render it unavailable or unsuitable for the proper execution and results of Contractor's Work. Contractor's failure to so report will constitute an acceptance of such other work as fit and proper for integration with Contractor's Work except for latent defects and deficiencies in such other work.

8.02 *Coordination*

- A. If Owner intends to contract with others for the performance of other work at or adjacent to the Site, to perform other work at or adjacent to the Site with Owner's employees, or to arrange to have utility owners perform work at or adjacent to the Site, the following will be set forth in the Supplementary Conditions or provided to Contractor prior to the start of any such other work:
 - 1. the identity of the individual or entity that will have authority and responsibility for coordination of the activities among the various contractors;
 - 2. an itemization of the specific matters to be covered by such authority and responsibility; and
 - 3. the extent of such authority and responsibilities.
- B. Unless otherwise provided in the Supplementary Conditions, Owner shall have sole authority and responsibility for such coordination.

8.03 *Legal Relationships*

- A. If, in the course of performing other work at or adjacent to the Site for Owner, the Owner's employees, any other contractor working for Owner, or any utility owner causes damage to the Work or to the property of Contractor or its Subcontractors, or delays, disrupts, interferes with, or increases the scope or cost of the performance of the Work, through actions or inaction, then Contractor shall be entitled to an equitable adjustment in the Contract Price or the Contract Times, or both. Contractor must submit any Change Proposal seeking an equitable adjustment in the Contract Price or the Contract Times under this paragraph within 30 days of the damaging, delaying, disrupting, or interfering event. The entitlement to, and extent of, any such equitable adjustment shall take into account information (if any) regarding such other work that was provided to Contractor in the Contract Documents prior to the submittal of the Bid or the final negotiation of the terms of the Contract. When applicable, any such

equitable adjustment in Contract Price shall be conditioned on Contractor assigning to Owner all Contractor's rights against such other contractor or utility owner with respect to the damage, delay, disruption, or interference that is the subject of the adjustment. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times.

- B. Contractor shall take reasonable and customary measures to avoid damaging, delaying, disrupting, or interfering with the work of Owner, any other contractor, or any utility owner performing other work at or adjacent to the Site. If Contractor fails to take such measures and as a result damages, delays, disrupts, or interferes with the work of any such other contractor or utility owner, then Owner may impose a set-off against payments due to Contractor, and assign to such other contractor or utility owner the Owner's contractual rights against Contractor with respect to the breach of the obligations set forth in this paragraph.
- C. When Owner is performing other work at or adjacent to the Site with Owner's employees, Contractor shall be liable to Owner for damage to such other work, and for the reasonable direct delay, disruption, and interference costs incurred by Owner as a result of Contractor's failure to take reasonable and customary measures with respect to Owner's other work. In response to such damage, delay, disruption, or interference, Owner may impose a set-off against payments due to Contractor.
- D. If Contractor damages, delays, disrupts, or interferes with the work of any other contractor, or any utility owner performing other work at or adjacent to the Site, through Contractor's failure to take reasonable and customary measures to avoid such impacts, or if any claim arising out of Contractor's actions, inactions, or negligence in performance of the Work at or adjacent to the Site is made by any such other contractor or utility owner against Contractor, Owner, or Engineer, then Contractor shall (1) promptly attempt to settle the claim as to all parties through negotiations with such other contractor or utility owner, or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law, and (2) indemnify and hold harmless Owner and Engineer, and the officers, directors,

members, partners, employees, agents, consultants and subcontractors of each and any of them from and against any such claims, and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such damage, delay, disruption, or interference.

ARTICLE 9 – OWNER’S RESPONSIBILITIES

9.01 *Communications to Contractor*

- A. Except as otherwise provided in these General Conditions, Owner shall issue all communications to Contractor through Engineer.

9.02 *Replacement of Engineer*

- A. Owner may at its discretion appoint an engineer to replace Engineer, provided Contractor makes no reasonable objection to the replacement engineer. The replacement engineer’s status under the Contract Documents shall be that of the former Engineer.

9.03 *Furnish Data*

- A. Owner shall promptly furnish the data required of Owner under the Contract Documents.

9.04 *Pay When Due*

- A. Owner shall make payments to Contractor when they are due as provided in the Agreement.

9.05 *Lands and Easements; Reports, Tests, and Drawings*

- A. Owner’s duties with respect to providing lands and easements are set forth in Paragraph 5.01.
- B. Owner’s duties with respect to providing engineering surveys to establish reference points are set forth in Paragraph 4.03.
- C. Article 5 refers to Owner’s identifying and making available to Contractor copies of reports of explorations and tests of conditions at the Site, and drawings of physical conditions relating to existing surface or subsurface structures at the Site.

9.06 *Insurance*

- A. Owner’s responsibilities, if any, with respect to purchasing and maintaining liability and property insurance are set forth in Article 6.

9.07 *Change Orders*

- A. Owner’s responsibilities with respect to Change Orders are set forth in Article 11.

9.08 *Inspections, Tests, and Approvals*

- A. Owner’s responsibility with respect to certain inspections, tests, and approvals is set forth in Paragraph 14.02.B.

9.09 *Limitations on Owner’s Responsibilities*

- A. The Owner shall not supervise, direct, or have control or authority over, nor be responsible for, Contractor’s means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Owner will not be responsible for Contractor’s failure to perform the Work in accordance with the Contract Documents.

9.10 *Undisclosed Hazardous Environmental Condition*

- A. Owner’s responsibility in respect to an undisclosed Hazardous Environmental Condition is set forth in Paragraph 5.06.

9.11 *Evidence of Financial Arrangements*

- A. Upon request of Contractor, Owner shall furnish Contractor reasonable evidence that financial arrangements have been made to satisfy Owner’s obligations under the Contract Documents (including obligations under proposed changes in the Work).

9.12 *Safety Programs*

- A. While at the Site, Owner’s employees and representatives shall comply with the specific applicable requirements of Contractor’s safety programs of which Owner has been informed.
- B. Owner shall furnish copies of any applicable Owner safety programs to Contractor.

ARTICLE 10 – ENGINEER’S STATUS DURING CONSTRUCTION

10.01 *Owner’s Representative*

- A. Engineer will be Owner’s representative during the construction period. The duties and responsibilities and the limitations of authority of Engineer as Owner’s representative during construction are set forth in the Contract.

10.02 *Visits to Site*

- A. Engineer will make visits to the Site at intervals appropriate to the various stages of construction as Engineer deems necessary in order to observe as an experienced and qualified design professional the progress that has been made and the quality of the various aspects of Contractor's executed Work. Based on information obtained during such visits and observations, Engineer, for the benefit of Owner, will determine, in general, if the Work is proceeding in accordance with the Contract Documents. Engineer will not be required to make exhaustive or continuous inspections on the Site to check the quality or quantity of the Work. Engineer's efforts will be directed toward providing for Owner a greater degree of confidence that the completed Work will conform generally to the Contract Documents. On the basis of such visits and observations, Engineer will keep Owner informed of the progress of the Work and will endeavor to guard Owner against defective Work.
- B. Engineer's visits and observations are subject to all the limitations on Engineer's authority and responsibility set forth in Paragraph 10.08. Particularly, but without limitation, during or as a result of Engineer's visits or observations of Contractor's Work, Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work.

10.03 *Project Representative*

- A. If Owner and Engineer have agreed that Engineer will furnish a Resident Project Representative to represent Engineer at the Site and assist Engineer in observing the progress and quality of the Work, then the authority and responsibilities of any such Resident Project Representative will be as provided in the Supplementary Conditions, and limitations on the responsibilities thereof will be as provided in Paragraph 10.08. If Owner designates another representative or agent to represent Owner at the Site who is not Engineer's consultant, agent, or employee, the responsibilities and authority and limitations thereon of such other individual or entity will be as provided in the Supplementary Conditions.

10.04 *Rejecting Defective Work*

- A. Engineer has the authority to reject Work in accordance with Article 14.

10.05 *Shop Drawings, Change Orders and Payments*

- A. Engineer's authority, and limitations thereof, as to Shop Drawings and Samples, are set forth in Paragraph 7.16.
- B. Engineer's authority, and limitations thereof, as to design calculations and design drawings submitted in response to a delegation of professional design services, if any, are set forth in Paragraph 7.19.
- C. Engineer's authority as to Change Orders is set forth in Article 11.
- D. Engineer's authority as to Applications for Payment is set forth in Article 15.

10.06 *Determinations for Unit Price Work*

- A. Engineer will determine the actual quantities and classifications of Unit Price Work performed by Contractor as set forth in Paragraph 13.03.

10.07 *Decisions on Requirements of Contract Documents and Acceptability of Work*

- A. Engineer will render decisions regarding the requirements of the Contract Documents, and judge the acceptability of the Work, pursuant to the specific procedures set forth herein for initial interpretations, Change Proposals, and acceptance of the Work. In rendering such decisions and judgments, Engineer will not show partiality to Owner or Contractor, and will not be liable to Owner, Contractor, or others in connection with any proceedings, interpretations, decisions, or judgments conducted or rendered in good faith.

10.08 *Limitations on Engineer's Authority and Responsibilities*

- A. Neither Engineer's authority or responsibility under this Article 10 or under any other provision of the Contract, nor any decision made by Engineer in good faith either to exercise or not exercise such authority or responsibility or the undertaking, exercise, or performance of any authority or responsibility by Engineer, shall create, impose, or give rise to any duty in contract, tort, or otherwise owed by Engineer to Contractor, any Subcontractor, any Supplier, any other individual or entity, or to any surety for or employee or agent of any of them.

- B. Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Engineer will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.
- C. Engineer will not be responsible for the acts or omissions of Contractor or of any Subcontractor, any Supplier, or of any other individual or entity performing any of the Work.
- D. Engineer's review of the final Application for Payment and accompanying documentation and all maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, tests and approvals, and other documentation required to be delivered by Paragraph 15.06.A will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests, and approvals, that the results certified indicate compliance with the Contract Documents.
- E. The limitations upon authority and responsibility set forth in this Paragraph 10.08 shall also apply to the Resident Project Representative, if any.

10.09 *Compliance with Safety Program*

- A. While at the Site, Engineer's employees and representatives will comply with the specific applicable requirements of Owner's and Contractor's safety programs (if any) of which Engineer has been informed.

ARTICLE 11 – AMENDING THE CONTRACT DOCUMENTS; CHANGES IN THE WORK

11.01 *Amending and Supplementing Contract Documents*

- A. The Contract Documents may be amended or supplemented by a Change Order, a Work Change Directive, or a Field Order.
 - 1. Change Orders:
 - a. If an amendment or supplement to the Contract Documents includes a change in the Contract Price or the Contract Times, such amendment or supplement must be set forth in a Change Order. A Change Order

also may be used to establish amendments and supplements of the Contract Documents that do not affect the Contract Price or Contract Times.

- b. Owner and Contractor may amend those terms and conditions of the Contract Documents that do not involve (1) the performance or acceptability of the Work, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, without the recommendation of the Engineer. Such an amendment shall be set forth in a Change Order.
2. *Work Change Directives:* A Work Change Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the modification ordered or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order, following negotiations by the parties as to the Work Change Directive's effect, if any, on the Contract Price and Contract Times; or, if negotiations are unsuccessful, by a determination under the terms of the Contract Documents governing adjustments, expressly including Paragraph 11.04 regarding change of Contract Price. Contractor must submit any Change Proposal seeking an adjustment of the Contract Price or the Contract Times, or both, no later than 30 days after the completion of the Work set out in the Work Change Directive. Owner must submit any Claim seeking an adjustment of the Contract Price or the Contract Times, or both, no later than 60 days after issuance of the Work Change Directive.
3. *Field Orders:* Engineer may authorize minor changes in the Work if the changes do not involve an adjustment in the Contract Price or the Contract Times and are compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. Such changes will be accomplished by a Field Order and will be binding on Owner and also on Contractor, which shall perform the Work involved promptly. If Contractor

believes that a Field Order justifies an adjustment in the Contract Price or Contract Times, or both, then before proceeding with the Work at issue, Contractor shall submit a Change Proposal as provided herein.

11.02 *Owner-Authorized Changes in the Work*

- A. Without invalidating the Contract and without notice to any surety, Owner may, at any time or from time to time, order additions, deletions, or revisions in the Work. Such changes shall be supported by Engineer's recommendation, to the extent the change involves the design (as set forth in the Drawings, Specifications, or otherwise), or other engineering or technical matters. Such changes may be accomplished by a Change Order, if Owner and Contractor have agreed as to the effect, if any, of the changes on Contract Times or Contract Price; or by a Work Change Directive. Upon receipt of any such document, Contractor shall promptly proceed with the Work involved; or, in the case of a deletion in the Work, promptly cease construction activities with respect to such deleted Work. Added or revised Work shall be performed under the applicable conditions of the Contract Documents. Nothing in this paragraph shall obligate Contractor to undertake work that Contractor reasonably concludes cannot be performed in a manner consistent with Contractor's safety obligations under the Contract Documents or Laws and Regulations.

11.03 *Unauthorized Changes in the Work*

- A. Contractor shall not be entitled to an increase in the Contract Price or an extension of the Contract Times with respect to any work performed that is not required by the Contract Documents, as amended, modified, or supplemented, except in the case of an emergency as provided in Paragraph 7.15 or in the case of uncovering Work as provided in Paragraph 14.05.

11.04 *Change of Contract Price*

- A. The Contract Price may only be changed by a Change Order. Any Change Proposal for an adjustment in the Contract Price shall comply with the provisions of Paragraph 11.06. Any Claim for an adjustment of Contract Price shall comply with the provisions of Article 12.
- B. An adjustment in the Contract Price will be determined as follows:

1. where the Work involved is covered by unit prices contained in the Contract Documents, then by application of such unit prices to the quantities of the items involved (subject to the provisions of Paragraph 13.03); or
 2. where the Work involved is not covered by unit prices contained in the Contract Documents, then by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with Paragraph 11.04.C.2); or
 3. where the Work involved is not covered by unit prices contained in the Contract Documents and the parties do not reach mutual agreement to a lump sum, then on the basis of the Cost of the Work (determined as provided in Paragraph 13.01) plus a Contractor's fee for overhead and profit (determined as provided in Paragraph 11.04.C).
- C. *Contractor's Fee:* When applicable, the Contractor's fee for overhead and profit shall be determined as follows:
1. a mutually acceptable fixed fee; or
 2. if a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:
 - a. for costs incurred under Paragraphs 13.01.B.1 and 13.01.B.2, the Contractor's fee shall be 15 percent;
 - b. for costs incurred under Paragraph 13.01.B.3, the Contractor's fee shall be five percent;
 - c. where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of Paragraphs 11.01.C.2.a and 11.01.C.2.b is that the Contractor's fee shall be based on: (1) a fee of 15 percent of the costs incurred under Paragraphs 13.01.A.1 and 13.01.A.2 by the Subcontractor that actually performs the Work, at whatever tier, and (2) with respect to Contractor itself and to any Subcontractors of a tier higher than that of the Subcontractor that actually performs the Work, a fee of five percent of the amount (fee

plus underlying costs incurred) attributable to the next lower tier Subcontractor; provided, however, that for any such subcontracted work the maximum total fee to be paid by Owner shall be no greater than 27 percent of the costs incurred by the Subcontractor that actually performs the work;

- d. no fee shall be payable on the basis of costs itemized under Paragraphs 13.01.B.4, 13.01.B.5, and 13.01.C;
- e. the amount of credit to be allowed by Contractor to Owner for any change which results in a net decrease in cost will be the amount of the actual net decrease in cost plus a deduction in Contractor's fee by an amount equal to five percent of such net decrease; and
- f. when both additions and credits are involved in any one change, the adjustment in Contractor's fee shall be computed on the basis of the net change in accordance with Paragraphs 11.04.C.2.a through 11.04.C.2.e, inclusive.

11.05 *Change of Contract Times*

- A. The Contract Times may only be changed by a Change Order. Any Change Proposal for an adjustment in the Contract Times shall comply with the provisions of Paragraph 11.06. Any Claim for an adjustment in the Contract Times shall comply with the provisions of Article 12.
- B. An adjustment of the Contract Times shall be subject to the limitations set forth in Paragraph 4.05, concerning delays in Contractor's progress.

11.06 *Change Proposals*

- A. Contractor shall submit a Change Proposal to Engineer to request an adjustment in the Contract Times or Contract Price; appeal an initial decision by Engineer concerning the requirements of the Contract Documents or relating to the acceptability of the Work under the Contract Documents; contest a set-off against payment due; or seek other relief under the Contract. The Change Proposal shall specify any proposed change in Contract Times or Contract Price, or both, or other proposed relief, and explain the reason for the proposed change, with citations to any governing or applicable provisions of the Contract Documents.

1. *Procedures:* Contractor shall submit each Change Proposal to Engineer promptly (but in no event later than 30 days) after the start of the event giving rise thereto, or after such initial decision. The Contractor shall submit supporting data, including the proposed change in Contract Price or Contract Time (if any), to the Engineer and Owner within 15 days after the submittal of the Change Proposal. The supporting data shall be accompanied by a written statement that the supporting data are accurate and complete, and that any requested time or price adjustment is the entire adjustment to which Contractor believes it is entitled as a result of said event. Engineer will advise Owner regarding the Change Proposal, and consider any comments or response from Owner regarding the Change Proposal.

2. *Engineer's Action:* Engineer will review each Change Proposal and, within 30 days after receipt of the Contractor's supporting data, either deny the Change Proposal in whole, approve it in whole, or deny it in part and approve it in part. Such actions shall be in writing, with a copy provided to Owner and Contractor. If Engineer does not take action on the Change Proposal within 30 days, then either Owner or Contractor may at any time thereafter submit a letter to the other party indicating that as a result of Engineer's inaction the Change Proposal is deemed denied, thereby commencing the time for appeal of the denial under Article 12.

3. *Binding Decision:* Engineer's decision will be final and binding upon Owner and Contractor, unless Owner or Contractor appeals the decision by filing a Claim under Article 12.

B. *Resolution of Certain Change Proposals:* If the Change Proposal does not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters, then Engineer will notify the parties that the Engineer is unable to resolve the Change Proposal. For purposes of further resolution of such a Change Proposal, such notice shall be deemed a denial, and Contractor may choose to seek resolution under the terms of Article 12.

11.07 *Execution of Change Orders*

- A. Owner and Contractor shall execute appropriate Change Orders covering:
1. changes in the Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a Work Change Directive;
 2. changes in Contract Price resulting from an Owner set-off, unless Contractor has duly contested such set-off;
 3. changes in the Work which are: (a) ordered by Owner pursuant to Paragraph 11.02, (b) required because of Owner's acceptance of defective Work under Paragraph 14.04 or Owner's correction of defective Work under Paragraph 14.07, or (c) agreed to by the parties, subject to the need for Engineer's recommendation if the change in the Work involves the design (as set forth in the Drawings, Specifications, or otherwise), or other engineering or technical matters; and
 4. changes in the Contract Price or Contract Times, or other changes, which embody the substance of any final and binding results under Paragraph 11.06, or Article 12.
- B. If Owner or Contractor refuses to execute a Change Order that is required to be executed under the terms of this Paragraph 11.07, it shall be deemed to be of full force and effect, as if fully executed.

11.08 *Notification to Surety*

- A. If the provisions of any bond require notice to be given to a surety of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Times), the giving of any such notice will be Contractor's responsibility. The amount of each applicable bond will be adjusted to reflect the effect of any such change.

ARTICLE 12 – CLAIMS

12.01 *Claims*

- A. *Claims Process:* The following disputes between Owner and Contractor shall be

submitted to the Claims process set forth in this Article:

1. Appeals by Owner or Contractor of Engineer's decisions regarding Change Proposals;
 2. Owner demands for adjustments in the Contract Price or Contract Times, or other relief under the Contract Documents; and
 3. Disputes that Engineer has been unable to address because they do not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters.
- B. *Submittal of Claim:* The party submitting a Claim shall deliver it directly to the other party to the Contract promptly (but in no event later than 30 days) after the start of the event giving rise thereto; in the case of appeals regarding Change Proposals within 30 days of the decision under appeal. The party submitting the Claim shall also furnish a copy to the Engineer, for its information only. The responsibility to substantiate a Claim shall rest with the party making the Claim. In the case of a Claim by Contractor seeking an increase in the Contract Times or Contract Price, or both, Contractor shall certify that the Claim is made in good faith, that the supporting data are accurate and complete, and that to the best of Contractor's knowledge and belief the amount of time or money requested accurately reflects the full amount to which Contractor is entitled.
- C. *Review and Resolution:* The party receiving a Claim shall review it thoroughly, giving full consideration to its merits. The two parties shall seek to resolve the Claim through the exchange of information and direct negotiations. The parties may extend the time for resolving the Claim by mutual agreement. All actions taken on a Claim shall be stated in writing and submitted to the other party, with a copy to Engineer.
- D. *Mediation:*
1. At any time after initiation of a Claim, Owner and Contractor may mutually agree to mediation of the underlying dispute. The agreement to mediate shall stay the Claim submittal and response process.
 2. If Owner and Contractor agree to mediation, then after 60 days from such

agreement, either Owner or Contractor may unilaterally terminate the mediation process, and the Claim submittal and decision process shall resume as of the date of the termination. If the mediation proceeds but is unsuccessful in resolving the dispute, the Claim submittal and decision process shall resume as of the date of the conclusion of the mediation, as determined by the mediator.

3. Owner and Contractor shall each pay one-half of the mediator's fees and costs.
- E. *Partial Approval:* If the party receiving a Claim approves the Claim in part and denies it in part, such action shall be final and binding unless within 30 days of such action the other party invokes the procedure set forth in Article 17 for final resolution of disputes.
- F. *Denial of Claim:* If efforts to resolve a Claim are not successful, the party receiving the Claim may deny it by giving written notice of denial to the other party. If the receiving party does not take action on the Claim within 90 days, then either Owner or Contractor may at any time thereafter submit a letter to the other party indicating that as a result of the inaction, the Claim is deemed denied, thereby commencing the time for appeal of the denial. A denial of the Claim shall be final and binding unless within 30 days of the denial the other party invokes the procedure set forth in Article 17 for the final resolution of disputes.
- G. *Final and Binding Results:* If the parties reach a mutual agreement regarding a Claim, whether through approval of the Claim, direct negotiations, mediation, or otherwise; or if a Claim is approved in part and denied in part, or denied in full, and such actions become final and binding; then the results of the agreement or action on the Claim shall be incorporated in a Change Order to the extent they affect the Contract, including the Work, the Contract Times, or the Contract Price.

ARTICLE 13 – COST OF THE WORK; ALLOWANCES; UNIT PRICE WORK

13.01 *Cost of the Work*

- A. *Purposes for Determination of Cost of the Work:* The term Cost of the Work means the sum of all costs necessary for the proper performance of the Work at issue, as further defined below. The provisions of this Paragraph 13.01 are used for two distinct purposes:

1. To determine Cost of the Work when Cost of the Work is a component of the Contract Price, under cost-plus-fee, time-and-materials, or other cost-based terms; or
 2. To determine the value of a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price. When the value of any such adjustment is determined on the basis of Cost of the Work, Contractor is entitled only to those additional or incremental costs required because of the change in the Work or because of the event giving rise to the adjustment.
- B. *Costs Included:* Except as otherwise may be agreed to in writing by Owner, costs included in the Cost of the Work shall be in amounts no higher than those prevailing in the locality of the Project, shall not include any of the costs itemized in Paragraph 13.01.C, and shall include only the following items:
1. Payroll costs for employees in the direct employ of Contractor in the performance of the Work under schedules of job classifications agreed upon by Owner and Contractor. Such employees shall include, without limitation, superintendents, foremen, and other personnel employed full time on the Work. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits, which shall include social security contributions, unemployment, excise, and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, and vacation and holiday pay applicable thereto. The expenses of performing Work outside of regular working hours, on Saturday, Sunday, or legal holidays, shall be included in the above to the extent authorized by Owner.
 2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts shall accrue to Contractor unless Owner deposits funds with Contractor with which to make payments, in which case

the cash discounts shall accrue to Owner. All trade discounts, rebates, and refunds and returns from sale of surplus materials and equipment shall accrue to Owner, and Contractor shall make provisions so that they may be obtained.

3. Payments made by Contractor to Subcontractors for Work performed by Subcontractors. If required by Owner, Contractor shall obtain competitive bids from subcontractors acceptable to Owner and Contractor and shall deliver such bids to Owner, who will then determine, with the advice of Engineer, which bids, if any, will be acceptable. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee shall be determined in the same manner as Contractor's Cost of the Work and fee as provided in this Paragraph 13.01.
4. Costs of special consultants (including but not limited to engineers, architects, testing laboratories, surveyors, attorneys, and accountants) employed for services specifically related to the Work.
5. Supplemental costs including the following:
 - a. The proportion of necessary transportation, travel, and subsistence expenses of Contractor's employees incurred in discharge of duties connected with the Work.
 - b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office, and temporary facilities at the Site, and hand tools not owned by the workers, which are consumed in the performance of the Work, and cost, less market value, of such items used but not consumed which remain the property of Contractor.
 - c. Rentals of all construction equipment and machinery, and the parts thereof, whether rented from Contractor or others in accordance with rental agreements approved by Owner with the advice of Engineer, and the costs of transportation, loading, unloading, assembly, dismantling, and removal thereof. All such costs shall be in accordance with the terms of said rental agreements. The rental of any such equipment, machinery, or parts shall cease when the use thereof is no longer necessary for the Work.
 - d. Sales, consumer, use, and other similar taxes related to the Work, and for which Contractor is liable, as imposed by Laws and Regulations.
 - e. Deposits lost for causes other than negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.
 - f. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by Contractor in connection with the performance of the Work (except losses and damages within the deductible amounts of property insurance established in accordance with Paragraph 6.05), provided such losses and damages have resulted from causes other than the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of Owner. No such losses, damages, and expenses shall be included in the Cost of the Work for the purpose of determining Contractor's fee.
 - g. The cost of utilities, fuel, and sanitary facilities at the Site.
 - h. Minor expenses such as communication service at the Site, express and courier services, and similar petty cash items in connection with the Work.
 - i. The costs of premiums for all bonds and insurance that

Contractor is required by the Contract Documents to purchase and maintain.

C. *Costs Excluded:* The term Cost of the Work shall not include any of the following items:

1. Payroll costs and other compensation of Contractor's officers, executives, principals (of partnerships and sole proprietorships), general managers, safety managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks, and other personnel employed by Contractor, whether at the Site or in Contractor's principal or branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in Paragraph 13.01.B.1 or specifically covered by Paragraph 13.01.B.4. The payroll costs and other compensation excluded here are to be considered administrative costs covered by the Contractor's fee.
2. Expenses of Contractor's principal and branch offices other than Contractor's office at the Site.
3. Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Work and charges against Contractor for delinquent payments.
4. Costs due to the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.
5. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Paragraph 13.01.B.

D. *Contractor's Fee:* When the Work as a whole is performed on the basis of cost-plus, Contractor's fee shall be determined as set forth in the Agreement. When the value of any Work covered by a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price is determined on the basis of

Cost of the Work, Contractor's fee shall be determined as set forth in Paragraph 11.04.C.

E. *Documentation:* Whenever the Cost of the Work for any purpose is to be determined pursuant to this Article 13, Contractor will establish and maintain records thereof in accordance with generally accepted accounting practices and submit in a form acceptable to Engineer an itemized cost breakdown together with supporting data.

13.02 Allowances

A. It is understood that Contractor has included in the Contract Price all allowances so named in the Contract Documents and shall cause the Work so covered to be performed for such sums and by such persons or entities as may be acceptable to Owner and Engineer.

B. *Cash Allowances:* Contractor agrees that:

1. the cash allowances include the cost to Contractor (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the Site, and all applicable taxes; and
2. Contractor's costs for unloading and handling on the Site, labor, installation, overhead, profit, and other expenses contemplated for the cash allowances have been included in the Contract Price and not in the allowances, and no demand for additional payment on account of any of the foregoing will be valid.

C. *Contingency Allowance:* Contractor agrees that a contingency allowance, if any, is for the sole use of Owner to cover unanticipated costs.

D. Prior to final payment, an appropriate Change Order will be issued as recommended by Engineer to reflect actual amounts due Contractor on account of Work covered by allowances, and the Contract Price shall be correspondingly adjusted.

13.03 Unit Price Work

A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement.

- B. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Payments to Contractor for Unit Price Work will be based on actual quantities.
- C. Each unit price will be deemed to include an amount considered by Contractor to be adequate to cover Contractor's overhead and profit for each separately identified item.
- D. Engineer will determine the actual quantities and classifications of Unit Price Work performed by Contractor. Engineer will review with Contractor the Engineer's preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise). Engineer's written decision thereon will be final and binding (except as modified by Engineer to reflect changed factual conditions or more accurate data) upon Owner and Contractor, subject to the provisions of the following paragraph.
- E. Within 30 days of Engineer's written decision under the preceding paragraph, Contractor may submit a Change Proposal, or Owner may file a Claim, seeking an adjustment in the Contract Price if:
 1. the quantity of any item of Unit Price Work performed by Contractor differs materially and significantly from the estimated quantity of such item indicated in the Agreement;
 2. there is no corresponding adjustment with respect to any other item of Work; and
 3. Contractor believes that it is entitled to an increase in Contract Price as a result of having incurred additional expense or Owner believes that Owner is entitled to a decrease in Contract Price, and the parties are unable to agree as to the amount of any such increase or decrease.

times for their observation, inspection, and testing. Contractor shall provide them proper and safe conditions for such access and advise them of Contractor's safety procedures and programs so that they may comply therewith as applicable.

14.02 *Tests, Inspections, and Approvals*

- A. Contractor shall give Engineer timely notice of readiness of the Work (or specific parts thereof) for all required inspections and tests, and shall cooperate with inspection and testing personnel to facilitate required inspections and tests.
- B. Owner shall retain and pay for the services of an independent inspector, testing laboratory, or other qualified individual or entity to perform all inspections and tests expressly required by the Contract Documents to be furnished and paid for by Owner, except that costs incurred in connection with tests or inspections of covered Work shall be governed by the provisions of Paragraph 14.05.
- C. If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or approved by an employee or other representative of such public body, Contractor shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish Engineer the required certificates of inspection or approval.
- D. Contractor shall be responsible for arranging, obtaining, and paying for all inspections and tests required:
 1. by the Contract Documents, unless the Contract Documents expressly allocate responsibility for a specific inspection or test to Owner;
 2. to attain Owner's and Engineer's acceptance of materials or equipment to be incorporated in the Work;
 3. by manufacturers of equipment furnished under the Contract Documents;
 4. for testing, adjusting, and balancing of mechanical, electrical, and other equipment to be incorporated into the Work; and
 5. for acceptance of materials, mix designs, or equipment submitted for approval

ARTICLE 14 – TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK

14.01 *Access to Work*

- A. Owner, Engineer, their consultants and other representatives and personnel of Owner, independent testing laboratories, and authorities having jurisdiction will have access to the Site and the Work at reasonable

prior to Contractor's purchase thereof for incorporation in the Work.

Such inspections and tests shall be performed by independent inspectors, testing laboratories, or other qualified individuals or entities acceptable to Owner and Engineer.

- E. If the Contract Documents require the Work (or part thereof) to be approved by Owner, Engineer, or another designated individual or entity, then Contractor shall assume full responsibility for arranging and obtaining such approvals.
- F. If any Work (or the work of others) that is to be inspected, tested, or approved is covered by Contractor without written concurrence of Engineer, Contractor shall, if requested by Engineer, uncover such Work for observation. Such uncovering shall be at Contractor's expense unless Contractor had given Engineer timely notice of Contractor's intention to cover the same and Engineer had not acted with reasonable promptness in response to such notice.

14.03 *Defective Work*

- A. *Contractor's Obligation:* It is Contractor's obligation to assure that the Work is not defective.
- B. *Engineer's Authority:* Engineer has the authority to determine whether Work is defective, and to reject defective Work.
- C. *Notice of Defects:* Prompt notice of all defective Work of which Owner or Engineer has actual knowledge will be given to Contractor.
- D. *Correction, or Removal and Replacement:* Promptly after receipt of written notice of defective Work, Contractor shall correct all such defective Work, whether or not fabricated, installed, or completed, or, if Engineer has rejected the defective Work, remove it from the Project and replace it with Work that is not defective.
- E. *Preservation of Warranties:* When correcting defective Work, Contractor shall take no action that would void or otherwise impair Owner's special warranty and guarantee, if any, on said Work.
- F. *Costs and Damages:* In addition to its correction, removal, and replacement obligations with respect to defective Work, Contractor shall pay all claims, costs, losses, and damages arising out of or relating to

defective Work, including but not limited to the cost of the inspection, testing, correction, removal, replacement, or reconstruction of such defective Work, fines levied against Owner by governmental authorities because the Work is defective, and the costs of repair or replacement of work of others resulting from defective Work. Prior to final payment, if Owner and Contractor are unable to agree as to the measure of such claims, costs, losses, and damages resulting from defective Work, then Owner may impose a reasonable set-off against payments due under Article 15.

14.04 *Acceptance of Defective Work*

- A. If, instead of requiring correction or removal and replacement of defective Work, Owner prefers to accept it, Owner may do so (subject, if such acceptance occurs prior to final payment, to Engineer's confirmation that such acceptance is in general accord with the design intent and applicable engineering principles, and will not endanger public safety). Contractor shall pay all claims, costs, losses, and damages attributable to Owner's evaluation of and determination to accept such defective Work (such costs to be approved by Engineer as to reasonableness), and for the diminished value of the Work to the extent not otherwise paid by Contractor. If any such acceptance occurs prior to final payment, the necessary revisions in the Contract Documents with respect to the Work shall be incorporated in a Change Order. If the parties are unable to agree as to the decrease in the Contract Price, reflecting the diminished value of Work so accepted, then Owner may impose a reasonable set-off against payments due under Article 15. If the acceptance of defective Work occurs after final payment, Contractor shall pay an appropriate amount to Owner.

14.05 *Uncovering Work*

- A. Engineer has the authority to require special inspection or testing of the Work, whether or not the Work is fabricated, installed, or completed.
- B. If any Work is covered contrary to the written request of Engineer, then Contractor shall, if requested by Engineer, uncover such Work for Engineer's observation, and then replace the covering, all at Contractor's expense.
- C. If Engineer considers it necessary or advisable that covered Work be observed by Engineer or inspected or tested by others, then Contractor, at Engineer's request, shall uncover, expose,

or otherwise make available for observation, inspection, or testing as Engineer may require, that portion of the Work in question, and provide all necessary labor, material, and equipment.

1. If it is found that the uncovered Work is defective, Contractor shall be responsible for all claims, costs, losses, and damages arising out of or relating to such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others); and pending Contractor's full discharge of this responsibility the Owner shall be entitled to impose a reasonable set-off against payments due under Article 15.
2. If the uncovered Work is not found to be defective, Contractor shall be allowed an increase in the Contract Price or an extension of the Contract Times, or both, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction. If the parties are unable to agree as to the amount or extent thereof, then Contractor may submit a Change Proposal within 30 days of the determination that the Work is not defective.

14.06 *Owner May Stop the Work*

- A. If the Work is defective, or Contractor fails to supply sufficient skilled workers or suitable materials or equipment, or fails to perform the Work in such a way that the completed Work will conform to the Contract Documents, then Owner may order Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of Owner to stop the Work shall not give rise to any duty on the part of Owner to exercise this right for the benefit of Contractor, any Subcontractor, any Supplier, any other individual or entity, or any surety for, or employee or agent of any of them.

14.07 *Owner May Correct Defective Work*

- A. If Contractor fails within a reasonable time after written notice from Engineer to correct defective Work, or to remove and replace rejected Work as required by Engineer, or if Contractor fails to perform the Work in accordance with the Contract Documents, or if Contractor fails to comply with any other

provision of the Contract Documents, then Owner may, after seven days written notice to Contractor, correct or remedy any such deficiency.

- B. In exercising the rights and remedies under this Paragraph 14.07, Owner shall proceed expeditiously. In connection with such corrective or remedial action, Owner may exclude Contractor from all or part of the Site, take possession of all or part of the Work and suspend Contractor's services related thereto, and incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere. Contractor shall allow Owner, Owner's representatives, agents and employees, Owner's other contractors, and Engineer and Engineer's consultants access to the Site to enable Owner to exercise the rights and remedies under this paragraph.
- C. All claims, costs, losses, and damages incurred or sustained by Owner in exercising the rights and remedies under this Paragraph 14.07 will be charged against Contractor as set-offs against payments due under Article 15. Such claims, costs, losses and damages will include but not be limited to all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of Contractor's defective Work.
- D. Contractor shall not be allowed an extension of the Contract Times because of any delay in the performance of the Work attributable to the exercise by Owner of Owner's rights and remedies under this Paragraph 14.07.

ARTICLE 15 – PAYMENTS TO CONTRACTOR; SET-OFFS; COMPLETION; CORRECTION PERIOD

15.01 *Progress Payments*

- A. *Basis for Progress Payments:* The Schedule of Values established as provided in Article 2 will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to Engineer. Progress payments on account of Unit Price Work will be based on the number of units completed during the pay period, as determined under the provisions of Paragraph 13.03. Progress payments for cost-based Work will be based on Cost of the Work completed by Contractor during the pay period.

B. Applications for Payments:

1. At least 20 days before the date established in the Agreement for each progress payment (but not more often than once a month), Contractor shall submit to Engineer for review an Application for Payment filled out and signed by Contractor covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment shall also be accompanied by a bill of sale, invoice, or other documentation warranting that Owner has received the materials and equipment free and clear of all Liens, and evidence that the materials and equipment are covered by appropriate property insurance, a warehouse bond, or other arrangements to protect Owner's interest therein, all of which must be satisfactory to Owner.
2. Beginning with the second Application for Payment, each Application shall include an affidavit of Contractor stating that all previous progress payments received on account of the Work have been applied on account to discharge Contractor's legitimate obligations associated with prior Applications for Payment.
3. The amount of retainage with respect to progress payments will be as stipulated in the Agreement.

C. Review of Applications:

1. Engineer will, within 10 days after receipt of each Application for Payment, including each resubmittal, either indicate in writing a recommendation of payment and present the Application to Owner, or return the Application to Contractor indicating in writing Engineer's reasons for refusing to recommend payment. In the latter case, Contractor may make the necessary corrections and resubmit the Application.
2. Engineer's recommendation of any payment requested in an Application for Payment will constitute a representation

by Engineer to Owner, based on Engineer's observations of the executed Work as an experienced and qualified design professional, and on Engineer's review of the Application for Payment and the accompanying data and schedules, that to the best of Engineer's knowledge, information and belief:

- a. the Work has progressed to the point indicated;
 - b. the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, the results of any subsequent tests called for in the Contract Documents, a final determination of quantities and classifications for Unit Price Work under Paragraph 13.03, and any other qualifications stated in the recommendation); and
 - c. the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Work.
3. By recommending any such payment Engineer will not thereby be deemed to have represented that:
 - a. inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in the Contract; or
 - b. there may not be other matters or issues between the parties that might entitle Contractor to be paid additionally by Owner or entitle Owner to withhold payment to Contractor.
 4. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment, including final payment, will impose responsibility on Engineer:
 - a. to supervise, direct, or control the Work, or

- b. for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or
 - c. for Contractor's failure to comply with Laws and Regulations applicable to Contractor's performance of the Work, or
 - d. to make any examination to ascertain how or for what purposes Contractor has used the money paid on account of the Contract Price, or
 - e. to determine that title to any of the Work, materials, or equipment has passed to Owner free and clear of any Liens.
5. Engineer may refuse to recommend the whole or any part of any payment if, in Engineer's opinion, it would be incorrect to make the representations to Owner stated in Paragraph 15.01.C.2.
6. Engineer will recommend reductions in payment (set-offs) necessary in Engineer's opinion to protect Owner from loss because:
- a. the Work is defective, requiring correction or replacement;
 - b. the Contract Price has been reduced by Change Orders;
 - c. Owner has been required to correct defective Work in accordance with Paragraph 14.07, or has accepted defective Work pursuant to Paragraph 14.04;
 - d. Owner has been required to remove or remediate a Hazardous Environmental Condition for which Contractor is responsible; or
 - e. Engineer has actual knowledge of the occurrence of any of the events that would constitute a default by Contractor and therefore justify termination for cause under the Contract Documents.
- D. Payment Becomes Due:
- 1. Ten days after presentation of the Application for Payment to Owner with Engineer's recommendation, the amount recommended (subject to any Owner set-offs) will become due, and when due will be paid by Owner to Contractor.
- E. Reductions in Payment by Owner:
- 1. In addition to any reductions in payment (set-offs) recommended by Engineer, Owner is entitled to impose a set-off against payment based on any of the following:
 - a. claims have been made against Owner on account of Contractor's conduct in the performance or furnishing of the Work, or Owner has incurred costs, losses, or damages on account of Contractor's conduct in the performance or furnishing of the Work, including but not limited to claims, costs, losses, or damages from workplace injuries, adjacent property damage, non-compliance with Laws and Regulations, and patent infringement;
 - b. Contractor has failed to take reasonable and customary measures to avoid damage, delay, disruption, and interference with other work at or adjacent to the Site;
 - c. Contractor has failed to provide and maintain required bonds or insurance;
 - d. Owner has been required to remove or remediate a Hazardous Environmental Condition for which Contractor is responsible;
 - e. Owner has incurred extra charges or engineering costs related to submittal reviews, evaluations of proposed substitutes, tests and inspections, or return visits to manufacturing or assembly facilities;
 - f. the Work is defective, requiring correction or replacement;
 - g. Owner has been required to correct defective Work in accordance with Paragraph 14.07, or has accepted defective Work pursuant to Paragraph 14.04;
 - h. the Contract Price has been reduced by Change Orders;

- i. an event that would constitute a default by Contractor and therefore justify a termination for cause has occurred;
 - j. liquidated damages have accrued as a result of Contractor's failure to achieve Milestones, Substantial Completion, or final completion of the Work;
 - k. Liens have been filed in connection with the Work, except where Contractor has delivered a specific bond satisfactory to Owner to secure the satisfaction and discharge of such Liens;
 - l. there are other items entitling Owner to a set off against the amount recommended.
2. If Owner imposes any set-off against payment, whether based on its own knowledge or on the written recommendations of Engineer, Owner will give Contractor immediate written notice (with a copy to Engineer) stating the reasons for such action and the specific amount of the reduction, and promptly pay Contractor any amount remaining after deduction of the amount so withheld. Owner shall promptly pay Contractor the amount so withheld, or any adjustment thereto agreed to by Owner and Contractor, if Contractor remedies the reasons for such action. The reduction imposed shall be binding on Contractor unless it duly submits a Change Proposal contesting the reduction.
 3. Upon a subsequent determination that Owner's refusal of payment was not justified, the amount wrongfully withheld shall be treated as an amount due as determined by Paragraph 15.01.C.1 and subject to interest as provided in the Agreement.

15.02 *Contractor's Warranty of Title*

- A. Contractor warrants and guarantees that title to all Work, materials, and equipment furnished under the Contract will pass to Owner free and clear of (1) all Liens and other title defects, and (2) all patent, licensing, copyright, or royalty obligations, no later than seven days after the time of payment by Owner.

15.03 *Substantial Completion*

- A. When Contractor considers the entire Work ready for its intended use Contractor shall notify Owner and Engineer in writing that the entire Work is substantially complete and request that Engineer issue a certificate of Substantial Completion. Contractor shall at the same time submit to Owner and Engineer an initial draft of punch list items to be completed or corrected before final payment.
- B. Promptly after Contractor's notification, Owner, Contractor, and Engineer shall make an inspection of the Work to determine the status of completion. If Engineer does not consider the Work substantially complete, Engineer will notify Contractor in writing giving the reasons therefor.
- C. If Engineer considers the Work substantially complete, Engineer will deliver to Owner a preliminary certificate of Substantial Completion which shall fix the date of Substantial Completion. Engineer shall attach to the certificate a punch list of items to be completed or corrected before final payment. Owner shall have seven days after receipt of the preliminary certificate during which to make written objection to Engineer as to any provisions of the certificate or attached punch list. If, after considering the objections to the provisions of the preliminary certificate, Engineer concludes that the Work is not substantially complete, Engineer will, within 14 days after submission of the preliminary certificate to Owner, notify Contractor in writing that the Work is not substantially complete, stating the reasons therefor. If Owner does not object to the provisions of the certificate, or if despite consideration of Owner's objections Engineer concludes that the Work is substantially complete, then Engineer will, within said 14 days, execute and deliver to Owner and Contractor a final certificate of Substantial Completion (with a revised punch list of items to be completed or corrected) reflecting such changes from the preliminary certificate as Engineer believes justified after consideration of any objections from Owner.
- D. At the time of receipt of the preliminary certificate of Substantial Completion, Owner and Contractor will confer regarding Owner's use or occupancy of the Work following Substantial Completion, review the builder's risk insurance policy with respect to the end of the builder's risk coverage, and confirm the transition to coverage of the Work under a

permanent property insurance policy held by Owner. Unless Owner and Contractor agree otherwise in writing, Owner shall bear responsibility for security, operation, protection of the Work, property insurance, maintenance, heat, and utilities upon Owner's use or occupancy of the Work.

- E. After Substantial Completion the Contractor shall promptly begin work on the punch list of items to be completed or corrected prior to final payment. In appropriate cases Contractor may submit monthly Applications for Payment for completed punch list items, following the progress payment procedures set forth above.
- F. Owner shall have the right to exclude Contractor from the Site after the date of Substantial Completion subject to allowing Contractor reasonable access to remove its property and complete or correct items on the punch list.

15.04 *Partial Use or Occupancy*

- A. Prior to Substantial Completion of all the Work, Owner may use or occupy any substantially completed part of the Work which has specifically been identified in the Contract Documents, or which Owner, Engineer, and Contractor agree constitutes a separately functioning and usable part of the Work that can be used by Owner for its intended purpose without significant interference with Contractor's performance of the remainder of the Work, subject to the following conditions:
 - 1. At any time Owner may request in writing that Contractor permit Owner to use or occupy any such part of the Work that Owner believes to be substantially complete. If and when Contractor agrees that such part of the Work is substantially complete, Contractor, Owner, and Engineer will follow the procedures of Paragraph 15.03.A through E for that part of the Work.
 - 2. At any time Contractor may notify Owner and Engineer in writing that Contractor considers any such part of the Work substantially complete and request Engineer to issue a certificate of Substantial Completion for that part of the Work.
 - 3. Within a reasonable time after either such request, Owner, Contractor, and Engineer shall make an inspection of that

part of the Work to determine its status of completion. If Engineer does not consider that part of the Work to be substantially complete, Engineer will notify Owner and Contractor in writing giving the reasons therefor. If Engineer considers that part of the Work to be substantially complete, the provisions of Paragraph 15.03 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.

- 4. No use or occupancy or separate operation of part of the Work may occur prior to compliance with the requirements of Paragraph 6.05 regarding builder's risk or other property insurance.

15.05 *Final Inspection*

- A. Upon written notice from Contractor that the entire Work or an agreed portion thereof is complete, Engineer will promptly make a final inspection with Owner and Contractor and will notify Contractor in writing of all particulars in which this inspection reveals that the Work, or agreed portion thereof, is incomplete or defective. Contractor shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.

15.06 *Final Payment*

- A. Application for Payment:
 - 1. After Contractor has, in the opinion of Engineer, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance, certificates of inspection, annotated record documents (as provided in Paragraph 7.11), and other documents, Contractor may make application for final payment.
 - 2. The final Application for Payment shall be accompanied (except as previously delivered) by:
 - a. all documentation called for in the Contract Documents;
 - b. consent of the surety, if any, to final payment;

- c. satisfactory evidence that all title issues have been resolved such that title to all Work, materials, and equipment has passed to Owner free and clear of any Liens or other title defects, or will so pass upon final payment.
 - d. a list of all disputes that Contractor believes are unsettled; and
 - e. complete and legally effective releases or waivers (satisfactory to Owner) of all Lien rights arising out of the Work, and of Liens filed in connection with the Work.
3. In lieu of the releases or waivers of Liens specified in Paragraph 15.06.A.2 and as approved by Owner, Contractor may furnish receipts or releases in full and an affidavit of Contractor that: (a) the releases and receipts include all labor, services, material, and equipment for which a Lien could be filed; and (b) all payrolls, material and equipment bills, and other indebtedness connected with the Work for which Owner might in any way be responsible, or which might in any way result in liens or other burdens on Owner's property, have been paid or otherwise satisfied. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, Contractor may furnish a bond or other collateral satisfactory to Owner to indemnify Owner against any Lien, or Owner at its option may issue joint checks payable to Contractor and specified Subcontractors and Suppliers.
- B. Engineer's Review of Application and Acceptance:
- 1. If, on the basis of Engineer's observation of the Work during construction and final inspection, and Engineer's review of the final Application for Payment and accompanying documentation as required by the Contract Documents, Engineer is satisfied that the Work has been completed and Contractor's other obligations under the Contract have been fulfilled, Engineer will, within ten days after receipt of the final Application for Payment, indicate in writing Engineer's recommendation of final payment and present the Application for Payment to Owner for payment. Such recommendation shall account for any set-offs against payment that are

necessary in Engineer's opinion to protect Owner from loss for the reasons stated above with respect to progress payments. At the same time Engineer will also give written notice to Owner and Contractor that the Work is acceptable, subject to the provisions of Paragraph 15.07. Otherwise, Engineer will return the Application for Payment to Contractor, indicating in writing the reasons for refusing to recommend final payment, in which case Contractor shall make the necessary corrections and resubmit the Application for Payment.

- C. *Completion of Work*: The Work is complete (subject to surviving obligations) when it is ready for final payment as established by the Engineer's written recommendation of final payment.
- D. *Payment Becomes Due*: Thirty days after the presentation to Owner of the final Application for Payment and accompanying documentation, the amount recommended by Engineer (less any further sum Owner is entitled to set off against Engineer's recommendation, including but not limited to set-offs for liquidated damages and set-offs allowed under the provisions above with respect to progress payments) will become due and shall be paid by Owner to Contractor.

15.07 *Waiver of Claims*

- A. The making of final payment will not constitute a waiver by Owner of claims or rights against Contractor. Owner expressly reserves claims and rights arising from unsettled Liens, from defective Work appearing after final inspection pursuant to Paragraph 15.05, from Contractor's failure to comply with the Contract Documents or the terms of any special guarantees specified therein, from outstanding Claims by Owner, or from Contractor's continuing obligations under the Contract Documents.
- B. The acceptance of final payment by Contractor will constitute a waiver by Contractor of all claims and rights against Owner other than those pending matters that have been duly submitted or appealed under the provisions of Article 17.

15.08 *Correction Period*

- A. If within one year after the date of Substantial Completion (or such longer period of time as may be prescribed by the terms of any applicable special guarantee required by the

Contract Documents, or by any specific provision of the Contract Documents), any Work is found to be defective, or if the repair of any damages to the Site, adjacent areas that Contractor has arranged to use through construction easements or otherwise, and other adjacent areas used by Contractor as permitted by Laws and Regulations, is found to be defective, then Contractor shall promptly, without cost to Owner and in accordance with Owner's written instructions:

1. correct the defective repairs to the Site or such other adjacent areas;
 2. correct such defective Work;
 3. if the defective Work has been rejected by Owner, remove it from the Project and replace it with Work that is not defective, and
 4. satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others, or to other land or areas resulting therefrom.
- B. If Contractor does not promptly comply with the terms of Owner's written instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective Work corrected or repaired or may have the rejected Work removed and replaced. Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others).
- C. In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications.
- D. Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced under this paragraph, the correction period hereunder with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.
- E. Contractor's obligations under this paragraph are in addition to all other obligations and

warranties. The provisions of this paragraph shall not be construed as a substitute for, or a waiver of, the provisions of any applicable statute of limitation or repose.

ARTICLE 16 – SUSPENSION OF WORK AND TERMINATION

16.01 Owner May Suspend Work

- A. At any time and without cause, Owner may suspend the Work or any portion thereof for a period of not more than 90 consecutive days by written notice to Contractor and Engineer. Such notice will fix the date on which Work will be resumed. Contractor shall resume the Work on the date so fixed. Contractor shall be entitled to an adjustment in the Contract Price or an extension of the Contract Times, or both, directly attributable to any such suspension. Any Change Proposal seeking such adjustments shall be submitted no later than 30 days after the date fixed for resumption of Work.

16.02 Owner May Terminate for Cause

- A. The occurrence of any one or more of the following events will constitute a default by Contractor and justify termination for cause:
1. Contractor's persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the Progress Schedule);
 2. Failure of Contractor to perform or otherwise to comply with a material term of the Contract Documents;
 3. Contractor's disregard of Laws or Regulations of any public body having jurisdiction; or
 4. Contractor's repeated disregard of the authority of Owner or Engineer.
- B. If one or more of the events identified in Paragraph 16.02.A occurs, then after giving Contractor (and any surety) ten days written notice that Owner is considering a declaration that Contractor is in default and termination of the contract, Owner may proceed to:
1. declare Contractor to be in default, and give Contractor (and any surety) notice that the Contract is terminated; and

- 2. enforce the rights available to Owner under any applicable performance bond.
- C. Subject to the terms and operation of any applicable performance bond, if Owner has terminated the Contract for cause, Owner may exclude Contractor from the Site, take possession of the Work, incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere, and complete the Work as Owner may deem expedient.
- D. Owner may not proceed with termination of the Contract under Paragraph 16.02.B if Contractor within seven days of receipt of notice of intent to terminate begins to correct its failure to perform and proceeds diligently to cure such failure.
- E. If Owner proceeds as provided in Paragraph 16.02.B, Contractor shall not be entitled to receive any further payment until the Work is completed. If the unpaid balance of the Contract Price exceeds the cost to complete the Work, including all related claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals) sustained by Owner, such excess will be paid to Contractor. If the cost to complete the Work including such related claims, costs, losses, and damages exceeds such unpaid balance, Contractor shall pay the difference to Owner. Such claims, costs, losses, and damages incurred by Owner will be reviewed by Engineer as to their reasonableness and, when so approved by Engineer, incorporated in a Change Order. When exercising any rights or remedies under this paragraph, Owner shall not be required to obtain the lowest price for the Work performed.
- F. Where Contractor's services have been so terminated by Owner, the termination will not affect any rights or remedies of Owner against Contractor then existing or which may thereafter accrue, or any rights or remedies of Owner against Contractor or any surety under any payment bond or performance bond. Any retention or payment of money due Contractor by Owner will not release Contractor from liability.
- G. If and to the extent that Contractor has provided a performance bond under the provisions of Paragraph 6.01.A, the provisions of that bond shall govern over any inconsistent provisions of Paragraphs 16.02.B and 16.02.D.

16.03 *Owner May Terminate For Convenience*

- A. Upon seven days written notice to Contractor and Engineer, Owner may, without cause and without prejudice to any other right or remedy of Owner, terminate the Contract. In such case, Contractor shall be paid for (without duplication of any items):
 - 1. completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;
 - 2. expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses; and
 - 3. other reasonable expenses directly attributable to termination, including costs incurred to prepare a termination for convenience cost proposal.
- B. Contractor shall not be paid on account of loss of anticipated overhead, profits, or revenue, or other economic loss arising out of or resulting from such termination.

16.04 *Contractor May Stop Work or Terminate*

- A. If, through no act or fault of Contractor, (1) the Work is suspended for more than 90 consecutive days by Owner or under an order of court or other public authority, or (2) Engineer fails to act on any Application for Payment within 30 days after it is submitted, or (3) Owner fails for 30 days to pay Contractor any sum finally determined to be due, then Contractor may, upon seven days written notice to Owner and Engineer, and provided Owner or Engineer do not remedy such suspension or failure within that time, terminate the contract and recover from Owner payment on the same terms as provided in Paragraph 16.03.
- B. In lieu of terminating the Contract and without prejudice to any other right or remedy, if Engineer has failed to act on an Application for Payment within 30 days after it is submitted, or Owner has failed for 30 days to pay Contractor any sum finally determined to be due, Contractor may, seven days after written notice to Owner and Engineer, stop the Work until payment is made of all such

amounts due Contractor, including interest thereon. The provisions of this paragraph are not intended to preclude Contractor from submitting a Change Proposal for an adjustment in Contract Price or Contract Times or otherwise for expenses or damage directly attributable to Contractor's stopping the Work as permitted by this paragraph.

ARTICLE 17 – FINAL RESOLUTION OF DISPUTES

17.01 *Methods and Procedures*

- A. *Disputes Subject to Final Resolution:* The following disputed matters are subject to final resolution under the provisions of this Article:
1. A timely appeal of an approval in part and denial in part of a Claim, or of a denial in full; and
 2. Disputes between Owner and Contractor concerning the Work or obligations under the Contract Documents, and arising after final payment has been made.
- B. *Final Resolution of Disputes:* For any dispute subject to resolution under this Article, Owner or Contractor may:
1. elect in writing to invoke the dispute resolution process provided for in the Supplementary Conditions; or
 2. agree with the other party to submit the dispute to another dispute resolution process; or
 3. if no dispute resolution process is provided for in the Supplementary Conditions or mutually agreed to, give written notice to the other party of the intent to submit the dispute to a court of competent jurisdiction.

ARTICLE 18 – MISCELLANEOUS

18.01 *Giving Notice*

- A. Whenever any provision of the Contract Documents requires the giving of written notice, it will be deemed to have been validly given if:
1. delivered in person, by a commercial courier service or otherwise, to the individual or to a member of the firm or to an officer of the corporation for which it is intended; or

2. delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to the sender of the notice.

18.02 *Computation of Times*

- A. When any period of time is referred to in the Contract by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday by the law of the applicable jurisdiction, such day will be omitted from the computation.

18.03 *Cumulative Remedies*

- A. The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by Laws or Regulations, by special warranty or guarantee, or by other provisions of the Contract. The provisions of this paragraph will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right, and remedy to which they apply.

18.04 *Limitation of Damages*

- A. With respect to any and all Change Proposals, Claims, disputes subject to final resolution, and other matters at issue, neither Owner nor Engineer, nor any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, shall be liable to Contractor for any claims, costs, losses, or damages sustained by Contractor on or in connection with any other project or anticipated project.

18.05 *No Waiver*

- A. A party's non-enforcement of any provision shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Contract.

18.06 *Survival of Obligations*

- A. All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with the Contract, as well as all continuing obligations indicated in the Contract, will survive final payment, completion, and acceptance of the Work or

termination or completion of the Contract or termination of the services of Contractor.

18.07 *Controlling Law*

- A. This Contract is to be governed by the law of the state in which the Project is located.

18.08 *Headings*

- A. Article and paragraph headings are inserted for convenience only and do not constitute parts of these General Conditions.

SUPPLEMENTARY CONDITIONS

These Supplementary Conditions amend or supplement the Standard General Conditions of the Construction Contract as indicated below. All provisions that are not so amended or supplemented remain in full force and effect.

The terms used in these Supplementary Conditions have the meanings stated in the General Conditions. Additional terms used in these Supplementary Conditions have the meanings stated below, which are applicable to both the singular and plural thereof. The address system used in these Supplementary Conditions is the same as the address system used in the General Conditions, with the prefix "SC" added thereto.

SC-1.01.1.A. Delete and replace the following subsections in Paragraph 1.01.A:

5. *Bidder*: Any individual, partnership, corporation, joint venture, or other combination thereof who submits a Bid to Owner for the Work contemplated, acting directly or through an authorized representative. As used in the Contract Documents, masculine pronouns refer to both masculine and feminine genders.

16. *Contractor*: Person or entity identified as such in the Agreement and the Contractor's authorized representatives who are referred to throughout the Contract Documents as if singular in number.

20. *Engineer*: Person or entity identified as such in the Agreement and the Engineer's authorized representatives who are referred to throughout the Contract Documents as if singular in number.

28. *Owner*: The individual, entity, public body or authority identified as such in the Agreement and the Owner's authorized representatives who are referred to throughout the Contract Documents as if singular in number.

SC-1.01.A. Add the following language at the end of Paragraph 1.01.A.40:

Substantial Completion is further defined in Paragraph 15.03.A below.

SC-1.01.A. Add new paragraphs immediately following Paragraph 1.01.A.48 as follows:

49. *Final Completion*: See Paragraph 15.06.B.1 and SC-14.07.B.1 for definition.

50. *Latent Defect*: A defect in the Work of which the Owner has no knowledge.

51. *Specialist*: The term Specialist refers to a person, partnership, firm, or corporation of established reputation (or if newly organized, whose personnel have previously established a reputation in the same field), which is regularly engaged in, and which maintains a regular force of workers skilled in either (as applicable) manufacturing of fabricated items required by the Contract Documents, or otherwise performing Work required by the Contract Documents. Where the Specifications

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require the installation by a Specialist, that term shall also be deemed to mean either the manufacturer of the items, a person, partnership, firm, or corporation licensed by the manufacturer, or a person, partnership, firm, or corporation who will perform the Work under the manufacturer's direct supervision.

52. *Consultant*: An individual or entity having a direct contract with the Engineer or Engineer's Consultant for performance of Work on the Project.

53. *Award*: The formal acceptance of the Bid by Owner's Board of Directors.

54. *Bid Bond*: The security furnished with a Bid to guarantee that the Bidder will enter into the Contract if Bidder's Bid is accepted by Owner.

55. *Construction Manager*: Person or entity designated by the Owner to provide construction management services for the Project with duties, responsibilities, and limitations of the Engineer, unless stipulated otherwise.

56. *Equipment*:

a) *Construction*: All machinery and equipment, together with the necessary supplies for upkeep and maintenance, including tools and apparatus necessary for the proper construction and acceptable completion of the Work contemplated.

b) *Installation*: All material or articles used in equipping a facility or apparatus required to fulfill a functional design.

57. *Execution*: Field or Site performance, workmanship, installation, erection, application, field fabrication, quality control, and protection of installed products on the Site.

58. *Geotechnical Data Report ("GDR")*: The factual report that collects and presents data regarding actual subsurface conditions at or adjacent to the Site, including Technical Data and other geotechnical data, prepared by or for Owner. The GDR's content may include logs of borings, trenches, and other site investigations, recorded measurements of subsurface water levels, the results of field and laboratory testing, and descriptions of the investigative and testing programs. The GDR does not include an interpretation of the data. If opinions, or interpretive or speculative non-factual comments or statements appear in a document that is labeled a GDR, such opinions, comments, or statements are not operative parts of the GDR and do not have contractual standing. Subject to that exception, the GDR is a Contract Document.

59. *Materials*: All materials incorporated into the Project, including equipment and all other materials consumed or to be consumed in the performance of the Work contemplated.

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60. *Procurement Contractor*: The corporation, company, partnership, firm, or individual who has entered into a contract with Owner outside the scope of these Contract Documents, to furnish materials and equipment for this Project.

61. *Product Data*: Type of Shop Drawing comprised of standard illustrations, schedules, performance charts, instructions, brochures, diagrams, catalog cuts, and other information assembled by or for the Contractor and submitted by the Contractor to illustrate materials or equipment for some portion of the Work.

62. *Products*: Materials, equipment, systems, ship fabrications, mixtures, and source controls.

63. *Solicitation Document*. An Invitation to Bid, Request for Proposals, Request for Quotes, or other written document issued by the Owner that outlines the required Specifications necessary to submit a Bid.

64. *Utility*: Any public or private fixed works for transporting fluids, gases, electricity, signals, or communications.

SC-2.01. Delete Paragraph 2.01.B. and Paragraph 2.01.C. in their entirety and insert the following in their place:

2.01.B. *Evidence of Contractor's Insurance*: When Contractor delivers the executed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner copies of the policies of insurance (including all endorsements, and identification of applicable self-insured retentions and deductibles) required to be provided by Contractor in Article 6. Contractor may block out (redact) any confidential premium or pricing information contained in any policy or endorsement furnished under this provision.

2.01.C. *Public Works Bond*: Before starting any work on the Project, Contractor and every Subcontractor performing work on the Project must have a public works bond filed with the Construction Contractors Board, as required by ORS 279C.830 and 279C.836, unless exempt under those provisions. Contractor must require that the Subcontractor have a public works bond filed with the Construction Contractors Board before starting work on the Project unless exempt under ORS 279C.836. Contractor shall include copies of both its public works bond and the public works bonds from its Subcontractors in the copies of the bonds required in Paragraph 2.01.A above. See SC-6.01.A for additional requirements related to the public works bond.

SC-2.02. Delete the first sentence in Paragraph 2.02.A in its entirety and replace with the following sentence:

Owner will furnish to Contractor up to four copies of the conformed Contract Documents (Specifications and half size Drawings and two copies of full-size Drawings) incorporating and integrating all Addenda and any amendments negotiated prior to the Effective Date of the Contract (including one fully executed counterpart of the Agreement) and one copy in electronic portable document format (PDF).

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SC-2.03.A. Before Starting Construction: Add the following to Paragraph 2.03.A:

4. A preliminary schedule of payments showing projected cash flow.

SC-2.03. Add the following to the end of section SC-2.03:

B. Before any Work at the Site is started, Contractor shall prepare and submit a written plan for the Project-specific safety precautions and programs. The safety plan shall identify Contractor's process for ensuring that safety is the highest priority on the project and will be complete with respect to procedures and actions that Contractor intends for Contractor and all others as provided in Paragraphs 7.12.A.1, for Contractor and all others to comply with all applicable Laws and Regulations. The submittal shall include a statement that the Contractor is solely responsible for safety on the project, that it will conduct its operations in accordance with all applicable safety standards and requirements, and that it will continually review its operations to ensure that safe conditions are provided at all times. Contractor's plan for safety precautions and programs shall have been approved and endorsed by Contractor's designated safety representative required in Paragraph 7.13. Delivery of this plan will in no way reduce or obviate Contractor's obligation to comply with the safety obligations set forth in Section 7.12 of the General Conditions.

C. *Contractor Drug Testing Program:* Before any Work at the site is started, Contractor shall provide evidence that it has an employee drug testing program in place that is administered and enforced by the Contractor in accordance with ORS 279C.505.

SC-2.04. Add the following to the end of Paragraph 2.04.A:

The preconstruction conference will be scheduled within five (5) days of the Notice to Proceed or as otherwise agreed to by the Parties.

SC-2.05. Initial Acceptance of Schedules: Add the following to Paragraph 2.05.A:

4. Contractor's schedule of payments will be acceptable if it provides a reasonable projection of payments in relationship to the Progress Schedule and Schedule of Values.

SC-3.01. Add the following to the end of SC 3.01.A:

Unless otherwise specifically defined in the Contract Documents, words which have well-known technical meanings or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings. Contract Documents are intended to be complimentary. Whatever is called for in one, is interpreted to be called for in all. However, in the event of conflicts or discrepancies among the Contract Documents, interpretations will be based on the following descending order of precedence:

1. Permits from outside agencies;
2. The Agreement including exhibits, and addenda and any amendments thereto, with those of later date having precedence over those of an earlier date;

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3. Supplementary General Conditions;
4. Standard General Conditions of the Construction Contract, Engineers Joint Contract Documents Committee (EJCDC) 2013;
5. Specifications – Division 01;
6. Specifications – Divisions 02 - 49;
7. Drawings;
8. Design Details: Figure dimensions, and dimensions that can be computed, on plans shall take precedence over scale dimensions. The Drawings with the higher level of detail take precedence over less detailed Drawings.

Change Orders, Work Change Directives, Field Orders, Engineer's written interpretation and clarifications and Notice to Proceed, in precedence listed, will take precedence over all other Contract Document components referenced herein.

References to standard specifications, manuals, codes of any technical society, organization or association, to the laws or regulation of any governmental authority, whether such reference be specific or by implication, shall mean the latest standard specification, manual, code, laws or regulations in effect in the jurisdiction where the Project Site is located on the first published date of the Solicitation Document, except as may be otherwise specifically stated.

SC-3.01. Delete Paragraph 3.01.C in its entirety.

SC-3.01. Amend Paragraph 3.01.E by adding “and Owner” after the first word “Engineer” in the first line.

SC-3.01. Add the following new paragraph immediately after Paragraph 3.01.E:

3.01.F. Sections of Division 01, General Requirements, govern the execution of the Work of all sections of the Specifications.

A. Standards Specifications and Codes

1. Reference in the Contract Documents to standard specifications, manuals, reference standards, or codes of any technical society, organization, or association, whether such reference be specific or by implication, shall mean the standard specification, manual, reference standard, or code in effect at the time of opening of Bids (or on the Effective Date of the Contract if there were no Bids), except as may be otherwise specifically stated in the Contract Documents.
2. No provision of any such standard specification, manual, reference standard, or code, or any instruction of a Supplier, shall be effective to change the duties or responsibilities of Owner, Contractor, or Engineer, or any of their subcontractors, consultants, agents, or employees, from those set forth in the Contract Documents unless otherwise agreed to in writing by all affected parties. No such provision or instruction shall be effective to assign to Owner,

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Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of the Contract Documents. Owner, Contractor and Engineer shall comply with all applicable laws and regulations at all times.

SC-3.03.A. Amend Paragraph 3.03.A.2 by adding the words “Owner and” just before the word “Engineer” near the end of the first sentence.

SC-3.03.B. Delete Paragraph 3.03.B.1 in its entirety and replace with the following:

1. Except as may be otherwise specifically stated in the Contract Documents, the provisions of the Contract Documents shall take precedence in resolving any conflict, error, ambiguity, or discrepancy between such provisions of the Contract Documents and the provision of any standard specification, manual, reference standard, or code, or the instruction of any Supplier (whether or not specifically incorporated by reference as a Contract Document).

SC-4.01. Delete the third sentence of Paragraph 4.01.A in its entirety.

SC-4.04. Progress Schedule: Add the following subparagraph to Paragraph 4.04.A immediately after subparagraph 4.04.A.2:

3. If, in the opinion of Engineer, Contractor falls behind the accepted Construction Schedule due to actions or neglect of Contractor or Contractor’s agents, servants, employees, officers, Subcontractors, directors, or any party contracting to perform part or all of the Work or to supply any equipment or materials, Contractor shall take steps, including, but not limited to, increasing the number of personnel, shifts, and/or overtime operations, days of work, and/or amount of construction equipment until such time as the Work is back on schedule. Contractor shall also submit for review no later than the time of submittal of the next request for partial payment, such supplementary schedule or schedules as may be necessary to demonstrate the manner in which the acceptable rate of progress will be regained, all without additional cost to Owner.

SC-5.01. Delete Paragraph 5.01.B in its entirety.

SC-5.01. Add the following Paragraph 5.01.D:

Any work performed in public rights-of-way, in addition to conforming to the Contract Documents, shall be done in accordance with the requirements of the permit issued by the public agency in whose right-of-way the Work is located.

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SC-5.02. Delete Paragraph 5.02.A.2 in its entirety and replace with the following:

If a damage or injury claim is made by the owner or occupant of any such land or area because of the performance of the Work, or because of other actions or conduct of the Contractor or those for which Contractor is responsible, Contractor shall (a) take immediate corrective or remedial action as required by Paragraph 7.12, or otherwise; (b) promptly attempt to settle the claims as to all parties through negotiations with such owner or occupant, or otherwise resolve the claim by arbitration or other dispute resolution proceeding, or at law; and (c) to the fullest extent permitted by Laws and Regulations, indemnify and hold harmless Owner, Clackamas County and their officers, elected officials, directors, employees, agents, consultants, and subcontractors from and against any such claim, and against all costs, losses and damages arising out of or relating to any claim or action, legal or equitable, brought by any such owner or occupant against Owner or any other party indemnified hereunder to the extent caused directly or indirectly, in whole or in part by, or based upon, Contractor's performance of the Work, or because of other actions or conduct of the Contractor or those for which Contractor is responsible.

SC 5.03: Add the following after Paragraph 5.03.B:

5.03.C. Reports and Drawings: The Supplementary Conditions hereby identify:

5.03.C.1. Those reports known to Owner of explorations and tests of subsurface conditions at or adjacent to the Site (other than any Geotechnical Data Report), and Technical Data contained in such reports. Such reports are as follows:

5.03.C.1.a. Report dated 1982 prepared by CH2M HILL, Inc, entitled *Soils Report, Tri-City Sewage Treatment Plant*. The Technical Data contained in such report upon whose accuracy Contractor may reasonably rely are those indicated in the definition of Technical Data in the General Conditions.

5.03.C.1.b. Report dated 2002 prepared by CH2M HILL, entitled *Tri-City WPCP Liquids Expansion Geotechnical Data Report*. The Technical Data contained in such report upon whose accuracy Contractor may reasonably rely are those indicated in the definition of Technical Data in the General Conditions.

5.03.C.1.c. Report dated 2008 prepared by Shannon and Wilson, Inc., entitled *Geotechnical Data Report Tri-City Water Pollution Control Plant, Interim Expansion, Clackamas County, Oregon. Prepared for MWH Americas, Inc.* The Technical Data contained in such report upon whose accuracy Contractor may reasonably rely are those indicated in the definition of Technical Data in the General Conditions.

5.03.C.1.d. Report dated 2016 prepared by Shannon and Wilson, Inc., entitled *Groundwater Monitoring Program Report, Tri-City Water*

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Resource Recovery Facility, Solids Handling Improvement Project, Clackamas County, Oregon. Prepared for MWH Global, Inc. The Technical Data contained in such report upon whose accuracy Contractor may reasonably rely are those indicated in the definition of Technical Data in the General Conditions.

5.03.C.2. Contractor may download copies of the examined copies of reports identified immediately above that were not included with the Bidding Documents at www.clackamas.us/bids.

5.03.E. Geotechnical Data Report:

5.03.E.1. This Contract contains a Geotechnical Data Report (“GDR”), dated January 2018 prepared by CH2M HILL, Inc., 1100 N.E. Circle Boulevard, Suite 300, Corvallis, OR 97330, entitled *Tri-City Water Resource Recovery Facility Solids Handling Improvements Geotechnical Data Report*.

5.03.E.2. The GDR is incorporated as a Contract Document. The GDR is to be used in conjunction with other Contract Documents, including the Drawings and Specifications.

SC-5.06. Delete Paragraph 5.06.A and Paragraph 5.06.B in their entirety and insert the following in their place:

5.06.A. No reports or drawings related to Hazardous Environmental Conditions are known to Owner.

SC-5.06. Delete Paragraph 5.06.I and 506.J in their entirety and replace with the following:

- I. Subject to the limitations of the Oregon Constitution and the Oregon Tort Claims Act, Owner shall indemnify and hold harmless Contractor, and its officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs losses and damages arising out of or relating to a Hazardous Environmental Condition (1) was not shown or indicated in the Drawings, Specifications, or other Contract Documents, identified as Technical Data entitled to limited reliance pursuant to Paragraph 5.06.B, or identified in the Contract Documents to be included within the scope of the Work, and (2) was not created by Contractor or by anyone whom Contractor is responsible. Nothing in this Paragraph 5.06.I shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual’s or entity’s own negligence.
- J. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Clackamas County and their officers, elected officials, directors, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages arising out of or relating to the failure to control, contain, or remove a Constituent

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of Concern brought to the Site by Contractor or by anyone for whom Contractor is responsible, or to a Hazardous Environmental Condition created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 5.06.J shall obligate Contractor to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

SC-6.01.A. Delete the second sentence of Paragraph 6.01.A in its entirety and replace with the following:

Before starting any work on the Project, the Contractor shall file with the Construction Contractors Board, and maintain in full force and effect, the separate public works bond required by Oregon Revised Statutes, Chapter 279C.830 and 279C.836, unless otherwise exempt under those provisions. The Contractor shall also include in every subcontract a provision requiring the Subcontractor to have a public works bond filed with the Construction Contractors Board before starting Work, unless otherwise exempt, and shall verify that the Subcontractor has filed a public works bond before permitting any Subcontractor to start Work. Contractor shall include copies of both its public works bond and the public works bonds from its subcontractors in the copies of the bonds required in Paragraph 2.01.A above.

These bonds shall remain in effect until one year after date of Final Completion of the Project and acceptance by the Owner, except as provided otherwise by Laws or Regulations or by the Contract Documents.

SC-6.01.B. Delete phrase in Paragraph 6.01.B "named in...U.S. Department of Treasury" and substitute "acceptable to the Owner."

SC-6.01.B. Amend Paragraph 6.01.B by adding the following sentence:

The performance bond shall include, in part, provisions to indemnify and hold harmless Owner, and its officers, directors, elected officials, agents and employees.

SC-6.02.A. Delete Paragraph 6.02.A. in its entirety and replace with the following:

A. Contractor shall obtain and maintain insurance as required in this Article 6 in the Supplementary Conditions.

SC-6.02.B. Delete paragraph 6.02.B. in its entirety and replace with the following:

B. As evidence of the insurance coverage required by the Contract, the Contractor shall furnish certificate(s) of insurance to the Owner prior to execution of the Agreement. The certificate(s) will specify all of the parties who are additional insureds or loss payees for the Agreement, identified in SC-6.02.C. A renewal certificate shall be sent to Owner at least 10 days prior to coverage expiration.

Insurance coverage required under the Agreement shall be obtained from insurance companies or entities acceptable to the Owner and that are eligible to provide such

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insurance under Oregon law. Eligible insurers include admitted insurers that have been issued a certificate of authority from the Oregon Department of Consumer and Business Services authorizing them to conduct an insurance business and issue policies of insurance in the state of Oregon, and certain non-admitted surplus lines insurers that satisfy the requirements of applicable Oregon law and which are subject to approval by the Owner. All companies that provide policies required under this Contract shall have a rating of not less than A-X in the most current edition of Best's Rating Guide, in addition to any other requirements specified herein. The Contractor shall be financially responsible for all deductibles, self-insured retentions and/or self-insurance included hereunder. Any deductible, self-insured retention and/or self-insurance in excess of \$50,000 shall be subject to approval by the Owner in writing and shall be a condition precedent to the effectiveness of any Contract.

SC-6.02.C. Supplement Paragraph 6.02.C with the following:

The general liability insurance coverage, automobile liability, umbrella, and pollution liability if required, shall include the Owner (Water Environment Services), Clackamas County and Engineer (CH2M HILL Engineers, Inc.) as additional insureds, but only with respect to the Contractor's activities to be performed under the Contract Documents. The additional-insured endorsement for CGL insurance must be written on ISO Form CG 20 10 (10 01) and CG 20 37 (10 01), or their equivalent, but shall not use either of the following forms: CG 20 10 (10 93) or CG 20 10 (03 94). Proof of insurance must include a copy of the endorsement showing "Water Environment Services and Clackamas County, together with their elected officials, agents, officers, and employees" as scheduled insureds.

If Contractor cannot obtain an insurer to name the Owner and Engineer as additional insureds, Contractor shall obtain at Contractor's expense, and keep in effect during the term of the Contract, Owners and Contractors Protective Liability Insurance, naming the Owner and Engineer as additional insureds with not less than a \$4,000,000 limit per occurrence. This policy must be kept in effect for 36 months following Final Completion. As evidence of coverage, Contractor shall furnish the actual policy to Owner prior to execution of the Agreement.

SC-6.02. Delete all language in Paragraphs 6.02.D, F, and H and replace each with the word "Reserved."

SC-6.02. Add the following new paragraphs in order after Paragraph 6.02.J.

K. Compliance. Failure of the Contractor to fully comply with these requirements will be considered a material breach of Contract and shall be cause for immediate termination of the Contract at the option of District.

L. If the Contractor receives a non-renewal or cancellation notice from an insurance carrier affording coverage required herein, or receives notice that coverage no longer complies with the insurance requirements herein, Contractor agrees to notify Owner by

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fax within five (5) business days with a copy of the non-renewal or cancellation notice, or written specifics as to which coverage is no longer in compliance. When notified by Owner, the Contractor agrees to stop Work pursuant to the Contract at Contractor's expense, unless all required insurance remain in effect. Any failure to comply with the reporting provisions of this insurance, except for the potential exhaustion of aggregate limits, shall not affect the coverages provided to the Owner and its institutions, divisions, officers, and employees. Owner shall have the right, but not the obligation, of prohibiting Contractor from entering the Project Site until a new certificate(s) of insurance is provided to Owner evidencing the replacement coverage. The Contractor agrees that Owner reserves the right to withhold payment to Contractor until evidence of reinstated or replacement coverage is provided to Owner.

M. Contractor may obtain worker's compensation insurance from an insurance company that has not been rated by A.M. Best, provided that such company (a) is domiciled in the state in which the project is located, (b) is certified or authorized as a worker's compensation insurance provider by the appropriate state agency, and (c) has been accepted to provide worker's compensation insurance for similar projects by the state within the last 12 months.

N. All insurance carried by Contractor under the Agreement shall be the primary coverage. The coverages indicated are minimums unless otherwise specified in the Contract Documents.

SC-6.03. Delete Paragraph 6.03.A in its entirety and replace with the following:

A. *Workers' Compensation:* The Contractor is an independent contractor for purposes of the Oregon Workers' Compensation Law, as set forth in ORS Chapter 656 ("Workers' Comp Law") and is solely liable for any Workers' Compensation coverage under this Agreement. All employers, including Contractor, that employ subject workers who work under the Agreement 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. This shall include Employer's Liability Insurance with coverage limits of not less than the minimum amount required by statute for each accident. Contractors who perform the Work without the assistance or labor of any employee need not obtain such coverage if the Contractor certifies so in writing. Contractor shall ensure that each of its Subcontractors complies with these requirements. The Contractor shall require proof of such Workers' Compensation coverage by receiving and keeping on file a certificate of insurance from each Subcontractor or anyone else directly employed by either the Contractor or its Subcontractors. The Contractor will be solely responsible for payment of any local, state or federal taxes required as a result of these Contract Documents.

These Contract Documents are not intended to entitle the Contractor to any benefits generally granted to the District, officers, commissioners, agents or employees. Without limitation, but by way of illustration, the benefits not intended to be extended to the Contractor are vacation, holiday and sick leave, other leaves with pay, tenure, medical and dental coverage, life and disability insurance, overtime pay, Social Security, workers' compensation, unemployment

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compensation, or retirement benefits (except so far as benefits are required by law if the Contractor is presently a member of the Public Employees Retirement System).

SC-6.03.B. Delete Paragraph 6.03.B in its entirety and replace with the following:

B. Commercial General Liability: Upon execution of the Agreement, Contractor shall obtain, and keep in effect at Contractor's expense for the entire term of the Agreement, Commercial General Liability Insurance ("CGL") covering bodily injury and property damage in the amount of not less than \$4,000,000 per occurrence and \$5,000,000 in the aggregate in a form satisfactory to Owner. This insurance shall include personal injury liability, products and completed operations, and contractual liability coverage for the indemnities provided under the Agreement (to the extent contractual liability coverage for the indemnity is available in the marketplace), and shall be issued on an occurrence basis written on ISO Form GC 00 01 (12 04 or later) or an equivalent form approved in advance by Owner. The CGL policy shall not exclude coverage for explosion, collapse, and underground ('xcu') hazards. The CGL shall cover work in or near a waterway to protect against liability for bodily injury and property damage which may arise out of the Contractor's operations under this Contract. The CGL shall provide separation of insured language. The Owner may adjust the CGL insurance amounts required under this provision at any time based upon institution specific risk assessments through the issuance of an amendment to the Agreement. The policy or policies obtained by Contractor for purposes of fulfilling the requirements of this section shall be primary insurance with respect to the Owner. Any insurance or self-insurance maintained by the County shall be excess and shall not contribute to it.

SC-6.03.D. Delete Paragraph 6.03.D in its entirety and replace it with the following:

Contractor shall obtain, at Contractor's expense, and keep in effect during the term of the Agreement, Automobile Liability Insurance covering owned, and/or hired vehicles, as applicable. The coverage may be written in combination with the Commercial General Liability Insurance. Contractor shall provide proof of insurance of not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate. Contractor and its subcontractors shall be responsible for ensuring that all non-owned vehicles maintain adequate Automobile Liability insurance while on Project Site. The Owner may adjust the Automobile Liability insurance amounts required under this provision at any time based upon institution specific risk assessments through the issuance of an amendment to the Agreement.

SC-6.03.E. Delete Paragraph 6.03.E in its entirety and replace with the following language:

Contractor shall obtain, at Contractor's expense, and keep in effect during the term of the Contract, Umbrella liability Insurance over and above the general liability, automobile liability and workers' compensation coverage if required by Owner in specified limits at time of requirement.

SC-6.03.F. Replace Paragraph 6.03.F in its entirety with the following language:

F. *Pollution and Asbestos Liability:* Contractor shall obtain, at the Contractor's expense and keep in effect during the term of the Contract, Contractor's Pollution

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Liability insurance covering the Contractor's liability for a third party bodily injury and property damage arising from pollution conditions caused by the Contractor while performing their operations under the Contract.

SC-6.03.I.3. Replace Paragraph 6.03.I.3 in its entirety with:

3. contain a provision or endorsement that the coverage afforded will not be canceled, materially changed, or renewal refused until at least 60 days prior written notice.

SC-6.03.I.4. Replace Paragraph 6.03.I.4 in its entirety with:

4. remain in effect at least as long as is required in this Article and at all times thereafter when Contractor may be correcting, removing, or replacing defective Work as a warranty or correction obligation, or otherwise, or returning to the Site to conduct other tasks arising from the Contract Documents.

SC-6.04.A. Delete Paragraph 6.04.A in its entirety.

SC-6.05.A. Add the following to the list of items in Paragraph 6.05.A, as numbered items:

14. be subject to a deductible amount of no more than \$50,000 for direct physical loss in any one occurrence, except the earthquake and flood deductible, which shall not exceed 2 percent of each loss or \$50,000, whichever is greater. The deductible shall be paid by the Contractor.

15. include as loss payees Owner, the Contractor and its subcontractors as their interests may appear.

16. include for the benefit of Owner loss of profits and soft cost coverage including, without limitation, fixed expenses and debt service for a minimum of 12 months with a maximum deductible of 30 days, plus engineering or other consultants' fees, if not otherwise covered.

17. include by express endorsement coverage of damage to Contractor's equipment.

18. remain in full force and effect through the entire term of the Agreement.

SC-6.05. In Paragraph 6.05.B, replace the words "10 Days" with "60 Days."

SC-6.05. Add the following paragraphs after SC-6.05.F:

G. A loss insured under the Builder's Risk insurance shall be adjusted by the Owner and made payable to the Owner as loss payee. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner. The Owner shall have power to adjust and settle a loss with insurers.

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H. *Builder's Risk Installation Floater*: For Work other than new construction, Contractor shall obtain and keep in effect during the term of the Contract, a Builder's Risk Installation Floater for coverage of the Contractor's labor, materials and equipment to be used for completion of the Work performed under the Contract. The minimum amount of coverage to be carried shall be equal to the full amount of the Contract. The policy will include as loss payees Owner, the Contractor and its Subcontractors as their interests may appear. Owner may waive this requirement at its sole and absolute discretion.

SC-6.06. Delete Paragraph 6.06.A in its entirety and replace with the following:

All policies purchased in accordance with Paragraph 6.05, expressly including the builder's risk policy, shall contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any insureds thereunder, or their officers, directors, elected officials, employees agents, consultants or subcontractors. Owner and Contractor waive all rights against each other and the respective officers, directors, elected officials, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work; and, in addition, waive all such rights against all individuals identified in the Supplementary Conditions as insureds, and the officers, directors, elected officials, members, partners, employees, agents, consultants and subcontractors of each and any of them, under such policies for losses and damages so caused. None of the above waivers shall extend to the rights that any party making such waiver may have to the proceeds of insurance held by Owner and Contractor as trustee or fiduciary, or otherwise payable under any policy so issued.

SC-6.06. Delete Paragraph 6.06.B and C in their entirety.

SC-6.07. Delete Paragraph 6.07.A, B and C in their entirety and replace with the following paragraph:

- A. Any insured loss under the builder's risk and other policies of insurance required by Paragraph 6.05 will be adjusted and settled with the named insured that purchased the policy.

SC-7.01. Add the following after the first sentence of Paragraph 7.01.B:

If a replacement is necessary, the replacement shall also be a competent resident superintendent and shall be subject to approval by Owner. The Contractor's superintendent shall be present at the Site at all times while Work is in progress and shall be available by phone for emergencies 24 hours per day, 7 days per week. If at any time the superintendent leaves the Project Site while Work is in progress, Owner and Engineer shall be notified and provided with the name of the Contractor's representative having responsible charge. The superintendent will be Contractor's representative at the Site and shall have authority to act on behalf of Contractor. All communications given to or received from the superintendent shall be binding on Contractor.

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SC-7.02. Add the following language to the end of Paragraph 7.02.B:

Contractor and Subcontractor regular working hours shall be between 7:00 a.m. and 6:00 p.m. on weekdays, Monday through Friday, only. If change to these standard hours is desired, a written request must be placed with Owner and Engineer a minimum of five work days prior to the first day of altered hours. The following holidays are observed by Owner which shall be considered legal holidays.

- New Year's Day (January 1)
- Martin Luther King Jr. Day (third Monday in January)
- President's Day (third Monday in February)
- Memorial Day (last Monday in May)
- Independence Day (July 4)
- Labor Day (first Monday in September)
- Veteran's Day (November 11)
- Thanksgiving Day (fourth Thursday in November)
- Christmas Day (December 25)

SC-7.03. Services, Materials, and Equipment: Add the following paragraphs immediately after Paragraph 7.03.C:

D. Until Substantial Completion of the Work is acknowledged by Owner, Contractor shall have the responsible charge and care of the Work and of materials to be used herein, including materials for which Contractor has received partial payment or materials which have been furnished by Owner, and shall bear the risk of injury, loss, or damage to any part thereof by the action of the elements or from any other cause, whether arising from the execution of the Work or not.

E. Contractor shall rebuild, repair, restore, and make good all injuries, losses, or damages to any portion of the Work or the materials occasioned by any cause before the Work's completion and acceptance and shall bear the expense thereof. Where necessary to protect the Work or materials from damage, Contractor shall, at Contractor's own expense, provide suitable drainage and erect such temporary structures or rent such structures as are necessary to protect the Work or materials from damage. The suspension of the Work or the granting of an extension of time for any cause whatever shall not relieve Contractor of Contractor's responsibility for the Work and materials as specified herein.

F. When the quality of a material, process, or article is not specifically set forth in the Contract Documents, the best available quality of the material, process, or article shall be provided.

SC-7.04. Amend Paragraph 7.04.A.1 by deleting "in its sole discretion" from the first sentence.

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SC-7.05. Amend Paragraph 7.05.B by deleting the third sentence stating “Engineer will be the sole judge of acceptability.”

SC-7.06. Add the following language at the end of Paragraph 7.06.A:

Contractor shall perform with Contractor’s own organization Work amounting to not less than 25 percent of the combined value of all items of the Work covered by the Contract.

SC-7.06. Add the following new paragraphs immediately after Paragraph 7.06.D:

7.06.D.1. The identity and acceptance of Subcontractors and Suppliers for the following portions of the Work is required in accordance with the requirements of the Instructions to Bidders:

SC-7.06. Amend Paragraph 7.06.I by removing “and Engineer” from the first sentence.

SC-7.06. Add the following new subparagraphs immediately after Paragraph 7.06.O:

P. Contractor shall ensure that any person entering into any subcontract to perform under the Contract is registered with the Secretary of State to do business in the State of Oregon, not prohibited from entering into a public contract by the Oregon Bureau of Labor and Industry, the Construction Contractors Board or Federal Excluded Party listings and is a Responsible Proposer as defined by ORS 279.

Q. Subcontractor Insurance: Unless a special type of insurance or special amount of coverage is required by the Owner for a specific subcontract or type of work, Contractor shall require all Subcontractors to provide and maintain insurance coverages with at least \$1,000,000/claim, \$2,000,000 aggregate for commercial general liability, \$500,000/claim for automobile liability, \$1,000,000/claim for professional liability (if applicable), and statutory limits for workers’ compensation insurance. Contractor shall require certificates of insurance from all Subcontractors as evidence of coverage. Contractor shall provide copies of Subcontractor’s certificates of insurance, if requested by Owner. This condition may be met through utilization of a Contractor Controlled Insurance Program.

SC-7.07. Amend Paragraph 7.07.B by removing “attorneys” from the first sentence.

SC-7.07. Delete Paragraph 7.07.C in its entirety and replace with the following:

C. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner, Clackamas County and their officers, directors, elected officials, employees, agents, consultants and subcontractors of from and against all claims, costs, losses, and damages arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work.

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SC-7.08. Add the following new paragraphs immediately after Paragraph 7.08.A:

B. Contractor will be responsible for obtaining all required permits and maintaining compliance with those permits throughout the course of the Work. Owner will pay the cost of obtaining all permits. The Contractor shall be responsible for any penalties or fines that result from Contractor's noncompliance with the terms of the permits. The Contractor will be responsible for compliance with the terms of all permits throughout the performance of the Work.

SC-7.10. Delete Paragraph 7.10.B in its entirety and replace with the following:

B. If Contractor performs any Work or takes any other action knowing or having reason to know that is contrary to Laws and Regulations, Contractor shall bear all resulting costs and losses, and shall indemnify and hold harmless Owner, Clackamas County, and their officers, directors, elected officials, employees, agents, consultants and subcontractors from and against all claims, costs, losses and damages arising out of or relating to such Work or other action. It shall not be Contractor's responsibility to make certain that the Work described in the Contract Documents is in accordance with Laws and Regulations, but this shall not relieve Contractor of Contractor's obligations under Paragraph 3.03.

SC-7.10. Add the following new paragraph(s) immediately after Paragraph 7.10.C:

7.10.D. While not intended to be inclusive of all Laws or Regulations for which Contractor may be responsible under Paragraph 7.10, the following Laws or Regulations, as may be amended from time to time, are included as mandated by statute or for the convenience of Contractor:

7.10.D.1. Prevailing Wage Rates:

7.10.D.1.a. Contractor shall comply fully with the provisions of ORS 279C.800 through 279C.870. Pursuant to ORS 279C.830(1)(d), Contractor shall pay workers not less than the specified minimum hourly rate of wage, and shall include that requirements in all subcontracts. Contractor and all subcontractors shall also comply with the provisions of the David-Bacon Act (40 U.S.C. 3141 et seq), and shall pay the higher of either the state or federal prevailing wage rates for the type of work being performed. The Bureau of Labor and Industries ("BOLI") wage rates and requirements set forth in the following BOLI booklet (and any listed amendments to that booklet), which are incorporated herein by reference, apply to the Work authorized under this Agreement:

PREVAILING WAGE RATES for Public Works Contracts in Oregon, January 1, 2018 which can be downloaded at the following web address: http://www.oregon.gov/boli/whd/pwr/pages/pwr_state.aspx

7.10.D.1.b. Owner will pay the Commissioner of the Bureau of Labor and Industries the fee required by ORS 279C.825.

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7.10.D.1.c. Contractor shall provide written notice to all workers of the number of hours per day and days per week such workers may be required to work.

7.10.D.2. Discrimination: Contractor shall comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations, and:

a) In accordance with ORS 279A.110, Contractor will not discriminate against Disadvantaged, Minority, Women, or Emerging Small Business enterprises, as those terms are defined in ORS 200.005, or a business enterprise that is owned or controlled by or that employs a disabled veteran, as that term is defined in ORS 408.225, in obtaining required subcontracts.

b) Contractor shall maintain, in current and valid form, all licenses and certificates required by the applicable Laws, Regulations or the Contract when performing the work.

7.10.D.3. In accordance with ORS 279C.505, Contractor shall demonstrate to Owner that it has an employee drug testing program in place prior to commencement and at all times during the performance of the Work.

7.10.D.4. ORS 654.150 applies at the Construction Site. All costs incurred in complying with state statutes requiring sanitation facilities shall be borne by Contractor.

7.10.D.5. Payment by Contractor:

- a. The Contractor shall promptly make full payment for labor, materials, supplies and provisions at such times as they become due and payable to all persons supplying the Contractor or his subcontractor with labor, services, materials, supplies, or provisions for the prosecution of the work provided for in the contract. Contractor shall pay all contributions or amounts due the Industrial Accident Fund from such Contractor or subcontractor incurred in the performance of the Work. The Contractor shall not permit any lien or claim to be filed or prosecuted against the Owner for or on account of any labor, services, materials, supplies, or provisions furnished. The Contractor shall pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.
- b. In the event the Contractor fails, neglects, or refuses to make prompt and full payment of any claim for labor, services, materials, supplies or provisions furnished by any person in connection with the Work, whether the labor, services, materials, supplies, or provisions to be performed are furnished for the Contractor or for a subcontractor, then and in such event, the Owner may withhold the amount of such claim by the person or persons furnishing such

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labor, services, materials, supplies, or provisions and deduct the amount of from funds due or to become due to the Contractor by reason of the Contract Documents. The deduction of any such amounts because of claims and the manner herein authorized will not, however, relieve the Contractor or his surety from their obligation with respect to any unpaid claims. Sums withheld for the purposes named herein will be paid to the Contractor upon certification that said claims have been paid. Notwithstanding the foregoing, Owner, in its discretion, may pay such claims and deduct or charge that amount of the payment against funds due or to become due the Contractor by reason of the Contract Documents.

- c. If the Contractor or a first-tier subcontractor fails, neglects or refuses to make payment to a party furnishing labor or materials in connection with the project within 30 days after receipt of payment from the Owner or Contractor, the Contractor or first-tier subcontractor shall owe the party the amount due plus interest charges commencing at the end of the ten-day period that payment is due under ORS 279C.580(4) and any upon final payment unless payment is subject to a good-faith dispute as defined in ORS 279C.580. The rate of interest charge to the Contractor or first-tier subcontractor and the amount due shall equal three times the discount rate on 90-day commercial paper in effect at the Federal Reserve Bank in the Federal Reserve District that includes Oregon on the date that is 30 days after the date when payment was received from the Owner or from the Contractor, but the rate of interest shall not exceed 30 percent. The amount of interest may not be waived. Contractor shall incorporate this provision into all subcontracts.
- d. If the Contractor or a subcontractor fails, neglects or refuses to make payment to a person furnishing labor or materials in connection with the Contract, the person may file a complaint with the Construction Contractor's Board unless payment is subject to a good-faith dispute as defined in ORS 279C.580. Resolution of such dispute and computation of amounts due plus interest and costs shall be as provided in that statute. Contractor shall incorporate this provision into any subcontract related to this project.
- e. The payment of a claim in the manner authorized under this section shall not relieve the Contractor or the surety from any obligation with respect to any unpaid claims.
- f. Contractor shall pay subcontractor for satisfactory performance within ten days out of such amounts paid to Contractor by Owner, and shall at all times comply with ORS 279C.580, which is incorporated herein by reference.
- g. The Contractor shall include in each subcontract for property or services entered into by the Contractor and a first-tier subcontractor, including a materials supplier, for the purpose of performing a construction contract, a payment clause that obligates the Contractor to pay the first-tier subcontractor for

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satisfactory performance under its subcontract within ten (10) days out of such amounts as are paid to the Contractor by the Owner under such Contractor.

- h. All employers, including Contractor, that employ subject workers who work under the Contract Documents in the State of Oregon shall comply with ORS 656.017 and provide the required Workers Compensation coverage, unless such employees are exempt under ORS 656.126. Contractor shall ensure that each of its subcontracts complies with these requirements.
- i. As a condition to Owner's performance hereunder, Contractor shall promptly, as due, make payment to any person, co-partnership, association or corporation furnishing medical, surgical, and hospital care or other needed care and attention, incident to sickness or injury, to the employees of the Contractor, of all sums of which the Contractor agrees to pay for the services and all moneys and sums that the Contractor collected or deducted from the wages of employees under any law, contract or agreement for the purpose of providing or paying for the services.

7.10.D.6. *Payroll Certification and Fee Requirements.*

- a. In accordance with ORS 279C.845, the Contractor and every subcontractor shall submit written certified statements to the Owner on the form prescribed by the Commissioner of BOLI, certifying the hourly rate of wage paid each worker which the Contractor or the subcontractor has employed on the Project and further certifying that no worker employed on the Project has been paid less than the prevailing rate of wage or less than the minimum hourly rate of wage specified in the Contract Documents, which certified and statement shall be verified by the oath of the Contractor or the subcontractor that the Contractor or Subcontractor knows the contents of the certified statement, and, that to the Contractor's or subcontractor's best knowledge and belief, the certified statement is true. The certified statements shall set out accurately and completely the payroll costs for the prior week, including the name and address for each worker, the worker's correct classification, rate of pay, daily and weekly number of hours worked, deductions made, and actual wages paid. Certified statements for each week during which the Contractor or subcontractor has employed a worker on the Project shall be submitted once a month, by the fifth (5th) business day of the following month. The Contractor and subcontractor shall preserve the certified statements for a period of ten (10) years from the date of completion of the Work.
- b. Pursuant to ORS 279C.845(7), the Owner shall retain 25 percent of any amount earned by the Contractor, in addition to other retainage, on the Work until the Contractor has filed the certified statements required above. The Owner shall pay the Contractor the amount retained under this subsection within 14 business days after the Contractor files the required certified statements, regardless of whether a subcontractor has failed to file certified statements.

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- c. Pursuant to ORS 279C.845(8), the Contractor shall retain 25 percent of any amount earned by a first-tier subcontractor on this Project until the subcontractor has filed with the Owner the certified statements required above. Before paying any amount required under this subsection, the Contractor shall verify that the first-tier subcontractor has filed the certified statement. Within 14 days after the first-tier subcontractor has filed the certified statement, the Contractor shall pay the first-tier subcontractor any amount retained under this subsection.

7.10.D.7 *Subcontracts*. Contractor shall include in each first-tier subcontract, and shall require that each first-tier subcontractor include in each lower-tier subcontract; clauses for payments, interest penalties and conditions as required under ORS 279C.580, which is incorporated herein by reference. Contractor shall certify that it shall not accept a bid from subcontractors to perform Work unless such subcontractors are registered with the Construction Contractors Board in accordance with ORS 701.021 at the time they submit their bids to the Contractor.

7.10.D.8. Environmental Pollution:

- a. In compliance with ORS 279C.525, lists of federal, state, and local agencies of which the Owner has knowledge that have enacted ordinances or regulations relating to environmental pollution and the preservation of natural resources that may affect the performance of the Contract are listed in the 2015 Oregon Department of Transportation Standard Specifications for Construction, Section 00170.01.
- b. If Contractor is delayed or must undertake additional work by reason of existing regulation or ordinances of agencies not cited herein, or due to enactment of new or the amendment of existing statutes, ordinances or regulations occurring after the submission of the successful Proposal, Owner may grant a time extension, a reasonable adjustment in the Cost of Work by issuance of a Change Order setting forth the additional work that must be undertaken. Such Change Order, if any, shall not invalidate the Agreement and shall, as applicable, increase the Agreement price to compensate Contractor for all costs and expenses incurred, including overhead and profits, as reasonable compensation of any such delay or additional work.

7.10.D.9. In accordance with ORS 279C.510, Contractor shall salvage or recycle construction and demolition debris if feasible and cost effective.

7.10.D.10. Workers employed by Contractor shall not be able to collect for unpaid overtime unless a claim is filed in accordance with ORS 279C.545 with Contractor.

7.10.D.11. Person claiming not being paid in full for supplied labor or materials for performance of the Work has right to file notice of such claim. Notice shall be filed in accordance with ORS 279C.605.

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7.10.D.12. Contractor shall comply with Clackamas County Code.

7.10.D.13. Contractor agrees to comply with the following, as applicable and as may be amended from time to time: i) Title VI and VII of the Civil Rights Act of 1964; ii) Section 503 and 504 of the Rehabilitation Act of 1973; iii) the Health Insurance Portability and Accountability Act of 1996; iv) the Americans with Disabilities Act of 1990; v) Oregon Revised Statutes Chapter 659A; vi) all regulations and administrative rules established pursuant to any applicable laws; and vii) all other applicable requirements of federal, state, county or other local government entity statutes, rules and regulations.

7.10.D.14. The following notice is applicable to Contractors who perform excavation Work: ATTENTION: Oregon law requires you to follow rules adopted by the Oregon Utility Notification Center. Those rules are set forth in OAR 952-001-0090. You may obtain copies of the rules by calling the center at (877) 668-4001.

7.10.D.15. *Independent Contractor Status:* The service or services performed under the Contract Documents are those of an independent contractor as defined in ORS 670.600. Contractor represents and warrants that it is not an officer, employee or agent of the Owner as those terms are used in ORS 30.265.

7.10.D.16. *Retirement System Status and Taxes:* Contractor represents and warrants that it is not a contributing member of the Public Employees' Retirement System and will be responsible for any federal or state taxes applicable to payment received under the Agreement. Contractor will not be eligible for any benefits from these payments under the Agreement of federal Social Security, employment insurance, workers' compensation or the Public Employees' Retirement System, except as a self-employed individual. Unless Contractor is subject to backup withholding, Owner will not withhold from such payments any amount(s) to cover Contractor's federal or state tax obligations.

7.10.D.17. *Government Employment Status:* The Contractor represents and warrants that it is not currently employed by the Federal Government. This does not preclude the Contractor from holding another contract with the Federal Government.

7.10.D.18. *American Iron and Steel Requirement.* The Contractor acknowledges that it understands the goods and services provided in the performance of the Work are being funded with monies made available by the Clean Water State Revolving Fund that has statutory requirements commonly known as "American Iron and Steel;" that requires all of the iron and steel products used in the project to be produced in the United States ("American Iron and Steel Requirement") including iron and steel products provided by the Contractor pursuant to these Contract Documents. The Contractor hereby represents and warrants to and for the benefit of the Owner and the State that (a) the Contractor has reviewed and understands the American Iron and Steel Requirement, (b) all of the iron and steel products used in the Project will be and/or have been produced in the United States in a manner that complies with the American Iron and Steel Requirement, unless a waiver of the requirement is approved, and (c) the Contractor will provide any further

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verified information, certification or assurance of compliance with this paragraph, or information necessary to support a waiver of the American Iron and Steel Requirement, as may be requested by the Owner or the State. Notwithstanding any other provision of these Contract Documents, any failure to comply with this paragraph by the Contractor shall permit the Owner or State to recover as damages against the Contractor any loss, expense, or cost incurred by the Owner or State resulting from any such failure (including without limitation any impairment or loss of funding, whether in whole or in part, from the State or any damages owed to the State by the Owner). While the Contractor has no direct contractual privity with the State, as a lender to the Owner for the funding of its Project, the Owner and the Contractor agree that the State is a third-party beneficiary and neither this paragraph (nor any other provision of the Contract Documents necessary to give this paragraph force or effect) shall be amended or waived without the prior written consent of the State.

7.10.D.19. Failure to comply with any or all of the requirements of Section 7.10.D shall be a material breach of the Contract and constitute grounds for Contract termination. Damages or costs resulting from such noncompliance shall be the responsibility of Contractor.

SC-7.11. Amend Paragraph 7.11.A by adding “and Owner” after the word “Engineer” in the second and third sentences.

SC-7.12.B. Add the following paragraph immediately after Paragraph 7.12.B:

Contractor shall be aware that permit-required confined spaces exist in or near the Project Site. Entry to these spaces must be accomplished in compliance with the requirements of OAR 166-150-0190 (29 CFR 1910.146). Examples of permit-required confined spaces include but are not limited to the following:

1. Open tanks beyond the handrails including clarifiers, aeration basins, channels, etc.
2. Manholes.
3. Flow control structures which have the potential to contain sewage.
4. Enclosed tanks including digesters, clarifiers, grit basins, chemical tanks, etc.
5. Wet well and dry wells of pump stations.
6. Headworks channels.
7. Electrical vaults.

The hazards associated with these confined spaces may include but are not limited to:

1. Oxygen deficiency.
2. Combustible vapors including methane.
3. Slip hazards.
4. Fall/retrieval hazard.
5. Engulfment hazard.
6. Lockout required of mechanical and electrical devices.

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7. Toxic or hazardous chemicals including hydrogen sulfide and process chemicals.
8. Traffic hazards.
9. Hot work and ignition sources.
10. Potential for rapid changes in working conditions.
11. Painting or coating application activities often pose temporary hazards.

Prior to beginning Work in permit-required confined spaces, Contractor shall provide Owner with a copy of Contractor's permit-required confined space entry plan/program including a copy of the permit forms that will be used by Contractor. Upon request by Contractor, Owner will review with Contractor, Owner's permit-required confined space program and specific procedures Owner would incorporate in spaces entered. Owner will coordinate any of its entries into the same spaces with Contractor. When the permit-required confined space Work is completed, Contractor shall inform Owner, in writing, of any hazards encountered or changes made resulting in different hazards within the space.

SC-7.12. Insert the following Paragraphs 7.12.F and 7.12.G:

F. Contractor shall revise Contractor's plan for safety precautions and programs at appropriate times to reflect changes in construction conditions, the Work, Contractor's means, methods, techniques, sequences and procedures of construction, and the requirements of Paragraph 12.02. Contractor shall disseminate the original plan and revisions to all others indicated in Paragraphs 7.12.A.1 and 12.02.

G. Contractor's plan for safety precautions and programs will not require more stringent safety requirements, training or other qualifications for all others, including those specified in Paragraph 12.02 and their employees, than Contractor sets forth for comparable activity and responsibility of Contractor, Subcontractors and Suppliers and their respective employees.

SC-7.12. Insert the following paragraph as J:

J. Contractor shall prepare, implement, and maintain a safety and health program or plan and submit a Site Specific Safety Plan Certification. See Section 01 31 19, Project Meetings.

SC-7.15. Amend Paragraph 7.15.A by adding the words "and Owner" immediately after the word "Engineer" in the second sentence.

SC-7.17. Add the following new paragraph after Paragraph 7.17.C.8:

9. any acceptance by Owner or any failure to do so.

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SC-7.17. Add the following new paragraph after Paragraph 7.17.D:

E. Contractor shall warrant the Work to be free of defects in materials and workmanship for a period of one year from the date of Substantial Completion by the Owner. The Contractor shall correct defective Work during the warranty period as described in General Conditions.

SC-7.18. Delete Paragraph 7.18.A in its entirety and replace with the following:

A. Contractor shall be responsible for all damage to property, injury to persons, and loss, expense, inconvenience, and delay that may be caused by, or result from, the carrying out of the Work to be done under the Contract, or from any act, omission or neglect of the Contractor, its Subcontractors, employees, guests, visitors, invitees and agents.

To the fullest extent permitted by law, Contractor shall indemnify, defend (with counsel approved by Owner) and hold harmless the Owner, Clackamas County, and their elected officials, officers, directors, agents, and employees (collectively "Indemnitees") from and against all liabilities, damages, losses, claims, expenses, demands and actions of any nature whatsoever which arise out of, result from or are related to: (a) any damage, injury, loss, expense, inconvenience or delay; (b) any accident or occurrence which happens or is alleged to have happened in or about the Project Site or any place where the Work is being performed, or in the vicinity of either, at any time prior to the time the Work is fully completed in all respects; (c) any failure of the Contractor to observe or perform any duty or obligation under the Contract Documents which is to be observed or performed by the Contractor, or any breach of any agreement, representation or warranty of the Contractor contained in the Contract Documents or in any subcontract; (d) the negligent acts or omissions of the Contractor, a Subcontractor or anyone directly or indirectly employed by them or any one of them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder (except to the extent otherwise void under ORS 30.140); and (e) any lien filed upon the Project or bond claim in connection with the Work. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this section.

Contractor shall also indemnify and hold harmless Owner for any fines or costs imposed on the Owner by the State of Oregon or the United States for violation of the Owner's National Pollutant Discharge Elimination Permit, where such violations are the result of the Contractor's sole negligence. The Owner will withhold from any payments owed to the Contractor the amount of such fines, and a Change Order shall be issued to reflect any such reduction.

SC-7.18. Amend Paragraph 7.18.B by removing "or Engineer" from the first sentence.

SC-8.02. Add the following new paragraph immediately following Paragraph 8.02.B:

8.02.C. Other work anticipated to be performed at the Site by others that is not related to but coincides with the scheduled performance of the Work under these Contract Documents is described in Section 01 31 13, Project Coordination.

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SC-8.03. Amend Paragraph 8.03.D by deleting both uses of the word “Engineer” from the first sentence.

SC-9.02.A. In Paragraph 9.02.A, delete the words “to whom Contractor makes no reasonable objection.”

SC-9.05.C. Delete Paragraph 9.05.C in its entirety and replace with the following:

- A. Article 5 refers to Owner’s identifying and making available to Contractor copies of reports of explorations and tests of conditions at the Site relating to existing surface or subsurface structures at the Site that have been utilized by Engineer in preparing the Contract Documents.

SC-9.11.A. Delete Paragraph 9.11.A in its entirety and replace it with the following:

- A. If and to the extent Owner has agreed to furnish Contractor reasonable evidence that financial arrangements have been made to satisfy Owner’s obligations under the Contract Documents, Owner’s responsibility in respect thereof will be as set forth in the Supplementary Conditions.

SC-10.03. Add the following new paragraphs immediately after Paragraph 10.03.A:

10.03.B. Resident Project Representative (“RPR”) will be furnished by the Engineer. The responsibilities, authority, and limitations of the RPR are limited to those of Engineer in accordance with Paragraph 10.08 and as set forth elsewhere in the Contract Documents and are further limited and described below.

10.03.C. Responsibilities and Authority:

10.03.C.1. Schedules: Review and monitor Progress Schedule, Schedule of Submittals, and Schedule of Values prepared by Contractor and consult with Engineer concerning acceptability.

10.03.C.2. Conferences and Meetings: Conduct or attend meetings with Contractor, such as preconstruction conferences, progress meetings, Work conferences and other Project related meetings.

10.03.C.3. Liaison: (i) Serve as Engineer’s liaison with Contractor, working principally through Contractor’s authorized representative, and assist in understanding the intent of the Contract Documents; (ii) assist Engineer in serving as Owner’s liaison with Contractor when Contractor’s operations affect Owner’s onsite operations; (iii) assist in obtaining from Owner additional details or information when required for proper execution of the Work.

10.03.C.4. Interpretation of Contract Documents: Inform Engineer and Owner when clarifications and interpretations of the Contract Documents are needed and transmit to Contractor technical clarifications and interpretations as issued by

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Engineer, or non-technical clarifications and interpretations of the Contract Documents issued by Owner.

10.03.C.5. Submittals: Receive submittals that are furnished at the Site by Contractor, and notify Engineer of availability for examination. Advise Engineer and Contractor of the commencement of any Work or arrival of materials and equipment at Site, when recognized, requiring a Shop Drawing or Sample if the submittal has not been approved by Engineer.

10.03.C.6. Modifications: Consider and evaluate Contractor's suggestions for modifications in Drawings or Specifications and provide recommendations to Engineer; transmit to Contractor, in writing decisions as issued by Engineer.

10.03.C.7. Review of Work and Rejection of Defective Work: (i) Conduct onsite observations of the Work in progress to assist Engineer in determining if the Work is, in general, proceeding in accordance with the Contract Documents; (ii) inform Engineer and Contractor whenever RPR believes that any Work is defective; (iii) advise Engineer whenever RPR believes that any Work will not produce a completed Project that conforms generally to the Contract Documents or will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents, whenever RPR believes Work should be uncovered for observation, or requires special testing, inspection, or approval; (iv) monitor to ensure that tests, equipment and systems startups and operating and maintenance training are conducted in the presence of appropriate personnel, and that Contractor maintains adequate records thereof; (v) observe, record and report to Engineer appropriate details relative to the test procedures and startups; and (vi) accompany visiting inspectors representing public or other agencies having jurisdiction over the Project, record the results of these inspections and report to the Engineer.

10.03.C.8. Inspections, Tests, and System Startups: (i) Verify tests, equipment and systems startups and operating and maintenance training are conducted in the presence of appropriate personnel, and that Contractor maintains adequate records thereof; (ii) observe, record, and report to Engineer appropriate details relative to the test procedures and system startups; and (iii) accompany visiting inspectors representing public or other agencies having jurisdiction over the Project, record the results of these inspections, and report to Engineer.

10.03.C.9. Records: (i) Maintain at the Site files for correspondence, conference records, Submittals including Shop Drawings and Samples, reproductions of original Contract Documents including all Addenda, the signed Agreement, Written Amendments, Work Change Directives, Change Orders, Field Orders, additional Drawings issued after the Effective Date of the Agreement, Engineer's written clarifications and interpretations, progress reports, and other Project related documents; (ii) keep a record of pertinent Site conditions, activities, decisions and events.

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10.03.C.10. Reports: (i) Furnish Engineer periodic reports of progress of the Work and of Contractor's compliance with the Progress Schedule and Schedule of Submittals; (ii) consult with Engineer in advance of scheduled major tests, inspections or start of important phases of the Work; and (iii) assist in drafting proposed Change Orders, Work Change Directives, and Field Orders, and obtain backup material from Contractor as appropriate.

10.03.C.11. Payment Requests: Review Applications for Payment with Contractor for compliance with the established procedure for their submission and forward with recommendations to Engineer, noting particularly the relationship of the payment requested to the Schedule of Values, Work completed, and materials and equipment delivered at the Site but not incorporated in the Work.

10.03.C.12. Certificates, Operation and Maintenance Manuals: During the course of the Work, verify materials and equipment certificates and operation and maintenance manuals and other data required by Specifications to be assembled and furnished by Contractor are applicable to the items actually installed and in accordance with the Contract Documents, and ensure these documents have been delivered to Engineer for review and forwarding to Owner prior to payment for that part of the Work.

10.03.13. Substantial Completion: (i) Conduct an inspection in the company of Engineer, Owner, and Contractor and prepare a list of items to be completed or corrected; (ii) submit to Engineer a list of observed items requiring completion or correction.

10.03.14. Final Completion: (i) Conduct final inspection in the company of Engineer, Owner, and Contractor; and (ii) notify Contractor and Engineer in writing of all particulars in which this inspection reveals that the Work is incomplete or defective; and (iii) observe that all items on final list have been completed, corrected, or accepted by Owner and make recommendations to Engineer concerning acceptance.

10.03.D. Limitations of Authority: Resident Project Representative will not:

10.03.D.1. have authority to authorize a deviation from Contract Documents or substitution of materials or equipment, unless authorized by Owner; or

10.03.D.2. exceed the limitations of Engineer's authority as set forth in Contract Documents; or

10.03.D.3. undertake any of the responsibilities of Contractor, Subcontractors, Suppliers, or Contractor's authorized representative; or

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10.03.D.4. advise on, issue directions relative to, or assume control over an aspect of the means, methods, techniques, sequences, or procedures of Contractor's work unless such advice or directions are specifically required by the Contract Documents; or

10.03.D.5. advise on, issue directions regarding, or assume control over safety practices, precautions, and programs in connection with the activities or operations of Owner or Contractor; or

10.03.D.6. participate in specialized field or laboratory tests or inspections conducted offsite by others, except as specifically authorized by Owner; or

10.03.D.7. accept Shop Drawings or Samples from anyone other than Contractor; or

10.03.D.8. authorize Owner to occupy the Project in whole or in part; or

10.03.D.9 take an action that would affect Owner's obligations related to scope or schedule of the Work.

SC-10.07. Delete the last sentence of Paragraph 10.07.A and replace it with the following:

In rendering such decisions and judgments, Engineer will not show partiality to the Owner or Contractor. If a dispute, matter for interpretation or need for judgment arises that includes allegations against the Engineer, then the Engineer shall not be the party deciding that matter.

SC-10.08. Add the following new paragraph immediately after Paragraph 10.08.E:

10.08.F. Only the Owner has the authority to authorize modifications of the Contract Documents, authorize additional Work, or change the Contract Time.

SC-11.04. Replace 15 percent with 10 percent at the end of Paragraph 11.04.C.2.a).

SC-11.04. Add the following new paragraph immediately after Paragraph 11.04.C:

11.04.D. In the event Contractor submits request for additional compensation as a result of a change or differing Site conditions, or as a result of delays, acceleration, or loss of productivity, Owner reserves right, upon written request, to audit and inspect Contractor's books and records relating to the Project. Upon written request for an audit, Contractor shall make its books and records available within 14 days of request. Owner shall specifically designate identity of auditor. As part of audit, Contractor shall make available its books and records relating to the Project, including but not limited to Bidding Documents, cost reports, payroll records, material invoices, subcontracts, purchase orders, daily timesheets, and daily diaries. Audit shall be limited to those cost items which are sought by Contractor in a change order or claim submission to Owner.

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SC-11.05.B. Add the following to Paragraph 11.05.B:

All requests for time extensions shall be supported by Schedule analysis showing the effect on the entire Project taking into account concurrent Work and the critical path, including float. Partial demonstration of impact on particular operations only will not be acceptable to show the criticality of any event on the Project Schedule as a whole.

SC-11.05. Add the following paragraphs to Paragraph 11.05 immediately following Paragraph 11.05.B:

C. Use of Float:

1. A claim for an adjustment of Contract Times (or Milestones), otherwise allowable under the Contract Documents, shall be granted only when the time lost or gained exceeds the float for the activity at the time of the event giving rise to the claim. Float, the amount of time between the early start date and the late start date, or the early finish date and the late finish date, is jointly owned by both Owner and Contractor whether expressly disclosed or implied in any manner.
2. Contractor shall not use float suppression techniques (including, but not limited to, preferential sequencing caused by late starts of follow-up trades, unreasonably small crews, extended durations, or imposed dates) in information provided to Owner or Engineer.

SC-11.06. Delete the last sentence of Paragraph 11.06.A.1 and replace it with the following:

Engineer will advise Owner regarding the Change proposal.

SC-11.06. Delete Paragraph 11.06.A.2 and 11.06.A.3 in their entirety and replace them with the following:

2. *Owner's Action:* Owner will review each Change Proposal and, within 30 days after receipt of the Contractor's supporting data, either deny the Change Proposal in whole, approve it in whole, or deny it in part and approve it in part. Such actions shall be in writing, with a copy provided to Engineer and Contractor. If Owner does not take action on the Change Proposal within 30 days, then Contractor may at any time thereafter submit a letter to Owner indicating that as a result of the inaction on the Change Proposal, it is deemed denied, thereby commencing the time for appeal of the denial under Article 12.
3. *Binding Decision:* Owner's decision will be final and binding upon Contractor, unless Contractor appeals the decision by filing a Claim under Article 12.

SC-11.07. Delete Paragraph 11.07.B in its entirety.

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SC-12.01. Delete Paragraph 12.01.A.1 in its entirety and replace it with the following:

2. Appeals by Contractor of Owner's decisions regarding Change Proposals;

SC-13.01. Delete Paragraph 13.01.B.1 in its entirety and insert the following in its place:

SC-13.01. In Paragraph 13.01.B.1, delete the third sentence and replace with the following language:

1. Labor costs for employees in the direct employ of Contractor in the performance of the Work will be the actual cost for wages in accordance with the Oregon BOLI Prevailing Wage Rates for Public Works Contracts in Oregon (see SC-7.10.D.1.a for specific BOLI publication) for each craft or type of workers performing the Work at the time the Work is done, plus BOLI's established Fringe Rate for employer payments of payroll taxes, worker compensation insurance, liability insurance, health and welfare, pension, vacation, apprenticeship funds, and other direct costs resulting from Federal, State or local laws, as well as assessments or benefits required by lawful collective bargaining agreements. Labor costs for equipment operators and helpers will be paid only when such costs are not included in the invoice for equipment rental. The labor costs for foremen and superintendents shall be proportioned to all of their assigned Work and only that applicable to extra Work shall be paid.

SC-13.01.B. In Paragraph 13.01.B.4, delete the word "special" and replace with the word "technical," and delete the parenthetical phrase "(including but not limited to Engineers, architects, testing laboratories, surveyors, attorneys, and accountants)" in its entirety.

SC-13.01. Delete Paragraph 13.01.B.5.c in its entirety and insert the following in its place:

c. Rentals of construction equipment at the rental rate listed for such equipment specified in the current edition of the "Contractor's Equipment Cost Guide" as published by Equipment Watch (www.equipmentwatch.com), telephone number 800/699-3282, or from rate sheets from local rental companies. Such rental rate will be used to compute payments for equipment whether the equipment is under the Contractor's control through direct ownership, leasing, renting, or another method of acquisition. The rental rate to be applied for use of each item of equipment will be the rate resulting in the least total cost to the Owner for the total period of use. If it is deemed necessary by the Contractor to use the equipment not listed by the references specified herein, an equitable rental rate for the equipment will be established by the Engineer. The Contractor may furnish cost data which might assist the Engineer in the establishment of the rental rate. Payment shall be subject to the following:

- 1) Payment for equipment which is already on the Project Site and which is used in the completion of extra Work will not be allowed;
- 2) All equipment shall, in the opinion of the Engineer, be in good working condition and suitable for the purpose for which the equipment is to be used;

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- 3) Before construction equipment is used on the extra Work, the Contractor shall plainly stencil or stamp an identifying number thereon at a conspicuous location, and shall furnish to the Engineer, in duplicate, a description of the equipment and its identifying number;
- 4) Unless otherwise specified, manufacturer's ratings and manufacturer approved modifications shall be used to classify equipment for the determination of applicable rental rates. Equipment which has no direct power unit shall be powered by a unit of at least minimum rating recommended by the manufacturer;
- 5) Individual pieces of equipment or tools having a replacement value of \$400 or less, whether or not consumed by use, will be considered to be small tools and no payment will be made therefore; and
- 6) Rental time will not be allowed while equipment is inoperative due to breakdowns.

The rental time to be paid for equipment at the Site will be the time the equipment is in productive operation on the extra Work being performed and, in addition, will include the time required to move the equipment to the location of the extra Work and return it to the original location or to another location; except, that moving time will not be paid if the equipment is used on other than the extra Work, even though located at the Site of the extra Work. Loading and transporting costs will be allowed, in lieu of moving time, when the equipment is moved by means other than its own power, except that no payment will be made for loading and transporting costs when the equipment is used at the Site of the extra Work on other than the extra Work. Rental time will not be allowed while equipment is inoperative due to breakdowns. The rental time of equipment on the Work Site will be computed subject to the following:

- 1) When hourly rates are listed, any part of an hour less than 30 minutes of operation will be considered to be one-half hour of operation, and any part of an hour in excess of 30 minutes will be considered 1 hour of operation;
- 2) When daily rates are listed, any part of a day less than 4 hours operation will be considered to be half-day of operation. When Owner -operated equipment is used to perform extra Work to be paid from on time and materials basis, the Contractor will be paid for the equipment and operator, as set forth in Paragraphs a), b), and c) following:
 - a) Payment for the equipment will be made in accordance with the provisions in Paragraph 13.01.B.5.c above;
 - b) Payment for the cost of labor and subsistence or travel allowance will be made at the rates established in Paragraph SC-13.01.B.1; and

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c) To the direct cost of equipment rental and labor, computed as provided herein, will be added the allowances for equipment rental and labor as provided in Section 00 72 00, General Conditions, Paragraph 13.01.D.

SC-13.01. Add the following language to the end of Paragraph 13.01.B.5.h:

Express and courier services must be approved prior to use.

SC-13.01.E. Add the following to Paragraph 13.01.E:

Supporting data shall include but not be limited to daily submissions of timesheets indicating hours and trades worked, equipment and time equipment was employed, and materials expended. Also see SC-7.10.D.6.

SC-13.03.E. Delete Paragraph 13.03.E in its entirety.

SC-14.02.A. Delete Paragraph 14.02.A in its entirety and replace with the following:

A. Contractor shall notify Engineer 48 hours prior to the expected time for operations requiring inspection and laboratory testing services. Contractor shall cooperate with inspection and testing personnel and furnish samples of materials, design mix, equipment, tools, storage and assistance as requested.

SC-14.02.D.5. Add the following to Paragraph 14.02.D:

Tests required by Contract Documents to be performed by Contractor that require test certificates be submitted to Owner or Engineer for acceptance shall be made by an independent testing laboratory or agency licensed or certified in accordance with Laws and Regulations and applicable state and local statutes. In the event state license or certification is not required, testing laboratories or agencies shall meet the following applicable requirements:

1. "Recommended Requirements for Independent Laboratory Qualification," published by the American Council of Independent Laboratories.
2. Basic requirements of ASTM E329, "Standard Specification for Agencies Engaged in the Testing and/or Inspection of Materials Used in Construction" as applicable.
3. Calibrate testing equipment at reasonable intervals by devices of accuracy traceable to either the National Bureau of Standards or accepted values of natural physical constants.

Prior to requesting a certificate of Substantial Completion, and allowing occupancy of facilities, Contractor shall provide an inspection by a state industrial safety representative, by an independent safety inspector certified by the state in the construction type being inspected, or a federal or state (OSHA) representative

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qualified in the construction type being inspected, to determine that the facilities provided are in compliance with the state and federal safety requirements. Signed copies of the inspection reports shall be submitted to the Engineer for Owner's files. Violations or deficiencies noted therein shall be resolved prior to occupancy of the facilities and before final payment will be made.

SC-14.03. Delete Paragraph 14.03.B in its entirety and replace with the following:

B. Owner and Engineer's Authority: Engineer will have the authority to determine whether Work is defective, and will advise Owner, who will determine whether to reject defective work.

SC-14.03. Amend Paragraph 14.03.D by adding "or Owner" after the word Engineer.

SC-15.01. Amend Paragraph 15.01.A by adding the following after the last sentence:

"The Owner will make progress payments in accordance with ORS 279C.570."

SC-15.01. Add the following subparagraph after Paragraph 15.01.B.3:

4. Stored Material and Equipment: Payments for stored materials and equipment shall be based only upon the actual cost of the materials and equipment to Contractor and shall not include any overhead or profit to Contractor. Partial payments will not be made for undelivered materials or equipment.

5. Schedule and Data: During the progress of the Work, each Application for payment shall be accompanied by Contractors updated schedule of operations, or progress report, with Shop Drawings schedules, procurement schedules, and value of materials on hand included in the application and other data specified in Section 01 33 00, Submittal Procedures, or reasonable required by Engineer.

6. Unless otherwise indicated in the Contract Documents, partial payment for equipment shall be as follows:

- a) 5 percent upon final approval of Shop Drawings by Engineer or Owner.
- b) 55 percent upon delivery of goods.
- c) 35 percent upon startup and final acceptance of good by engineer or Owner.
- d) 5 percent upon delivery of O&M Manuals.

SC-15.01. Add the following new Paragraph 15.01.B.4:

Total price for mobilization shall not exceed 1.0 percent of the Contract Price. Total price for demobilization shall not be less than 2.0 percent of the Contract Price.

SC 15.01. Amend Paragraph 15.01.E.1.1 by replacing period with a semicolon and adding "or" to the end of the sentence.

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SC-15.01. Amend Paragraph 15.01.E.1 by adding the following at the end:

m. Any funds retained pursuant to SC-7.10.D.6, SC-7.18 and SC-15.03.B.

SC-15.01. Add the following new paragraph immediately after Paragraph 15.01.E:

15.01.F. *Subcontractor Payments.* Contractor shall make payments to subcontractors in accordance with SC-7.10.D.

SC-15.03. Amend Paragraph 15.03.A by adding the following:

Substantial Completion is further defined as (i) that degree of completion of the Project's operating facilities or systems sufficient to provide Owner the full time, uninterrupted, and continuous beneficial operation of the Work; (ii) all required functional, performance, and acceptance or startup testing has been successfully demonstrated for all components, devices, equipment, and instrumentation and control to the satisfaction of Engineer in accordance with the requirements of the Specifications; (iii) all inspections required have been completed and identified critical defective Work has been replaced or corrected; and (iv) all appurtenant operations and maintenance features (i.e., hose bibs, drainage systems, etc.) have been installed and are functional.

1. Conditions precedent to Substantial Completion of the Work and Engineer's issuance of a Certificate of Substantial Completion shall include:

- a. Conformance with all training services requirements and deliverables.
- b. Submittal of current record documents to the Owner and Engineer.
- c. Submittals have been received and approved or accepted by Engineer including, but not limited to, the following:
 - i. Approved Shop Drawings;
 - ii. Electrical testing and wiring diagram;
 - iii. Equipment data forms;
 - iv. Manufacturer's certificates of proper installation;
 - v. Factory test reports;
 - vi. Commissioning, testing and startup reports;
 - vii. Final Operations and Maintenance Manuals;
 - viii. Extra materials (spare parts) (as specified).

SC 15.03.B. Add the Following new subparagraph to Paragraph 15.03.B:

1. If some or all of the Work has been determined not to be at a point of Substantial Completion and will require re-inspection or re-testing by Engineer,

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the cost of such re-inspection or re-testing, including the cost of time, travel and living expenses, shall be paid by Contractor to Owner. If Contractor does not pay, or the parties are unable to agree as to the amount owed, then Owner may impose a reasonable set-off under Article 15.01.E Reductions in payment by Owner against Payments due.

SC-15.06. Add the following new paragraph immediately after Paragraph 15.06.A.2.e:

f. In accordance with ORS 279A.120, when out-of-state Contractor is awarded a Contract, Contractor is required to report to the Department of Revenue the Contract Price, terms of payment, length of Contract, and other information as Department of Revenue may require. Owner will verify Contractor has satisfied this requirement prior to issuing final payment.

SC-16.02. Amend Paragraph 16.02.A by adding the following at the end of the sentence:

“in a manner consistent with ORS 279C.670.”

SC-16.04. Delete GC 16.04 in its entirety.

SC-17.02. Add the following new paragraph immediately after Paragraph 17.01.

SC-17.02 *Litigation.* Any Claim between Owner and Contractor that arises from or relates to the Contract and that is not resolved through the Claims Review Process shall be brought and conducted solely and exclusively within the Circuit Court of Clackamas 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 County 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 THE CONTRACT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF THE COURTS REFERENCED IN THIS SECTION.

SC-18.04. Amend Paragraph 18.04.A by removing the words “nor Engineer” from the second sentence.

SC-18.06. Amend Paragraph 18.06.A by adding the following to the end of the last sentence:

All warranty and indemnification provisions of the Contract, and all of Contractor’s other obligations under the contract that are not fully performed by the time of Final Completion or termination, shall survive Final Completion or any termination of the Contract.

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SC-18.07. Delete Paragraph 18.07.A in its entirety and replace with the following:

- A. This Contract is governed by the laws of the State of Oregon without giving effect to the conflict of law provisions thereof.

SC-18.08. Add the following after Paragraph 18.08:

18.09 *General Provisions.*

A. No Third Party Beneficiaries: Owner and Contractor are the only parties to the Contract and are the only parties entitled to enforce its terms. Nothing in the 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 the Contract.

B. Severability: If any provision of the Contract is declared by a court to be unenforceable, 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 provision held to be invalid.

C. Access to Records: Contractor shall keep, at all times on the Project Site, one record copy of the complete Contract Documents, including the Plans, Specifications, addenda, and Change Orders (if any) in good order and marked currently to record field changes and selections made during construction, and one record copy of Shop Drawings, Product Data, Samples and similar submittals, and shall at all times give the Owner access thereto. Contractor shall retain and the Owner and its duly authorized representatives shall have access, for a period not less than ten (10) years, to all Record Documents, financial and accounting records, and other books, documents, papers and records of Contractor which are pertinent to the Contract, including records pertaining to Overhead and indirect costs, for the purpose of making audit, examination, excerpts and transcripts. If for any reason, any part of the Work or the Contract shall be subject to litigation, Contractor shall retain all such records until all litigation is resolved and Contractor shall continue to provide Owner and/or its agents with full access to such records until such time as all litigation is complete and all periods for appeal have expired and full and final satisfaction of any judgment, order or decree is recorded and Owner receives a record copy of documentation from Contractor.

E. Waiver: Failure of the Owner to enforce any provision of the Contract shall not constitute a waiver or relinquishment by the Owner of the right to such performance in the future nor of the right to enforce any other provision of the Contract.

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F. Successors in Interest: The provisions of the Contract shall be binding upon and shall accrue to the benefit of the parties to the Contract and their respective permitted successors and assigns.

G. Non-Exclusive Rights and Remedies: Except as otherwise expressly provided herein, the rights and remedies expressly afforded under the provisions of the Contract shall not be deemed exclusive, and shall be in addition to and cumulative with any and all rights and remedies otherwise available at law or in equity. The exercise by either Party of any one or more of such remedies shall not preclude the exercise by it, at the same or different times, of any other remedies for the same default or breach, or for any other default or breach, by the other Party.

H. Interpretation: The titles of the sections of the Contract are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

I. Debt Limitation: The 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.

END OF SECTION