



# AGENDA

**Thursday, July 17, 2014 - 6:00 PM**  
**BOARD OF COUNTY COMMISSIONERS**

Beginning Board Order No. 2014-76

## **CALL TO ORDER**

- Roll Call
- Pledge of Allegiance

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

1. Approval to Apply for a 2014 Resident Opportunity for Self-Sufficiency Service (ROSS) Coordinator Grant from the US Department of Housing and Urban Development
2. Approval to Apply for a Grant from the State of Oregon Housing and Community Services for Capacity Building Funds
3. Approval to Respond to the Meyer Memorial Trust Request for Proposal to Increase Access to Private Market Units through Housing Choice Vouchers Grant

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

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

- 4 1. First Reading of Ordinance No. \_\_\_\_\_ Amending Title 5 – Animals, and Appendix B, Fines, of the Clackamas County Code (Diedre Landon, Department of Transportation & Development)
- 5 2. Resolution No. \_\_\_\_\_ for the Consideration of the Formation of an ORS 266 Parks and Recreation District, Replacing the Current North Clackamas Parks & Recreation District (NCPRD) at a Higher Permanent Rate (Chris Storey, County Counsel, Gary Barth, NCPRD)

**IV. DISCUSSION ITEMS** *(The following items will be individually presented by County staff or other appropriate individuals. Citizens who want to comment on a discussion item may do so when called on by the Chair.)*

**~NO DISCUSSION ITEMS SCHEDULED**

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

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

- 6 1. Approval of an Amendment to the Intergovernmental Agreement with the State of Oregon Department of Human Services for Job Opportunities and Basic Skills for Clients Receiving Temporary Assistance to Needy Families (TANF) – *Community Solutions*
- 7 2. Approval of an Intergovernmental Agreement for Professional Services Amendment No. A3 with the State of Oregon, Department of Education Early Learning Division – *Children, Youth & Families*
- 8 3. Approval of Grant Agreement Amendment No. 2 from the US Department of Housing and Urban Development, Continuum of Care Program, for the Jackson Place Program to Provide Transitional Housing and Services for the Homeless – *Social Services*
- 9 4. Approval of a Grant Agreement Amendment No. 2 from the US Department of Housing and Urban Development, Continuum of Care Program, for the HOPE Leasing Program for the Purpose of Providing Permanent Housing - *Social Services*

**B. Department of Transportation & Development**

- 10 1. Resolution No. \_\_\_\_ Declaring the Public Necessity and Purpose for Acquisition of Rights-of-Way and Easements for the Pudding River (Whiskey Hill Road) Bridge Project and Authorizing Negotiations and Eminent Domain Actions

**C. Elected Officials**

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

**D. Emergency Management**

- 12 1. Approval of Two FY 2012 Urban Area Security Initiative Sub-recipient Grant Agreements with Clackamas Fire District No. 1

**VI. NORTH CLACKAMAS PARKS & RECREATION DISTRICT**

- 13 1. Approval of an Amended and Restated Intergovernmental Agreement Related to the Acquisition, Ownership, Development and Easements Related to the Lents II/Luther Road 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 by the following Saturday. You may also order copies from any library in Clackamas County or the Clackamas County Government Channel.*

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

July 17, 2014

Board of County Commissioner  
 Clackamas County

Members of the Board:

Approval to apply for a 2014 Resident Opportunity for Self-Sufficiency Service (ROSS) Coordinator grant from the U.S. Department of Housing and Urban Development

<b>Purpose/Outcomes</b>	Permission to apply for grant funds to cover costs of 1.0 FTE for a Public Housing Service Coordinator.
<b>Dollar Amount and Fiscal Impact</b>	\$246,000 over three years (\$82,000 annually)
<b>Funding Source</b>	U.S. Department of Housing and Urban Development (HUD) - No County General Funds are involved. No Match is required.
<b>Safety Impact</b>	None
<b>Duration</b>	1/1/2015-12/31/2018
<b>Previous Board Action</b>	June 16, 2011, Board approved applying for ROSS grant currently in effect.
<b>Contact Person</b>	Chuck Robbins, Executive Director, 503-650-5666
<b>Contract No.</b>	None

**BACKGROUND:**

The Housing Authority of Clackamas County, a division of the Health, Housing & Human Services Department request the approval to apply for a grant from the U.S. Housing & Urban Development. HUD's ROSS grant provides funding for Service Coordinators to help Public Housing families increase earned income, reduce or eliminate the need for welfare assistance and make progress toward achieving economic independence and/or housing self-sufficiency. The total amount of the award for a three-year grant term is \$246,000. The Housing Authority will use grant funds for salary and benefits for one (1) full time Public Housing Service Coordinator over three years.

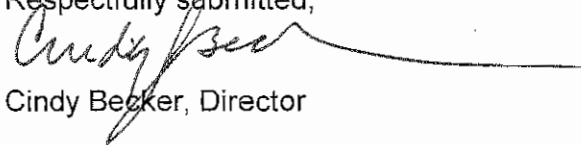
The Service Coordinator will:

- Coordinate with local service providers to link participants to supportive services needed to achieve self-sufficiency.
- Market the program to Public Housing residents.
- Provide general case management for intake, assessment, education, and referrals.
- Coordinate and sponsor educational events such as health care, job search seminars, self help groups and life skills training.

**RECOMMENDATION:**

Staff recommend the approval to apply for this grant and acceptance of the award if funded. Staff further recommend authorizing Cindy Becker, H3S Director to sign on behalf of Clackamas County.

Respectfully submitted,

  
 Cindy Becker, Director

July 17, 2014

Board of County Commissioner  
 Clackamas County

Members of the Board:

Approval to apply for a Grant from the State of Oregon Housing and  
 Community Services for Capacity Building Funds

<b>Purpose/Outcomes</b>	Permission to apply for grant funds to be used to seek increased capacity in administering the Housing Authority's housing portfolio
<b>Dollar Amount and Fiscal Impact</b>	\$50,000
<b>Funding Source</b>	State Grant Funds - No County General Funds are involved. No match is required.
<b>Safety Impact</b>	None
<b>Duration</b>	October 1, 2014 - June 30, 2015
<b>Previous Board Action</b>	None
<b>Contact Person</b>	Chuck Robbins, Executive Director, 503-650-5666
<b>Contract No.</b>	None

**BACKGROUND:**

The Housing Authority of Clackamas County, a division of the Health, Housing & Human Services Department request the approval to apply for a grant from the State of Oregon, Housing and Community Services Division for Capacity Building funds. Declines in Federal funding are requiring the Housing Authority to look at ways to operate more efficiently. One avenue of efficiency the Housing Authority has looked into is improved use of technology. Technology upgrades are expensive and Oregon Housing and Community Services Capacity Building Funds grant would be used to offset some of the costs. The Housing Authority would like to research and purchase possible software upgrades for its finance and client reporting requirements, electronic tablets to automate inspection reporting, and paperless technology which would allow the Housing Authority to reduce space dedicated to storage and improve records access.

**RECOMMENDATION:**

Staff recommends the approval to apply for this grant and acceptance of the award if funded. Staff further recommends authorizing Cindy Becker, H3S Director to sign all grant documents on behalf of Clackamas County.

Respectfully submitted,



Cindy Becker, Director

July 17, 2014

Board of County Commissioner  
 Clackamas County

Members of the Board:

Approval to Respond to the Meyer Memorial Trust Request for Proposals (RFP) to Increase Access to Private Market Units through Housing Choice Vouchers Grant

<b>Purpose/Outcomes</b>	Permission to apply for grant funds to Increase Access to Private Market Units through Housing Choice (Section 8) Vouchers
<b>Dollar Amount and Fiscal Impact</b>	Maximum \$75,000 (Typical Grants range from \$5,000 to \$30,000)
<b>Funding Source</b>	Meyer Memorial Trust - No County General Funds are involved. No Match is required.
<b>Safety Impact</b>	None
<b>Duration</b>	One Year from Time of Award
<b>Previous Board Action</b>	None
<b>Contact Person</b>	Chuck Robbins, Executive Director, 503-650-5666
<b>Contract No.</b>	None

**BACKGROUND:**

The Housing Authority of Clackamas County, a division of the Health, Housing & Human Services Department request the approval to respond to a RFP from the Meyer Memorial Trust Request for Proposals for Housing Choice Vouchers. Effective July 1, 2014, House Bill 2639 made it illegal to discriminate against Section 8 Housing Choice Voucher families. Landlords and property managers are skeptical about working with the Section 8 Program and this grant would allow the Housing Authority to do extensive outreach and education with landlords in the private market in areas that are not typically utilized by Section 8 families. In particular, the Housing Authority would like to focus on improving lease ups in areas that do not have a high concentration of low-income and/or minority households. These grant funds would allow the Housing Authority to assign existing staff to this project and provide the additional resources needed to develop and implement an extensive outreach and education program that would be rolled out over the course of the next year.

**RECOMMENDATION:**

Staff recommends the approval to apply for this grant and acceptance of the award if funded. Staff further recommends authorizing Cindy Becker, H3S Director to sign all grant documents on behalf of Clackamas County.

Respectfully submitted,



Cindy Becker, Director



**M. BARBARA CARTMILL**  
DIRECTOR

**DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT**

**DEVELOPMENT SERVICES BUILDING**

150 BEAVERCREEK ROAD | OREGON CITY, OR 97045

July 17, 2014

Board of County Commissioners  
Clackamas County

Members of the Board

**FIRST READING ORDINANCE AMENDING TITLE 5, ANIMALS, AND  
APPENDIX B, FINES, OF THE CLACKAMAS COUNTY CODE**

<b>Purpose/Outcomes</b>	This is the first reading of the proposed amendments to Title 5 of the County Code. These proposed amendments fall into three primary categories: (1) statutory changes, (2) housekeeping to better define current program operations and (3) continuous annoyance (barking dogs). Fees and fines are proposed with the ordinance amendments to provide financial support for the program changes.
<b>Dollar Amount and Fiscal Impact</b>	\$160,000/year for proposed Continuous Annoyance program; no fiscal impact for other proposed amendments.
<b>Funding Source(s)</b>	<u>Animal Rescue Entities:</u> <ul style="list-style-type: none"> <li>• Licenses: \$100/year/entity (number of entities unknown)</li> <li>• Fines: Unknown</li> </ul> <u>Continuous Annoyance (Barking Dogs):</u> <ul style="list-style-type: none"> <li>• Citations: \$13,000-19,000/year</li> <li>• Dog Licenses (Increase): \$144,000/year (additional \$6/license/year)</li> </ul>
<b>Safety Impact</b>	The statutory changes are designed to help ensure the safety of animals and guard against abuse.
<b>Duration</b>	Ongoing
<b>Previous Board Action</b>	None
<b>Contact Person</b>	Diedre Landon, Administrative Services Manager Department of Transportation and Development 503-742-4411 (Phone)   dlandon@clackamas.us

**BACKGROUND:**

**Statutory Changes:** Several code amendments are proposed to bring County Code into compliance with new and revised State statutes. (Exhibit A)

**Housekeeping:** A number of amendments are proposed to clarify and further define portions of the code. These do not result in any substantive changes. (Exhibit A)

**Continuous Annoyance:** During the 2013-14 budget sessions, the Board of County Commissioners directed Clackamas County Dog Services (CCDS) staff to revisit the barking dogs program ("continuous annoyance"). Three BCC study sessions have been held since then to discuss the issue. (Exhibit A; Attachments B & C)

- Barking dog complaint calls often involve neighbor-to-neighbor issues other than the barking dog, and the other issues must be acknowledged to establish the lines of communication to resolve the barking dog issue.

- Since most dog owners are not aware that their animal is barking and/or that their neighbors are annoyed by the barking, a successful program relies on the participation of both parties to reach a solution.

Because of these challenges, barking dog complaints are difficult to respond to and resolve. Clackamas County Dog Services (CCDS) is recommending a continued partnership with the County's Dispute Resolution Center to help resolve such complaints. Staff developed a structure for a resolution-based program that is reflected in the proposed amendments. (Attachment B)

**License, Fee and Fine Changes:** A \$6/license/year increase is proposed in the cost of County dog licenses in order to cover the additional cost of the proposed new continuous annoyance program. A new fine is proposed for veterinarians who fail to report a canine rabies vaccination pursuant to County Code, Chapter 5.01.030(B3). In addition, as provided in the law there would be a charge for a new license for rescue entities, fines for violating new laws on dog tethering and minimum care standards. (Attachments D & E)

## **EXECUTIVE SUMMARY:**

Clackamas County Dog Services proposes the following amendments to the Title 5 Animal Code and related license fees and fines. The amendments were reviewed and approved by County Counsel.

### **1. Statutory Changes**

- a. Animal Rescue Entity:  
With the passage of Senate Bill 6 during the 2013 legislative session, state law has been amended to require licensing and record-keeping for Animal Rescue Entities. The bill defines enforcing entities, which includes Clackamas County Dog Services, and requires the enforcing agency to license and enforce the law regarding these entities. The law allows the enforcing agency to impose fines if an animal rescue entity fails to comply with the law. Changes to Section 5.01.030(A)(3) reflect these legislative changes.
- b. Tethering Restrictions:  
During the same legislative session, approved House Bill 2893 amended ORS 167.343 to impose limitations on the type and duration of tethering used on dogs. The law also provides for the imposition of fines for failing to comply with the law. These new laws are included, as amended by the state, in 5.01.040(B)(18).
- c. Minimum Care Requirements:  
Passage of HB 2783 modified the statutory minimum care requirements for dogs in the State of Oregon. Changes to Chapter 5.01.020(A)(22) reflect these changes.

### **2. Housekeeping:**

- a. Inspection Certifications: The code is being amended to permit people who purchase multiple dog licenses to verify compliance with minimum care standards by either having the County inspect the premises or by submitting an inspection certification from a licensed Oregon veterinarian. 5.01.030(A)(2).
- b. Changes to 5.01.070(B) require a Dog Services officer to request entry onto real property during the course of an investigation to determine whether to issue a citation.
- c. Staff proposes removal of 5.01.090(D), which authorizes the Dog Services manager to request the assistance of law enforcement to obtain and execute a warrant for search and seizure of dogs. The existing language sets an expectation of action with residents, though this is not the preferred method of compliance. The removal of this language reflects our current practice.
- d. Staff proposes adoption of a fine for citing veterinarians who fail to report a canine rabies vaccination pursuant to County Code, Chapter 5.01.030(B3). The rabies vaccination report helps the County identify unlicensed dogs within the county and pursue licensing. Identifying and returning a licensed dog to its owner can be done relatively easily and quickly, minimizing the amount of shelter and care needed for a dog found running-at-large.

### 3. Continuous Annoyance (Barking Dogs)

Complaints from people about barking dogs are more formally referred to as continuous annoyance calls. The Board directed staff to develop a progressive, resolution-based program and that is reflected in the proposed ordinance amendments.

Adoption of the amendments outlined in Sections 5.01.040(B)(17) and 5.01.070(F)(1-2) will reinstate the Continuous Annoyance regulation in County Code. Staff recommends that the ordinance be adopted with program implementation effective January 5, 2015 (the first Monday in the new calendar year). This schedule provides time for the recruitment and training of personnel to handle the new workload resulting from the program changes.

As discussed at a recent study session on this topic, program costs that exceed revenue generated by fines and citations will be paid for with the proceeds of a \$6/license/year increase in the cost of a County dog license.

#### **FINANCIAL IMPLICATIONS (current year and ongoing):**

- **Animal Rescue Entity:** The addition of the animal rescue entity program is projected to have little to no impact on the overall financial status of Dog Services. The initial licensing fee is expected to enable cost recovery for the licensing and tracking portion of the program because much of the burden is placed on the licensee. Fines paid by entities found to be in violation of the new laws are anticipated to provide for approximately 50% direct cost recovery; any remaining expenses would be sought for recovery during legal proceedings.
- **Continuous Annoyance:** One administrative team member and one field services officer will be needed to respond to the additional complaints generated with the proposed Continuous Annoyance program. The Board allocated \$200,000 to the FY13-14 CCDS budget to meet related staffing needs and program implementation for the first year of the program. Assuming limited collection on citations, this program will require ongoing support of approximately \$144,000 per year, in addition to existing program costs. The recommended structure, which includes an increase of \$6/license/year, captures the cost of staffing a barking dog (continuous annoyance) provision in the County Code.
- **Other Fees and Fines:**
  - Adoption of a fine for the improper tethering of a dog provides a mechanism for the County to enforce the new laws that the State put into effect.
  - The adoption of a fine for citing veterinarians who fail to report canine rabies vaccinations provides an incentive for voluntarily compliance.

#### **ATTACHMENTS:**

Exhibit A: Title 5 – Animal Code Amendments (*Redline*)

Attachment B: Proposed Barking Dog Program Response Process

Attachment C: Title 5 – Animal Code Amendments (*Continuous Annoyance Language*)

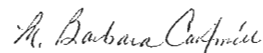
Attachment D: Program Fine Schedule (*Proposed*)

Attachment E: Program Fee Schedule (*Proposed*)

#### **RECOMMENDATION:**

Staff recommends the Board of County Commissioner read the proposed ordinance by title only and proceed to a second reading of the ordinance on July 31, 2014.

Sincerely,



M. Barbara Cartmill  
Director



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

**An Ordinance amending Title 5, Animals, and Appendix B, Fines, of the Clackamas County Code**

WHEREAS, the Clackamas County Board of Commissioners finds that Title 5, Animals, of the Clackamas County Code should be updated to comply with newly enacted State law requirements including regulation of animal rescue entities and tethering requirements; and

WHEREAS, the Clackamas County Board of Commissioners finds that continuously barking dogs can be disruptive and annoying, and can interfere with County residents' peaceful enjoyment of their homes and property; and

WHEREAS, the Clackamas County Board of Commissioners finds that continuously barking dogs are contrary to the public health, safety and welfare; and

WHEREAS, the Clackamas County Board of Commissioners finds that fines associated with the Title 5 amendments should be adopted;

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

The Board of Commissioners of Clackamas County ordains as follows:

**Section 1:** Title 5 of the Clackamas County Code is hereby amended as shown on Exhibit "A", attached hereto and incorporated herein by this reference.

**Section 2:** Appendix B of the Clackamas County Code is hereby amended as shown on Exhibit "D", attached hereto and incorporated herein by this reference.

**Section 3: Effective Date.** The provisions of this ordinance that pertain to continuously barking dogs ("continuous annoyance") shall be effective on January 5, 2015. All other provisions will become effective 90 days after adoption.

ADOPTED this \_\_\_\_\_ day of July, 2014.

BOARD OF COUNTY COMMISSIONERS

\_\_\_\_\_  
Chair

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

**TITLE 5**

**ANIMALS**

**Summary**

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**TITLE 5**

**ANIMALS**

**5.01 DOG ANIMAL LICENSING, & SERVICES AND ENFORCEMENT..... 1**

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## Chapter 5.01

### 5.01 DOG ANIMAL LICENSING, & SERVICES AND ENFORCEMENT

#### 5.01.010 Enactment; Authority

The County is authorized by Oregon Revised Statutes (ORS) 203.035 to regulate matters of County concern. The Board of County Commissioners finds that dog licensing and services within the County is a matter of County concern that impacts the health and safety of the people of Clackamas County. ORS 609.015, ORS 609.135 and ORS 153.030 recognize the authority of the County to enact and enforce regulations and procedures that vary from related state law provisions. The Board of County Commissioners adopts the following dog licensing and services regulations and procedures pursuant to ORS 203.035. Matters that concern crimes of abuse, neglect, or abandonment of dogs and other animals regulated by this code will be investigated and prosecuted under state law. [Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 01-2004, 4/8/04; Amended by Ord. 05-2010, 7/1/10]

#### 5.01.020 Definitions; Exclusions; Fines and Fees

- A. Definitions. Terms used but not defined shall have their plain meaning.
1. ANIMAL means any nonhuman mammal, bird, reptile, amphibian or fish as defined in ORS 167.310 or ORS 167.374.
  2. ANIMAL RESCUE ENTITY means an individual or organization, including but not limited to an animal control agency, humane society, animal shelter, animal sanctuary or boarding kennel not subject to ORS 167.374, but excluding a veterinary facility, that keeps, houses, and maintains in its custody 10 or more animals and that solicits or accepts donations in any form.
  3. BITE, BITING, BITTEN means the breaking of the skin of a person, domestic animal, or livestock by the teeth of a dog.
  4. CONDITIONAL RELEASE means a security or non-security release of an impounded dog which imposes regulations and conditions on the activities and keeping of the dog pending final disposition of a violation of this chapter, including appeal.
  5. CONTINUOUS ANNOYANCE means any dog that unreasonably causes annoyance, alarm or noise disturbance to any person by barking, whining, screeching, howling or making other sounds which may be heard beyond the boundary of the owner's or keeper's property, either as an episode of continuous noise lasting for a minimum period of fifteen (15) minutes or repeated episodes of intermittent noise lasting for a minimum period of 45 minutes within a 24-hour period.
  36. COSTS mean any monetary assessment, other than fines and fees ordered by a Hearings Officer, including, but not limited to, costs for veterinarian care, restitution, prosecution expenses and attorney fees.
  47. DANGEROUS DOG means any dog that menaces, bites, injures or kills a person, domestic animal, or livestock.

58. DOG means the common dog (*Canis familiaris*) and also includes any animal claimed by its owner to be a wolf-hybrid unless the owner provides written verification from a licensed veterinarian that the animal is a wolf-hybrid and not a dog.
69. DOG AT LARGE means a dog that is off or outside the dog owner's property and not under the immediate control of a person.
710. DOG OWNER means the following, however any presumption of ownership raised in this section may be rebutted by proof to the contrary:
- a. Any person in whose name a dog license has been issued;
  - b. Any person who has a possessory property right in a dog;
  - c. ~~In a family situation the adult head(s) of household shall be jointly and severally presumed to be the owner(s);~~
  - ~~d.~~ Any person who without regard to any ownership interest, shelters a dog or ~~who~~ has a dog in that person's care, possession, custody or control, or ~~who~~ knowingly permits a dog to remain on property occupied by that person for more than 30 days ~~shall be presumed to be the owner.~~
  - d. In all three circumstances described above, it is understood that in a family situation the adult head(s) of household shall be jointly and severally presumed to be the owner(s).
811. DOG SERVICES means Clackamas County Dog Services.
912. DOG SERVICES OFFICER means a person employed by or contracting with Clackamas County who is authorized to investigate violations and issue citations as provided in this chapter.
103. DOMESTIC ANIMAL means any nonhuman mammal, bird, reptile, amphibian or fish as defined ~~has the meaning provided~~ in ORS 167.310.
14. ENFORCING AGENCY means Clackamas County.
145. EUTHANASIA means the putting ~~of a dog~~ to death of an animal in any humane manner permitted under ORS 609.405.
126. EXPENSES mean expenditures incurred by Dog Services during impoundment, keeping and disposition of a dog.
137. HEARINGS OFFICER means any authority appointed by the Board of County Commissioners to hear and determine violations of this chapter.
148. IMPOUND means taking physical or constructive custody of a dog. A dog shall be considered impounded from the time Dog Services staff or a peace officer takes physical custody of the dog or serves an owner with a Notice of Impound and Conditional Release in accordance with this chapter.
159. LIVESTOCK has the meaning provided in ORS 609.125.
1620. MANAGER means the Clackamas County Dog Services Manager or his/her designee.
1721. MENACE means lunging, growling, snarling, chasing, attacking, or other behavior by a dog that would cause a reasonable person to fear for the person's safety, the safety of another person or the safety of a domestic animal or livestock.
1822. MINIMUM CARE means ~~care but is not limited to,~~ sufficient ~~food~~ to ~~maintain~~preserve the ~~dog's~~ health and well-being of a dog and, except for emergencies or circumstances beyond the reasonable control of the owner, includes but is not limited to, each of the following requirements:
- a. Food of sufficient quantity and quality to allow for normal growth or maintenance of body weight.

- b. Open or adequate; access to potable water in sufficient quantity to satisfy the dogs' needs. Access to ~~that is not~~ snow or ice ~~is not adequate access to potable water.~~
- c. ; ~~a~~ Access to ~~an enclosed~~ adequate shelter. For a dog other than one engaged in herding or protecting livestock, this requires access to a barn, dog house or other enclosed structure sufficient to protect the ~~dog~~ animal from wind, rain, snow or sun with adequate bedding to protect against cold and dampness.
- d. ; ~~continuous a~~ Access to ~~an area that is kept clean and has~~ adequate bedding, which is defined as bedding of sufficient quantity and quality to permit a dog to remain dry and reasonably clean and to maintain a normal body temperature.
- e. space and ventilation with suitable temperature; and v Veterinary care deemed necessary by a reasonably prudent person to relieve the dog's distress from injury, neglect or disease.
- f. Continuous access to an area:
- i. with adequate space for exercise necessary for the health of the dog;
  - ii. with air temperature suitable for the dog; and
  - iii. that is kept reasonably clean and free from excess waste or other contaminants that could affect the dog's health.
- ~~19.~~ MULTIPLE DWELLING means any building or portion thereof that is designed, built, rented, leased, let or hired out to be occupied, or which is occupied as the home or residence of two or more families living independently of each other in separate units.
- ~~203.~~ PEACE OFFICER has the meaning provided in ORS 161.015.
- ~~244.~~ PHYSICAL INJURY has the meaning provided in ORS 167.310.
- ~~225.~~ SECURE ENCLOSURE means any of the following:
- a. A fully fenced pen, kennel or structure that is in compliance with applicable County codes, that will remain locked with a padlock or combination lock, and which has secure sides at least five feet high. The County may also require that the structure have a secure top and/or floor ~~that are~~ attached to the sides, or require that the sides be embedded in the ground no less than one foot; or
  - b. A house or garage that has latched doors kept in good repair to prevent the escape of the dog. A house, garage, patio, porch or any part of the house is not a secure enclosure if the structure would allow the dog to exit the structure of its own will; or
  - c. For a dangerous dog, a fully fenced pen, kennel or structure at least six feet in height that is either anchored beneath the ground or is in concrete and which prevents the dog from digging under it. The enclosure must be of a design that prevents entry of children or unauthorized persons and also prevents those persons from extending an arm or leg inside the enclosure. The enclosure must remain locked with a padlock or combination lock when occupied by the dog. A County approved sign must remain posted at all entry points of the dog owner's property that informs both children and adults that the dog is dangerous.

26. TETHERING means to restrain a dog by tying the dog to any object or structure by any means. Tethering does not include using a handheld leash for the purpose of walking a dog.

237. VIOLATION means any violation of this chapter for which a fine, condition, or restriction, or other sanction may be imposed.

248. WOLF-HYBRID means an animal that is either the result of cross-breeding a purebred wolf and a dog, or an existing wolf-hybrid with a dog, or any dog declared by its owner to be a wolf-hybrid. A wolf-hybrid will be considered to be a dog under this chapter unless the owner provides written verification from a licensed veterinarian that the animal is a wolf-hybrid and not a dog.

B. Exclusions.

This chapter does not regulate veterinarians, kennel operators or pet shop owners who for a period of not more than 90 days maintain on their property dogs owned by other persons.

C. Fines and Fees.

All fines and fees associated with this chapter shall be set by resolution of the Board of County Commissioners.

[Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 01-2004, 4/8/04; Amended by Ord. 05 2010, 7/1/10]

### 5.01.030 Licensing; Vaccinations

A. License.

1. Individual Dog License.

- a. A person must be at least 18 years old to obtain a license for a dog.
- b. Every dog owner shall license a dog by the time the dog has a set of permanent canine teeth or is six months old, whichever comes first, or within thirty (30) days of acquiring the dog.
- c. A dog owner who has moved to Clackamas County and who does not have a current dog license from another Oregon city or county, shall obtain a dog license within thirty (30) days of moving into Clackamas County unless the dog has not yet reached six months of age. A dog with a current dog license from another Oregon city or county shall not require licensing under this chapter until expiration of the current license, if within thirty (30) days of moving into Clackamas County the owner notifies Dog Services of the dog's description, license number, and city or county of issuance, and Clackamas County address. d. A dog license is not transferable to another dog. The license number shall be assigned to the particular dog and shall remain with that dog for the life of the dog.

2. Multiple Dog License.

- a. Qualification; Application; Inspection. When an owner has more than one dog, the owner may obtain or renew a multiple dog license after submission of submitting a completed, qualifying Multiple Dog License Application and after either 1) submitting an inspection certification from a veterinarian licensed in the state of Oregon; or 2) a County inspection of the applicant's premises to determine that the owner is in compliance with minimum care standards exists as provided by this chapter.

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- b. ~~Denial of a Multiple Dog License. Causes for denial~~An owner may appeal the denial of a multiple dog license application may include, but are not limited to, denial for any person currently under active investigation or prosecution for any animal-related crime, persons under parole or probation following a conviction for any animal-related crime, or any person for which ownership, keeping or responsibility for animals would be a violation of any rule, regulation or law, either civil or criminal, to a Hearings Officer by delivering a written request to Dog Services within seven (7) days of the mailing date of the written notice denying the license. A hearing will follow the same procedures set forth in this chapter for a hearing on a violation except that the burden of proof will be on the owner to prove that the denial was improper.
  - c. Transfer. A multiple dog license may be transferred to another holder with prior written approval of Clackamas County, provided that the transferee qualifies to hold the license in all ways that an applicant for a new multiple dog license must qualify.
  - d. Appeal of Denial of Multiple Dog License. An owner may appeal the denial or a new multiple dog license or denial of a transfer of a multiple dog license to a Hearings Officer by delivering a written request to Dog Services within seven (7) days of the mailing date of the written notice denying the license. A hearing will follow the same procedures set forth in this chapter for a hearing on a violation, except that the burden of proof will be on the owner to prove that the denial was improper.
  - ee. Land Use Approval. Issuance of a Mmultiple Ddog Llicense does not constitute approval of a particular land use or indicate compliance with any zoning or land use planning restrictions that may apply. Applicant may be required to demonstrate compliance with city or county zoning or land use planning restrictions prior to issuance.
  - f. To ensure that minimum care standards are continually being met, an owner can either 1) submit an inspection certification from a veterinarian licenses in the state of Oregon or 2) allow a County inspection of the premises to determine that the owner is in compliance with the minimum care standards as provided for by this chapter.
3. Licensing of Animal Rescue Entities:
- a. Licensing Requirement. An animal rescue entity shall comply with the following license requirements:
    - i. Obtain a license issued by the enforcing agency in accordance with this section; and
    - ii. Pay a reasonable fee for a license or an annual renewal of the license.
  - b. Issuance and Renewal of License. The enforcing agency may not issue or renew a license under this section unless the animal rescue entity demonstrates it is in compliance with this chapter and with applicable state and local law.
  - c. Record Keeping. An animal rescue entity shall maintain a record for each animal that identifies:
    - i. The animal's date of birth or, if the date of birth is unknown, the animal's approximate age;
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- ii. The date possession, control or charge of the animal was acquired and the source of the animal;
- ii. The number of offspring the animal has produced, if applicable;
- iv. The disposition of each animal, including the date of disposition, manner of disposition, and the name and address for any individual or organization taking possession, control or charge of an animal;
- v. Sex, breed type and weight of the animal at intake; and
- vi. A photograph of the animal taken within 24 hours of intake.
- d. Inspections. The following inspections of animal rescue entities by the enforcing agency shall be permitted:
  - i. Inspection of the records required by this section.
  - ii. Furnish reports and information required by Section 5.01.030(C)(1)-(6) and by state and local law.
  - iii. Conduct an on-site investigation of the premises whenever the enforcing agency has reason to believe that the animal rescue entity is operating without a license. The purpose of an investigation under this section is to determine whether the animal rescue entity is subject to the requirements of this chapter.
  - iv. At any reasonable time, an on-site investigation of the premises may be conducted to determine whether the animal rescue entity is in compliance with this section.
  - v. An on-site investigation if a credible and serious complaint has been received that the animal rescue entity has failed to comply with the requirements of this section. The investigation shall be limited to determining if the animal rescue entity has failed to comply with the requirements of this chapter.
  - vi. If during the course of an inspection made under this section, the enforcing agency finds evidence of animal cruelty in violation of ORS 167.310 to 167.351, 167.355 or 167.360 to 167.372, the enforcing agency shall seize the evidence and report the violation to law enforcement.
- e. Transfer of License. An animal rescue entity may transfer a license issued under this section to another person with the written consent of the enforcing agency, provided that the transferee otherwise qualifies to be licensed as an animal rescue entity and does not have a certified unpaid debt to the state. The transferee shall submit a signed release to the enforcing agency permitting the performance of a background investigation of the transferee, and the enforcing agency shall conduct the background investigation.
- f. Violations. A violation of any provision in this section may be prosecuted by the enforcing agency, as provided by section 5.01.070 of this chapter, and may result in the imposition of fines and civil penalties, or other restrictions or remedies as provided in this chapter.

B. Dog Rabies Vaccination

- 1. Individual or multiple dog licenses will not be issued without evidence of one of the following for each dog to be licensed:
  - a. A rabies vaccination certificate issued by a licensed veterinarian that is valid for the license period; or,

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- b. A written statement signed by a licensed veterinarian stating that for medical reasons the rabies vaccination cannot be administered to the dog.
    - 2. A dog that does not have proof of a current rabies vaccination, exemption from vaccination, or current Oregon county or city license, shall be apprehended and impounded at the owner's expense.
    - 3. A veterinarian performing a rabies vaccination of any dog must transmit a copy of the vaccination certificate or written documentation that includes information contained on the certificate to Dog Services within 30 days of the vaccination. In the alternative, a veterinarian may issue a dog license in accordance with the rules adopted by this Chapter, and submit proof of license to Dog Services within 30 days of the vaccination.
  - C. License Term; Renewal; Fine
    - 1. A license will be valid for one, two or three years from the date of issuance at the option of the dog owner, [based on the license fee paid by the owner](#), and requires a rabies vaccination certificate for the licensing period.
    - 2. Renewal of a license shall not be due until the last day of the month in which the license expires. If a person fails to renew a license prior to its expiration date, a fine may be assessed at the time the license is renewed.
  - D. Identification ~~€~~Tags.
    - 1. At the time an individual dog license is issued, the County will issue a free identification tag that is to be fastened to a collar or harness and kept on the dog at all times when the dog is not in the immediate possession of the owner.
    - 2. When a multiple dog license is issued, the owner may obtain identification tags [for each dog in his possession](#) upon payment of a fee.
    - 3. If a dog license tag is lost, the owner may obtain a duplicate tag from Dog Services upon payment of a fee.
  - E. License Fees Exemptions.
    - 1. No license fee will be required for the following:
      - a. Any dog that meets the definition of an "assistance animal" as defined in ORS 346.680, provided that the license applicant has filed a statement with Dog Services indicating that the dog is an "assistance animal" for a person who has a physical impairment in one or more of their daily life activities and resides in the applicant's household.
      - b. Any dog in training to be an "assistance animal" as defined in ORS 346.680, in affiliation with a recognized organization for the training or placement of assistance animals, provided the trainer files a statement with Dog Services verifying that the dog is an assistance animal.

[Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 05-2003, 3/13/03; Amended by Ord. 01-2004, 4/8/04; Amended by Ord. 05-2010, 7/1/10; Amended by Ord. 08-2012, 8/2/12]

#### **5.01.040 Control of Dogs**

- A. Duties of Owners. For the purposes of this chapter, a dog owner is responsible for the behavior of the dog regardless of whether the owner or another person allowed the dog to engage in the behavior that is the subject of the violation.
  - B. Violations.
    - 1. It is unlawful to permit a dog to be a public nuisance. A dog is a public nuisance if it:
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- a. Menaces, bites, injures or kills a person, domestic animal, or livestock. It is a defense to this section if the dog engages in such behavior as a result of a person wrongfully assaulting the dog or owner, or other similar provocation, or when the dog's behavior was directed towards a trespasser or other extenuating circumstances that establishes that the dog does not constitute an unreasonable risk to life or property;
  - b. Is a dog at large. It is a defense to this section that the dog was a working dog wearing a locating device and temporarily separated from the person in control of the dog;
  - c. Chases a vehicle while off the dog owner's property;
  - d. Damages or destroys property of another person while off the dog owner's property;
  - e. Scatters garbage while off the dog owner's property;
  - f. Is a female in heat (estrus) and is a dog at large.
2. It is unlawful to fail to comply with the requirements of this chapter that apply to keeping a dangerous dog.
  3. It is unlawful to permit any dog to leave the confines of any prescribed quarantine area, and/or fail to comply with any other condition of quarantine.
  4. It is unlawful to interfere with an identified County employee or peace officer who is enforcing any provision of this chapter by intentionally acting in any manner that prevents, or attempts to prevent, a County employee or peace officer from performing their lawful duties.
  5. It is unlawful to knowingly provide false information to a County employee or peace officer enforcing any provision of this chapter.
  6. It is unlawful to permit a dog to be confined within a motor vehicle at any location under such conditions as may endanger the health or well-being of the dog, ~~including but not limited to dangerous temperature, lack of food, water or attention.~~
  7. It is unlawful to permit a dog to be unrestrained in an open portion of a vehicle.
  8. It is unlawful to fail to reclaim an impounded dog.
  9. It is unlawful to fail to comply with any fine, fee, cost, expense, condition, ~~or~~ restriction or other order imposed by a Hearings Officer under this chapter.
  10. It is unlawful to fail to surrender a dog for apprehension to the County when required by this chapter.
  11. It is unlawful to fail to license a dog or renew a license as required by this chapter.
  12. It is unlawful for an owner to fail to immediately notify Dog Services when the owner's dog has bitten a person, domestic animal, or livestock.
  13. It is unlawful to keep a dog in a manner that does not meet minimum care standards of this chapter.
  14. It is unlawful to fail to maintain a current rabies vaccination.
  15. It is unlawful for a person who has been bitten by a dog, or a parent/guardian of a bitten minor, to fail to immediately notify Dog Services when required by this chapter.
  16. It is unlawful for a dog owner to fail to follow any condition of release pending final disposition of a violation of this chapter, including appeal.
  17. It is unlawful to permit any dog to cause continuous annoyance as defined in Section 5.01.020(5).
  18. It is unlawful to permit any dog to be tethered in any manner as provided below:

- a. with a tether that is not a reasonable length given the size of the dog and available space and that allows the dog to become entangled in a manner that risks the dog's health or safety;
- b. with a collar that pinches or chokes the dog when pulled;
- c. for more than 10 hours in a 24-hour period;
- d. for more than 15 hours in a 24-hour period if the tether is attached to a runner, pulley or trolley system;

It is not a violation of this section if for any dog to be tethered:

- e. while the dog remains in the physical presence of the person who owns, controls or otherwise has charge of the dog;
  - f. pursuant to the requirements of a campground or other recreational area;
  - g. for the purpose of engaging in an activity that requires licensure in this state, including but not limited to hunting;
  - h. to allow transport of the dog; or
  - i. if the dog is kept for herding, protecting livestock or dog sledding.
19. It is a violation for a veterinarian performing a rabies vaccination on a dog to fail to report the rabies vaccination as provided in 5.01.030(B)(3).
20. It is unlawful to operate an animal rescue entity without proper licensing and compliance with requirements outlined in 5.01.030(A)(3).

- C. **Lost Dogs; Duties of Finders.** Any person who finds and shelters a dog without knowing the dog owner's identity ~~shall notify Dog Services within three days with a description of the dog. A finder may surrender the dog to Dog Services, or retain possession subject to surrender upon County request.~~ shall be subject to the responsibilities provided in ORS 98.005, ORS 98.025 and ORS 609.100.

[Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 05-2003, 3/13/03; Amended by Ord. 01-2004, 4/8/04; Amended by Ord. 05-2010, 7/1/10; Amended by Ord. 08-2012, 8/2/12]

### **5.01.050 Biting Dogs; Dangerous Dogs**

#### **A. Reporting ~~b~~Biting ~~d~~Dogs.**

1. The owner of a dog that bites a person, domestic animal, or livestock shall immediately notify Dog Services of the time and circumstances of the bite along with a description of the biting dog, its rabies vaccination status, the owner's name and address, and if known the name and address of the person who was bitten or the owner of the bitten domestic animal or livestock.
2. Any person who is bitten by a dog, ~~or~~ is the parent/guardian of a bitten minor, or owns a domestic animal or livestock bitten by a dog shall immediately notify Dog Services of the time and circumstances of the bite along with his/her name and address, a description of the biting dog, and if known the name and address of the dog owner.

#### **B. Quarantine of ~~b~~Biting ~~d~~Dogs.**

1. A dog suspected of biting a person will be quarantined at the owner's expense until the tenth day following the bite in accordance with state law.
2. At the discretion of the County, a dog that has proof of a current rabies vaccination, exemption from vaccination, or a current Oregon county or city license may be quarantined at the premises of a licensed veterinarian or at the premises of the owner providing the dog is kept within a secure enclosure or with approved restraint deemed adequate to prevent contact with any person or other animal, and is kept in accordance with any other conditions set by the

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County as permitted by this chapter or required by state law. It shall be a violation of this chapter if during home quarantine the dog leaves the confines of a prescribed quarantine area for any reason or otherwise violates the conditions of quarantine.

3. Dogs that have bitten a person and do not have proof of a current rabies vaccination, exemption from vaccination, or a current Oregon county or city license shall be apprehended and impounded as resources allow.

C. Dangerous Dogs.

1. Classification of Dog as a Dangerous Dog. A dog may be classified by the Hearings Officer as a dangerous dog when it has menaced, bitten, chased, injured or killed any person, domestic animal, or livestock.

2. Notice of Classification; Hearing.

- a. Notice. Prior to a dog being classified as dangerous, the owner shall have a right to a hearing before a Hearings Officer. The County shall send a Dangerous Dog Notice to the dog owner by certified mail or personal ~~service; if~~ service. If sent by mail, the date of mailing will be considered the date of service. The notice shall inform the owner of:
  - i. A description of the alleged incident and specific behavior that supports classification of the dog as dangerous.
  - ii. The regulations that may be imposed following a dangerous dog classification, including the requirement of a dangerous dog certificate.
  - iii. An opportunity to request a hearing.
  - iv. Information that the dog owner must request a hearing within seven (7) days from the date of service by delivering a written request to Dog Services.
  - v. Information that if the dog owner does not make a timely request for hearing, the dog owner shall be deemed to have waived his/her right to a hearing. Thereafter, following proof of sufficient evidence that the dog is dangerous, the Hearings Officer may so classify the dog and impose regulations consistent with this chapter.

- b. Hearing.

- i. Following a timely request for hearing, the County will notify the dog owner and Hearings Officer of the date and time of the hearing. The hearing shall follow the procedures set forth in this chapter for a hearing on a violation.
- ii. The Hearings Officer may refrain from classifying a dog as dangerous upon a finding that the behavior was the result of a person wrongfully assaulting the dog or owner, or other similar provocation, or when the dog's behavior was directed towards a trespasser, or other extenuating circumstances that establishes that the dog does not constitute an unreasonable risk to life or property.
- iii. A hearing on classification of a dangerous dog may be consolidated with a hearing on any underlying violation for which the dog owner has been cited.

3. Regulation of Dangerous Dogs; Microchip Identification. When a dog has been classified as dangerous, the dog shall be microchip identified at Dog Services at
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the expense of the owner, as provided in ORS 609.168. In addition, a Hearings Officer may order the following regulations:

- a. That the dog be kept in a secure enclosure;
  - b. That the dog owner obtain and maintain proof of public liability insurance;
  - c. That the dog owner not permit the dog to be off the owner's premises unless the dog is muzzled and restrained by an adequate leash and under the control of a competent person;
  - d. That the dog owner successfully complete a County approved pet ownership program;
  - e. That the dog successfully complete obedience training certified by the American Temperament Testing Society or other similar County approved program;
  - f. That the dog be spayed or neutered;
  - g. After consideration of the factors set forth in ORS 609.093, require euthanasia when a dog has bitten or killed a person, domestic animal, or livestock. The Hearings Officer may also consider the public nuisance violation history of the dog and owner to include all known determinations by any court, governing body, official or agency of any local or state government without regard to where or when the incident occurred.
4. Certificate of Registration; Secure Enclosure; Notice to New Owner
- a. Certificate of Registration. Within seven (7) days after a dog has been classified as dangerous, the owner must license the dog, if not already licensed, and obtain a dangerous dog certificate of registration to be renewed annually until the dog is declassified or dies. The County will only issue certificates of registration and renewals to persons who are at least 18 years of age and who present sufficient evidence of:
    - i. A rabies vaccination certificate which will remain in effect for at least one year from the date the certificate of registration is issued;
    - ii. A secure enclosure to confine the dangerous dog;
    - iii. A clearly visible County--approved warning sign to be posted and remain at all entry points of the owner's property that informs both children and adults that the dog is dangerous;
    - iv. Microchip identification as provided in ORS 609.168; and,
    - v. Payment of an annual dangerous dog registration fee.
  - b. Secure Enclosure. The owner of a dog classified as dangerous shall confine the dog in a secure enclosure. The owner must immediately notify Dog Services when a dangerous dog is at large, or has bitten a person, domestic animal, or livestock. A dangerous dog shall not be permitted to leave the confines of a secure enclosure unless the dog is muzzled and restrained by an adequate chain or leash and under control of a competent person.
  - c. Notice to New Owner. Prior to a dangerous dog being sold or given away, the owner shall provide notice to the new owner that the dog has been classified as a dangerous dog and provide the County with the name, address and telephone number of the new owner whether or not the new owner resides in Clackamas County. ~~If~~ the new owner resides
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- in Clackamas County, he/she must comply with all dangerous dog regulations imposed unless and until the dog is declassified or dies.
5. Declassification of Dangerous Dog.
    - a. Declassification. Following an owner's written request, the County may declassify a dog as dangerous and terminate the regulations ordered at the time of classification, except for microchip identification and secure enclosure, when the following conditions have been met:
      - i. For two years from the date of classification the dog has had no further incidents of behavior that would make it a dangerous dog;
      - ii. For two years from the date of classification there have been no violations of the regulations imposed;
      - iii. The dog owner has obtained a certificate of satisfactory completion of obedience training for the classified dog.
    - b. Appeal of Declassification Denial. A dog owner may appeal to a Hearings Officer the denial of a request to declassify a dangerous dog by delivering a written request for appeal to Dog Services within seven (7) days of the mailing date of the County's written notice denying declassification.
      - i. The County's written denial shall include information on how the dog owner may appeal the denial.
      - ii. On appeal the Hearings Officer shall determine whether the dog meets the criteria for declassification and shall either uphold the County's denial or order declassification.

[Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 01-2004, 4/8/04; Amended by Ord. 05-2010, 7/1/10]

### **5.01.060 Impoundment; Release; Adoption**

#### **A. Impoundment**

1. Any Dog Services Officer or peace officer may impound a dog animal that is in violation of this chapter, or when a Dog Services Officer or peace officer reasonably believes a dog the animal requires medical assistance or care, or when ordered by a court or Hearings Officer.
2. If a person refuses to allow a Dog Services Officer or peace officer to enter the premises to apprehend and impound an dog animal as authorized by this chapter, the County may request the assistance of the local law enforcement official to obtain and execute a search warrant as authorized by law to search for and seize the dog animal subject to impound.
3. Any Dog Services Officer or peace officer is authorized to remove a dog the animal from a motor vehicle to apprehend and impound the dog animal when the officer reasonably believes it is confined in a manner that endangers its health or well-being, including but not limited to dangerous temperature, lack of food, water or attention. A written notice of impoundment will be left on or in the vehicle with information on how to reclaim the dog animal.
4. Any person may immediately apprehend and hold for impoundment any dog animal that has trespassed upon the property of that person or another in violation of this chapter, or has menaced, bitten, injured or killed a person, domestic animal, or livestock.

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5. Animals other than dogs that are seized by Dog Services Officers will be taken to facilities that are appropriate for the holding or keeping of those animals. Release of such animals will be subject to State law as well as any rules or procedures for the facility where the animal is being kept.
- B. Impound Holding Periods. Unless otherwise provided in this chapter or reclaimed sooner by the owner, dogs that have been impounded will be held for the following minimum time periods; ~~unless sooner reclaimed by their owner~~:
1. Dogs not wearing a license tag shall be held for at least three consecutive business days, not including the day of impoundment.
  2. Dogs wearing a license tag shall be held for at least five consecutive business days, from the date of notification of impoundment. If notification is by mail, the date of mailing shall be considered the date of notification.
- C. Release of Animals Impounded ~~Dogs~~ at County Dog Shelter; Conditional Release.
1. Release.
    - a. Release Prohibited. Unless otherwise ordered by a Hearings Officer or court of competent jurisdiction, an impounded dog may not be released until final disposition of any violation alleging that the dog has killed a person, or when a dog is pending classification or has been classified as a dangerous dog.
    - b. Release Permitted. Unless prohibited by this chapter prior to final disposition of a violation or pending appeal, an impounded ~~dog~~ animal may be released subject to release conditions in subsection 5.01.060(C)(2)(a) and upon posting security in the amount equal to 50% of the base fine for each violation and payment of fees and costs owed to date including prior outstanding balances, except upon showing of good cause.
  2. Conditional Release.
    - a. Conditions. As permitted by this chapter pending final disposition of a violation or appeal, the County or Hearings Officer may conditionally release an impounded ~~dog~~ animal to its owner and may impose any of the following release conditions, including but not limited to a requirement that the ~~dog~~ animal owner:
      - i. Obtain and provide proof of a rabies vaccination within a designated time, if applicable;
      - ii. Provide proof of license within a designated time, if applicable;
      - iii. Restrain the dog on the dog owner's property by means of a secure enclosure;
      - iv. If the animal is a dog, Ccontrol the dog on a leash that is no longer than six (6) feet, and at all times handled by an adult who is able to control the dog;
      - v. If the animal is a dog, Mmuzzle the dog at all times when the dog is off the dog owner's property;
      - vi. Obtain veterinary care for the ~~dog~~ animal within a designated time;
      - vii. Comply with minimum care standards consistent with this chapter;
      - viii. Keep the ~~dog~~ animal indoors during certain hours.
    - b. Revocation of Conditional Release; Violation; Security Forfeited.
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- i. Revocation. Upon reasonable ground to believe that a release condition has been violated, the County may revoke release, and apprehend and impound the subject ~~dog~~-animal pending final disposition of the underlying violation or appeal.
    - ii. Violation. At the time of revocation the ~~dog~~-animal owner, or the owners, operators or managers of animal rescue entities shall be cited for failure to follow condition(s) of release. A hearing on revocation may be made in accordance with section 5.01.070 of this chapter and consolidated with a hearing on the underlying violation(s).
    - iii. Security Forfeited. The security amount posted on conditional release shall be forfeited upon a finding that one or more conditions of release were violated or if no timely hearing is requested.
  - 3. If a dog owner, or the owners, operators or managers of animal rescue entities, has been cited for a violation(s) of this chapter, and a Hearings Officer finds that no violation(s) occurred, then impoundment and board fees shall not be assessed until the first business day after notice of the Hearings Officer's Final Order.
  - 4. An owner must reclaim an ~~an~~ dog-animal within five (5) business days after notice of a Hearings Officer's Final Order unless otherwise ordered or unless stayed by a court of competent jurisdiction.
  - D. Failure to Reclaim.
    - 1. If an owner fails to reclaim an ~~an animal~~-~~dog~~ as provided in this chapter, the ~~dog~~-animal will be deemed abandoned and shall become the property of the County without compensation paid to the owner.
    - 2. An owner that fails to reclaim an ~~an animal~~-~~dog~~ will be civilly liable to the County for all penalties, fines, fees, costs and expenses authorized by this chapter, which may be collected in the same manner as any other debt allowed by law.
  - E. Diseased or Injured ~~Dog~~Animal. A dog owner, or the owners, operators or managers of animal rescue entities shall be liable to the County for costs paid for medical treatment during impoundment. If the County determines an ~~an animal~~-~~dog~~ is seriously injured or seriously ill or its health condition causes a threat to public health or safety, the ~~dog~~-animal may be immediately euthanized without compensation paid to the owner.
  - F. Release for Adoption.
    - 1. Fees. Adoption fees will be assessed consistent with this chapter.
    - 2. Standards. The Dog Services Manager shall have the authority to develop and enforce adoption policies and procedures.

[Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 05-2003, 3/13/03; Amended by Ord. 01-2004, 4/8/04; Amended by Ord. 05-2010, 7/1/10; Amended by Ord. 08-2012, 8/2/12]

### **5.01.070 Citation; Complaint; Hearing Process**

- A. Issuance of Citation.
    - 1. Any Dog Services Officer or peace officer may issue and serve a dog owner, or the owners, operators or managers of animal rescue entities -with a citation when there are reasonable grounds to believe ~~the owner or dog has committed~~that a violation of this chapter has occurred. The citation shall serve as the County's complaint and may include a fine that is payable to Clackamas County.
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2. A citation shall be served by personal service or by certified mail with return receipt requested, no later than six (6) months from the date the alleged violation occurred. When mailed the date of mailing shall be considered the date of service. The failure of any person to receive notice properly given shall not invalidate or otherwise affect proceedings under this chapter.

B. Inspection and Investigation. In determining whether to issue a citation, a Dog Services Officer may request entry onto any real property in order to investigate a suspected violation of this chapter.

BC. Form of Citation.

1. The citation shall include:

- a. The name and address of the person cited;
- b. The date(s) the alleged violation(s) occurred;
- c. The number and title of the chapter section(s) violated;
- d. A description of the ~~dog~~animal(s) involved;
- e. The base fine, to be equal to the minimum fine, along with the maximum fine for each violation as authorized by this chapter;
- f. A statement providing notice of the penalties that could be imposed by the Hearings Officer, including penalties and keeping restrictions provided in Section 5.01.080 of this chapter.
- g. Whether appearance before a Hearings Officer is optional, or if mandatory, the date, time and place at which the person is to appear;
- gh. The procedure for the person to follow to admit the violation and pay the fine, or to contest the citation and appear before a Hearings Officer;
- hi. A statement that if the person fails to pay the fine within the time allowed, or fails to appear before the Hearings Officer when required, ~~then~~ the person shall have waived his/her right to contest the citation and the Hearings Officer may enter a judgment against the person for an amount up to the maximum fine, in addition to any fees, costs or expenses, conditions or restrictions authorized by this chapter;
- ij. A statement that when appearance before a Hearings Officer is mandatory the person cannot pay the fine in lieu of appearance.

2. An error in transcribing information into a citation, when determined by the Hearings Officer to be non-prejudicial to the defense of the cited person, may be corrected prior to or at the time of the hearing with notice to the cited person. Except as provided in this subsection, a citation that does not conform to the requirements of this section shall be set aside by the Hearings Officer upon motion of the cited person before any other proceedings at the hearing. Minor variations in the form of citation shall not be a basis for setting aside a citation. Nothing prohibits the Hearings Officer from amending a citation in the Hearings Officer's discretion.

C. Response to Citation

1. Unless an appearance before a Hearings Officer is mandatory, a dog owner, or the owners, operators or managers of animal rescue entities who has received a citation may respond by:
  - a. Appearing personally before the Hearings Officer on the cited appearance date and either admit or deny the violation; or
  - b. Prior to the appearance date return a signed copy of the citation to Dog Services admitting the violation, along with a check or money order payable to Clackamas County for the total base fine amount. Admission

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- and payment does not relieve the dog owner, or the owners, operators or managers of animal rescue entities of the requirement to correct the violation; or
- c. Prior to the appearance date, return a signed copy of the citation to Dog Services denying the violation and requesting a hearing. Dog Services will set a time and place for the hearing and notify the Hearings Officer, and the dog owner, or the owners, operators or managers of animal rescue entities.
2. **Mandatory Appearance.** Personal appearance before a Hearings Officer at the time and place indicated on the citation shall be mandatory:
    - a. When a dog owner, or the owners, operators or managers of animal rescue entities has received a citation three (3) times or more within a twelve (12) month period or the issuing officer has determined the appearance should be mandatory;
    - b. For violation of Failure to Surrender an Animal-Dog;
    - c. For violation of Interfering with a County employee or Peace Officer;
    - d. For violation of Providing False Information to a County employee or Peace Officer;
    - e. For violation of Failure to Comply with Conditions of Quarantine;
    - f. For violation of Failure to Comply with any Fine, Fee, Cost, Expense, Condition or Restriction authorized by this chapter;
    - g. For violation of Dog as a Public Nuisance when a dog kills a person, domestic animal, or livestock;
    - h. For violation of Failure to Comply with the Requirements of Keeping a Dangerous Dog.
    - i. For failure to reclaim an impounded doganimal.
    - j. For failure to meet minimum care standards.
  3. **Failure to Respond to Citation.** If a person cited fails to respond to a citation as required by this chapter, then the person shall be deemed to have waived his/her right to contest the citation. Following proof of sufficient evidence that the person has committed the cited violation(s), the Hearings Officer may enter a Final Order against the person for an amount up to the maximum fine, in addition to any applicable fees, costs or expenses, and any other imposition consistent with this chapter. A copy of the Final Order shall be sent to the person cited by regular mail.
- D. **Hearing Process.**
1. **Informal Disposition.** The County and the dog owner, or the owners, operators or managers of animal rescue entities may agree to an informal and final disposition of any violation before a Hearings Officer issues a Final Order.
  2. **Burden of Proof.** The burden will be on the County to prove that the violation occurred by a preponderance of the evidence.
  3. **Testimony of Witnesses and Parties.** The Hearings Officer shall have the authority to administer oaths or affirmations and take testimony of and question witnesses and parties. Parties may offer witness testimony on their own behalf. Written testimony must be submitted by sworn affidavit and may be admitted into the record subject to exclusion by the Hearings Officer and objections by the opposing party.
  4. **Cross-Examination of Witnesses.** The person cited and attorneys may examine or cross-examine witnesses.
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5. Evidence. Reliable and relevant evidence shall be admitted subject to the rules of privilege recognized by law. Records developed, kept and maintained during the normal course of business, including but not limited to, law enforcement reports and veterinary records, shall be admissible provided the party offering the records establishes the authenticity of the records through written or oral testimony. The burden of presenting evidence to support a fact or position shall be on the offering party. The Hearings Officer may establish procedures for the presentation of evidence to ensure that the hearing record reflects a full and fair inquiry into the facts necessary to determine the matter alleged. The Hearings Officer shall have the discretion to exclude any material or testimony that is accumulative, repetitious, irrelevant or immaterial.
6. Objections. Objections to admission of evidence shall be noted in the record and will be considered with respect to the weight to be given the particular evidence offered. The Hearings Officer shall have the discretion to admit or exclude any evidence presented and may reserve the ruling on the admissibility or exclusion of evidence until the time the Final Order is issued.
7. Subpoenas. The Hearings Officer may issue subpoenas to parties when a request is supported by a showing of general relevance and reasonable scope of the evidence sought. Witnesses appearing pursuant to subpoena, other than the parties, peace officers or employees of the County, shall be paid the same witness fees and mileage as allowed in civil cases from the party requesting the subpoena to be paid at the time the subpoena is issued. The party requesting the subpoena will be responsible for its service in accordance with the Oregon Rules of Civil Procedure.
8. Representation. The person cited may represent him/herself or may be represented by counsel at personal expense. The County may be represented at the hearing by any employee of the County. If the employee is not an attorney, the employee shall not present legal argument, examine or cross-examine witnesses, present rebuttal evidence or give legal advice to the Hearings Officer conducting the hearing.
9. Record. A verbatim ~~written or mechanical~~ record shall be made of all hearings. The record may be transcribed at the request of a party upon payment in advance of the cost of transcription.
10. Final Order. At the conclusion of the hearing, the Hearings Officer shall issue a Final Order based upon reliable, relevant and substantial evidence which shall be the County's final determination. A Final Order shall be effective on the date that it is issued unless otherwise provided by the Hearings Officer. The order may be oral or written, but in all cases must be recorded in the record of the proceeding. The Hearings Officer may impose fines, fees, costs, expenses, conditions or restrictions and any other imposition authorized by this Chapter. Monetary obligations are due and payable on the effective date of the Final Order unless otherwise provided.
11. Judicial Review. Review of a Final Order of the Hearings Officer may be made by any party by writ of review as provided in ORS 34.010-34.100.
12. Enforcement of Final Order. The County may maintain civil proceedings in law or equity in a court of competent jurisdiction to enforce any provision of a Hearings Officer's Final Order.

- F. Process when Citation is for Dog as Continuous Annoyance. When the County receives a complaint of a dog causing a continuous annoyance, all of the procedures in this chapter shall apply and the following additional procedures shall also be required:
1. First Complaint. The county will not investigate or issue a citation, but will provide assistance to the complainant and the dog owner to help them resolve the issue between themselves.
  2. Second Complaint. The complainant and the dog owner will be referred to mandatory mediation:
    - a. If the complainant fails to participate in mediation, no citation will be issued to the owner, the county will not investigate the complaint and not further complaints will be considered until and unless the complainant participates in mediation.
    - b. If the owner fails to participate in mediation, the county may conduct further investigation into the complaint, may issue a citation and may take other steps that it determines are reasonable in the circumstances.
  3. Complaints Following Mediation Where All Parties Have Participated. If mediation is conducted wherein both the owner and complainant participate, upon receipt of further complaints the County may conduct further investigation into the complaint, may issue a citation and may take other steps that it determines are reasonable in the circumstances.
  4. After Citation Issued. After a citation is issued by the County, all standard procedures and provisions in this chapter shall apply.

[Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 01-2004, 4/8/04; Amended by Ord. 05-2010, 7/1/10; Amended by Ord. 08-2012, 8/2/12]

#### **5.01.080 Penalties**

- A. Fines, Fees, Costs; Expenses.
1. Upon a finding that ~~a the~~ dog owner or the owners, operators or managers of animal rescue entities has violated this chapter, a Hearings Officer may impose fines, fees, costs and expenses, which shall become a debt owing to Clackamas County and may be collected in the same manner as any other debt allowed by law. If fines, fees, costs or expenses are not paid within sixty (60) days after payment is ordered, the County may file and record the Final Order for payment in the County Clerk Lien Record as authorized by ORS 30.460.
  2. If the Hearings Officer finds that the alleged violation did not occur, the County shall reimburse the ~~dog~~ owner for any fines, fees, costs and expenses previously paid by the owner for the alleged violation.
  3. The Hearings Officer may order payment of the County's attorney fees and prosecution costs to include staff time for any violation of this Chapter.
- B. Conditions and Restrictions; Restitution; Euthanasia.
1. Upon a finding by the Hearings Officer that a dog owner, or the owners, operators or managers of animal rescue entities has violated a provision of this chapter, in addition to and not in lieu of any fine, fee, cost or expense, the Hearings Officer may impose restitution, euthanasia, and reasonable conditions and restrictions, including but not limited to:
    - a. Suspend the owner's right to own or keep any ~~dog~~ animal in Clackamas County for a period not to exceed five (5) years;

- b. Upon sufficient proof order restitution to any person who has suffered actual monetary loss as a result of a violation of this chapter, including but not limited to expenses incurred for veterinary~~ian~~ care, burial and memorial expenses, repair or replacement of damaged property, or medical bills;
  - c. Require the owner to spay or neuter the ~~dog~~animal;
  - d. Require the owner to remove the ~~dog~~animal to a location where the ~~dog~~animal does not present a threat to persons, domestic animals, or livestock;
  - e. Require the owner to surrender the ~~dog~~animal to the County;
  - f. After consideration of the factors set forth in ORS 609.093, require euthanasia when an ~~animal-dog~~ animal has bitten or killed a person, domestic animal, or livestock. The Hearings Officer may also consider the public nuisance violation history of the ~~dog~~animal and owner to include all known determinations by any court, governing body, official or agency of any local or state government without regard to where or when the incident occurred;
  - g. Require that the owner comply with any other condition or restriction reasonably designed to abate any future violation of this chapter;
  - h. Require that the owner obtain microchip identification for the ~~dog~~animal;
  - i. Require the owner to reduce the number of ~~dogs~~animals on the owner's premises.
2. Any condition or restriction imposed by a Hearings Officer must be complied with immediately unless otherwise ordered. The County may request that an owner provide proof of compliance by a date certain. If proof is not provided, or proof is insufficient, then a rebuttable presumption will exist that the owner has failed to comply and the owner may be cited for the violation of Failure to Comply in accordance with this chapter.
  3. An owner shall be responsible for all costs incurred in complying with any condition or restriction imposed.
  4. Upon a finding that an owner is guilty of a violation set forth in this chapter, regarding the same ~~dog~~animal for the third time in a twelve (12) month period, the Hearings Officer may order that the owner surrender the ~~dog~~animal to the County, without compensation paid to the owner.
  5. When an ~~animal-dog~~ animal has been ordered surrendered and the County has determined that the ~~dog~~animal qualifies for adoption, the County may give placement preference to any person who had prior contact with the ~~dog~~animal, including but not limited to the former owner's family members or friends who reside separately from the former owner and whom the County has determined will provide adequate care and follow all conditions or restrictions imposed by the Hearings Officer in order to maintain control of the ~~dog~~animal.

[Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 05-2003, 3/13/03; Amended by Ord. 01-2004, 4/8/04; Amended by Ord. 05-2010, 7/1/10; Amended by Ord. 08-2012, 8/2/12]

#### **5.01.090 Authority of Dog Services Manager**

In accordance with the provisions of this chapter the Dog Services Manager shall have the authority to:

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- A. Collect fines, fees, costs and expenses.
  - B. Authorize an owner to keep a licensed dog that has been impounded and quarantined, at the premises of the owner during the period of quarantine.
  - C. Declassify a dog as dangerous in accordance with the provisions of this chapter.
  - ~~D. Request the assistance of local law enforcement officials officers to obtain and execute a warrant authorized under state law and this chapter for the search and seizure of property.~~
  - ED. Require a dog owner, or the owners, operators, or managers of animal rescue entities to provide proof of compliance with a Hearings Officer's Final Order.
  - FE. Inspect premises of a dog owner, or of an animal rescue entity to ensure compliance with this chapter;
  - GF. Develop and enforce policy, procedures; and standards to ensure the effective administration of this chapter.

[Added by Ord. 01-2004, 4/8/04; Amended by Ord. 05-2010, 7/1/10]

#### **5.01.100 Transition**

[Added by Ord. 01-2004, 4/8/04; Repealed by Ord. 08-2012, 8/2/12]

#### **5.01.110 Severability**

If any clause, section or provision of this chapter is declared unconstitutional or invalid for any reason or cause, the remaining portion of this chapter shall remain in full force and effect and be valid as if the invalid portion had not been incorporated herein.

[Added by Ord. 01-2004, 4/8/04; Amended by Ord. 05-2010, 7/1/10]

#### **5.01.120 Enforcement of Other Laws**

- A. Enforcement of Dogs. Pursuant to ORS 203.035; 153.030; 609.015 and ORS 609.135, this chapter supersedes enforcement in the County of the following state statutes regarding control of dogs: ORS 609.030 and 609.035 to 609.110; 609.155; 609.158; 609.165; 609.170; 609.180; 609.190.
- B. Enforcement of Rabies Control. Rabies control shall be enforced by the Clackamas County Health Officer in cooperation with the Dog Services Manager in accordance with the provisions of ORS 433.340 through 433.390.
- C. Enforcement of Violations Involving Livestock. When a dog is determined to be a Public Nuisance under this chapter for menacing, biting, injuring or killing livestock, in addition to all other provisions and regulations of this chapter the following state statutes apply: ORS 609.125; 609.156; 609.161; 609.162; 609.163; 609.167; 609.168.
- D. Enforcement of Possession of Dogs. The number of dogs possessed by a person shall be limited as provided in ORS 167.374. In addition to all other provisions and regulations of this chapter, ORS 167.374 shall apply.
- E. Other Laws Apply. Except as expressly provided in this chapter, this chapter shall in no way be a substitute for or eliminate the necessity of conforming with any and all state and federal laws, rules and regulations, and other ordinances which relate to the requirements provided in this chapter.

[Added by Ord. 05-2010, 7/1/10; Amended by Ord. 08-2012, 8/2/12]

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## Proposed Barking Dogs (Continuous Annoyance) Program DRAFT Resolution-Based Response Process

*Proposed Effective Date: January 8, 2015*

Clackamas County Dog Services is committed to the resolution-based process described below to respond to complaints about barking dogs. The intent is to resolve the issue as quickly and amicably as possible with both the complainant and the dog owner(s). A complaint will be considered to be resolved if no more complaints are received. Dog Services assists dog owners with education and training to help reduce barking dog problems.

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### Step 1. Complaint 1

- a. Dog Services accepts complaint at face-value.
- b. Dog Services sends a letter with notification of complaint and educational brochure to dog owner(s), and waits at least 8-10 days before accepting another complaint.
- c. Dog Services offers mediation coaching to complainant and dog owner.

### Step 2. Complaint 2

- a. Dog Services refers all parties to community mediation.
- b. Dog Services asks the complainant to begin keeping a 7-10-day log of the barking (with dates/times).
- c. Dog owner and complainant each attend mediation and pay a mediation fee.
  - i. Failure on the part of either party to comply with the mediated resolution will result in sanctions to that party, including fines adequate to cover mediation costs.
  - ii. If the complainant fails to attend mediation, CCDS will not accept any additional continuous annoyance complaints from the complainant.
  - iii. If the dog owner fails to attend mediation, the process will move to level 3 if any additional complaints are received by CCDS.

### Did you know...?

Community mediation works! It is estimated that mediation can resolve differences between parties about 90% of the time. While the original solution may not be permanent, it resolves the issue at hand.



### Step 3. Complaint 3

- a. Complainant files notarized affidavit with supporting documentation (activity log, photos, videos, etc).
- b. Dog Services officer attempts resolution through education. There may be a citation and investigation.
- c. Officer writes first citation to dog owner(s) for code violation with an option to pay fine without a hearing. (Officer considers diversion or lower fines\* for dog owners who have attended or are willing to attend mediation to resolve the dispute.)

### Step 4. Complaint 4

- a. Dog Services officer writes a second citation for code violation, with a mandatory hearing and fine\* doubles.
- b. Hearings Officer attempts education and orders mitigation through restrictions.

### Step 5. Complaint 5

- a. Dog owner fails to comply with the Hearings Officer's decision
- b. Dog Services issues additional fines\* and sets a court date.

*\*Non-payment is sent to a collections agency and may result in small claims court filing to collect citation revenue(s).*

June 23, 2014



## **TITLE 5**

### **ANIMALS**

#### **Summary**

#### **5.01 ANIMAL LICENSING, SERVICES AND ENFORCEMENT..... 1**

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#### **ORGANIZATION & OVERVIEW OF PROPOSED CHANGES:**

##### **1. Barking Dogs (Continuous Annoyance)**

Continuous Annoyance calls relate to barking dog complaints. After the second Study Session regarding a possible barking dog program, the Board directed Staff to develop a progressive, resolution based program for consideration.

Adoption of the amendments outlined in Sections 5.01.040(B)(17) and 5.01.070(F)(1-2) will reinstate the Continuous Annoyance regulation in County Code.

**TITLE 5**

**ANIMALS**

**5.01 ANIMAL LICENSING, SERVICES AND ENFORCEMENT ..... 1**

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## Chapter 5.01

### 5.01 ANIMAL LICENSING, SERVICES AND ENFORCEMENT

#### 5.01.010 Enactment; Authority

The County is authorized by Oregon Revised Statutes (ORS) 203.035 to regulate matters of County concern. The Board of County Commissioners finds that dog licensing and services within the County is a matter of County concern that impacts the health and safety of the people of Clackamas County. ORS 609.015, ORS 609.135 and ORS 153.030 recognize the authority of the County to enact and enforce regulations and procedures that vary from related state law provisions. The Board of County Commissioners adopts the following dog licensing and services regulations and procedures pursuant to ORS 203.035. Matters that concern crimes of abuse, neglect, or abandonment of dogs and other animals regulated by this code will be investigated and prosecuted under state law. [Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 01-2004, 4/8/04; Amended by Ord. 05-2010, 7/1/10]

#### 5.01.020 Definitions; Exclusions; Fines and Fees

- A. Definitions. Terms used but not defined shall have their plain meaning.
1. ANIMAL means any nonhuman mammal, bird, reptile, amphibian or fish as defined in ORS 167.310 or ORS 167.374.
  2. ANIMAL RESCUE ENTITY means an individual or organization, including but not limited to an animal control agency, humane society, animal shelter, animal sanctuary or boarding kennel not subject to ORS 167.374, but excluding a veterinary facility, that keeps, houses, and maintains in its custody 10 or more animals and that solicits or accepts donations in any form.
  3. BITE, BITING, BITTEN means the breaking of the skin of a person, domestic animal, or livestock by the teeth of a dog.
  4. CONDITIONAL RELEASE means a security or non-security release of an impounded dog which imposes regulations and conditions on the activities and keeping of the dog pending final disposition of a violation of this chapter, including appeal.
  5. CONTINUOUS ANNOYANCE means any dog that unreasonably causes annoyance, alarm or noise disturbance to any person by barking, whining, screeching, howling or making other sounds which may be heard beyond the boundary of the owner's or keeper's property, either as an episode of continuous noise lasting for a minimum period of fifteen (15) minutes or repeated episodes of intermittent noise lasting for a minimum period of 45 minutes within a 24-hour period.
  6. COSTS mean any monetary assessment, other than fines and fees ordered by a Hearings Officer, including but not limited to, costs for veterinarian care, restitution, prosecution and attorney fees.
  7. DANGEROUS DOG means any dog that menaces, bites, injures or kills a person, domestic animal, or livestock.
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8. DOG means the common dog (*Canis familiaris*) and also includes any animal claimed by its owner to be a wolf-hybrid unless the owner provides written verification from a licensed veterinarian that the animal is a wolf-hybrid and not a dog.
  9. DOG AT LARGE means a dog that is off or outside the dog owner's property and not under the immediate control of a person.
  10. DOG OWNER means the following, however any presumption of ownership raised in this section may be rebutted by proof to the contrary:
    - a. Any person in whose name a dog license has been issued;
    - b. Any person who has a possessory property right in a dog;
    - c. Any person who without regard to any ownership interest, shelters a dog or has a dog in that person's care, possession, custody or control, or knowingly permits a dog to remain on property occupied by that person for more than 30 days.
    - d. In all three circumstances described above, it is understood that in a family situation the adult head(s) of household shall be jointly and severally presumed to be the owner(s).
  11. DOG SERVICES means Clackamas County Dog Services.
  12. DOG SERVICES OFFICER means a person employed by or contracting with Clackamas County who is authorized to investigate violations and issue citations as provided in this chapter.
  13. DOMESTIC ANIMAL means any nonhuman mammal, bird, reptile, amphibian or fish as defined in ORS 167.310.
  14. ENFORCING AGENCY means Clackamas County.
  15. EUTHANASIA means the putting to death of an animal in any humane manner permitted under ORS 609.405.
  16. EXPENSES mean expenditures incurred by Dog Services during impoundment, keeping and disposition of a dog.
  17. HEARINGS OFFICER means any authority appointed by the Board of County Commissioners to hear and determine violations of this chapter.
  18. IMPOUND means taking physical or constructive custody of a dog. A dog shall be considered impounded from the time Dog Services staff or a peace officer takes physical custody of the dog or serves an owner with a Notice of Impound and Conditional Release in accordance with this chapter.
  19. LIVESTOCK has the meaning provided in ORS 609.125.
  20. MANAGER means the Clackamas County Dog Services Manager or his/her designee.
  21. MENACE means lunging, growling, snarling, chasing, attacking, or other behavior by a dog that would cause a reasonable person to fear for the person's safety, the safety of another person or the safety of a domestic animal or livestock.
  22. MINIMUM CARE means care sufficient to preserve the health and well-being of a dog and, except for emergencies or circumstances beyond the reasonable control of the owner, includes but is not limited to, each of the following requirements:
    - a. Food of sufficient quantity and quality to allow for normal growth or maintenance of body weight.
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- b. Open or adequate access to potable water in sufficient quantity to satisfy the dogs' needs. Access to snow or ice is not adequate access to potable water.
  - c. Access to adequate shelter. For a dog other than one engaged in herding or protecting livestock, this requires access to a barn, dog house or other enclosed structure sufficient to protect the animal from wind, rain, snow or sun with adequate bedding to protect against cold and dampness.
  - d. Access to adequate bedding, which is defined as bedding of sufficient quantity and quality to permit a dog to remain dry and reasonably clean and to maintain a normal body temperature.
  - e. Veterinary care deemed necessary by a reasonably prudent person to relieve the dog's distress from injury, neglect or disease.
  - f. Continuous access to an area:
    - i. with adequate space for exercise necessary for the health of the dog;
    - ii. with air temperature suitable for the dog; and
    - iii. that is kept reasonably clean and free from excess waste or other contaminants that could affect the dog's health.
23. PEACE OFFICER has the meaning provided in ORS 161.015.
24. PHYSICAL INJURY has the meaning provided in ORS 167.310.
25. SECURE ENCLOSURE means any of the following:
- a. A fully fenced pen, kennel or structure that is in compliance with applicable County codes, that will remain locked with a padlock or combination lock, and which has secure sides at least five feet high. The County may also require that the structure have a secure top and/or floor attached to the sides, or require that the sides be embedded in the ground no less than one foot; or
  - b. A house or garage that has latched doors kept in good repair to prevent the escape of the dog. A house, garage, patio, porch or any part of the house is not a secure enclosure if the structure would allow the dog to exit the structure of its own will; or
  - c. For a dangerous dog, a fully fenced pen, kennel or structure at least six feet in height that is either anchored beneath the ground or is in concrete and which prevents the dog from digging under it. The enclosure must be of a design that prevents entry of children or unauthorized persons and also prevents those persons from extending an arm or leg inside the enclosure. The enclosure must remain locked with a padlock or combination lock when occupied by the dog. A County approved sign must remain posted at all entry points of the dog owner's property that informs both children and adults that the dog is dangerous.
26. TETHERING means to restrain a dog by tying the dog to any object or structure by any means. Tethering does not include using a handheld leash for the purpose of walking a dog.
27. VIOLATION means any violation of this chapter for which a fine, condition, restriction, or other sanction may be imposed.
28. WOLF-HYBRID means an animal that is either the result of cross-breeding a purebred wolf and a dog, an existing wolf-hybrid with a dog, or any dog declared by its owner to be a wolf-hybrid. A wolf-hybrid will be considered to
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be a dog under this chapter unless the owner provides written verification from a licensed veterinarian that the animal is a wolf-hybrid and not a dog.

B. Exclusions.

This chapter does not regulate kennel operators or pet shop owners who for a period of not more than 90 days maintain on their property dogs owned by other persons.

C. Fines and Fees.

All fines and fees associated with this chapter shall be set by the Board of County Commissioners.

[Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 01-2004, 4/8/04; Amended by Ord. 05 2010, 7/1/10]

### **5.01.030 Licensing; Vaccinations**

A. License.

1. Individual Dog License.

- a. A person must be at least 18 years old to obtain a license for a dog.
- b. Every dog owner shall license a dog by the time the dog has a set of permanent canine teeth or is six months old, whichever comes first, or within thirty (30) days of acquiring the dog.
- c. A dog owner who has moved to Clackamas County and does not have a current dog license from another Oregon city or county, shall obtain a dog license within thirty (30) days of moving into Clackamas County unless the dog has not yet reached six months of age. A dog with a current dog license from another Oregon city or county shall not require licensing under this chapter until expiration of the current license, if within thirty (30) days of moving into Clackamas County the owner notifies Dog Services of the dog's description, license number, city or county of issuance, and Clackamas County address.
- d. A dog license is not transferable to another dog. The license number shall be assigned to the particular dog and shall remain with that dog for the life of the dog.

2. Multiple Dog License.

- a. Qualification; Application; Inspection. When an owner has more than one dog, the owner may obtain or renew a multiple dog license after submitting a completed, qualifying Multiple Dog License Application and after either 1) submitting an inspection certification from a veterinarian licensed in the state of Oregon; or 2) a County inspection of the applicant's premises to determine that the owner is in compliance with minimum care standards as provided by this chapter.
  - b. Denial. Causes for denial of a multiple dog license application may include, but are not limited to, denial for any person currently under active investigation or prosecution for any animal-related crime, persons under parole or probation following a conviction for any animal-related crime, or any person for which ownership, keeping or responsibility for animals would be a violation of any rule, regulation or law, either civil or criminal.
  - c. Transfer. A multiple dog license may be transferred to another holder with prior written approval of Clackamas County, provided that the
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- transferee qualifies to hold the license in all ways that an applicant for a new multiple dog license must qualify.
- d. **Appeal of Denial of Multiple Dog License.** An owner may appeal the denial or a new multiple dog license or denial of a transfer of a multiple dog license to a Hearings Officer by delivering a written request to Dog Services within seven (7) days of the mailing date of the written notice denying the license. A hearing will follow the same procedures set forth in this chapter for a hearing on a violation, except that the burden of proof will be on the owner to prove that the denial was improper.
  - e. **Land Use Approval.** Issuance of a multiple dog license does not constitute approval of a particular land use or indicate compliance with any zoning or land use planning restrictions that may apply. Applicant may be required to demonstrate compliance with city or county zoning or land use planning restrictions prior to issuance.
  - f. To ensure that minimum care standards are continually being met, an owner can either 1) submit an inspection certification from a veterinarian licenses in the state of Oregon or 2) allow a County inspection of the premises to determine that the owner is in compliance with the minimum care standards as provided for by this chapter.
3. **Licensing of Animal Rescue Entities:**
- a. **Licensing Requirement.** An animal rescue entity shall comply with the following license requirements:
    - i. Obtain a license issued by the enforcing agency in accordance with this section; and
    - ii. Pay a reasonable fee for a license or an annual renewal of the license.
  - b. **Issuance and Renewal of License.** The enforcing agency may not issue or renew a license under this section unless the animal rescue entity demonstrates it is in compliance with this chapter and with applicable state and local law.
  - c. **Record Keeping.** An animal rescue entity shall maintain a record for each animal that identifies:
    - i. The animal's date of birth or, if the date of birth is unknown, the animal's approximate age;
    - ii. The date possession, control or charge of the animal was acquired and the source of the animal;
    - ii. The number of offspring the animal has produced, if applicable;
    - iv. The disposition of each animal, including the date of disposition, manner of disposition, and the name and address for any individual or organization taking possession, control or charge of an animal;
    - v. Sex, breed type and weight of the animal at intake; and
    - vi. A photograph of the animal taken within 24 hours of intake.
  - d. **Inspections.** The following inspections of animal rescue entities by the enforcing agency shall be permitted:
    - i. Inspection of the records required by this section.
    - ii. Furnish reports and information required by Section 5.01.030(C)(1)-(6) and by state and local law.
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- iii. Conduct an on-site investigation of the premises whenever the enforcing agency has reason to believe that the animal rescue entity is operating without a license. The purpose of an investigation under this section is to determine whether the animal rescue entity is subject to the requirements of this chapter.
  - iv. At any reasonable time, an on-site investigation of the premises may be conducted to determine whether the animal rescue entity is in compliance with this section.
  - v. An on-site investigation if a credible and serious complaint has been received that the animal rescue entity has failed to comply with the requirements of this section. The investigation shall be limited to determining if the animal rescue entity has failed to comply with the requirements of this chapter.
  - vi. If during the course of an inspection made under this section, the enforcing agency finds evidence of animal cruelty in violation of ORS 167.310 to 167.351, 167.355 or 167.360 to 167.372, the enforcing agency shall seize the evidence and report the violation to law enforcement.
  - e. **Transfer of License.** An animal rescue entity may transfer a license issued under this section to another person with the written consent of the enforcing agency, provided that the transferee otherwise qualifies to be licensed as an animal rescue entity and does not have a certified unpaid debt to the state. The transferee shall submit a signed release to the enforcing agency permitting the performance of a background investigation of the transferee, and the enforcing agency shall conduct the background investigation.
  - f. **Violations.** A violation of any provision in this section may be prosecuted by the enforcing agency, as provided by section 5.01.070 of this chapter, and may result in the imposition of fines and civil penalties, or other restrictions or remedies as provided in this chapter.

**B. Dog Rabies Vaccination**

- 1. Individual or multiple dog licenses will not be issued without evidence of one of the following for each dog to be licensed:
    - a. A rabies vaccination certificate issued by a licensed veterinarian that is valid for the license period; or,
    - b. A written statement signed by a licensed veterinarian stating that for medical reasons the rabies vaccination cannot be administered to the dog.
  - 2. A dog that does not have proof of a current rabies vaccination, exemption from vaccination, or current Oregon county or city license, shall be apprehended and impounded at the owner's expense.
  - 3. A veterinarian performing a rabies vaccination of any dog must transmit a copy of the vaccination certificate or written documentation that includes information contained on the certificate to Dog Services within 30 days of the vaccination. In the alternative, a veterinarian may issue a dog license in accordance with the rules adopted by this Chapter, and submit proof of license to Dog Services within 30 days of the vaccination.
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C. License Term; Renewal; Fine

1. A license will be valid for one, two or three years from the date of issuance at the option of the dog owner, based on the license fee paid by the owner, and requires a rabies vaccination certificate for the licensing period.
2. Renewal of a license shall not be due until the last day of the month in which the license expires. If a person fails to renew a license prior to its expiration date, a fine may be assessed at the time the license is renewed.

D. Identification Tags.

1. At the time an individual dog license is issued, the County will issue a free identification tag that is to be fastened to a collar or harness and kept on the dog at all times when the dog is not in the immediate possession of the owner.
2. When a multiple dog license is issued, the owner may obtain identification tags for each dog in his possession upon payment of a fee.
3. If a dog license tag is lost, the owner may obtain a duplicate tag from Dog Services upon payment of a fee.

E. License Fees Exemptions.

1. No license fee will be required for the following:
  - a. Any dog that meets the definition of an “assistance animal” as defined in ORS 346.680, provided that the license applicant has filed a statement with Dog Services indicating that the dog is an "assistance animal" for a person who has a physical impairment in one or more of their daily life activities and resides in the applicant’s household.
  - b. Any dog in training to be an “assistance animal” as defined in ORS 346.680, in affiliation with a recognized organization for the training or placement of assistance animals, provided the trainer files a statement with Dog Services verifying that the dog is an assistance animal.

[Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 05-2003, 3/13/03; Amended by Ord. 01-2004, 4/8/04; Amended by Ord. 05-2010, 7/1/10; Amended by Ord. 08-2012, 8/2/12]

### **5.01.040 Control of Dogs**

A. Duties of Owners. For the purposes of this chapter, a dog owner is responsible for the behavior of the dog regardless of whether the owner or another person allowed the dog to engage in the behavior that is the subject of the violation.

B. Violations.

1. It is unlawful to permit a dog to be a public nuisance. A dog is a public nuisance if it:
    - a. Menaces, bites, injures or kills a person, domestic animal or livestock. It is a defense to this section if the dog engages in such behavior as a result of a person wrongfully assaulting the dog or owner, or other similar provocation, or when the dog’s behavior was directed towards a trespasser or other extenuating circumstances that establishes that the dog does not constitute an unreasonable risk to life or property;
    - b. Is a dog at large. It is a defense to this section that the dog was a working dog wearing a locating device and temporarily separated from the person in control of the dog;
    - c. Chases a vehicle while off the dog owner’s property;
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- d. Damages or destroys property of another person while off the dog owner's property;
  - e. Scatters garbage while off the dog owner's property;
  - f. Is a female in heat (estrus) and is a dog at large.
2. It is unlawful to fail to comply with the requirements of this chapter that apply to keeping a dangerous dog.
  3. It is unlawful to permit any dog to leave the confines of any prescribed quarantine area and/or fail to comply with any other condition of quarantine.
  4. It is unlawful to interfere with an identified County employee or peace officer who is enforcing any provision of this chapter by intentionally acting in any manner that prevents, or attempts to prevent, a County employee or peace officer from performing their lawful duties.
  5. It is unlawful to knowingly provide false information to a County employee or peace officer enforcing any provision of this chapter.
  6. It is unlawful to permit a dog to be confined within a motor vehicle at any location under such conditions as may endanger the health or well-being of the dog.
  7. It is unlawful to permit a dog to be unrestrained in an open portion of a vehicle.
  8. It is unlawful to fail to reclaim an impounded dog.
  9. It is unlawful to fail to comply with any fine, fee, cost, expense, condition, restriction or other order imposed by a Hearings Officer under this chapter.
  10. It is unlawful to fail to surrender a dog for apprehension to the County when required by this chapter.
  11. It is unlawful to fail to license a dog or renew a license as required by this chapter.
  12. It is unlawful for an owner to fail to immediately notify Dog Services when the owner's dog has bitten a person, domestic animal or livestock.
  13. It is unlawful to keep a dog in a manner that does not meet minimum care standards of this chapter.
  14. It is unlawful to fail to maintain a current rabies vaccination.
  15. It is unlawful for a person who has been bitten by a dog, or a parent/guardian of a bitten minor, to fail to immediately notify Dog Services when required by this chapter.
  16. It is unlawful for a dog owner to fail to follow any condition of release pending final disposition of a violation of this chapter, including appeal.
  17. It is unlawful to permit any dog to cause continuous annoyance as defined in Section 5.01.020(5).
  18. It is unlawful to permit any dog to be tethered in any manner as provided below:
    - a. with a tether that is not a reasonable length given the size of the dog and available space and that allows the dog to become entangled in a manner that risks the dog's health or safety;
    - b. with a collar that pinches or chokes the dog when pulled;
    - c. for more than 10 hours in a 24-hour period;
    - d. for more than 15 hours in a 24-hour period if the tether is attached to a runner, pulley or trolley system;It is not a violation of this section if for any dog to be tethered:
    - e. while the dog remains in the physical presence of the person who owns, controls or otherwise has charge of the dog;
    - f. pursuant to the requirements of a campground or other recreational area;
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- g. for the purpose of engaging in an activity that requires licensure in this state, including but not limited to hunting;
  - h. to allow transport of the dog; or
  - i. if the dog is kept for herding, protecting livestock or dog sledding.
- 19. It is a violation for a veterinarian performing a rabies vaccination on a dog to fail to report the rabies vaccination as provided in 5.01.030(B)(3).
  - 20. It is unlawful to operate an animal rescue entity without proper licensing and compliance with requirements outlined in 5.01.030(A)(3).
- C. **Lost Dogs; Duties of Finders.** Any person who finds and shelters a dog without knowing the dog owner's identity shall be subject to the responsibilities provided in ORS 98.005, ORS 98.025 and ORS 609.100.

[Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 05-2003, 3/13/03; Amended by Ord. 01-2004, 4/8/04; Amended by Ord. 05-2010, 7/1/10; Amended by Ord. 08-2012, 8/2/12]

### **5.01.050 Biting Dogs; Dangerous Dogs**

- A. **Reporting Biting Dogs.**
- 1. The owner of a dog that bites a person, domestic animal or livestock shall immediately notify Dog Services of the time and circumstances of the bite along with a description of the biting dog, its rabies vaccination status, the owner's name and address, and if known the name and address of the person who was bitten or the owner of the bitten domestic animal or livestock.
  - 2. Any person who is bitten by a dog, is the parent/guardian of a bitten minor, or owns a domestic animal or livestock bitten by a dog shall immediately notify Dog Services of the time and circumstances of the bite along with his/her name and address, a description of the biting dog, and if known the name and address of the dog owner.
- B. **Quarantine of Biting Dogs.**
- 1. A dog suspected of biting a person will be quarantined at the owner's expense until the tenth day following the bite in accordance with state law.
  - 2. At the discretion of the County, a dog that has proof of a current rabies vaccination, exemption from vaccination, or a current Oregon county or city license may be quarantined at the premises of a licensed veterinarian or at the premises of the owner providing the dog is kept within a secure enclosure or with approved restraint deemed adequate to prevent contact with any person or other animal, and is kept in accordance with any other conditions set by the County as permitted by this chapter or required by state law. It shall be a violation of this chapter if during home quarantine the dog leaves the confines of a prescribed quarantine area for any reason or otherwise violates the conditions of quarantine.
  - 3. Dogs that have bitten a person and do not have proof of a current rabies vaccination, exemption from vaccination, or a current Oregon county or city license shall be apprehended and impounded as resources allow.
- C. **Dangerous Dogs.**
- 1. **Classification of Dog as a Dangerous Dog.** A dog may be classified by the Hearings Officer as a dangerous dog when it has menaced, bitten, chased, injured or killed any person, domestic animal or livestock.
  - 2. **Notice of Classification; Hearing.**
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- a. Notice. Prior to a dog being classified as dangerous, the owner shall have a right to a hearing before a Hearings Officer. The County shall send a Dangerous Dog Notice to the dog owner by certified mail or personal service. If sent by mail, the date of mailing will be considered the date of service. The notice shall inform the owner of:
    - i. A description of the alleged incident and specific behavior that supports classification of the dog as dangerous.
    - ii. The regulations that may be imposed following a dangerous dog classification, including the requirement of a dangerous dog certificate.
    - iii. An opportunity to request a hearing.
    - iv. Information that the dog owner must request a hearing within seven (7) days from the date of service by delivering a written request to Dog Services.
    - v. Information that if the dog owner does not make a timely request for hearing, the dog owner shall be deemed to have waived his/her right to a hearing. Thereafter, following proof of sufficient evidence that the dog is dangerous, the Hearings Officer may so classify the dog and impose regulations consistent with this chapter.
  - b. Hearing.
    - i. Following a timely request for hearing, the County will notify the dog owner and Hearings Officer of the date and time of the hearing. The hearing shall follow the procedures set forth in this chapter for a hearing on a violation.
    - ii. The Hearings Officer may refrain from classifying a dog as dangerous upon a finding that the behavior was the result of a person wrongfully assaulting the dog or owner, or other similar provocation, or when the dog's behavior was directed towards a trespasser, or other extenuating circumstances that establishes that the dog does not constitute an unreasonable risk to life or property.
    - iii. A hearing on classification of a dangerous dog may be consolidated with a hearing on any underlying violation for which the dog owner has been cited.
3. Regulation of Dangerous Dogs; Microchip Identification. When a dog has been classified as dangerous, the dog shall be microchip identified at Dog Services at the expense of the owner, as provided in ORS 609.168. In addition, a Hearings Officer may order the following regulations:
    - a. That the dog be kept in a secure enclosure;
    - b. That the dog owner obtain and maintain proof of public liability insurance;
    - c. That the dog owner not permit the dog to be off the owner's premises unless the dog is muzzled and restrained by an adequate leash and under the control of a competent person;
    - d. That the dog owner successfully complete a County approved pet ownership program;
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- e. That the dog successfully complete obedience training certified by the American Temperament Testing Society or other similar County approved program;
  - f. That the dog be spayed or neutered;
  - g. After consideration of the factors set forth in ORS 609.093, require euthanasia when a dog has bitten or killed a person, domestic animal, or livestock. The Hearings Officer may also consider the public nuisance violation history of the dog and owner to include all known determinations by any court, governing body, official or agency of any local or state government without regard to where or when the incident occurred.
4. Certificate of Registration; Secure Enclosure; Notice to New Owner
- a. Certificate of Registration. Within seven (7) days after a dog has been classified as dangerous, the owner must license the dog, if not already licensed, and obtain a dangerous dog certificate of registration to be renewed annually until the dog is declassified or dies. The County will only issue certificates of registration and renewals to persons who are at least 18 years of age and who present sufficient evidence of:
    - i. A rabies vaccination certificate which will remain in effect for at least one year from the date the certificate of registration is issued;
    - ii. A secure enclosure to confine the dangerous dog;
    - iii. A clearly visible County-approved warning sign to be posted and remain at all entry points of the owner's property that informs both children and adults that the dog is dangerous;
    - iv. Microchip identification as provided in ORS 609.168; and,
    - v. Payment of an annual dangerous dog registration fee.
  - b. Secure Enclosure. The owner of a dog classified as dangerous shall confine the dog in a secure enclosure. The owner must immediately notify Dog Services when a dangerous dog is at large, or has bitten a person, domestic animal or livestock. A dangerous dog shall not be permitted to leave the confines of a secure enclosure unless the dog is muzzled and restrained by an adequate chain or leash and under control of a competent person.
  - c. Notice to New Owner. Prior to a dangerous dog being sold or given away, the owner shall provide notice to the new owner that the dog has been classified as a dangerous dog and provide the County with the name, address and telephone number of the new owner whether or not the new owner resides in Clackamas County. If the new owner resides in Clackamas County, he/she must comply with all dangerous dog regulations imposed unless and until the dog is declassified or dies.
5. Declassification of Dangerous Dog.
- a. Declassification. Following an owner's written request, the County may declassify a dog as dangerous and terminate the regulations ordered at the time of classification, except for microchip identification and secure enclosure, when the following conditions have been met:
    - i. For two years from the date of classification the dog has had no further incidents of behavior that would make it a dangerous dog;
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- ii. For two years from the date of classification there have been no violations of the regulations imposed;
  - iii. The dog owner has obtained a certificate of satisfactory completion of obedience training for the classified dog.
- b. Appeal of Declassification Denial. A dog owner may appeal to a Hearings Officer the denial of a request to declassify a dangerous dog by delivering a written request for appeal to Dog Services within seven (7) days of the mailing date of the County's written notice denying declassification.
- i. The County's written denial shall include information on how the dog owner may appeal the denial.
  - ii. On appeal the Hearings Officer shall determine whether the dog meets the criteria for declassification and shall either uphold the County's denial or order declassification.

[Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 01-2004, 4/8/04; Amended by Ord. 05-2010, 7/1/10]

#### **5.01.060 Impoundment; Release; Adoption**

##### **A. Impoundment**

1. Any Dog Services Officer or peace officer may impound an animal that is in violation of this chapter, or when a Dog Services Officer or peace officer reasonably believes the animal requires medical assistance or care, or when ordered by a court or Hearings Officer.
2. If a person refuses to allow a Dog Services Officer or peace officer to enter the premises to apprehend and impound an animal as authorized by this chapter, the County may request the assistance of the local law enforcement official to obtain and execute a search warrant as authorized by law to search for and seize the animal subject to impound.
3. Any Dog Services Officer or peace officer is authorized to remove the animal from a motor vehicle to apprehend and impound the animal when the officer reasonably believes it is confined in a manner that endangers its health or well-being, including but not limited to dangerous temperature, lack of food, water or attention. A written notice of impoundment will be left on or in the vehicle with information on how to reclaim the animal.
4. Any person may immediately apprehend and hold for impoundment any animal that has trespassed upon the property of that person or another in violation of this chapter, or has menaced, bitten, injured or killed a person, domestic animal, or livestock.
5. Animals other than dogs that are seized by Dog Services Officers will be taken to facilities that are appropriate for the holding or keeping of those animals. Release of such animals will be subject to State law as well as any rules or procedures for the facility where the animal is being kept.

##### **B. Impound Holding Periods. Unless otherwise provided in this chapter or reclaimed sooner by the owner, dogs that have been impounded will be held for the following minimum time periods:**

1. Dogs not wearing a license tag shall be held for at least three consecutive business days, not including the day of impoundment.
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2. Dogs wearing a license tag shall be held for at least five consecutive business days, from the date of notification of impoundment. If notification is by mail, the date of mailing shall be considered the date of notification.
- C. Release of Animals Impounded at County Dog Shelter; Conditional Release.
1. Release.
    - a. Release Prohibited. Unless otherwise ordered by a Hearings Officer or court of competent jurisdiction, an impounded dog may not be released until final disposition of any violation alleging that the dog has killed a person, or when a dog is pending classification or has been classified as a dangerous dog.
    - b. Release Permitted. Unless prohibited by this chapter prior to final disposition of a violation or pending appeal, an impounded animal may be released subject to release conditions in subsection 5.01.060(C)(2)(a) and upon posting security in the amount equal to 50% of the base fine for each violation and payment of fees and costs owed to date including prior outstanding balances, except upon showing of good cause.
  2. Conditional Release.
    - a. Conditions. As permitted by this chapter pending final disposition of a violation or appeal, the County or Hearings Officer may conditionally release an impounded animal to its owner and may impose any of the following release conditions, including but not limited to a requirement that the animal owner:
      - i. Obtain and provide proof of a rabies vaccination within a designated time, if applicable;
      - ii. Provide proof of license within a designated time, if applicable;
      - iii. Restrain the dog on the dog owner's property by means of a secure enclosure;
      - iv. If the animal is a dog, control the dog on a leash that is no longer than six (6) feet, and at all times handled by an adult who is able to control the dog;
      - v. If the animal is a dog, muzzle the dog at all times when the dog is off the dog owner's property;
      - vi. Obtain veterinary care for the animal within a designated time;
      - vii. Comply with minimum care standards consistent with this chapter;
      - viii. Keep the animal indoors during certain hours.
    - b. Revocation of Conditional Release; Violation; Security Forfeited.
      - i. Revocation. Upon reasonable ground to believe that a release condition has been violated, the County may revoke release, and apprehend and impound the subject animal pending final disposition of the underlying violation or appeal.
      - ii. Violation. At the time of revocation the animal owner, or the owners, operators or managers of animal rescue entities shall be cited for failure to follow condition(s) of release. A hearing on revocation may be made in accordance with section 5.01.070 of this chapter and consolidated with a hearing on the underlying violation(s).
      - iii. Security Forfeited. The security amount posted on conditional release shall be forfeited upon a finding that one or more
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conditions of release were violated or if no timely hearing is requested.

3. If a dog owner, or the owners, operators or managers of animal rescue entities, has been cited for a violation(s) of this chapter, and a Hearings Officer finds that no violation(s) occurred, then impoundment and board fees shall not be assessed until the first business day after notice of the Hearings Officer's Final Order.
  4. An owner must reclaim an animal within five (5) business days after notice of a Hearings Officer's Final Order unless otherwise ordered or unless stayed by a court of competent jurisdiction.
- D. Failure to Reclaim.
1. If an owner fails to reclaim an animal as provided in this chapter, the animal will be deemed abandoned and shall become the property of the County without compensation paid to the owner.
  2. An owner that fails to reclaim an animal will be civilly liable to the County for all penalties, fines, fees, costs and expenses authorized by this chapter, which may be collected in the same manner as any other debt allowed by law.
- E. Diseased or Injured Animal. A dog owner, or the owners, operators or managers of animal rescue entities shall be liable to the County for costs paid for medical treatment during impoundment. If the County determines an animal is seriously injured or seriously ill or its health condition causes a threat to public health or safety, the animal may be immediately euthanized without compensation paid to the owner.
- F. Release for Adoption.
1. Fees. Adoption fees will be assessed consistent with this chapter.
  2. Standards. The Dog Services Manager shall have the authority to develop and enforce adoption policies and procedures.

[Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 05-2003, 3/13/03; Amended by Ord. 01-2004, 4/8/04; Amended by Ord. 05-2010, 7/1/10; Amended by Ord. 08-2012, 8/2/12]

### **5.01.070 Citation; Complaint; Hearing Process**

- A. Issuance of Citation.
1. Any Dog Services Officer or peace officer may issue and serve a dog owner, or the owners, operators or managers of animal rescue entities with a citation when there are reasonable grounds to believe that a violation of this chapter has occurred. The citation shall serve as the County's complaint and may include a fine that is payable to Clackamas County.
  2. A citation shall be served by personal service or by certified mail with return receipt requested, no later than six (6) months from the date the alleged violation occurred. When mailed the date of mailing shall be considered the date of service. The failure of any person to receive notice properly given shall not invalidate or otherwise affect proceedings under this chapter.
- B. Inspection and Investigation. In determining whether to issue a citation, a Dog Services Officer may request entry onto any real property in order to investigate a suspected violation of this chapter.
- C. Form of Citation.
1. The citation shall include:
    - a. The name and address of the person cited;
    - b. The date(s) the alleged violation(s) occurred;
    - c. The number and title of the chapter section(s) violated;
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- d. A description of the animal(s) involved;
  - e. The base fine, to be equal to the minimum fine, along with the maximum fine for each violation as authorized by this chapter;
  - f. A statement providing notice of the penalties that could be imposed by the Hearings Officer, including penalties and keeping restrictions provided in Section 5.01.080 of this chapter.
  - g. Whether appearance before a Hearings Officer is optional, or if mandatory, the date, time and place at which the person is to appear;
  - h. The procedure for the person to follow to admit the violation and pay the fine or to contest the citation and appear before a Hearings Officer;
  - i. A statement that if the person fails to pay the fine within the time allowed, or fails to appear before the Hearings Officer when required, the person shall have waived his/her right to contest the citation and the Hearings Officer may enter a judgment against the person for an amount up to the maximum fine, in addition to any fees, costs or expenses, conditions or restrictions authorized by this chapter;
  - j. A statement that when appearance before a Hearings Officer is mandatory the person cannot pay the fine in lieu of appearance.
2. An error in transcribing information into a citation, when determined by the Hearings Officer to be non-prejudicial to the defense of the cited person, may be corrected prior to or at the time of the hearing with notice to the cited person. Except as provided in this subsection, a citation that does not conform to the requirements of this section shall be set aside by the Hearings Officer upon motion of the cited person before any other proceedings at the hearing. Minor variations in the form of citation shall not be a basis for setting aside a citation. Nothing prohibits the Hearings Officer from amending a citation in the Hearings Officer's discretion.
- C. Response to Citation
1. Unless an appearance before a Hearings Officer is mandatory, a dog owner, or the owners, operators or managers of animal rescue entities who has received a citation may respond by:
    - a. Appearing personally before the Hearings Officer on the cited appearance date and either admit or deny the violation; or
    - b. Prior to the appearance date return a signed copy of the citation to Dog Services admitting the violation, along with a check or money order payable to Clackamas County for the total base fine amount. Admission and payment does not relieve the dog owner, or the owners, operators or managers of animal rescue entities of the requirement to correct the violation; or
    - c. Prior to the appearance date, return a signed copy of the citation to Dog Services denying the violation and requesting a hearing. Dog Services will set a time and place for the hearing and notify the Hearings Officer, and the dog owner, or the owners, operators or managers of animal rescue entities.
  2. Mandatory Appearance. Personal appearance before a Hearings Officer at the time and place indicated on the citation shall be mandatory:
    - a. When a dog owner, or the owners, operators or managers of animal rescue entities has received a citation three (3) times or more within a
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- twelve (12) month period or the issuing officer has determined the appearance should be mandatory;
- b. For violation of Failure to Surrender an Animal;
  - c. For violation of Interfering with a County employee or Peace Officer;
  - d. For violation of Providing False Information to a County employee or Peace Officer;
  - e. For violation of Failure to Comply with Conditions of Quarantine;
  - f. For violation of Failure to Comply with any Fine, Fee, Cost, Expense, Condition or Restriction authorized by this chapter;
  - g. For violation of Dog as a Public Nuisance when a dog kills a person, domestic animal or livestock;
  - h. For violation of Failure to Comply with the Requirements of Keeping a Dangerous Dog.
  - i. For failure to reclaim an impounded animal.
  - j. For failure to meet minimum care standards.
3. Failure to Respond to Citation. If a person cited fails to respond to a citation as required by this chapter, then the person shall be deemed to have waived his/her right to contest the citation. Following proof of sufficient evidence that the person has committed the cited violation(s), the Hearings Officer may enter a Final Order against the person for an amount up to the maximum fine, in addition to any applicable fees, costs or expenses, and any other imposition consistent with this chapter. A copy of the Final Order shall be sent to the person cited by regular mail.
- D. Hearing Process.
1. Informal Disposition. The County and the dog owner, or the owners, operators or managers of animal rescue entities may agree to an informal and final disposition of any violation before a Hearings Officer issues a Final Order.
  2. Burden of Proof. The burden will be on the County to prove that the violation occurred by a preponderance of the evidence.
  3. Testimony of Witnesses and Parties. The Hearings Officer shall have the authority to administer oaths or affirmations and take testimony of and question witnesses and parties. Parties may offer witness testimony on their own behalf. Written testimony must be submitted by sworn affidavit and may be admitted into the record subject to exclusion by the Hearings Officer and objections by the opposing party.
  4. Cross-Examination of Witnesses. The person cited and attorneys may examine or cross-examine witnesses.
  5. Evidence. Reliable and relevant evidence shall be admitted subject to the rules of privilege recognized by law. Records developed, kept and maintained, during the normal course of business, including but not limited to, law enforcement reports and veterinary records, shall be admissible provided the party offering the records establishes the authenticity of the records through written or oral testimony. The burden of presenting evidence to support a fact or position shall be on the offering party. The Hearings Officer may establish procedures for the presentation of evidence to ensure that the hearing record reflects a full and fair inquiry into the facts necessary to determine the matter alleged. The Hearings Officer shall have the discretion to exclude any material or testimony that is accumulative, repetitious, irrelevant or immaterial.
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6. Objections. Objections to admission of evidence shall be noted in the record and will be considered with respect to the weight to be given the particular evidence offered. The Hearings Officer shall have the discretion to admit or exclude any evidence presented and may reserve the ruling on the admissibility or exclusion of evidence until the time the Final Order is issued.
7. Subpoenas. The Hearings Officer may issue subpoenas to parties when a request is supported by a showing of general relevance and reasonable scope of the evidence sought. Witnesses appearing pursuant to subpoena, other than the parties, peace officers or employees of the County, shall be paid the same witness fees and mileage as allowed in civil cases from the party requesting the subpoena to be paid at the time the subpoena is issued. The party requesting the subpoena will be responsible for its service in accordance with the Oregon Rules of Civil Procedure.
8. Representation. The person cited may represent him/herself or may be represented by counsel at personal expense. The County may be represented at the hearing by any employee of the County. If the employee is not an attorney, the employee shall not present legal argument, examine or cross-examine witnesses, present rebuttal evidence or give legal advice to the Hearings Officer conducting the hearing.
9. Record. A verbatim record shall be made of all hearings. The record may be transcribed at the request of a party upon payment in advance of the cost of transcription.
10. Final Order. At the conclusion of the hearing, the Hearings Officer shall issue a Final Order based upon reliable, relevant and substantial evidence which shall be the County's final determination. A Final Order shall be effective on the date that it is issued unless otherwise provided by the Hearings Officer. The order may be oral or written, but in all cases must be recorded in the record of the proceeding. The Hearings Officer may impose fines, fees, costs, expenses, conditions or restrictions and any other imposition authorized by this Chapter. Monetary obligations are due and payable on the effective date of the Final Order unless otherwise provided.
11. Judicial Review. Review of a Final Order of the Hearings Officer may be made by any party by writ of review as provided in ORS 34.010-34.100.
12. Enforcement of Final Order. The County may maintain civil proceedings in law or equity in a court of competent jurisdiction to enforce any provision of a Hearings Officer's Final Order.

F. Process when Citation is for Dog as Continuous Annoyance. When the County receives a complaint of a dog causing a continuous annoyance, all of the procedures in this chapter shall apply and the following additional procedures shall also be required:

1. First Complaint. The county will not investigate or issue a citation, but will provide assistance to the complainant and the dog owner to help them resolve the issue between themselves.
2. Second Complaint. The complainant and the dog owner will be referred to mandatory mediation:
  - a. If the complainant fails to participate in mediation, no citation will be issued to the owner, the county will not investigate the complaint and not further complaints will be considered until and unless the complainant participates in mediation.

b. If the owner fails to participate in mediation, the county may conduct further investigation into the complaint, may issue a citation and may take other steps that it determines are reasonable in the circumstances.

3. Complaints Following Mediation Where All Parties Have Participated. If mediation is conducted wherein both the owner and complainant participate, upon receipt of further complaints the County may conduct further investigation into the complaint, may issue a citation and may take other steps that it determines are reasonable in the circumstances.

4. After Citation Issued. After a citation is issued by the County, all standard procedures and provisions in this chapter shall apply.

[Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 01-2004, 4/8/04; Amended by Ord. 05-2010, 7/1/10; Amended by Ord. 08-2012, 8/2/12]

### **5.01.080 Penalties**

#### **A. Fines, Fees, Costs; Expenses.**

1. Upon a finding that the dog owner or the owners, operators or managers of animal rescue entities has violated this chapter, a Hearings Officer may impose fines, fees, costs and expenses, which shall become a debt owing to Clackamas County and may be collected in the same manner as any other debt allowed by law. If fines, fees, costs or expenses are not paid within sixty (60) days after payment is ordered, the County may file and record the Final Order for payment in the County Clerk Lien Record as authorized by ORS 30.460.
2. If the Hearings Officer finds that the alleged violation did not occur, the County shall reimburse the owner for any fines, fees, costs and expenses previously paid by the owner for the alleged violation.
3. The Hearings Officer may order payment of the County's attorney fees and prosecution costs to include staff time for any violation of this Chapter.

#### **B. Conditions and Restrictions; Restitution; Euthanasia.**

1. Upon a finding by the Hearings Officer that a dog owner, or the owners, operators or managers of animal rescue entities has violated a provision of this chapter, in addition to and not in lieu of any fine, fee, cost or expense, the Hearings Officer may impose restitution, euthanasia, and reasonable conditions and restrictions, including but not limited to:
  - a. Suspend the owner's right to own or keep any animal in Clackamas County for a period not to exceed five (5) years;
  - b. Upon sufficient proof order restitution to any person who has suffered actual monetary loss as a result of a violation of this chapter, including but not limited to expenses incurred for veterinary care, burial and memorial expenses, repair or replacement of damaged property, or medical bills;
  - c. Require the owner to spay or neuter the animal;
  - d. Require the owner to remove the animal to a location where the animal does not present a threat to persons, domestic animals or livestock;
  - e. Require the owner to surrender the animal to the County;
  - f. After consideration of the factors set forth in ORS 609.093, require euthanasia when an animal has bitten or killed a person, domestic animal or livestock. The Hearings Officer may also consider the public nuisance violation history of the animal and owner to include all known

- 
- determinations by any court, governing body, official or agency of any local or state government without regard to where or when the incident occurred;
- g. Require that the owner comply with any other condition or restriction reasonably designed to abate any future violation of this chapter;
  - h. Require that the owner obtain microchip identification for the animal;
  - i. Require the owner to reduce the number of animals on the owner's premises.
2. Any condition or restriction imposed by a Hearings Officer must be complied with immediately unless otherwise ordered. The County may request that an owner provide proof of compliance by a date certain. If proof is not provided, or proof is insufficient, then a rebuttable presumption will exist that the owner has failed to comply and the owner may be cited for the violation of Failure to Comply in accordance with this chapter.
  3. An owner shall be responsible for all costs incurred in complying with any condition or restriction imposed.
  4. Upon a finding that an owner is guilty of a violation set forth in this chapter, regarding the same animal for the third time in a twelve (12) month period, the Hearings Officer may order that the owner surrender the animal to the County, without compensation paid to the owner.
  5. When an animal has been ordered surrendered and the County has determined that the animal qualifies for adoption, the County may give placement preference to any person who had prior contact with the animal, including but not limited to the former owner's family members or friends who reside separately from the former owner and whom the County has determined will provide adequate care and follow all conditions or restrictions imposed by the Hearings Officer in order to maintain control of the animal.

[Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 05-2003, 3/13/03; Amended by Ord. 01-2004, 4/8/04; Amended by Ord. 05-2010, 7/1/10; Amended by Ord. 08-2012, 8/2/12]

#### **5.01.090 Authority of Dog Services Manager**

In accordance with the provisions of this chapter the Dog Services Manager shall have the authority to:

- A. Collect fines, fees, costs and expenses.
- B. Authorize an owner to keep a licensed dog that has been impounded and quarantined, at the premises of the owner during the period of quarantine.
- C. Declassify a dog as dangerous in accordance with the provisions of this chapter.
- D. Require a dog owner, or the owners, operators, or managers of animal rescue entities to provide proof of compliance with a Hearings Officer's Final Order.
- E. Inspect premises of a dog owner, or of an animal rescue entity to ensure compliance with this chapter;
- F. Develop and enforce policy, procedures and standards to ensure the effective administration of this chapter.

[Added by Ord. 01-2004, 4/8/04; Amended by Ord. 05-2010, 7/1/10]

#### **5.01.100 Transition**

[Added by Ord. 01-2004, 4/8/04; Repealed by Ord. 08-2012, 8/2/12]

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**5.01.110 Severability**

If any clause, section or provision of this chapter is declared unconstitutional or invalid for any reason or cause, the remaining portion of this chapter shall remain in full force and effect and be valid as if the invalid portion had not been incorporated herein.

[Added by Ord. 01-2004, 4/8/04; Amended by Ord. 05-2010, 7/1/10]

**5.01.120 Enforcement of Other Laws**

- A. Enforcement of Dogs. Pursuant to ORS 203.035; 153.030; 609.015 and ORS 609.135, this chapter supersedes enforcement in the County of the following state statutes regarding control of dogs: ORS 609.030 and 609.035 to 609.110; 609.155; 609.158; 609.165; 609.170; 609.180; 609.190.
- B. Enforcement of Rabies Control. Rabies control shall be enforced by the Clackamas County Health Officer in cooperation with the Dog Services Manager in accordance with the provisions of ORS 433.340 through 433.390.
- C. Enforcement of Violations Involving Livestock. When a dog is determined to be a Public Nuisance under this chapter for menacing, biting, injuring or killing livestock, in addition to all other provisions and regulations of this chapter the following state statutes apply: ORS 609.125; 609.156; 609.161; 609.162; 609.163; 609.167; 609.168.
- D. Enforcement of Possession of Dogs. The number of dogs possessed by a person shall be limited as provided in ORS 167.374. In addition to all other provisions and regulations of this chapter, ORS 167.374 shall apply.
- E. Other Laws Apply. Except as expressly provided in this chapter, this chapter shall in no way be a substitute for or eliminate the necessity of conforming with any and all state and federal laws, rules and regulations, and other ordinances which relate to the requirements provided in this chapter.

[Added by Ord. 05-2010, 7/1/10; Amended by Ord. 08-2012, 8/2/12]

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**Attachment D: Program Fine Schedule (Proposed)**

**Code Amendments - Program Fines:**

DEPARTMENT/DIVISION	AUTHORIZING LEGISLATION	Fine set by ORS	ORS authorized fine	Code authorized fine	FY 13/14 FINE AMOUNT	FY 14/15 FINE AMOUNT	New Fee FY 14/15	Notes
<b>DOG CONTROL</b>								
Continuous Annoyance <u>pending final disposition</u>								
Mediation Fee (Dog Owner) Mediation Fee (Complainant)	Code §5.01.040.B & §5.01.070 (F)			x	\$0	\$50 \$50	x	
1st citable offense 2nd offense 3rd offense						\$250-\$350 \$350-\$450 \$500-\$1,000		
<u>Improper tethering of a dog</u> 1st offense 2nd offense 3rd offense	Code §5.01.040.B			x	\$0	\$100-\$250 \$250-\$400 \$500	x	
Failure to comply with requirements <u>of an Animal Rescue Entity</u> 1st offense 2nd offense 3rd offense	Code §5.01.030.A			x	\$0	\$100-\$250 \$250-\$400 \$500	x	
<u>Failure to report canine rabies vaccination</u> 1st offense 2nd offense 3rd offense	Code §5.01.040.C			x	\$0	\$100-\$250 \$250-\$400 \$500	x	Multnomah County = \$100 per offense.

**Color Coding - Key:**

Continuous Annoyance - Barking Dogs

Statutory Requirements

Housekeeping

Attachment E: Program Fee Schedule (*Proposed*)

**Code Amendments - Program Fees:**

DEPARTMENT/DIVISION	AUTH. LEGISLATION	FEE SET BY ORS	ORS AUTH. FEE	CODE AUTH. FEE	FY 13/14 Adopted Fee	14/15 Proposed Fee	New Fee FY 14/15	Notes
<b>DOG CONTROL</b>								
Animal Rescue Entity, Annual License	Code §5.01.030.A			x	\$0	\$100	x	
<u>Licensing*</u>								
Fertile 1 year	Code §5.01.030				\$35	\$41		Increase the annual dog license fee by \$6/year/license to offset the cost of the continuous annoyance program.
2 year					\$60	\$72		
3 year					\$90	\$108		
Altered 1 year				x	\$18	\$24		
2 year					\$34	\$46		
3 year					\$48	\$66		
* <i>Note 1:</i> 25% discount for dogs with Canine Good Citizen Certification.								
* <i>Note 2:</i> \$5 discount for microchipped dogs.								
<u>Multiple Dog license</u>								
1 year	Code §5.01.030				\$200	\$206		Increase the annual dog license fee by \$6/year/license to offset the cost of the continuous annoyance program.
2 year				x	\$380	\$392		
3 year					\$560	\$578		

**Color Coding - Key:**

Continuous Annoyance - Barking Dogs

Statutory Requirements





5

OFFICE OF COUNTY COUNSEL

PUBLIC SERVICES BUILDING

2051 KAEN ROAD OREGON CITY, OR 97045

Stephen L. Madkour  
County Counsel

Kimberley Ybarra  
Kathleen Rastetter  
Chris Storey  
Scott C. Ciecko  
Alexander Gordon  
Amanda Keller  
Nathan K. Boderman  
Christina Thacker  
Assistants

July 17, 2014

Board of County Commissioners  
Clackamas County

Members of the Board:

**Consideration of Formation of an ORS 266 Parks and Recreation District Replacing the Current North Clackamas Parks and Recreation District at a Higher Permanent Rate**

<b>Purpose/Outcome</b>	The second public hearing on the question of whether or not to form a new ORS 266 parks and recreation district that would replace the current NCPRD at a new permanent rate
<b>Dollar Amount and Fiscal Impact</b>	NCPRD currently has a permanent rate of \$0.5394/1000 assessed value. This proposal, if passed by the BCC and referred to and passed by voters, would increase the revenue to the new district for parks and recreation services and facilities. No impact to the County General Fund.
<b>Funding Source</b>	Permanent tax rate of district residents
<b>Safety Impact</b>	None
<b>Duration</b>	Permanent
<b>Previous Board Action/Review</b>	Multiple study sessions. Hearing held on June 12, 2014 to initiate consideration of formation of the new ORS 266 district
<b>Contact Person</b>	Chris Storey, Assistant County Counsel 503 742 4623
<b>Contract No.</b>	N/A

**BACKGROUND:**

The Board of County Commissioners initiated consideration of the formation of a parks and recreation service district organized under ORS 266 with an independently elected board to provide additional funding for parks and recreation services and facilities consistent with an aspirational master plan (the "New District"). All three cities within the current boundaries of North Clackamas Parks and Recreation District ("NCPRD") have passed formal resolutions consenting to inclusion of their territory in the New District.

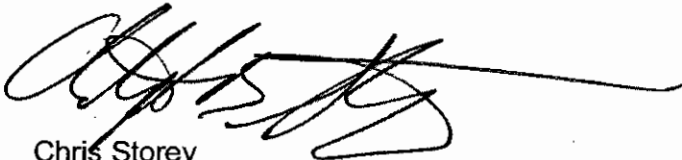
The New District's boundaries are identical to those of the currently-existing NCPRD, whose residents are paying \$0.5394 per thousand of assessed value in permanent tax rate to support the provision of parks and recreation services. NCPRD has undertaken an update of its 2004 Master Plan and as part of that process received the feedback that (i) current funding is inadequate to meet the long term needs of maintaining NCPRD's existing assets, and (ii) residents desire additional

parks, open spaces, natural areas, trails, community centers and other amenities. To meet these two needs, NCPRD has circulated a proposed updated "aspirational" Master Plan to meet those needs, contingent on receiving additional funding. To receive an increase in its permanent rate, NCPRD must reform as a new district under current state law. In the process of doing so, the BCC has indicated a desire to also consider independent governance of NCPRD. The proposal under consideration today addresses both of those issues.

Attached are the resolutions adopted at the June 12 board hearing for reference, by both the NCPRD Board and the BCC as the County Commission. Also attached is a proposed board order that would preliminarily approve formation of the New District at a particular permanent rate. Included with the proposed board order are (i) findings and reasons for decision; (ii) a boundary description; and (iii) a map of the New District. Under the required boundary process proscribed by ORS 198, the BCC must select the permanent rate that will be considered by voters if so referred.

By approving the attached draft order the Board would preliminarily approve formation of the New District. After due notice, there would be a further public hearing on August 7, 2014 receiving additional public testimony and consideration of referring the matter to election on the November 2014 ballot.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Chris Storey', with a long horizontal flourish extending to the right.

Chris Storey  
Assistant County Counsel

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

In the Matter of Endorsement of  
Petition for Formation of a New  
Parks and Recreation District with  
the Same Boundaries or Containing  
Territory of North Clackamas Parks  
And Recreation District

ORDER NO. 2014-47

This matter comes before the Board of County Commissioners, acting as the governing body of North Clackamas Parks and Recreation District, organized and existing under the provisions of ORS Chapter 451 ("NCPRD").

NCPRD has received recommendations as part of its Master Planning process began in 2012 to consider a higher permanent tax rate and change in governance structure. The only way to implement these recommendations under current law is to reform NCPRD as a new parks and recreation district organized under the provisions of ORS Chapter 266 (the "New District"). The reformation of NCPRD may be initiated by the Board of County Commissioners as the governing body of Clackamas County as part of their statutory authority regarding boundary changes within the County. Cities currently within NCPRD must affirmatively consent to the inclusion of affected territory within their limits.

It appearing that ORS Chapter 198 provides that the Board acting as the governing body of NCPRD must take a position on such a petition for it to go forward; and

It further appearing that this petition for formation of the New District is consistent with NCPRD's Master Plan recommendations and the District Advisory Board's recommendations, and reflects an opportunity to deliver improved parks and recreation services to all its residents in a balance and equitable manner including both growing and underserved areas;

THEREFORE, IT IS HEREBY RESOLVED THAT this Board endorses the petition for formation of the New District and either merger of NCPRD into the New District or withdrawal of territory from NCPRD into the New District, subject to approval by the voters of NCPRD.

DATED this 12<sup>th</sup> day of June, 2014.

  
Chair

  
Clerk

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

In the Matter of the Initiation of  
Formation of an Independent Parks  
and Recreation District and Merger  
of Existing North Clackamas Parks and  
Recreation District into the Same

ORDER NO. 2014 - 48

The Clackamas County Board of County Commissioners, as the responsible jurisdiction for boundary issues under Oregon Revised Statutes ("ORS") Chapter 198, have received a request from the governing body of North Clackamas Parks and Recreation District, a county service district organized pursuant to ORS 451 ("NCPRD") to initiate formation of a new parks and recreation district organized under ORS 266 at a higher rate (a "New District") within Clackamas County that would replace NCPRD as the designated service provider within NCPRD's current boundaries; and

This matter coming before the Board at this time and it appearing that the Cities of Damascus, Happy Valley and Milwaukie have consented to the inclusion of some or all of their boundaries within the New District, the consents of which cities are attached hereto as Exhibit A; and

It further appearing that formation of the New District and merger of NCPRD into the New District is an appropriate mechanism of changing the governance and permanent tax rate of the affected residents of the inhabited territories of NCPRD while ensuring continued service provision to the residents thereof; and

It further appearing that the formation of the New District may be in the best interests of the residents of the area, and is worthy of further consideration by this Board;


**NOW, THEREFORE, IT IS HEREBY ORDERED** that this Board initiates formation of an independent parks and recreation service district organized pursuant to ORS 266 with five directors, to be known as the "North Clackamas Parks and Recreation District", with a permanent tax rate of \$0.89 per thousand assessed value, and a boundary as shown on the attached Exhibit B which includes all of the current NCPRD boundaries and nothing more; and

**IT IS FURTHER ORDERED** that a public hearing on the formation of the New District will be held by this Board at 6:00 p.m. on July 17, 2014, in the Commissioners' hearing room, Fourth Floor, 2051 Kaen Road, Oregon City, Oregon.

**DATED** June 12, 2014.

**BOARD OF COUNTY COMMISSIONERS**

  
\_\_\_\_\_  
Chair

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

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

In the Matter of Preliminarily Approving  
Formation of an ORS 266 Parks and  
Recreation District and Merger of North  
Clackamas Parks and Recreation District  
Into the Same



ORDER NO. 2014-\_\_\_\_\_

This matter coming before the Board at this time, and it appearing that by Order No: 2014-48, this Board initiated the formation of a parks and recreation service district under ORS Chapter 266 to be known as the "North Clackamas Parks and Recreation District" with a permanent tax rate of \$0.89 per thousand assessed value ("New District") with the same boundaries as the current North Clackamas Parks and Recreation District organized under ORS 451("NCPRD"), with NCPRD merging with and into the New District to leave the New District with the same assets, liabilities and obligations as NCPRD but at a new permanent rate (the "Proposal"); and

It further appearing that this Board is charged with deciding this proposal for a boundary change pursuant to ORS Chapters 198; and

It further appearing that this matter came before the Board for public hearing on July 17, 2008 and that a decision of approval was made on July 17, 2008; and

It further appearing that the Proposal appears to be economically feasible pursuant to the economic feasibility report published in June 2014 and attached hereto as Exhibit D; and

It further appearing that the Board is required to hold a second hearing as required by ORS 198.810 (2); and

NOW, THEREFORE, IT IS HEREBY ORDERED that the Proposal for formation of the New District and the merger of NCPRD with an into the New District (as described in Exhibit B and depicted on Exhibit C) is approved for the reasons stated in attached Exhibit A and that a final hearing on the Proposal will be held on August 7, 2014.

ADOPTED this 17th day of July, 2014.

BOARD OF COUNTY COMMISSIONERS

\_\_\_\_\_  
Chair

\_\_\_\_\_  
Secretary

## Exhibit A

### FINDINGS AND REASONS FOR DECISION

Based on staff review and the public hearing, the Commission finds that:

1. The territory to be included in the New District consists of all the current territory within NCPRD, including the Cities of Damascus, Happy Valley and Milwaukie.
2. The reason for formation of the district is to provide additional funding for the provision of park and recreation services and to provide for independent, dedicated governance.
3. Formation of a district which includes any territory within a city requires a resolution from the city approving the county order initiating the formation. ORS 198.835(3). The board order initiating the formation of this district included resolutions of approval from all three of the impacted cities.

ORS 198.840 requires that an initial hearing be held by the County Board and that the Board utilize the criteria prescribed by ORS 199.462 to determine if the area can be benefited by the formation of the district. ORS 199.462 requires the Board to “. . . consider local comprehensive planning for the area, economic, demographic and sociological trends and projections pertinent to the proposal, past and prospective physical development of land that would directly or indirectly be affected by the proposed boundary change . . . and the goals adopted under ORS 197.225.”

If the County Board approves the proposed formation, it must enter an order so declaring. The order must set a final hearing date not less than 20 nor more than 50 days after the date of the order. The proposal includes a permanent rate limit for operating taxes and if the Board approves the formation, the Board must call an election. The election shall be held on the next available primary or general election date and is on a single question which includes both the formation and approval of the tax rate – in this case, November 2014. The County must canvas the votes of the election and enter an order of approval or denial based on the votes. If the District formation is approved, the District is established from the date of the formation order.

4. ORS 266 allows the creation of a special purpose municipal entity that is dedicated solely to the provision of park and recreation services, including but not limited to the acquisition, construction, maintenance and improvement of parks, open spaces, trails, natural areas, community and recreational centers, and other recreational facilities. The district will also manage and provide recreational programming for residents of the district in a wide variety of areas.
5. Oregon Revised Statute 198.749 requires the submission of an Economic Feasibility Statement (EFS) by the proponents of a district formation. An Economic Feasibility Statement was prepared on this proposal, was circulated and is attached as Exhibit D hereto, and should

be considered to be included in this Finding in its entirety.

Currently, NCPRD is experiencing budget challenges in meeting current repair, replace and maintenance obligations, and has no non-SDC funds available to support new capital project construction. The New District is being proposed to provide secure funding for existing services now and in the future, and create opportunities for additional programs and facilities.

6. The territory in the proposed district is within the boundary of Metro and the regional Urban Growth Boundary.
7. The Clackamas County Comprehensive Plan does not address park services in this context.
8. ORS 197 requires that counties exercise their planning and zoning responsibilities -including the formation of special districts - in accordance with applicable state and local land use rules, plans and goals. ORS 197.175 provides that:

(1) . . . counties shall exercise their planning and zoning responsibilities, including, but not limited to, a . . . special district boundary change which shall mean . . . the formation . . . of . . . any special district authorized by ORS 198.705 to 198.955 . . . in accordance with ORS chapters 195, 196 and 197 and the goals approved under ORS chapters 195, 196 and 197. . .

(2) Pursuant to ORS chapters 195, 196 and 197, each city and county in this state shall:

(a) Prepare, adopt, amend and revise comprehensive plans in compliance with goals approved by the commission;

(b) Enact land use regulations to implement their comprehensive plans;

\* \* \*

(d) If its comprehensive plan and land use regulations have been acknowledged by the commission, make land use decisions and limited land use decisions in compliance with the acknowledged plan and land use regulations;. . .

The decision to approve or deny a proposal to form a district is a "land use decision" for purposes of ORS 197, including review by the Land Use Board of Appeals (LUBA) because the county is required to consider its comprehensive plan.

The referenced ORS 196 in (2) above deals with the Columbia River Gorge, Ocean Resource Planning, Wetlands and Removal & Fill. That statute does not apply to this proposed formation. ORS 195 requires special district actions affecting land use, including a special district boundary change, to be made in accordance with goals approved under ORS 195, 196 and 197. However, after a county or city comprehensive plan and land use regulations have been acknowledged as complying with the statewide planning goals, the local legislation

becomes directly applicable for most kinds of local land use decisions made after acknowledgement and the goals cease to be applicable. If the local legislation complies with state law, its correct application to specific land use decisions will assure the land use decision is consistent with state law. There does not need to be an independent analysis of the consistency of the proposal directly with the statewide goals.

9. Oregon Revised Statute (ORS) 198 contains the requirements generally applicable to all special district boundary changes. ORS 198.805(1) directs the Board to utilize the criteria found in a particular section of the boundary commission statute (ORS 199.462) to decide whether the area could be benefited by the formation. The Board may alter the boundaries of the proposed district, considering the benefit the formation will have on excluded or included territory. Specifically, ORS 198.805 (1) states:

[T]he county board shall hear the petition and determine, in accordance with the criteria prescribed by ORS 199.462, if the area could be benefited by the formation of the district. The county board may adjourn the hearing from time to time, but not exceeding four weeks in all unless additional notice is given. The county board may alter the boundaries set forth in the petition to either include or exclude territory. In determining the boundaries of the proposed district, the board shall consider the benefit the proposed district will have within the territory in or out of the proposed district. The board may not modify the boundaries to:

- (a) Exclude from the proposed district land that, in the judgment of the board, could be benefited by inclusion in the proposed district; or
- (b) Include in the proposed district land that, in the judgment of the board, could not be benefited by inclusion in the proposed district.

- a. Under the referenced ORS 199.462, the Board is required to consider the following factors:

- 1. Local comprehensive planning for the area;
- 2. Economic, demographic and sociological trends and projections pertinent to the area;
- 3. Past and prospective physical development of land that would directly or indirectly be affected by the proposed boundary change; and
- 4. The LCDC Goals.

The local comprehensive plan is addressed in Finding 7 above. Economic, demographic and sociological trends and projections were considerations of the proponents in determining the boundary of this proposal. The EFS notes, at pages 6-8, the multiple positive impacts of adequate library services for County residents. Spreading the costs of these important services over the wider service area is more economical and equitable for the entire service population. As noted above the LCDC Goals need not be applied directly but are addressed by way of the acknowledged Clackamas County Comprehensive Plan.

11. Chapter 266 is the principal act for parks and recreation service districts. However, it contains



no criteria for consideration of the county board in reviewing a formation proceeding. ORS 266 simply states that all boundary changes for park and recreation districts are to be handled in accord with ORS 198.

12. Another set of criteria can be found in the Metro Code. These criteria apply to the portions of the proposed district which lie within the Metro jurisdictional boundary. To approve a boundary change, the reviewing entity [the County Board] must apply the criteria and consider the factors set forth in Section 3.09 of the Metro Code. To approve a boundary change the County must:

- (1) Find that the change is consistent with expressly applicable provisions in:
  - (A) Any applicable urban service agreement adopted pursuant to ORS 195.205;
  - (B) Any applicable annexation plan adopted pursuant to ORS 195.205;
  - (C) Any applicable cooperative planning agreement adopted pursuant to ORS 195.020 (2) between the affected entity and a necessary party;
  - (D) Any applicable public facility plan adopted pursuant to a statewide planning goal on public facilities and services; and
  - (E) Any applicable comprehensive plan; and
- (2) Consider whether the boundary change would:
  - (A) Promote the timely, orderly and economic provision of public facilities and services;
  - (B) Affect the quality and quantity of urban services; and
  - (C) Eliminate or avoid unnecessary duplication of facilities and services.

Urban service agreements only relate to certain urban services such as water and sewer. These agreements do not apply to library services. There are no annexation plans under ORS 195 within the area of the proposed district. Cooperative agreements and public facility plans are not relative to the services to be provided by the proposed district. County Planning is addressed in the previous section of this report. The considerations in (2) above relate primarily to urban services. However, to the extent factors (A), (B) & (C) apply, the proposed district is an equitable and economical way to fund the services.

## CONCLUSIONS AND REASONS FOR DECISION

Based on findings, the Board concludes that:

1. Consideration of ORS 199.462 is required by ORS 198. The first factor to be considered under ORS 199.462 is the local comprehensive plan. The Metro Code also requires consistency with the local comprehensive Plan. The Board considered the Clackamas County Comprehensive Plan and finding no references to park and recreation services in this context (Finding No. 7 above) and concludes there are no inconsistencies with the Plan. The Board further notes that requirements of ORS 197 and the Goal consideration required by ORS 199.462 are met through the consideration of and finding of consistency with the County's Comprehensive Plan.
2. The required consideration of economic, demographic and sociological trends and projections and past and projected land uses required by ORS 199.462 has been adequately addressed in the economic feasibility statement and the determination that the District should provide additional services to and be funded by the areas already within NCPRD.
3. As required by ORS 198.805, the Board considered the benefit the proposed district will engender and determined that all residents in the current NCPRD are equally benefited and that formation of a new ORS 266 District would provide (i) direct, elected representation focused exclusively on park and recreation issues, and (ii) additional funding for the enhancement of the provision of park and recreation services for residents already paying for such services.
4. As noted in Finding 11 most of the criteria in the Metro Code do not apply to this proposed formation. The two applicable criteria (County planning and economic service provision) are addressed in the Reasons above.

## Exhibit "B"

June 5, 2014

Page 1 of 16

### NORTH CLACKAMAS REGIONAL PARKS AND RECREATION DISTRICT BOUNDARY, 2014

Beginning at a point on the Clackamas County and Multnomah County Line where it intersects the center of the Willamette River;

Thence, Easterly along said County Line, also being the south line of the "Town of Sellwood", Plat Number 21, Clackamas County Plat Records, to the southeast corner of said plat;

Thence, continuing along said County Line and along the east line of said plat, Northerly to the section line common to Sections 23 and 26, Township 1 South, Range 1 East, Willamette Meridian;

Thence, continuing along said County Line, Easterly, Seven (7) miles, more or less, to the northeast corner of Section 25, Township 1 South, Range 2 East, Willamette Meridian;

Thence, leaving said County Line, and along the east line of said Section 25, Southerly, 960 feet, more or less to the southwest corner of that tract of land described in Deed Document Number 1994-073651, Clackamas County Deed Records;

Thence, along the south line of said tract, Easterly, 1202 feet, more or less to the southeast corner thereof, said point also being on the west line of that tract of land described in Deed Document Number 2013-028017, Clackamas County Deed Records;

Thence, along the west line of said tract, Southerly, 191 feet, more or less to the north line of "Pleasant Valley Heights", Plat Number 1072, Clackamas County Plat Records;

Thence, along said north line, Westerly, 1205 feet, more or less, to the northwest corner of said plat, said point also being on the east line of said Section 25;

Thence, along the west line of said plat and the east line of said section 25, Southerly, 181 feet, more or less, to the south line of said plat, also being the centerline of Sager Road, County Road No. 1200;

Thence, along the centerline of said road, Easterly, 2017 feet, more or less to the southeast corner of that tract of land described Deed Document Number 1995-048989, Clackamas County Deed Records;

Thence, along the east line of said tract, Northerly, 250 feet, more or less to the northeast corner thereof;

Thence, along the north line of said tract, Westerly, 110 feet, more or less, to an angle point in the east boundary of that tract of land described in Deed Document Number 2011-054123, Clackamas County Deed Records;

Thence, along the most easterly line of said tract, Northerly, 199 feet, more or less, to the northeast corner thereof, said point also being on the south line of that tract of land described in Deed Document Number 2001-087232, Clackamas County Deed Records;

Thence, along the south line of said tract, and the south line of that tract of land described in Deed Document Number 2014-020636, Clackamas County Deed Records, Easterly, 744 feet, more or less, to the southeast corner of said Document Number 2014-020636 tract, said point also being on the centerline of 172<sup>nd</sup> Avenue, County Road No. 738;

Thence, along the centerline of said road, Northerly, 240 feet, more or less, to the northwest corner of the Moses Noble Donation Land Claim, Number 70;

Thence, along the north line of said Donation Land Claim, Easterly, 1518 feet, more or less to the northwest corner of that tract of land described in Deed Document Number 2014-001400, Clackamas County Deed Records;

Thence, along the west line of said tract and the west line of that tract of land described in Deed Document Number 2013-080777, Clackamas County Deed Records, Southeasterly, 410 feet, more or less, to the northwest corner of that tract of land described in Deed Document Number 1991-002878, Clackamas County Deed Records;

Thence, along the west line of said tract, Southerly, 140 feet, more or less to the southwest corner thereof;

Thence, along the south line of said tract, Easterly, 317 feet, more or less, to the southeast corner thereof, said point also being on the centerline of Foster Road, Market Road Number 18;

Thence, along the centerline of said road, Southeasterly, 741 feet, more or less, to the northeast corner of that tract of land described in Deed Document Number 2006-051750, Clackamas County Deed Records;

Thence, along the north line of said tract, Southwesterly, 615 feet, more or less, to the northwest corner thereof;

Thence, along the west line of said tract, Southerly, 135 feet, more or less, to the southwest corner thereof;

Thence, along the south line of said tract, Northeasterly, 627 feet, more or less to the southeast corner thereof, said point also being on the centerline of said Foster Road;

Thence, along the centerline of said road, Southeasterly, 359 feet, more or less to the northeast corner of that tract of land described in Deed Document Number 2012-020078, Clackamas County Deed Records;

Thence, along the north line of said tract, Westerly, 1069 feet, more or less to the northwest corner thereof;

Thence, along the west line of said tract, and the west line of that tract of land described in Deed Document Number 2012-020079, Clackamas County Deed Records, and the west line of that tract of land described in Deed Document number 1993-066336, Clackamas County Deed Records, Southerly, 1000 feet, more or less to the most westerly southwest corner of said Document Number 1993-066336 tract;

Thence, along the most westerly south line of said tract, Easterly, 203 feet, more or less to an angle point on the west line of said tract;

Thence, along the most southerly west line of said tract, and the west line of that tract of land described in Deed Document Number 2009-074910, Clackamas County Deed Records, and the west line of that tract of land described in Deed Document Number 1998-037473, Clackamas County Deed Records, and along the west line of that tract of land described in Deed Document Number 2010-016038, Clackamas County Deed Records, and the west line of that tract of land described in Deed Document Number 2007-066304, Clackamas County Deed Records, Southerly, 973 feet, more or less, to the northeast corner of that tract of land described in Deed Document Number 2002-051176, Clackamas County Deed Records;

Thence, along the north line of said tract, Westerly, 422 feet, more or less, to the northwest corner thereof;

Thence, along the west line of said tract, Southerly, 309 feet, more or less, to the southwest corner thereof;

Thence, along the south line of said tract, Easterly, 422 feet, more or less, to the southeast corner thereof, said point also being on the west line of that tract of land described in Deed Document Number 1972-032778, Clackamas County Deed Records;

Thence, along the west line of said tract and the west line of that tract of land described in Deed Document Number 2010-052274, Clackamas County Deed Records, Southerly, 329 feet, more or less to the northeast corner of that tract of land described in Deed Document Number 2004-059781, Clackamas County Deed Records;

Thence, along the north line of said tract and the north line of that tract of land described in Deed Document Number 1977-013087, Westerly, 328 feet, more or less to the northwest corner of said Document Number 1977-013087 tract;

Thence, along the west line of said tract, Southerly, 803 feet, more or less, to the southwest corner thereof, said point also being on the centerline of Hemrick Road, County Road Number 494;

Thence, along the centerline of said road, also being the north line of that tract of land described in Deed Document Number 1991-052820, Clackamas County Deed Records, and the north line of that tract of land described in Deed Document Number 2005-007307, Clackamas County Deed Records, and the north line of that tract of land described in Deed Document Number 2012-034941, Clackamas County Deed Records, Westerly, 160 feet, more or less, to the northwest corner of said Document Number 2012-034941 tract;

Thence, along the west line of said tract, Southerly, 395 feet, more or less, to the northeast corner of that tract of land described in Deed Document Number 2004-032440, Clackamas County Deed Records;

Thence, along the north line of said tract, Westerly, 352 feet, more or less, to the northwest corner thereof;

Thence, along the west line of said tract, Southerly, 427 feet, more or less, to the southwest corner thereof;

Thence, along the south line of said tract and the most westerly south line of that tract of land described ad Parcel III in Deed Document Number 1982-000195, Clackamas County Deed Records, Easterly, 775 feet, more or less to an angle point in said Parcel III tract;

Thence, along the westerly line of said tract, Southerly, 50 feet, more or less, to an angle point in said line;

Thence, continuing along said line, Easterly, 83 feet, more or less, to an angle point on said line, said point being on the east line of the west half of the northeast quarter of Section 31, Township 1 South, Range 3 East, Willamette Meridian;

Thence, along said east line, Southerly, 1094 feet, more or less, to the northeast corner of that tract of land described in Deed Book 696, Page 259, Clackamas County Deed Records;

Thence, along the north line of said tract, Westerly, 1322 feet, more or less to the northwest corner thereof, said point also being on the centerline of 172<sup>nd</sup> Avenue, County Road Number 494;

Thence, along the west line of said Deed Book 696, Page 259 tract, Southerly, 166 feet, more or less to the southwest corner thereof;

Thence, along the south line of said tract, Easterly, 1323 feet, more or less to the southeast corner thereof, said point also being on said east line of the west half of the northeast quarter of said section 31;

Thence, along said east line, Southerly, 331 feet, more or less to the northeast corner of that tract of land described in Deed Document Number 2008-027209, Clackamas County Deed Records;

Thence, along the north line of said tract, Westerly, 461 feet, more or less, to the northwest corner thereof, said point also being on the centerline of Rock Creek;

Thence, along the west line of said tract, and along the centerline of said creek, downstream in a Southerly direction, 253 feet, more or less to the southwest corner thereof, said point also being on the north line of that tract of land described as parcel 1, in Deed Document Number 2008-027209, Clackamas County Deed Records;

Thence, along the north line of said tract, Westerly, 835 feet, more or less to the northwest corner thereof, said point also being on the centerline of said 172<sup>nd</sup> Avenue;

Thence, along the west lines of parcels 1, 2 and 3I, of said Document Number 2008-027209 tract, also being along the centerline of said 172<sup>nd</sup> Avenue, Southerly, 333 feet, more or less, to the southwest corner of said parcel 3I;

Thence, along the south line of said parcel 3I tract, Easterly, 272 feet, more or less to the northwest corner of parcel 4, described in Deed Document Number 2008-027209, Clackamas County Deed Records;

Thence, along the west line of said parcel 4 tract, Southerly, 172 feet, more or less, to the southwest corner thereof;

Thence, along the south line of said tract, Easterly, 1049 feet, more or less to the southeast corner thereof, said point also being on the east line of the west half of the southeast quarter of said section 31;

Thence, along said east line, Southerly, 137 feet, more or less to the northeast corner of that tract of land described in Deed Document Number 1984-017971, Clackamas County Deed Records;

Thence, along the north line of said tract and the north line of that tract of land described in Deed Document Number 1975-033355, Clackamas County Deed Records, and the north line of that tract of land described in Deed Document Number 1970-011859, Clackamas County Deed Records, Westerly, 661 feet, more or less, to the northwest corner of said Document Number 1970-011859 tract;

Thence, along the west line of said tract, Southerly, 680 feet, more or less, to the southwest corner thereof, said point also being on the centerline of Troge Road, County Road Number 1631;

Thence, along said centerline, Easterly, 701 feet, more or less, to a point on the east line of the west half of the southeast quarter of said section 31;

Thence, along said east line, Southerly, 1433 feet, more or less, to the southeast corner thereof, said point also being on the north line of Section 6, Township 2 South, Range 3 East, Willamette Meridian;

Thence, along the north line of said Section 6, Westerly, 819 feet, more or less, to the northeast corner of the plat of "Rachella Acres, Plat Number 1743, Clackamas County Plat Records;

Thence, along the most northerly east line of said "Rachella Acres" and the common line between lots 2, 3, 4 and 5 of said plat, Southerly, 1327 feet, more or less, to the southwest corner of said lot 2, said point also being on the centerline of Vogel Road, County Road Number 2364;

Thence, along the centerline of said road, Easterly, 165 feet, more or less, to the southeast corner of said lot 2;

Thence, along the east line of said lot 2, Northerly, 558 feet, more or less, to the northeast corner thereof, said point also being on the south line of lot 1, "Rachella Acres Two", Plat Number 1877, Clackamas County Plat Records;

Thence, along the south line of said lot 1, Easterly, 360 feet, more or less to the southeast corner thereof, said point also being on the centerline of Rachella Court;

Thence, along said centerline, Northerly, 75 feet, more or less, to the southwest corner of lot 6 of said "Rachella Acres Two";

Thence, along the south line of said lot, Easterly, 461 feet, more or less, to a point on the east line of the west half of the northeast quarter of Section 6, Township 2 South, Range 3 East, Willamette Meridian;

Thence, along said east line, Southerly, 633 feet, more or less, to a point on the centerline of said Vogel Road;

Thence, along the centerline line of said road, Westerly, 667 feet, more or less, to the northwest corner of that tract of land described in Deed Document Number 1985-040091, Clackamas County Deed Records;

Thence, along the west line of said tract, Southerly, 335 feet, more or less to the southwest corner thereof;

Thence, along the south line of said tract, Easterly 647 feet, more or less, to the southeast corner thereof, said point also being on the east line of the west half of the northeast quarter of said section 6;

Thence, along said east line, Southerly, 990 feet, more or less, to the southwest corner of that tract of land described as Parcel I in Deed Document Number 2010-043011, Clackamas County Deed Records;



Thence, along the south line of Parcel II of said Deed Document Number 2010-043011, Westerly, 25 feet more or less to a point on the south line of said tract and the centerline of 177<sup>th</sup> Avenue, County Road Number 2877;

Thence, along the centerline of said 177<sup>th</sup> Avenue, Southerly, 399 feet, more or less, to the northwest corner of that tract of land described in Deed Document Number 2005-124662, Clackamas County Deed Records;

Thence, along the north line of said tract, Easterly, 200 feet, more or less, to the northeast corner thereof;

Thence, along the east line of said tract, Southerly, 250 feet, more or less, to the southeast corner thereof;

Thence, along the south line of said tract, Westerly, 200 feet, more or less, to the southwest corner thereof, said point also being on the centerline of said 177<sup>th</sup> Avenue;

Thence, along said centerline, Southerly, 30 feet, more or less, to the northeast corner of that tract of land described in Deed Document Number 1971-15674, Clackamas County Deed Records;

Thence, along the north line of said tract, Westerly 177 feet, more or less, to the northwest corner thereof, said point also being on the east line of that tract of land described in Deed Document Number 1992-075726, Clackamas County Deed Records;

Thence, along the east line of said Deed Document Number 1992-075726 tract, Northerly, 202 feet, more or less, to the northeast corner thereof;

Thence, along the north line of said tract, Westerly, 150 feet, more or less, to the northwest corner thereof;

Thence, along the west line of said tract, Southerly, 187 feet, more or less, to an angle point in said west line;

Thence, continuing along said west line, Southerly, 166 feet, more or less, to the southwest corner thereof, said point also being on the centerline of Sunnyside Road, County Road Number 1040;

Thence, along the centerline of said road, Northwesterly, 156 feet, more or less, to the northeast corner of Lot 19, "Golden Horseshoe Estates" Plat Number 1249, Clackamas County Plat Records;

Thence, along the east line of said Lot 19, Southerly, 284 feet, more or less to the southeast corner thereof;

Thence, along the south line of said Lot 19, Westerly, 120 feet, more or less, to the most southerly west corner thereof;

Thence along the southwesterly line of said Lot 19 and the southwesterly line of Lots 17 and 18 of said plat, Northwesterly, 512 feet, more or less, to the northwest corner of said Lot 17, said point also being a point on the south line of Lot 16 of said plat;

Thence, along the south line of said Lot 16, Westerly 20 feet, more or less, to the southwest corner thereof, said point also being on the east line of Lot 6 of said plat;

Thence, along the east line of said Lot 6, Northerly, 91 feet, more or less to the southwest corner of Lot 15 of said plat;

Thence, along the south line of said Lot 15, Easterly, 349 feet, more or less, to the southeast corner thereof, said point also being on the centerline of said Sunnyside Road;

Thence, along the centerline of said road, Northerly, 90 feet, more or less, to the northeast corner of said Lot 15;

Thence, along the north line of said lot, Westerly, 335 feet, more or less, to the northwest corner thereof, said point also being on the east line of Lot 5 of said plat;

Thence, along the east line of said Lot 5, Northerly, 14 feet, more or less, to the northeast corner thereof;

Thence, along the north line of said lot, Westerly 273 feet, more or less, to the northwest corner thereof, said point also being on the centerline of 172<sup>nd</sup> Avenue, County Road Number 25;

Thence, along the west line of said Lot 5 and the west lines of Lots 6 and 7, of said plat also being the centerline of said road, Southerly, 300 feet, more or less, to the southwest corner of said lot 7;

Thence, along the south line of said Lot 7, Easterly, 273 feet, more or less, to the southeast corner thereof, said point also being on the west line of Lot 20 of said plat;

Thence, along the west line of said Lot 20, Southerly, 100.00 feet, more or less, to the northeast corner of Lot 9 of said plat;

Thence, along the north line of said lot, Westerly, 273 feet, more or less, to the northwest corner thereof, said point also being on the centerline of said 172<sup>nd</sup> Avenue;

Thence, along the centerline of said road, Southerly, 210 feet, more or less, to the southwest corner of said plat;

Thence, along the south line of said plat, Easterly, 461 feet, more or less, to the northwest corner of Lot 10, "Sun Valley Estates", Plat Number 1722, Clackamas County Plat Records;

Thence, along the west line of said plat, Southerly, 644 feet, more or less, to the southwest corner thereof;

Thence, along the south line of said plat, Easterly, 869 feet, more or less, to the southeast corner thereof, said point also being on the east line of the west half of the southeast one quarter of Section 6, Township 2 South, Range 3 East, Willamette Meridian;

Thence, along said east line, Southerly, 954 feet, more or less, to a point on the south line of said Section 6, also being the north line of Section 7, Township 2 South, Range 3 East, Willamette Meridian;

Thence, along the north line of said Section 7, Westerly, 36 feet, more or less, to the northwest corner of that tract of land described in Deed Document Number 1999-009161, Clackamas County Deed Records;

Thence, along the west line of said tract, Southerly, 462 feet, more or less, to the southwest corner thereof;

Thence, along the south line of said tract, Easterly, 36 feet, more or less, to a point on the east line of the west half of the northwest one quarter of said Section 7;

Thence, along said east line, Southerly, 401 feet, more or less, to the northeast corner of that tract of land described in Deed Document Number 1982-029391, Clackamas County Deed Records;

Thence, along the north line of said tract, Westerly, 557 feet to the northwest corner thereof;

Thence, along the west line of said tract, Southerly, 470 feet, more or less to the southwest corner thereof;

Thence, along the south line of said tract, Easterly, 253 feet, more or less, to the northwest corner of that tract of land described in Deed Document Number 1995-074911, Clackamas County Deed Records;

Thence, along the west line of said tract, Southerly, 976 feet, more or less, to a point on the centerline of Armstrong Circle, Market Road Number 16;

Thence, along said centerline, Southeasterly, 21 feet, more or less, to the northwest corner of that tract of land described in Deed Book 585, Page 413, Clackamas County Deed Records;

Thence, along the west line of said tract, Southerly, 348 feet, more or less, to the southwest corner thereof, said point also being on the centerline of Highway 212;

Thence, along said centerline, Westerly, 1020 feet, more or less, to the center one quarter corner of said Section 7;

Thence, along the north-south centerline of said Section 7, Southerly, 2640 feet, more or less, to the south one quarter corner of said Section 7;

Thence, along the south line of said Section 7, Westerly, 2640 feet, more or less, to the southwest corner of said Section 7;

Thence, along the section line between Section 13, Township 2 South, Range 2 East, and Section 18, Township 2 South, Range 3 East, Willamette Meridian, Southerly, 926 feet, more or less, to the southeast corner of the plat of "Shadow Mountain", Plat Number 3879, Clackamas County Plat Records;

Thence, along the south line of said plat and the south line of Partition Plat No. 2005-101, Clackamas County Plat Records, Westerly, 850 feet, more or less, to the center of Highway 212;

Thence, along the centerline of Highway 212, Southerly, 700 feet, more or less, to a point that is 1610.40 feet South and 701.58 feet West of the Northeast corner of said Section 13;

Thence, parallel with the north boundary of said Section 13, Westerly, 1600 feet, more or less, to center of the Clackamas River;

Thence, downstream along the center of the main channel of the Clackamas River to its confluence with the Willamette River;

Thence downstream along the center of the main channel of the Willamette River to a point on the westerly extension of the south line of the plat of "Sellwood", Plat Number 21, Clackamas County Plat Records, being a point on the County Line between Clackamas and Multnomah Counties, said point also being the point of beginning;

Excepting therefrom the following described tracts of land that are "Islands" surrounded by the City of Happy Valley, but have not yet been annexed into the corporate limits of said City;

Tax Lot data:	Deed reference, Clackamas County Deed Records:
12E25A 01900	Document Number 2001-091408
12E25BA00700	Document Number 1997-040968
12E25BA01200	Document Number 1993-013168
12E25D 00500	Document Number 2012-051362
12E25D 00600	Document Number 2007-047779
12E25D 00700	Document Number 2006-078603

12E25D 00800	Document Number 2011-020300
13E30B 02800	Document Number 1989-006051
13E30B 02801	Document Number 2000-059720
13E30B 02700	Document Number 2012-081904
13E30B 02601	Document Number 1974-25394
13E30B 02602	Document Number 1999-011063
13E30B 02603	Document Number 2010-080130
13E30C 00201	Document Number 2002-076442
13E30C 00203	Document Number 2011-011260
13E30C 00500	Document Number 1999-089364
13E30C 00601	Document Number 1996-016505
13E30C 00602	Document Number 1993-057929
13E30C 00604	Document Number 2012-013788
13E30C 00800	Document Number 1991-000844
13E30C 00900	Document Number 1993-050570
13E30C 01000	Document Number 2004-068051
13E30C 01200	Document Number 1981-004626
13E30C 01900	Document Number 1991-045075
13E30C 02600	Document Number 1997-001704
13E30C 02700	Document Number 1997-001704
13E30D 02601	Document Number 1994-070855
13E30D 03100	Document Number 2014-022444
13E31A 00700	Document Number 2012-021944
12E36CA00101	Document Number 2010-058286

12E36CA00600	Document Number 2004-016283
12E36CA00700	Document Number 1991-023191
12E36CA00800	Document Number 1994-071682
12E36CA00900	Document Number 2005-026682
12E36CA01000	Document Number 1999-078287
12E36CA01100	Document Number 2010-042430
12E36CA01200	Deed Book 659, Page 704
12E36CA01400	Document Number 2008-083474
12E36CA01600	Document Number 1985-003057
12E36CA01700	Deed Book 662, Page 196
12E36CC00300	Document Number 2009-069166
12E36CC00404	Document Number 2011-044964
12E36CC01000	Document Number 1989-002643
12E36DA00400	Document Number 1992-045168
12E36DA00500	Document Number 1998-112449
12E36DA00800	Document Number 2001-005815
12E36DA00900	Document Number 2005-004640
12E36DA01201	Document Number 1989-021526
12E36DB01100	Document Number 1974-004219
12E36DB01200	Document Number 2005-120734
12E36DB01400	Document Number 1986-000925
12E36DB01500	Deed Book 685, Page 529
12E36DB01700	Document Number 1985-006666
12E36DB02500	Document Number 1999-103212
12E36DB02600	Document Number 1986-014831

12E36DB02700	Document Number 1987-022251
12E36DB02800	Document Number 1988-043533
12E36DB02900	Document Number 2009-040525
22E01AA16400	Document Number 1988-039996
22E12A 00100	Document Number 2005-084935
22E12A 00101	Document Number 1973-009096
22E12A 00300	Document Number 2007-035301
23E06B 00902	Document Number 1994-061842
23E06B 01500	Deed Book 208, Page 619
23E06BB01000	Document Number 2004-085175
23E06C 00200	Document Number 2001-052563
23E06C 00300	Document Number 1987-054701
23E06C 00400	Document Number 1997-045673
23E06C 00500	Document Number 2006-069556
23E06C 00600	Document Number 1992-052615
23E06C 00700	Document Number 1975-038196
23E06C 00800	Document Number 2010-040544
23E06C 00900	Document Number 2005-101261
23E06C 01000	Document Number 1993-020715
23E06C 01200	Document Number 2013-014593
23E06C 01300	Document Number 1983-022951
23E06C 01400	Document Number 2009-023307
23E06C 01500	Document Number 1972-030582
23E06C 01700	Document Number 2013-011467

23E06C 01800	Document Number 1975-000314
23E06C 02100	Document Number 2003-090210
23E06C 02400	Document Number 1995-047880
23E06C 02500	Document Number 2012-026888
23E06C 02600	Document Number 2011-008326
23E06C 02700	Document Number 2007-043729
23E06C 02800	Document Number 1972-012306
23E06C 02900	Document Number 2002-059182
23E06C 03100	Document Number 1982-003269
23E06C 03200	Document Number 2010-055179
23E06C 03300	Document Number 1995-011444
23E06C 03400	Document Number 1972-027661
23E06C 03500	Document Number 1973-014079
23E06C 03600	Document Number 1972-038290
23E06C 03700	Document Number 1972-022353
23E06C 04400	Document Number 1980-035663
23E06C 04500	Document Number 2014-015268
23E06C 04600	Document Number 2013-080360
23E06C 04700	Document Number 1992-012771
23E06C 04800	Document Number 2009-030004
23E06C 04900	Document Number 2010-041885
23E06C 05000	Document Number 2007-064174
23E06C 05100	Document Number 2001-098488
23E06C 05200	Document Number 2008-055686
23E06C 05300	Document Number 1975-009082



23E06C 05500	Document Number 2004-033594
23E06C 05600	Document Number 1993-072548
23E06C 05700	Document Number 2009-053143
23E06C 05800	Document Number 2008-047114
23E06C 05900	Document Number 1984-044366
23E06C 06200	Document Number 1998-047674
23E06C 06300	Document Number 2013-026570
23E06C 06400	Document Number 1992-078381
23E06C 06500	Document Number 2006-087377
23E06C 06600	Document Number 1985-041329
23E06C 07600	Document Number 1987-054998
23E06C 07601	Document Number 1987-054998
23E06C 07602	Document Number 1992-054464
23E06DB00200	Document Number 1986-020172
23E07B 00401	Document Number 1993-002359
23E07B 00403	Document Number 1980-009724
23E07B 00404	Document Number 1975-001092
23E07B 00405	Document Number 1993-002359
23E07B 00421	Document Number 1993-002359

Further excepting therefrom all property within the City of Portland corporate city limits:

Further excepting therefrom all property within the City of Gladstone corporate city limits:

Further excepting therefrom all property within the City of Johnson City corporate city limits:

6-05-2014

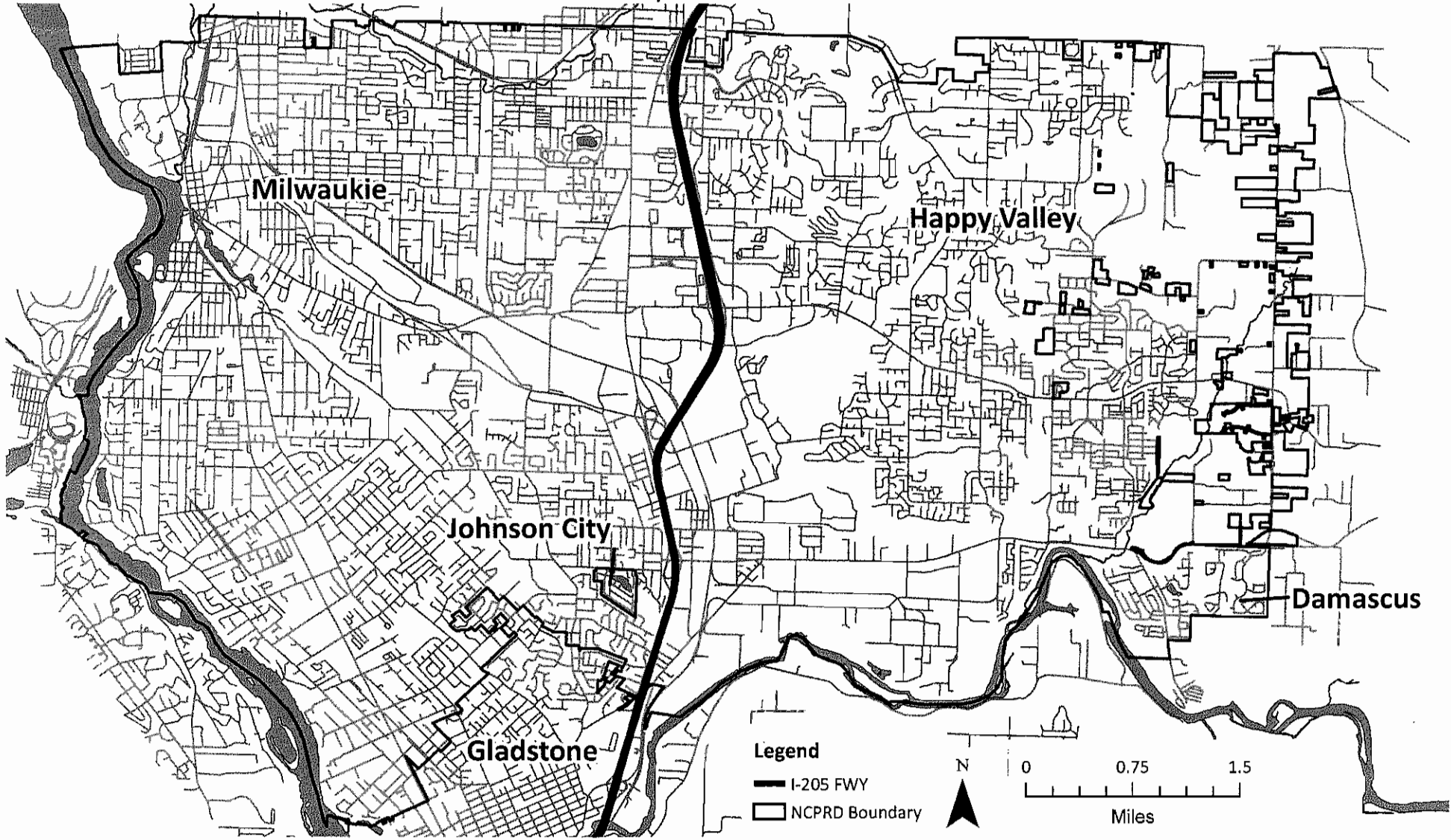
REGISTERED  
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RENEWS: 12-31-15

# North Clackamas Parks & Recreation District Boundary 2014



**Independent North Clackamas Parks and Recreation District**

*Economic Feasibility Statement*

Prepared for the Clackamas County Board of County Commissioners

July 17, 2014

**Exhibit “D”**

## **I. Background Leading to the Proposal**

### ***A. District Formation and Initial Funding***

The North Clackamas Parks and Recreation District (NCPRD) was created in 1990 by a citizen-led effort to increase the focus on parks and recreation in North Clackamas County.

When the District was formed, it served residents of:

- City of Milwaukie
- Four subareas of unincorporated Clackamas County:
  - Oak Lodge
  - Oatfield
  - Southgate
  - Sunnyside

Damascus incorporated as a city in 2004 and included a small portion of the District (previously unincorporated) in its boundaries.

### **Initial Responsibilities and Goals:**

When the District was formed, it assumed responsibility for 10 parks owned by the City of Milwaukie, including North Clackamas Park which had been deeded to the city by the county in 1977, as well as two parks owned by the county, Risley and Riverville. The District did not take ownership of the parks, just responsibility for their enhanced maintenance and operation, and for the operation of the Milwaukie Senior Center.

In addition to assuming responsibility for the initial 12 parks, there were specific goals set out in the ballot measure creating the District and articulated in its first Master Plan, which was developed by a citizen task force and Clackamas County planners.

Goals for the District included:

- Development of an aquatic park
- 10 new neighborhood parks
- Two riverfront parks
- 75 acres of natural area
- 9 miles of trails
- New sports fields

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- Sports field improvements
- Management of the Milwaukie Center
- New recreational programs

The original funding set for the District was approximately \$0.68 per \$1,000 of assessed value. The tax base system rate varied each year depending on the changes in the market value of property. This tax base system changed to a rate based system in 1997 as a result of property tax limitation legislation. The permanent tax rate set for NCPRD was \$0.5382 per \$1,000 of assessed property value.

In order to begin delivering on the initial goals stated in the ballot measure and NCPRD's initial master plan, a \$12 million revenue bond was issued in 1993. Proceeds were used to develop the North Clackamas Aquatic Park, many new neighborhood parks, and make renovations to existing parks. That debt was refunded in 2000 and again in 2010 to take advantage of favorable interest rates and help support District operations. The debt will mature in 2024/2025.

Annual debt service of approximately \$500,000 is paid by the property tax revenues. After paying debt service, the remaining tax revenues and other proceeds from fees and concessions go to support District operations. Today, the growing operating costs are outpacing incoming revenues.

When Measure 47/50 passed in May 1997, it limited assessed value growth on properties to 3%. Meanwhile, personnel and other operating costs are increasing at a higher rate than 3%. Only when the economy is strong and construction is robust does the District realize property tax revenue increases greater than 3%. In addition, the District is not able to keep up with the increasing costs of repairing and replacing existing capital assets. The District is able to partially fund the repair and replacement of existing assets but not able to fully fund the program.

***B. Additional Goals and Additional Funding Needs***

In 2000, NCPRD embarked on a Master Plan update to help map the future of the District. The plan was completed in 2004 and identified priorities for the District based on extensive review and analysis of its offerings and input from the community. It included a significant list of capital projects desired in the community, and also provided recommendations for additional funding and governance changes.

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**2004 Master Plan recommendations:**

*Needs:*

- Renovate existing parks
- Develop land in the District's inventory
- Develop trails in partnership with Metro and other partners
- Renovate sports fields on local school property
- Enhance programs and services

*Proposed Funding Solutions:*

- Pass a General Obligation Bond to fund capital projects
- Increase the permanent tax rate for the new District to secure long-term funding for District operations
- Create a new Special Parks District, formed under ORS 266, to increase the permanent rate

The 2004 plan was adopted by the Board of County Commissioners, in their role as the NCPRD Board. However, the funding recommended as part of the Master Plan was not approved. As a result, the District had inadequate funding to implement the Master Plan.

**Happy Valley Annexation and IGA**

Through a vote of its citizens the City of Happy Valley annexed into the District in 2006. As a result, additional capital project priorities and goals were set for parks and services in and around Happy Valley, subject to additional funding. Those priorities were identified in an intergovernmental agreement between the city and NCPRD. One of the top priorities identified was the addition of a large community park, which led to the development of Hood View Community Park in 2008 at a cost of \$18 million. Funding was provided by a variety of sources including contributions from the City of Happy Valley, Clackamas County and Metro, System Development Charges and the NCPRD general fund. A funding gap of \$8 million was closed through issuance of an \$8 million revenue bond, with a combination of future System Development Charges and general fund revenue projected as its repayment source. The debt will be retired in 2027/2028.

Today the District serves a 36 square mile area bordered by the Multnomah County line on the North, the Willamette River on the West, the Clackamas River on the South, excepting the City of Gladstone and Johnson City, and Happy Valley city limits on the East.

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**2014 Master Plan Key Findings and Recommendations:**

Today, the District operates and maintains more than 38 parks, 25 natural areas and 15 miles of trails, as well as the North Clackamas Aquatic Park, the Milwaukie Center, North Clackamas Park and the Hood View Community Park.

With more than two decades as a parks district, the District initiated its second master plan update. The master planning process included significant outreach to the community including many public meetings, stakeholder interviews, and statistically valid surveys. Together with extensive analyses of operations and current levels of service, the outreach helped solidify the issues that are the most important to consider when planning the District's future.

The key findings of this master planning process were consistent with those identified in the 2004 plan, but have grown in significance along with the District's size and changing needs of its residents.

*Key Findings:*

- While there is a high degree of satisfaction with the parks and recreation services that are currently provided by NCPRD, there are unmet needs and strong desires for additional parks, trails, natural areas, and recreational programming.
- Given the growing number of parks and facilities, increasing operations and maintenance costs, and relatively fixed operating revenue, NCPRD's current funding sources are inadequate to maintain the current level of service throughout the District, and/or support additional growth.
- Funding for capital investments in new parks and facilities, and for improvements to existing facilities, is not adequate for meeting the needs.

*Master Plan Recommendations:*

- Adopt an aspirational Capital Improvement Plan to meet the needs of residents and balance levels of service throughout the District.
- Identify funding sources for the aspirational Capital Improvement Plan; explore a bond for capital.
- Review and update System Development Charges zones, rates and methodology.



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- Identify funding sources for additional recreational programming and operations and maintenance; consider increasing the District's permanent tax rate.
- If re-forming the District to increase the permanent tax rate, consider re-forming as a Special Parks and Recreation District under ORS 266 in order to get the benefits of representative governance and the agility of a special purpose board.

## **II. Independent North Clackamas Parks and Recreation District**

### ***A. Introduction***

A Park and Recreation District is a classified Special District defined by Oregon Revised Statute Chapter 266. It is specially designed for the development, management, and operation of parks and recreation programs. It is governed by a specially elected board of directors, made up of District residents, and is solely focused on the parks and recreation needs of its residents.

Special District Boards have the authority to make decisions related to the utilization of revenues generated from the dedicated tax base, issue revenue bonds, and when authorized by a majority of voters, borrow money by issuing general obligation bonds.

Re-forming NCPRD as an independent parks district at \$0.89 per \$1,000 of assessed value would be a strong step in enabling the District to meet its 2014 Master Plan goals. It would provide approximately \$4 million of additional revenue per year. \$1.7 million would go to support growing operations and maintenance needs, \$1.8 million would go to service debt on a \$25 million revenue bond to support new capital projects throughout the District, and \$500,000 would be used for additional repair and replacement of aging assets.

### ***B. Services to be provided by the proposed district***

At formation, the independent parks and recreation district proposed for the residents of North Clackamas Parks and Recreation District would offer the same services currently provided including:

- Operation and maintenance of District parks, open spaces, natural areas and trails
- Recreational programming for youth, adults and seniors
- Meals and transportation programs for seniors and the disabled
- Sports league programming
- Operation of the North Clackamas Aquatic Park, Hood View Community Park, North Clackamas Park and the Milwaukie Center

As additional funding is available, the District would expand its offerings as outlined in the 2014 Master Plan.

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***C. A review of the relationship between District services and other existing or needed government services***

A robust parks and recreation system reduces public costs in many areas. It has a positive impact on:

- Public health by promoting health and wellness
- Crime prevention and juvenile delinquency by providing youth with positive, healthy activities
- Ecology and environmental sustainability, by preserving natural areas and connecting people with nature
- Senior services by keeping seniors socially active

Parks and open spaces contribute to the livability of a community, raise property values, promote economic development, and provide important environmental stewardship.

The impact of the health and social benefits make parks and recreational programs a positive and cost-effective public service.

**III. Proposed First Year Line Item Operating Budget and a Projected Third Year Line Item Operating Budget for the New District which Demonstrates its Economic Feasibility**

***A. Budget Overviews***

Budgets for the proposed new North Clackamas Parks and Recreation District's first and third years of operation, as required, are attached as Appendix A.

As reflected in these budgets, a full property tax assessment of \$0.89 per \$1,000 assessed value is adequate to fund current operations and begin to fund the 2014 aspirational Master Plan to begin to repair, replace and refurbish existing assets, maintain and enhance various programs and services and fund targeted new capital asset development.

***B. Projected Property Tax Revenue***

The proposed \$0.89 per \$1,000 permanent property tax rate on the county's assessed value would generate approximately \$10,136,968 in property tax revenue in the first year of the new District, based on current FY 2013-2014 figures provided by the Clackamas County Assessor's office. In addition, the Assessor's office suggests incrementing these projected tax revenues between 3-5% per year to reflect increased assessed value on existing and new properties. A conservative 3% annual budget increase has been used in the projections provided in Appendix A.

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Compression in the District is currently negligible (approximately \$3,243 per year) and is not expected to be an issue in the coming years, assuming (i) market property values rise at a modest rate; (ii) the long-term demand for housing continues as the population grows in the county; and (iii) the differential between real market and assessed values remains about the same as today's levels. Total budget losses annually due to compression are estimated to be \$23,835 annually, based upon projected revenue forecasts provided by the Clackamas County Assessor's office.

Finally, the first and third year tax revenues provided from a voter-approved District are assumed to have an average 94% collection rate. This rate includes an averaged amount for delinquent taxes collected in subsequent years after the first year of the district.

***C. Projected Expenditures***

Projected expenditures assume all existing NCPRD assigned staff move to the new District. Personnel expenditure increases are projected to include a 2.7% COLA, a 3.5% merit increase and a 5% medical increase. A PERS reserve and unemployment reserve have also been added. The District would continue to contract with the County for internal services such as payroll, technology services and human resources in the first and second year and would transition to independently providing those internal services in the third year. Material & Services expenditures are projected to increase at 2% per year. One-time capital outlay expenditures are projected to include a new financial management system, various software purchases, software licenses, and technology infrastructure.

***D. Summary***

The budgets for Year 1 and Year 3 ([Appendix A](#)) demonstrate the economic feasibility of the proposed Parks District and its funding up to a maximum permanent tax rate of \$0.89 per \$1,000 of assessed valuation. Based on current assessed value figures, approximately \$10,136,968 would be used to fund current operations and begin to fund the 2014 aspirational Master Plan to begin to repair, replace and refurbish existing assets, maintain and enhance various programs and services and begin to fund targeted new capital asset development. But more importantly, a stable and long-term dedicated source of funding will be provided to begin to support aspirational levels of high-quality Parks services for the all citizens of the District.

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Projected Line Items	First Year Budget FY 2015-2016	Third Year Budget FY 2017-2018
<b>General Fund</b>		
<b>Resources</b>		
Beginning Fund Balance	\$ 2,549,276	\$ 2,330,105
Property Taxes	\$ 10,136,968	\$ 10,754,309
<i>Property Taxes Imposed for District (\$0.64)</i>	\$ 10,807,843	\$ 11,466,040
<i>Compression Reduction</i>	\$ (23,835)	\$ (25,286)
<i>Taxes Collected (est. average @ 94%)</i>	\$ 10,136,968	\$ 10,754,309
Delinquent Taxes	\$ 147,460	\$ 150,424
Fees & Charges (Misc Revenue/Interest)	\$ 2,046,992	\$ 2,088,137
Grants	\$ 70,830	\$ 70,830
Concessions	\$ 60,600	\$ 61,818
Contributions & Donations	\$ 24,000	\$ 24,000
Transfers in	\$ 278,598	\$ 282,044
<b>Total Resources</b>	\$ 15,314,724	\$ 15,761,667
<b>Requirements</b>		
Personnel	\$ 5,221,770	\$ 5,936,801
Materials & Services	\$ 2,732,262	\$ 3,103,646
Allocated Costs	\$ 348,032	\$ -
Capital Outlay	\$ 1,827,500	\$ 1,700,000
<i>Software &amp; Conversion</i>	\$ 127,500	\$ -
<i>Capital</i>	\$ 700,000	\$ 500,000
<i>Capital Repair &amp; Replacement</i>	\$ 1,000,000	\$ 1,200,000
Special Payments	\$ 256,084	\$ 271,679
Debt Service	\$ 2,300,000	\$ 2,300,000
Transfers out	\$ 395,000	\$ 380,000
Contingency	\$ 2,234,076	\$ 2,069,541
<b>Total Requirements</b>	\$ 15,314,724	\$ 15,761,667
<b>Total General Fund</b>		
	\$ 0	\$ 0



July 17, 2014

Board of County Commissioners  
Clackamas County

Members of the Board:

Approval of an Amendment to an Intergovernmental Agreement (IGA) with the State of Oregon Department of Human Services for Job Opportunities and Basic Skills for clients receiving Temporary Assistance to Needy Families (TANF)

<b>Purpose/Outcomes</b>	Provide job search skills to low income families
<b>Dollar Amount and Fiscal Impact</b>	This amendment is being increased by \$117,121.00 for a new total of \$1,304,895.00 REVENUE. No match is required. No county general funds are involved.
<b>Funding Source</b>	Oregon Department of Human Services
<b>Safety Impact</b>	None
<b>Duration</b>	Effective July 1, 2014 and terminates on June 30, 2015
<b>Previous Board Action</b>	The original contract was approved by the Board of County Commissioners on 2/27/14 - agenda item #022714-A4
<b>Contact Person</b>	Lori Mack 503 655-8843
<b>Contract No.</b>	6575

**BACKGROUND:**

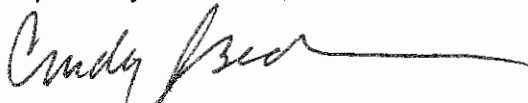
The Community Solutions for Clackamas County Division of Health, Housing and Human Services Department, requests approval of an amendment to an IGA with the State of Oregon Department of Human Services. This amendment adds 1.0 FTE Job Development Specialist, and 1.0 FTE Program Aide 1. The Job Developer provides job search skills through classes and one-on-one coaching. This position also works with area businesses to provide job placement assistance and on-going job support to clients receiving Temporary Assistance to Needy Families (TANF), formerly known as public assistance or welfare. The Program Aide 1 provides program support and data entry. Community Solutions has partnered with the Department of Human Services since 1988 to provide these services.

This contract has previously been reviewed and approved by County Counsel.

**RECOMMENDATION:**

Staff recommends Board approval of this amendment and authorizes Cindy Becker, H3S Director to sign on behalf of Clackamas County.

Respectfully submitted,

  
Cindy Becker, Director



**Agreement Number 144680**

**AMENDMENT TO  
STATE OF OREGON  
INTERGOVERNMENTAL 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](mailto: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 **01** to Agreement Number **144680** between the State of Oregon, acting by and through its Department of Human Services, hereinafter referred to as "DHS" and

**Clackamas County  
Acting by and through its Clackamas County Community Solutions  
112 11th Street  
Oregon City, OR 97045  
Telephone: (503) 655-8842  
Facsimile: (503) 655-8841  
E-mail address: [mautho@co.clackamas.or.us](mailto:mautho@co.clackamas.or.us)  
District 15**

hereinafter referred to as "County."

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 1. "Effective Date and Duration"** is hereby amended as follows: language to be deleted or replaced is ~~struck through~~; new language is **underlined and bold**.

This Agreement shall become effective on July 1, 2013, regardless of the date it is fully executed by every party and, when required, approved by Department of Justice. Unless extended or terminated earlier in accordance with its terms, this Agreement shall expire on June 30, 2015. Agreement termination shall not extinguish or prejudice DHS' right to enforce this Agreement with respect to any default by County that has not been cured.

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

- (1) Exhibit A, Part 1: Statement of Work – Definitions
- (2) Exhibit A, Part 2: Statement of Work – General Requirements
- (3) Exhibit A, Part 3: Statement of Work – Services
- (4) Exhibit A, Part 4: Statement of Work – Performance Requirements
- (5) Exhibit A, Part 5: Payment and Financial Reporting
- (6) Exhibit A, Part 6: Special Terms and Conditions
- (7) Exhibit B: Standard Terms and Conditions
- (8) Exhibit C: Subcontractor Insurance Requirements
- (9) Exhibit D: Required Federal Terms and Conditions
- (10) Exhibit E: Business Plan
- (11) ~~Exhibit F: Business Associate Agreement.~~

There are no understandings, agreements, or representations, oral or written, regarding this Agreement that are not specified in it.

- a. This Agreement and the documents listed in Section 2, Agreement Documents, Subsection a. above, shall be in the following descending order of precedence: this Agreement less all exhibits, Exhibits D, Exhibit A, Part 6, Exhibit A, Part 4, Exhibit A, Part 2, Exhibit E, Exhibit A, Part 5, Exhibit A, Part 3, Exhibit A, Part 1, Exhibit B, and Exhibit C ~~and Exhibit F.~~
- b. For purposes of this Agreement, “Work” means specific work to be performed or services to be delivered by County as set forth in Exhibit A.
- b. **Section 2. “Consideration” subsection a., only** to read as follows: language to be deleted or replaced is ~~struck through~~; new language is **underlined and bold**.  
The maximum not-to-exceed amount payable to County under this Agreement, which includes any allowable expenses, is ~~\$1,187,774.00~~ **\$1,304,895.00**. DHS will not pay County any amount in excess of the not-to-exceed amount for completing the Work, and will not pay for Work until this Agreement has been signed by all parties.
- c. **Exhibit A., Part 5, “Payment and Financial Reporting” Section 2. only** to read as follows: language to be deleted or replaced is ~~struck through~~; new language is **underlined and bold**.

**2. PAYMENT AND FINANCIAL REQUIREMENT BUDGET SUMMARY**

The total budget summary for the entire Agreement period July 1, 2013 through ~~June 30, 2014~~ **June 30, 2015**, is summarized in the budget summary as follows:

**Budget Summary**

**FY 2014**

July 1, 2013 to June 30, 2014

Administration Costs:	\$ 56,328.00
Program Costs:	\$ 537,559.00
<b>Total Budget:</b>	<b>\$ 593,887.00</b>



**FY 2015**

July 1, 2014 to June 30, 2015

Administration Costs:	\$ 56,328.00
Program Costs:	<del>\$537,559.00</del> <b>\$654,680.00</b>
<b>Total Budget:</b>	<del>\$593,887.00</del> <b>\$711,008.00</b>

**Grand Totals**

Administration Costs:	\$ 112,656.00
Program Costs:	<del>\$1,075,118.00</del> <b>\$1,192,239.00</b>
<b>Total Budget:</b>	<del>\$1,187,774.00</del> <b>\$1,304,895.00</b>

- e. **Exhibit D, “Required Federal Terms and Conditions”** is hereby superseded and restated in its entirety, as set forth in **Exhibit D, “Required Federal Terms and Conditions”**, attached hereto and incorporated herein by this reference.
- f. **Effective July 1, 2014, Exhibit E., “BUSINESS PLAN”** is hereby superseded and restated in its entirety, as set forth in **Exhibit E., “BUSINESS PLAN”**, attached hereto and incorporated herein by this reference.”
- g. **Exhibit F., “BUSINESS ASSOCIATE AGREEMENT”** is hereby deleted in its entirety.

**3. Certification.**

- a. The County 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 County and that pertains to this Agreement or to the project for which the Agreement work is being performed. The County 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. County 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 County. Without limiting the generality of the foregoing, by signature on this Agreement, the County hereby certifies that:
  - (1) Under penalty of perjury the undersigned is authorized to act on behalf of County and that County is, to the best of the undersigned’s knowledge, not in violation of any Oregon Tax Laws. For purposes of this certification, “Oregon Tax Laws” means a state tax imposed by ORS 320.005 to 320.150 and 403.200 to 403.250 and ORS chapters 118, 314, 316, 317,

318, 321 and 323 and the elderly rental assistance program under ORS 310.630 to 310.706 and local taxes administered by the Department of Revenue under ORS 305.620;

- (2) The information shown in Data and Certification, of original Agreement or as amended is County's true, accurate and correct information;
  - (3) To the best of the undersigned's knowledge, County 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;
  - (4) County and County's employees and agents are not included on the list titled "Specially Designated Nationals and Blocked Persons" maintained by the Office of Foreign Assets Control of the United States Department of the Treasury and currently found at:  
<http://www.treas.gov/offices/enforcement/ofac/sdn/t11sdn.pdf>;
  - (5) County is not listed on the non-procurement portion of the General Service Administration's "List of Parties Excluded from Federal procurement or Nonprocurement Programs" found at:  
<https://www.sam.gov/portal/public/SAM/>; and
  - (6) County is not subject to backup withholding because:
    - (a) County is exempt from backup withholding;
    - (b) County has not been notified by the IRS that County is subject to backup withholding as a result of a failure to report all interest or dividends; or
    - (c) The IRS has notified County that County is no longer subject to backup withholding.
- b.** County hereby certifies that the FEIN provided to DHS is true and accurate. If this information changes, County is also required to provide DHS with the new FEIN within 10 days.
- c.** 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. County certifies that the representations, warranties and certifications contained in the original Agreement are true and correct as of the effective date of this amendment and with the same effect as though made at the time of this amendment.

4. **County Data and Certification.** County shall provide current information as required below. This information is requested pursuant to ORS 305.385 and OAR 125-246-0330(1).

**PLEASE PRINT OR TYPE THE FOLLOWING INFORMATION:**

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

Street address: 112 11th St

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

Email address: mawtho@co.clackamas.or.us

Telephone: (503)655-8872 Facsimile: (503)655-8871

Federal Employer Identification Number: 93-6002286

**Proof of Insurance:**

Workers' Compensation Insurance Company: self insured

Policy #: N/A Expiration Date: N/A

County shall provide proof of Insurance upon request by DHS or DHS designee.

5. Signatures.

**COUNTY: YOU WILL NOT BE PAID FOR SERVICES RENDERED PRIOR TO NECESSARY STATE APPROVALS**

**Clackamas County acting by and through its Clackamas County Community Solutions**

By:

DIRECTOR

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

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

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

By:

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

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

**Approved for Legal Sufficiency:**

Exempt per OAR 137-045-0050(2)

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

\_\_\_\_\_  
Date

**Office of Contracts and Procurement:**

\_\_\_\_\_  
Contract Specialist

\_\_\_\_\_  
Date

**EXHIBIT D**  
**Required Federal Terms and Conditions**

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

- 1. Miscellaneous Federal Provisions.** County shall comply and require all subcontractors to comply with all federal laws, regulations, and executive orders applicable to the Agreement or to the delivery of Work. Without limiting the generality of the foregoing, County 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 the Agreement: (a) Title VI and VII of the Civil Rights Act of 1964, as amended, (b) Sections 503 and 504 of the Rehabilitation Act of 1973, as amended, (c) the Americans with Disabilities Act of 1990, as amended, (d) Executive Order 11246, as amended, (e) the Health Insurance Portability and Accountability Act of 1996, as amended, (f) the Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended, (g) the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, (h) all regulations and administrative rules established pursuant to the foregoing laws, (i) all other applicable requirements of federal civil rights and rehabilitation statutes, rules and regulations, and (j) all federal laws requiring reporting of Client abuse. These laws, regulations and executive orders are incorporated by reference herein to the extent that they are applicable to the Agreement and required by law to be so incorporated. No federal funds may be used to provide Work in violation of 42 U.S.C. 14402.
- 2. Equal Employment Opportunity.** If this Agreement, including amendments, is for more than \$10,000, then County 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 Agreement, including amendments, exceeds \$100,000 then County 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 DHS, United States Department of Health and Human Services and the appropriate Regional Office of the Environmental Protection Agency. County 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.** County 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 Agreement, the County certifies, to the best of the County's knowledge and belief that:
  - a. No federal appropriated funds have been paid or will be paid, by or on behalf of County, 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 County shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying" in accordance with its instructions.
  - c. The County 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 Agreement was made or entered into. Submission of this certification is a prerequisite for making or entering into this Agreement imposed by Section 1352, Title 31 of the U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
  - e. No part of any federal funds paid to County under this Agreement shall be used other than for normal and recognized executive legislative relationships, for publicity or propaganda purposes, for the preparation, distribution, or use of any kit, pamphlet, booklet, publication, electronic communication, radio, television, or video presentation designed to support or defeat the enactment of legislation before the United States Congress or any State or local legislature itself, or designed to support or defeat any proposed or pending regulation, administrative action, or order issued by the executive branch of any State or local government itself.

- f. No part of any federal funds paid to County under this Agreement 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 County under this Agreement may be used for any activity that promotes the legalization of any drug or other substance included in schedule I of the schedules of controlled substances established under section 202 of the Controlled Substances Act except for normal and recognized executive congressional communications. This limitation shall not apply when there is significant medical evidence of a therapeutic advantage to the use of such drug or other substance of that federally sponsored clinical trials are being conducted to determine therapeutic advantage.

6. **Resource Conservation and Recovery.** County 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.

7. **Audits.**

- a. County shall comply, and require any subcontractor to comply, with applicable audit requirements and responsibilities set forth in this Agreement and applicable state or federal law.
- b. Sub-recipients shall also comply with applicable Code of Federal Regulations (CFR) and OMB Circulars governing expenditure of federal funds including, but not limited, to OMB A-133 Audits of States, Local Governments and Non-Profit Organizations.

8. **Debarment and Suspension.** County shall 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 Non-procurement 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.

- 9. Drug-Free Workplace.** County shall comply and require all subcontractors to comply with the following provisions to maintain a drug-free workplace: (i) County 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 County's workplace or while providing services to DHS clients. County's notice shall specify the actions that will be taken by County 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, County's policy of maintaining a drug-free workplace, any available drug counseling, rehabilitation, and employee assistance programs, and the penalties that may be imposed upon employees for drug abuse violations; (iii) Provide each employee to be engaged in the performance of services under this Agreement a copy of the statement mentioned in paragraph (i) above; (iv) Notify each employee in the statement required by paragraph (i) above that, as a condition of employment to provide services under this Agreement, the employee will: abide by the terms of the statement, and notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction; (v) Notify DHS within ten (10) days after receiving notice under subparagraph (iv) above from an employee or otherwise receiving actual notice of such conviction; (vi) Impose a sanction on, or require the satisfactory participation in a drug abuse assistance or rehabilitation program by any employee who is so convicted as required by 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 subparagraphs (i) through (vi) above; (viii) Require any subcontractor to comply with subparagraphs (i) through (vii) above; (ix) Neither County, or any of County's employees, officers, agents or subcontractors may provide any service required under this Agreement while under the influence of drugs. For purposes of this provision, "under the influence" means: observed abnormal behavior or impairments in mental or physical performance leading a reasonable person to believe the County or County's employee, officer, agent or subcontractor has used a controlled substance, prescription or non-prescription medication that impairs the County or County's employee, officer, agent or subcontractor's performance of essential job function or creates a direct threat to DHS 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; (x) Violation of any provision of this subsection may result in termination of this Agreement.
- 10. Pro-Children Act.** County 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.).



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

- a. Keep such records as are necessary to fully disclose the extent of the services provided to individuals receiving Medicaid assistance and shall furnish such information to any state or federal agency responsible for administering the Medicaid program regarding any payments claimed by such person or institution for providing Medicaid Services as the state or federal agency may from time to time request. 42 U.S.C. Section 1396a(a)(27); 42 CFR Part 431.107(b)(1) & (2).
- b. Comply with all disclosure requirements of 42 CFR Part 1002.3(a) and 42 CFR Part 455 Subpart (B).
- c. Maintain written notices and procedures respecting advance directives in compliance with 42 U.S.C. Section 1396(a)(57) and (w), 42 CFR Part 431.107(b)(4), and 42 CFR Part 489 subpart I.
- d. Certify when submitting any claim for the provision of Medicaid Services that the information submitted is true, accurate and complete. County shall acknowledge County's understanding that payment of the claim will be from federal and state funds and that any falsification or concealment of a material fact may be prosecuted under federal and state laws.
- e. Entities receiving \$5 million or more annually (under this Agreement and any other Medicaid Agreement) for furnishing Medicaid health care items or services shall, as a condition of receiving such payments, adopt written fraud, waste and abuse policies and procedures and inform employees, contractors and agents about the policies and procedures in compliance with Section 6032 of the Deficit Reduction Act of 2005, 42 U.S.C. § 1396a(a)(68).

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

**13. Disclosure.**

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

care entity as a spouse, parent, child or sibling, or whether the person (individual or corporation) with an ownership or control interest in any subcontractor in which the provider, fiscal agent or managed care entity has a 5% or more interest is related to another person with ownership or control interest in the provider, fiscal agent or managed care entity as a spouse, parent, child or sibling; (4) the name of any other provider, fiscal agent or managed care entity in which an owner of the provider, fiscal agent or managed care entity has an ownership or control interest; and, (5) the name, address, date of birth and Social Security Number of any managing employee of the provider, fiscal agent or managed care entity.

- b. 42 CFR Part 455.434 requires as a condition of enrollment as a Medicaid or CHIP provider, to consent to criminal background checks, including fingerprinting when required to do so under state law, or by the category of the provider based on risk of fraud, waste and abuse under federal law.
- c. As such, a provider must disclose any person with a 5% or greater direct or indirect ownership interest in the provider whom has been convicted of a criminal offense related to that person's involvement with the Medicare, Medicaid, or title XXI program in the last 10 years.
- d. County shall make the disclosures required by this Section 14. To DHS. DHS reserves the right to take such action required by law, or where DHS has discretion, it deems appropriate, based on the information received (or the failure to receive information) from the provider, fiscal agent or managed care entity.

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

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

- c. The parties are subject to applicable requirements and regulations of the federal funding agency regarding rights in data first produced under a grant, subgrant or agreement under a grant or subgrant.

**Exhibit E  
BUSINESS PLAN**

**SELF SUFFICIENCY PROGRAMS  
DEPARTMENT OF HUMAN SERVICES  
JOB OPPORTUNITY & BASIC SKILLS  
(JOBS)**

**Community Solutions of Clackamas County  
Business Plan Service Delivery**

Service Period: July 01, 2014 to June 30, 2015

Submitted by: Lori Mack

Contractor Name: Clackamas County dba  
Community Solutions for  
Clackamas County

Service counties: Clackamas

To: District 15

Contract Administrator: Mary Clark  
District Manager: Maurita Johnson  
SSP Program Manager(s): David Flock



## Purpose of Business Plan

The purpose of the Business Plan is to provide more detailed information of the manner in which the contractor will conduct business and implement contracted JOBS service delivery. While the contract specifically states the contractual requirements, this document will describe the processes for the implementation of those requirements.

The plan includes the following sections:

- A. Service Delivery Detail
- B. District-specific Definitions
- C. Service Locations and Coverage Plans
- D. Performance Targets
- E. Performance-based Provisions
- F. Budget Detail
  - 1. Budget by category
  - 2. Budget by activity
  - 3. Staff costs estimate

The completion of this document is referenced as a requirement of the contract. It will be used for ongoing JOBS service planning and will enhance the department's ability to conduct contract monitoring and ongoing planning of the district's JOBS program.

The Business Plan will be reviewed and approved by the district leadership and central office during the planning process.

The contractor will be responsible for completing the Business Plan and submitting updates for approval prior to any changes to the JOBS service delivery, budget, or for a contract amendment.

Submitted on: June 3, 2014	By: Lori Mack Contractor contact
Reviewed and Approved on:	By: Contract Administrator
Reviewed and Approved on:	By: Self Sufficiency Program Manager

## A. Service Delivery Detail

1.  **Participant Re-engagement Coordination**
  - a. Contractor will support DHS in the Participant re-engagement process by providing information about Participants' individual progress, helping to identify causes for participation issues and assisting DHS and Participant to find solutions that will encourage and support success for the Participant.
  - b.  Other
  
2.  **Data Tracking**
  - a.  Monitoring attendance
  - b.  Narrate in TRACS
  - c.  Maintain records according to work verification procedures
  - d.  Other
  
3.  **Participant Satisfaction [Note to District: DO NOT DELETE THIS REQUIREMENT]**
  - a.  Contractor will ensure Participant satisfaction surveys are conducted, collected and sent to the District Self Sufficiency Program Manager on a regular schedule approved by DHS.
  - b.  Other
  
4.  **Meetings and Staffings**
  - a.  Contractor's staff who provide management, supervision and direct services, to attend meetings and Participant staffings as necessary for the management and provision of services.
  - b.  Formal structured performance outcomes meeting to review outcomes and costs. [Note to District: DO NOT DELETE THIS REQUIREMENT]
  - c.  Other
  
5.  **Reporting Requirements**
  - a.  Weekly reports
  - b.  Monthly reports
  - c.  Quarterly reports
  - d.  Annual reports
  - e.  District reports
  - f.  Monthly outcomes report (attached to invoice and to be reviewed at monthly outcomes meeting) [Note to District: DO NOT DELETE THIS REQUIREMENT]
  - g.  Year-to-date totals
  
6.  Other

**7. JOBS Service Components**

- a.  **Job Search**- help Applicants and Participants access job openings and gain job readiness, job search, job interview, and job retention skills so that they can become employed.
  - i.  Orientation and initial assessment of each Participant's employability.
  - ii.  Ongoing assessment of each Participant's employability to identify and address issues that limit success for placement, retention, and wage enhancement.
  - iii.  Job loss analysis
  - iv.  Labor market test
  - v.  Skills inventory testing
  - vi.  Service coordination, mentoring and employment coaching.
  - vii.  Job Search class
- b.  Other

**8.  Job Placement and Navigation**

- a.  Job development for unsubsidized job sites
- b.  Place Participants in unsubsidized job sites
- c.  Navigator Services - Assist Participants in connecting to employment related services.
- d.  Other

**9.  JOBS Plus** - enhance employability for Participants unlikely to be hired at their current skill level for their short-term job goal. JOBS Plus provides an incentive to Participants and employers by converting SNAP and TANF benefits into wages.

- a.  Develop JOBS Plus work sites with the desired outcome being unsubsidized employment
- b.  Place Participants in JOBS Plus work sites
- c.  Evaluate Participants progress
- d.  Other

**10.  Work Experience** - provide work experience and training for a specified period of time for participants who are unable to meet their short-term employment goal without this training.

- a.  Develop work experience sites
- b.  Orientation to goals, duties and expectations.
- c.  Provide work experience sites that will enhance employability through unpaid, short-term experience.
- d.  Regular communication and follow-up with site staff
- e.  Provide Job Coaches to do home visits, barrier removal, community referrals and support
- f.  Evaluate Participants progress
- g.  Other

11.  **Supported Work** - provide a more structured work setting with staff support and skill training.

- a.  Develop supported work sites
- b.  Assist participants in developing skills and behaviors that are part of standard expectations for workplace and for successful employment.
- c.  Assist Participants to improve communication skills and increase employment retention.
- d.  Provide Job Coaches to do home visits, barrier removal and community referrals and support
- e.  Other

12.  **Teen Parent Program**

- a.  Menu of services or a teen decision meeting that will result in developing a plan for the teen to move toward earning a high school diploma or GED certificate and preparing to transition into employment or adult JOBS activities, such as short-term vocational training, or on-the-job training opportunities provided by other workforce programs. [Note: Districts may change this language as local needs require.]
- b.  Monitor teen parents academic progress; track their social and emotional status and coordinate services with their case manager.
- c.  Parenting and life skills instruction - Topics to include: child development; child care; stress management; anger management; communication skills; decision making; nutrition; family planning; domestic violence; health care; budgeting; and independent living skills.
  - i.  Skill building groups
  - ii.  Referrals to drug and alcohol education and counseling services
  - iii.  Home visitor services to teen participants.
  - iv.  School to higher education activities
  - v.  Parenting/life skills instruction
  - vi.  School to work activities which could include: classroom instruction; computer skill development; resume writing; filling out applications; and other job-related skills such as being on time and dressing appropriately.
  - vii.  Training activities, including job shadows, culinary arts training, health occupations training, non-traditional jobs for women and paid or volunteer work experiences.
  - viii.  Referrals to local resources such as: food banks; assistance with housing and daycare; and help to problem solve for difficult situations. Agency or Contractor shall be available for emergencies and crisis intervention when necessary.
  - ix.  Other

13.  **Capacity Building Services**

- a.  Contractor collaborates with all DHS staff and contracted JOBS partners in coordination of Job Search and Placement Work activities.
  - i.  Referral to One-stop services;
  - ii.  Public accessible employment workshops



- iii.  Assistance with registration in "IMatch Skills®"
  - iv.  Job orders
  - v.  Career readiness certification testing
  - vi.  Aid Participants in completing the "Initial Skills Review"
  - vii.  Information and referral to workforce program services
  - viii.  Provide weekly check in tracking with participant
  - ix.  Aid Participants with progression through Service Levels
  - x.  Enhanced job search skills
  - xi.  One-on-one assistance with participants needing individualized assistance
  - xii.  Responsible for setting up and tracking all appointments and group sessions for all Participants
  - xiii.  Workshops with topics on skill building, information and referral sources and processes to enhance job readiness,
- b.  Other

14.  **Home Visitor** - Contractor will make home visits to participants to assist with re-engagement.

- a.  Contact Participants through telephone, voice mail, written notes, face-to-face contacts and other electronic means.
- b.  Aid participants with barrier removal
- c.  Communicate home visit findings in a timely manner to DHS
- d.  Narrate into TRACS
- e.  Other

## B. District-specific definitions

**Clients Served** - A person served under this Contract is a person participating in at least one hour of an allowable funded activity in a given month.

**Work-Site Slots Filled Monthly** - A work site participant is defined as a JOBS program participant in subsidized full- or part-time employment or unpaid employment. The JOBS activities for work site placements Sheltered/Supported Work (SW), and Work Experience (WE).

**Job Placements Monthly** - Job placement is defined as a placement of a program participant in unsubsidized full- or part-time employment, and resulting from Agency services provided to client during the period of three full calendar months prior to the employment. The employment must be expected to last at least thirty (30) days to be counted. Placements must be in conformance with criteria set and validated by DHS, as described in the Business Plan.

**Job Placement Leading to Closure** – A countable job placement is obtained unsubsidized employment resulting in a TANF grant reduction or TANF case closure.

**JOBS Plus Participants Monthly** – A JOBS Plus participant is defined as a client working at the JOBS Plus employer work-site during the month.

## C. Service Locations and Coverage Plans

Branch and/or address where services are provided	Services provided	Staff name(s) including backup staff	FTE	Hours of availability
104 11 <sup>th</sup> St. Oregon City	JO,SW,WE,JP	Shamyia Becerra, Jeremy Lamphier, Chris Gary, Shan Weggeland, Susan Malloy, Karina Cruz, Kelben Graf	6.60	7:30am-5:30 pm M-F (staff work 37.5 hrs.week)
OC DHS 315 Beavercreek Rd Oregon City	SW	Chris Gary, (Tues) Shan Weggeland (Wed)	.20	
N Clackamas DHS 82 <sup>nd</sup> Drive, Clackamas	SW	Jeremy Lamphier, (Thurs) Shamyia Becerra (Wed)	.20	
TOTAL			7.00	

## D. Performance Targets

Annual service period: July 1, 2013 through June 30, 2015

JOBS Activity/Budget	Average Monthly Target	Annual Target
<b>Job Search</b>		
Number served	80	960
New referrals	40	480
Removed from activity	10	120
Completed activity	32	384
Activity placement	32	384
<b>Total</b>		

JOBS Activity/Budget	Average Monthly Target	Annual Target
<b>Supported or Sheltered Work</b>		
Number served	68	816
New referrals	25	300
Removed from activity	8	96
Completed activity	10	120
Activity placement	5	60
<b>Total</b>		

JOBS Activity/Budget	Average Monthly Target	Annual Target
<b>Work Experience</b>		
Number served	19	180
New referrals	4	36
Removed from activity	2	24
Completed activity	2	24
Activity placement	2	24
<b>Total</b>		

<b>JOBS Activity/Budget</b>	<b>Average Monthly Target</b>	<b>Annual Target</b>
<b>JOBS Plus</b>		
Number served	18	28
New referrals	3	30
Removed from activity	1	2
Completed activity	2	28
Activity placement	2	28
<b>Total</b>		

<b>JOBS Activity/Budget</b>	<b>Average Monthly Target</b>	<b>Annual Target</b>
<b>Teen Parent HS/GED</b>		
Number served		
New referrals		
Removed from activity		
Graduated or GED		
Enrolled in school or program		
<b>Total</b>		

<b>JOBS Activity/Budget</b>	<b>Average Monthly Target</b>	<b>Annual Target</b>
<b>Other:</b>		
Number served		
New referrals		
Removed from activity		
Completed activity		
Activity placement		
<b>Total</b>		

**Tracking and reporting of district referrals that show and do not show for activity:**

## E. Performance-based Payment Provisions

### **Performance-based cost reimbursement**

Contract payments are made to reimburse providers for costs incurred providing planned client services for referred participants. Performance targets are monitored very closely, a structured monthly meeting is conducted to review outcomes, and the payment invoice includes a year-to-date report of outcomes achieved. A corrective action and payment penalty is implemented in response to performance that does not meet a minimum standard (80 percent of targets).

### **Cost reimbursement with incentive payment**

#### **Payment detail**

- The cost reimbursement is earned by meeting at least 80 percent of the average monthly target in all performance areas; AND
- Incentive Payment for Placement Performance Outcomes

The Service Component allocation for Job Placement is 600.

If in a given month, CSCC exceeds the monthly goal of 50 validated placements, they will receive \$500 for each validated placement above the goal of 50, up to a monthly limit of \$2,500.

Review of placements will be done at the end of December 2014. If CSCC has exceeded a six months total of 300 placements, they will receive \$500 for any validated placement that has not already been subject to the monthly incentive payment. The maximum amount payable for all incentive based validated placements will not exceed \$15,000 for the six months period.

A final review of placements will also be done at the end June 2014. If CSCC has exceeded the yearly goal of 600 placements, they will receive \$500 for any validated placement that has not already been subject to an incentive payment. The maximum amount payable for all incentive based validated placements will not exceed \$30,000 for the entire contract year.

### **Fixed Price Only**

This is a fee for service at a fixed price. For example, Pay \$XX for each JOBS Plus participants placed or pay \$XX per hour for Job Search.

**Fixed-Price and Incentive Payment**

Fixed price: An alternative fixed price arrangement is a set amount paid each month irrespective of their level of performance. By itself, this type of fixed price is not a performance-based contract unless combined with another performance based method, such as incentive payment.

Incentive payment: In addition to the set monthly amount paid, contractor receives payment for their achievements on meeting challenging performance targets, such as, \$XX for each client placed in employment \$2 above the state minimum wage.

**Work Order Contracts**

This payment provision may require a separate contract be written, please contact TANF unit or DHS Contracts and Procurement if you are considering this option. Contracts can be made with numerous different contractors and a voucher is filled out for each client, choosing from available options:

- A specific flat fee is paid for a Job Placement.
- A specific hourly rate is paid for Job Preparation.
- A specific hourly rate is paid for Job Coaching.

[For assistance, contact Lily Sehon at [lily.sehon@dhs.ohio.state.or.us](mailto:lily.sehon@dhs.ohio.state.or.us).]

## F. Budget Details

### 1. Budget by category

Budget period: July 1, 2014 – June 30, 2015

CATEGORY	Admin	Program	Total
I. PERSONNEL			
A. Salaries	\$33,875.00	\$295,057.00	\$328,932.00
B. Fringe Benefits	\$19,453.00	\$154,727.00	\$174,180.00
<b>Subtotal (Total from Staff Costs Estimate)</b>	<b>\$53,328.00</b>	<b>\$449,784.00</b>	<b>\$503,112.00</b>
II. NON-PERSONNEL			
C. Travel		\$6,000.00	\$6,000.00
D. Equipment			
E. Supplies	\$500.00	\$4,522.00	\$5,022.00
F. Other: Office lease, telephones, office equipment rental, insurance, etc.	\$2,500.00	\$47,253.00	\$49,753.00
<b>Subtotal</b>	<b>\$3,000.00</b>	<b>\$57,775.00</b>	<b>\$60,775.00</b>
INCENTIVE		\$30,000.00	\$30,000.00
<b>III. TOTAL</b>	<b>\$56,328.00</b>	<b>\$537,559.00</b>	<b>\$593,887.00</b>

**Budget period: July 1, 2014 – June 30, 2015**

CATEGORY	Admin	Program	Total
I. PERSONNEL			
A. Salaries	\$33,875.00	\$355,640.00	\$389,515.00
B. Fringe Benefits	\$19,453.00	\$192,855.00	\$212,308.00
<b>Subtotal (Total from Staff Costs Estimate)</b>	<b>\$53,328.00</b>	<b>\$548,495.00</b>	<b>\$601,823.00</b>
II. NON-PERSONNEL			
C. Travel		\$6,000.00	\$6,000.00
D. Equipment			
E. Supplies	\$500.00	\$5,522.00	\$6,022.00
F. Other: Office lease, telephones, office equipment rental, insurance, background checks, etc.	\$2,500.00	\$64,753.00	\$67,253.00
<b>Subtotal</b>	<b>\$3,000.00</b>	<b>\$76,275.00</b>	<b>\$79,275.00</b>
INCENTIVE		\$30,000.00	\$30,000.00
<b>III. TOTAL</b>	<b>\$56,328.00</b>	<b>\$654,770.00</b>	<b>\$711,098.00</b>

**Note: Administrative costs cannot exceed 12 percent of the contract's total budget.**

All administrative costs should be reasonable and justified. They include:

- Salaries and overhead costs associated with performing administrative functions such as accounting and payroll;
- Goods and services, supplies, equipment, travel, postage, utilities and office space related to the administrative functions;
- Management, budget preparation, supervision, coordination and monitoring.

Administrative costs do not include staff costs, space, supplies, and equipment related to direct client service provision.



DEPARTMENT OF HUMAN SERVICES  
 JOBS Contracted Services - **Budget by Activity**  
 Service period: July 1, 2014 – June 30, 2015

JOBS Activity Component	JOBS Contract Budget by Activity				Clients Served Loading Schedule	
	Admin	Program	Total	Activity Cost % of Total	Annual Target	Cost Per (estimate)
JO - Job Search	\$33,234	\$369,409	<b>\$402,643</b>	56%	960	
PL - JOBS Plus					34	
SW - Sheltered Work	\$14,645	\$163,693	<b>\$178,338</b>	25%	979	
WE - Work Experience	\$8,449	\$91,668	<b>\$100,117</b>	14%	216	
Pay for performance incentive:		\$30,000	<b>\$30,000</b>	5%		
Other*:						
Other*:						
<b>TOTAL COSTS</b>	<b>\$56,328</b>	<b>\$654,770</b>	<b>\$711,098</b>			

### 3. Staff Costs Estimate

District:											
Contractor/number:											
Annual service period: July 1, 2013 – June 30, 2014											
Title	Brief Description of Responsibilities	Name	Location	(a) FTE %	(b) Salary	(c) Salary (a x b)	(d) Benefit Rate %	(e) Benefit (c x d)	(f) Total (c + e)	Management Position? Y/N	Number of staff supervised
Services Manager	Manage staff and contract	Lori Mack	CSCC	0.05	\$81,291	\$4,065	55%	\$2,326	\$6,301	YES	7
Job Developer	Develop jobs, place clients	Shamyia Becerra	CSCC	1.00	\$51,588	\$51,588	56%	\$29,011	\$80,599		
Job Developer	Develop jobs, place clients	Jeremy Lamphier	CSCC	1.00	\$46,816	\$46,816	44%	\$20,727	\$67,543		
Job Developer	Develop jobs, place clients	Chris Gary	CSCC	1.00	\$42,812	\$42,812	46%	\$19,635	\$62,447		
Job Developer	Develop jobs, place clients	Shan Weggeland	CSCC	1.00	\$43,836	\$43,836	49%	\$21,546	\$65,382		
Employment & Training Spec.	Tracker, engage clients	Kelben Graf	CSCC	1.00	\$43,110	\$43,110	47%	\$20,181	\$63,291		
Program Aide I	Data entry, track attendance	Susan Malloy	CSCC	1.00	\$33,074	\$33,074	74%	\$24,381	\$57,455		
Program Aide I	Data entry, track attendance	Karina Cruz	CSCC	1.00	\$29,756	\$29,756	57%	\$17,010	\$46,766		
Admin Staff	Reporting, payroll, A/P, A/R, budgeting	Lori M, Susan C, Scott V	CSCC	0.50		\$33,875		\$19,453	\$53,328		
<b>TOTAL</b>				<b>7.55</b>		<b>\$328,932</b>		<b>\$174,180</b>	<b>\$503,112</b>		

District:

Contractor/number:

**Annual service period: July 1, 2014 – June 30, 2015**

Title	Brief Description of Responsibilities	Name	Location	(a) FTE %	(b) Salary	(c) Salary (a x b)	(d) Benefit Rate %	(e) Benefit (c x d)	(f) Total (c + e)	Management Position? Y/N	Number of staff supervised
Services Manager	Manage staff and contract	Lori Mack	CSCC	0.05	\$81,291	\$4,065	55%	\$2,326	\$6,391	YES	9
Job Developer	Develop jobs, place clients	Shamyia Becerra	CSCC	1.00	\$51,588	\$51,588	56%	\$29,011	\$80,599		
Job Developer	Develop jobs, place clients	Jeremy Lamphier	CSCC	1.00	\$46,816	\$46,816	44%	\$20,727	\$67,543		
Job Developer	Develop jobs, place clients	Chris Gary	CSCC	1.00	\$42,812	\$42,812	46%	\$19,635	\$62,447		
Job Developer	Develop jobs, place clients	Shan Weggeland	CSCC	1.00	\$43,836	\$43,836	49%	\$21,546	\$65,382		
Job Developer	Develop jobs, place clients	New/Vacant	CSCC	1.00	\$43,700	\$43,700	60%	\$26,220	\$69,920		
Employment & Training Spec.	Tracker, engage clients	Kelben Graf	CSCC	1.00	\$43,110	\$43,110	47%	\$20,181	\$63,291		
Program Aide I	Data entry, track attendance	Susan Malloy	CSCC	1.00	\$33,074	\$33,074	74%	\$24,381	\$57,455		
Program Aide I	Data entry, track attendance	Karina Cruz	CSCC	1.00	\$29,756	\$29,756	57%	\$17,010	\$46,766		
Program Aide I	Data entry, track attendance	Olga Gil	CSCC	0.50	\$33,766	\$16,883	70%	\$11,818	\$28,701		
Admin Staff	Reporting, payroll, A/P, A/R, budgeting	Lori M, Susan C, Scott V	CSCC	0.50		\$33,875		\$19,453	\$53,328		
<b>TOTAL</b>				<b>7.55</b>		<b>\$389,515</b>		<b>\$212,308</b>	<b>\$601,823</b>		

COPY

July 17, 2014

Board of County Commissioner  
Clackamas County

Members of the Board:

Approval of an Intergovernmental Contract for Professional Services Amendment #A3 with  
The State of Oregon, Department of Education Early Learning Division

<b>Purpose/Outcomes</b>	<p>In order to minimize disruption of existing home visiting services, the Oregon Department of Education wishes to extend the existing Intergovernmental Contract for Professional Services with County (H3S/CYF) and increase the funding amount from \$759,147 to \$1,394,481</p> <p>These funds are used to support County-wide screening and identification services for the High Risk target population of new parents with newborn babies. The screens will result in approximately 199 families receiving intensive home visiting services with an expected program outcome that children receiving intensive home visiting services will be free from abuse and neglect. Intensive home visiting services at minimum includes: on-going home visits, parent training focused on social-emotional development and relational health, linkages to positive community supports and primary health care.</p>
<b>Dollar Amount and Fiscal Impact</b>	<p>This Amendment increases the contract amount to: \$1,394,481 Itemized, this contract increases the award amount for Healthy Start General Fund from \$517,280 to <u>\$1,081,417</u>; and award amount for Healthy Start Federal Funds from \$70,797 to <u>\$141,593</u></p> <p>There is a 25% match requirement, of which 5% must be a cash match. Healthy Families program raises the 5% cash match and uses the provider's in-kind to meet the remaining match requirement. No general fund match is required for this contract.</p>
<b>Funding Source</b>	<p>Oregon Department of Education – Early Learning Division State General Funds: \$1,226,887 Federal Funds: CFDA Number 93.556 Title IV-B(2) , Social Service Act, Subpart 2, Family Preservation and Family Support Services Program: \$167,594</p>
<b>Safety Impact</b>	N/A
<b>Duration</b>	Upon signature and terminates on June 30, 2015
<b>Previous Board Action</b>	Previous board action was approved on June 6, 2013 #060613-A3
<b>Contact Person</b>	Rodney A. Cook
<b>Contract No.</b>	#6466

**BACKGROUND:**

The Children, Youth and Family Division, of the Health, Housing and Human Services Department request the approval of Amendment #A3 to the Intergovernmental Contract with the State of Oregon, Department of Education's Early Learning Division. This is a renewal of an Intergovernmental Contract that provides County-wide Home- visiting services to High Risk families.

Healthy Families is a child abuse prevention program, enrolling high risk families in intensive home visiting services before their newborn is 90-days old. Trained Home Visitors provide weekly, bi-weekly or monthly home visits. Services are free and voluntary for families, and last until their child is 3 years old. Many of the families served live in poverty, are single, and/or teen parents and struggle with an array of other stressors such as depression, drug and alcohol abuse, domestic violence, developmental delays and isolation, all while trying to care for their new baby. Often times these parents were raised in an abusive home, want to stop the cycle of abuse, but do not know how.

Home Visitors provide information on child development with a focus on social-emotional development and relational health. Additional information is also given on basic infant care, ways to sooth a baby's crying, SIDS, Shaken Baby Syndrome and prevention, toddler safety, early literacy and who to turn to for support. Home Visitors also connect families with local resources, celebrate milestones and complete developmental screenings with each child. They build relationships with families, getting to know their individual goals and struggles, so that supports can be tailored to their specific needs.

Most of the funds from this Intergovernmental Contract are disbursed to local non-profits to provide the Home Visiting Services component.

There are no changes to the contract template previously reviewed and approved by County Counsel.

**RECOMMENDATION:**

Staff recommends the Board approval of this Intergovernmental Contract Amendment #A3 and authorizes Cindy Becker, H3S Director to sign on behalf of Clackamas County.

Respectfully submitted,



Cindy Becker, Director

**STATE OF OREGON  
INTERGOVERNMENTAL CONTRACT FOR PROFESSIONAL SERVICES  
AMENDMENT # A3**

1. This is Amendment No. **A3** to Contract No. **#9748** (as amended from time to time the "Contract") dated **July 1, 2013** between the State of Oregon acting by and through its **Department of Education** hereafter called "**Agency**", and **Clackamas County** hereafter called "**Contractor**".
2. This Amendment shall be effective on the last date the Amendment has been signed by every party and when required, approved in accordance with applicable laws, rules and regulations, including any federal approval and approval for legal sufficiency by the State of Oregon, Department of Justice.
3. The Contract is hereby amended as follows with **new language indicated by underlining** and **[deleted language is indicated by brackets]**:

**EXHIBIT C  
AWARD**

<b>FUNDING AREA</b>	<b>GENERAL FUND</b>	<b>FEDERAL FUNDS</b>	<b>CFDA NUMBER</b>
<b>1. Healthy Start</b>	<del>[\$517,280]</del> <u><b>\$1,081,417</b></u>	<del>[\$70,797]</del> <u><b>\$141,593</b></u>	

**EXPLANATION OF AWARD**

The Award set forth above reflects the maximum amount of financial assistance Agency will provide to County under this Agreement in support of Activities in the specified Funding Area. The CFDA (Catalog of Federal Domestic Assistance) Number specifies the source of federal funds as follows: CFDA Number 93.556 specifies Title IV-B(2), Social Service Act, Subpart 2, Family Preservation and Family Support Services Program, funds.

- 4 Except as expressly amended above, all other terms and conditions of original Contract are still in full force and effect. Contractor certifies that the representations, warranties and certifications contained in the original Contract are true and correct as of the effective date of this Amendment and with the same effect as though made at the time of this Amendment.

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

**CONTRACTORS: YOU WILL NOT BE PAID FOR SERVICES RENDERED PRIOR TO NECESSARY STATE APPROVALS**

**CONTRACTOR**

By:	Title:	Date:
Printed Signature	E-Mail Address:	

**AGENCY**

Authorized  
Signature:

Title:

Date:

**Approved for Legal Sufficiency**

Authorized  
Signature:

Title:

Date

Assistant Attorney General

July 17, 2014

Board of Commissioners  
Clackamas County

Members of the Board:

Approval of a Grant Agreement Amendment #2 from the U.S. Department of Housing and Urban Development, Continuum of Care Program, for the Jackson Place Program to Provide Transitional Housing and Services for the Homeless

<b>Propose/ Outcomes</b>	Approval of a grant agreement amendment #2 to the Continuum of Care Program for the Jackson Place Program to provide transitional housing and services for the homeless.
<b>Dollar Amount and Fiscal Impact</b>	Total amount of the amendment is \$62,013, bringing the grant total to \$127,290. The grant requires a 25% match or in-kind contribution which is met through Emergency Housing Account (EHA) state funds and in-kind services from area providers. This agreement partially funds one case management position. No County General Funds are involved.
<b>Funding Source</b>	HUD
<b>Safety Impact</b>	None
<b>Duration</b>	July 1, 2014 to June 30, 2015, with an option for renewal
<b>Previous Board Action</b>	Approval to Apply for this grant was approved on December 11, 2013
<b>Contact Person</b>	Brenda Durbin, Director, Social Services Division - 503-655-8641
<b>Contract No.</b>	6293

**Background**

The Social Services Division of the Health, Housing & Human Services Department requests the approval of a grant agreement amendment #2 from the U.S. Department of Housing and Urban Development, Continuum of Care Program, for the Jackson Place Program for the purpose of providing transitional housing for the homeless. These grant funds provide housing in a one bedroom apartment complex to homeless singles and couples for up to two years. Individuals receive case management and support services, along with housing. A minimum of 6 households receive services each year.

The grant agreement amendment was received from HUD on June 23, 2014 and approved by County Counsel on July 8, 2014.



**Recommendation**

We recommend the approval of this grant agreement and that Cindy Becker, Director of Health, Housing & Human Services is authorized to sign all documents necessary to accomplish this action on behalf of the Board of County Commissioners.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Cindy Becker", with a long horizontal flourish extending to the right.

Cindy Becker,  
Director

Tax ID Number: 93-6002286  
Grant Number: OR0101L0E071306  
DUNS Number: 096992656

EXHIBIT 2  
SCOPE OF WORK for FY2013 COMPETITION

1. This Agreement is governed by the Continuum of Care program Interim Rule attached hereto and made a part hereof as Exhibit 1a. Upon publication for effect of a Final Rule for the Continuum of Care program, the Final Rule will govern this Agreement instead of the Interim Rule. The project listed on this Exhibit at 3., below, is also subject to the terms of the FY2013 Notice of Funds Availability.
2. The Continuum that designated Recipient to apply for grant funds is not a high-performing community.
3. Recipient is not a Unified Funding Agency and was not the only Applicant the Continuum of Care designated to apply for and receive grant funds and is not the only Recipient for the Continuum of Care that designated it. HUD's total funding obligation for this grant is \$62013 for project number OR0101L0E071306. In accordance with 24 CFR 578.105(b), Recipient is prohibited from moving more than 10% from one budget line item in a project's approved budget to another without a written amendment to this Agreement. The obligation for this project shall be allocated as follows:

a. CoC Planning cost	\$ 0
b. Acquisition	\$ 0
c. New construction	\$ 0
d. Rehabilitation	\$ 0
e. Leasing	\$ 15688
f. Rental assistance	\$ 0
i. Tenant-based rental assistance	\$
ii. Project-based rental assistance	\$
iii. Sponsor-based rental assistance	\$
g. Supportive services	\$ 23712
h. Operating costs	\$ 18583
i. HMIS	\$ 0
j. Administration	\$ 4030

4. No funds for new projects may be drawn down by Recipient until HUD has approved site control pursuant to §578.21 and §578.25 and no funds for renewal projects may be drawn down by Recipient before the end date of the project's final operating year under the grant that has been renewed.
5. Nothing in this grant agreement shall be construed as creating or justifying any claim against the federal government or the grantee by any third party.

This agreement is hereby executed on behalf of the parties as follows:

**UNITED STATES OF AMERICA,  
Secretary of Housing and Urban Development**

By:



\_\_\_\_\_  
(Signature)

Douglas Carlson, Director  
\_\_\_\_\_  
(Typed Name and Title)

June 23, 2014  
\_\_\_\_\_  
(Date)

**RECIPIENT**

Clackamas Dept. Health, Housing & Human Svcs  
\_\_\_\_\_  
(Name of Organization)

By:

\_\_\_\_\_  
(Signature of Authorized Official)

Cindy Becker, Director  
\_\_\_\_\_  
(Typed Name and Title of Authorized Official)

\_\_\_\_\_  
(Date)

**Exhibit 1a**

**Continuum of Care Program Interim Rule**

(iv) Reprogramming ESG funds that have not yet been expended from affected activities to other eligible activities;

(v) Suspending disbursement of ESG funds for some or all activities;

(vi) Reducing or terminating the remaining grant of a subrecipient and reallocating those funds to other subrecipients; and

(vii) Making matching contributions before or as draws are made from the recipient's ESG grant.

(2) HUD may change the method of payment to a reimbursement basis.

(3) HUD may suspend payments to the extent HUD deems it necessary to preclude the further expenditure of funds for affected activities.

(4) HUD may remove the recipient from participation in reallocations of funds under subpart D of this part.

(5) HUD may deny matching credit for all or part of the cost of the affected activities and require the recipient to make further matching contributions to make up for the contribution determined to be ineligible.

(6) HUD may require the recipient to reimburse its line of credit in an amount equal to the funds used for the affected activities.

(7) HUD may reduce or terminate the remaining grant of a recipient and reallocate those funds to other recipients in accordance with subpart D of this part.

(8) HUD may condition a future grant.

(9) HUD may take other remedies that are legally available.

(c) *Recipient sanctions.* If the recipient determines that a subrecipient is not complying with an ESG program requirement or its subgrant agreement, the recipient must take appropriate actions, as prescribed for HUD in paragraphs (a) and (b) of this section. If the recipient is a State and funds become available as a result of an action under this section, the recipient must reallocate those funds to other subrecipients as soon as practicable. If the recipient is a unit of general purpose local government of territory, it must either reallocate those funds to other subrecipients or reprogram the funds for other activities to be carried out by the recipient as soon as practicable. The re-

ipient must amend its Consolidated Plan in accordance with its citizenship participation plan if funds become available and are reallocated or reprogrammed under this section. The reallocated or reprogrammed funds must be used by the expenditure deadline in §576.203.

## PART 578—CONTINUUM OF CARE PROGRAM

### Subpart A—General Provisions

#### Sec.

578.1 Purpose and scope.

578.3 Definitions.

### Subpart B—Establishing and Operating a Continuum of Care

578.5 Establishing the Continuum of Care.

578.7 Responsibilities of the Continuum of Care.

578.9 Preparing an application for funds.

578.11 Unified Funding Agency.

578.13 Remedial action.

### Subpart C—Application and Grant Award Process

578.15 Eligible applicants.

578.17 Overview of application and grant award process.

578.19 Application process.

578.21 Awarding funds.

578.23 Executing grant agreements.

578.25 Site control.

578.27 Consolidated plan.

578.29 Subsidy layering.

578.31 Environmental review.

578.33 Renewals.

578.35 Appeal.

### Subpart D—Program Components and Eligible Costs

578.37 Program components and uses of assistance.

578.39 Continuum of Care planning activities.

578.41 Unified Funding Agency costs.

578.43 Acquisition.

578.45 Rehabilitation.

578.47 New construction.

578.49 Leasing.

578.51 Rental assistance.

578.53 Supportive services.

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578.57 Homeless Management Information System.

578.59 Project administrative costs.

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578.63 Indirect costs.

**Subpart E—High-Performing Communities**

- 578.65 Standards.
- 578.67 Publication of application.
- 578.69 Cooperation among entities.
- 578.71 HPC-eligible activities.

**Subpart F—Program Requirements**

- 578.73 Matching requirements.
- 578.75 General operations.
- 578.77 Calculating occupancy charges and rent.
- 578.79 Limitation on transitional housing.
- 578.81 Term of commitment, repayment of grants, and prevention of undue benefits.
- 578.83 Displacement, relocation, and acquisition.
- 578.85 Timeliness standards.
- 578.87 Limitation on use of funds.
- 578.89 Limitation on use of grant funds to serve persons defined as homeless under other federal laws.
- 578.91 Termination of assistance to program participants.
- 578.93 Fair Housing and Equal Opportunity.
- 578.95 Conflicts of interest.
- 578.97 Program income.
- 578.99 Applicability of other federal requirements.

**Subpart G—Grant Administration**

- 578.101 Technical assistance.
- 578.103 Recordkeeping requirements.
- 578.105 Grant and project changes.
- 578.107 Sanctions.
- 578.109 Closeout.

AUTHORITY: 42 U.S.C. 11371 *et seq.*, 42 U.S.C. 3535(d).

SOURCE: 77 FR 45442, July 31, 2012, unless otherwise noted.

**Subpart A—General Provisions**

**§ 578.1 Purpose and scope.**

(a) The Continuum of Care program is authorized by subtitle C of title IV of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11381-11389).

(b) The program is designed to:

(1) Promote communitywide commitment to the goal of ending homelessness;

(2) Provide funding for efforts by non-profit providers, States, and local governments to quickly rehouse homeless individuals (including unaccompanied youth) and families, while minimizing the trauma and dislocation caused to homeless individuals, families, and communities by homelessness;

(3) Promote access to and effective utilization of mainstream programs by homeless individuals and families; and

(4) Optimize self-sufficiency among individuals and families experiencing homelessness.

**§ 578.3 Definitions.**

As used in this part:

*Act* means the McKinney-Vento Homeless Assistance Act as amended (42 U.S.C. 11371 *et seq.*).

*Annual renewal amount* means the amount that a grant can be awarded on an annual basis when renewed. It includes funds only for those eligible activities (operating, supportive services, leasing, rental assistance, HMIS, and administration) that were funded in the original grant (or the original grant as amended), less the unrenewable activities (acquisition, new construction, rehabilitation, and any administrative costs related to these activities).

*Applicant* means an eligible applicant that has been designated by the Continuum of Care to apply for assistance under this part on behalf of that Continuum.

*At risk of homelessness.* (1) An individual or family who:

(i) Has an annual income below 30 percent of median family income for the area, as determined by HUD;

(ii) Does not have sufficient resources or support networks, *e.g.*, family, friends, faith-based or other social networks, immediately available to prevent them from moving to an emergency shelter or another place described in paragraph (1) of the “Homeless” definition in this section; and

(iii) Meets one of the following conditions:

(A) Has moved because of economic reasons two or more times during the 60 days immediately preceding the application for homelessness prevention assistance;

(B) Is living in the home of another because of economic hardship;

(C) Has been notified in writing that their right to occupy their current housing or living situation will be terminated within 21 days of the date of application for assistance;

(D) Lives in a hotel or motel and the cost of the hotel or motel stay is not paid

by charitable organizations or by federal, State, or local government programs for low-income individuals;

(E) Lives in a single-room occupancy or efficiency apartment unit in which there reside more than two persons, or lives in a larger housing unit in which there reside more than 1.5 people per room, as defined by the U.S. Census Bureau;

(F) Is exiting a publicly funded institution, or system of care (such as a health-care facility, a mental health facility, foster care or other youth facility, or correction program or institution); or

(G) Otherwise lives in housing that has characteristics associated with instability and an increased risk of homelessness, as identified in the recipient's approved consolidated plan;

(2) A child or youth who does not qualify as "homeless" under this section, but qualifies as "homeless" under section 387(3) of the Runaway and Homeless Youth Act (42 U.S.C. 5732a(3)), section 637(11) of the Head Start Act (42 U.S.C. 9832(11)), section 41403(6) of the Violence Against Women Act of 1994 (42 U.S.C. 14043e-2(6)), section 330(h)(5)(A) of the Public Health Service Act (42 U.S.C. 254b(h)(5)(A)), section 3(m) of the Food and Nutrition Act of 2008 (7 U.S.C. 2012(m)), or section 17(b)(15) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(b)(15)); or

(3) A child or youth who does not qualify as "homeless" under this section, but qualifies as "homeless" under section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2)), and the parent(s) or guardian(s) of that child or youth if living with her or him.

*Centralized or coordinated assessment system* means a centralized or coordinated process designed to coordinate program participant intake assessment and provision of referrals. A centralized or coordinated assessment system covers the geographic area, is easily accessed by individuals and families seeking housing or services, is well advertised, and includes a comprehensive and standardized assessment tool.

*Chronically homeless.* (1) An individual who:

(i) Is homeless and lives in a place not meant for human habitation, a safe haven, or in an emergency shelter; and

(ii) Has been homeless and living or residing in a place not meant for human habitation, a safe haven, or in an emergency shelter continuously for at least one year or on at least four separate occasions in the last 3 years; and

(iii) Can be diagnosed with one or more of the following conditions: substance use disorder, serious mental illness, developmental disability (as defined in section 102 of the Developmental Disabilities Assistance Bill of Rights Act of 2000 (42 U.S.C. 15002)), post-traumatic stress disorder, cognitive impairments resulting from brain injury, or chronic physical illness or disability;

(2) An individual who has been residing in an institutional care facility, including a jail, substance abuse or mental health treatment facility, hospital, or other similar facility, for fewer than 90 days and met all of the criteria in paragraph (1) of this definition, before entering that facility; or

(3) A family with an adult head of household (or if there is no adult in the family, a minor head of household) who meets all of the criteria in paragraph (1) of this definition, including a family whose composition has fluctuated while the head of household has been homeless.

*Collaborative applicant* means the eligible applicant that has been designated by the Continuum of Care to apply for a grant for Continuum of Care planning funds under this part on behalf of the Continuum.

*Consolidated plan* means the HUD-approved plan developed in accordance with 24 CFR 91.

*Continuum of Care and Continuum* means the group organized to carry out the responsibilities required under this part and that is composed of representatives of organizations, including non-profit homeless providers, victim service providers, faith-based organizations, governments, businesses, advocates, public housing agencies, school



districts, social service providers, mental health agencies, hospitals, universities, affordable housing developers, law enforcement, organizations that serve homeless and formerly homeless veterans, and homeless and formerly homeless persons to the extent these groups are represented within the geographic area and are available to participate.

*Developmental disability* means, as defined in section 102 of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (42 U.S.C. 15002):

(1) A severe, chronic disability of an individual that—

(i) Is attributable to a mental or physical impairment or combination of mental and physical impairments;

(ii) Is manifested before the individual attains age 22;

(iii) Is likely to continue indefinitely;

(iv) Results in substantial functional limitations in three or more of the following areas of major life activity:

(A) Self-care;

(B) Receptive and expressive language;

(C) Learning;

(D) Mobility;

(E) Self-direction;

(F) Capacity for independent living;

(G) Economic self-sufficiency.

(v) Reflects the individual's need for a combination and sequence of special, interdisciplinary, or generic services, individualized supports, or other forms of assistance that are of lifelong or extended duration and are individually planned and coordinated.

(2) An individual from birth to age 9, inclusive, who has a substantial developmental delay or specific congenital or acquired condition, may be considered to have a developmental disability without meeting three or more of the criteria described in paragraphs (1)(i) through (v) of the definition of "developmental disability" in this section if the individual, without services and supports, has a high probability of meeting these criteria later in life.

*Eligible applicant* means a private nonprofit organization, State, local government, or instrumentality of State and local government.

*Emergency shelter* is defined in 24 CFR part 576.

*Emergency Solutions Grants (ESG)* means the grants provided under 24 CFR part 576.

*Fair Market Rent (FMR)* means the Fair Market Rents published in the FEDERAL REGISTER annually by HUD.

*High-performing community (HPC)* means a Continuum of Care that meets the standards in subpart E of this part and has been designated as a high-performing community by HUD.

*Homeless* means:

(1) An individual or family who lacks a fixed, regular, and adequate nighttime residence, meaning:

(i) An individual or family with a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings, including a car, park, abandoned building, bus or train station, airport, or camping ground;

(ii) An individual or family living in a supervised publicly or privately operated shelter designated to provide temporary living arrangements (including congregate shelters, transitional housing, and hotels and motels paid for by charitable organizations or by federal, State, or local government programs for low-income individuals); or

(iii) An individual who is exiting an institution where he or she resided for 90 days or less and who resided in an emergency shelter or place not meant for human habitation immediately before entering that institution;

(2) An individual or family who will imminently lose their primary nighttime residence, provided that:

(i) The primary nighttime residence will be lost within 14 days of the date of application for homeless assistance;

(ii) No subsequent residence has been identified; and

(iii) The individual or family lacks the resources or support networks, e.g., family, friends, faith-based or other social networks, needed to obtain other permanent housing;

(3) Unaccompanied youth under 25 years of age, or families with children and youth, who do not otherwise qualify as homeless under this definition, but who:

(i) Are defined as homeless under section 387 of the Runaway and Homeless Youth Act (42 U.S.C. 5732a), section 637

of the Head Start Act (42 U.S.C. 9832), section 41403 of the Violence Against Women Act of 1994 (42 U.S.C. 14043e-2), section 330(h) of the Public Health Service Act (42 U.S.C. 254b(h)), section 3 of the Food and Nutrition Act of 2008 (7 U.S.C. 2012), section 17(b) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(b)), or section 725 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a);

(ii) Have not had a lease, ownership interest, or occupancy agreement in permanent housing at any time during the 60 days immediately preceding the date of application for homeless assistance;

(iii) Have experienced persistent instability as measured by two moves or more during the 60-day period immediately preceding the date of applying for homeless assistance; and

(iv) Can be expected to continue in such status for an extended period of time because of chronic disabilities; chronic physical health or mental health conditions; substance addiction; histories of domestic violence or childhood abuse (including neglect); the presence of a child or youth with a disability; or two or more barriers to employment, which include the lack of a high school degree or General Education Development (GED), illiteracy, low English proficiency, a history of incarceration or detention for criminal activity, and a history of unstable employment; or

(4) Any individual or family who:

(i) Is fleeing, or is attempting to flee, domestic violence, dating violence, sexual assault, stalking, or other dangerous or life-threatening conditions that relate to violence against the individual or a family member, including a child, that has either taken place within the individual's or family's primary nighttime residence or has made the individual or family afraid to return to their primary nighttime residence;

(ii) Has no other residence; and

(iii) Lacks the resources or support networks, e.g., family, friends, and faith-based or other social networks, to obtain other permanent housing.

*Homeless Management Information System (HMIS)* means the information system designated by the Continuum of

Care to comply with the HMIS requirements prescribed by HUD.

*HMIS Lead* means the entity designated by the Continuum of Care in accordance with this part to operate the Continuum's HMIS on its behalf.

*Permanent housing* means community-based housing without a designated length of stay, and includes both permanent supportive housing and rapid rehousing. To be permanent housing, the program participant must be the tenant on a lease for a term of at least one year, which is renewable for terms that are a minimum of one month long, and is terminable only for cause.

*Permanent supportive housing* means permanent housing in which supportive services are provided to assist homeless persons with a disability to live independently.

*Point-in-time count* means a count of sheltered and unsheltered homeless persons carried out on one night in the last 10 calendar days of January or at such other time as required by HUD.

*Private nonprofit organization* means an organization:

(1) No part of the net earnings of which inure to the benefit of any member, founder, contributor, or individual;

(2) That has a voluntary board;

(3) That has a functioning accounting system that is operated in accordance with generally accepted accounting principles, or has designated a fiscal agent that will maintain a functioning accounting system for the organization in accordance with generally accepted accounting principles; and

(4) That practices nondiscrimination in the provision of assistance.

A private nonprofit organization does not include governmental organizations, such as public housing agencies.

*Program participant* means an individual (including an unaccompanied youth) or family who is assisted with Continuum of Care program funds.

*Project* means a group of eligible activities, such as HMIS costs, identified as a project in an application to HUD for Continuum of Care funds and includes a structure (or structures) that is (are) acquired, rehabilitated, constructed, or leased with assistance provided under this part or with respect to which HUD provides rental assistance

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or annual payments for operating costs, or supportive services under this subtitle.

*Recipient* means an applicant that signs a grant agreement with HUD.

*Safe haven* means, for the purpose of defining chronically homeless, supportive housing that meets the following:

(1) Serves hard to reach homeless persons with severe mental illness who came from the streets and have been unwilling or unable to participate in supportive services;

(2) Provides 24-hour residence for eligible persons for an unspecified period;

(3) Has an overnight capacity limited to 25 or fewer persons; and

(4) Provides low-demand services and referrals for the residents.

*State* means each of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, Guam, the Commonwealth of the Northern Marianas, and the Virgin Islands.

*Subrecipient* means a private nonprofit organization, State, local government, or instrumentality of State or local government that receives a subgrant from the recipient to carry out a project.

*Transitional housing* means housing, where all program participants have signed a lease or occupancy agreement, the purpose of which is to facilitate the movement of homeless individuals and families into permanent housing within 24 months or such longer period as HUD determines necessary. The program participant must have a lease or occupancy agreement for a term of at least one month that ends in 24 months and cannot be extended.

*Unified Funding Agency (UFA)* means an eligible applicant selected by the Continuum of Care to apply for a grant for the entire Continuum, which has the capacity to carry out the duties in §578.11(b), which is approved by HUD and to which HUD awards a grant.

*Victim service provider* means a private nonprofit organization whose primary mission is to provide services to victims of domestic violence, dating violence, sexual assault, or stalking. This term includes rape crisis centers, battered women's shelters, domestic vio-

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lence transitional housing programs, and other programs.

### Subpart B—Establishing and Operating a Continuum of Care

#### §578.5 Establishing the Continuum of Care.

(a) *The Continuum of Care.* Representatives from relevant organizations within a geographic area shall establish a Continuum of Care for the geographic area to carry out the duties of this part. Relevant organizations include nonprofit homeless assistance providers, victim service providers, faith-based organizations, governments, businesses, advocates, public housing agencies, school districts, social service providers, mental health agencies, hospitals, universities, affordable housing developers, law enforcement, and organizations that serve veterans and homeless and formerly homeless individuals.

(b) *The board.* The Continuum of Care must establish a board to act on behalf of the Continuum using the process established as a requirement by §578.7(a)(3) and must comply with the conflict-of-interest requirements at §578.95(b). The board must:

(1) Be representative of the relevant organizations and of projects serving homeless subpopulations; and

(2) Include at least one homeless or formerly homeless individual.

(c) *Transition.* Continuums of Care shall have 2 years after August 30, 2012 to comply with the requirements of paragraph (b) of this section.

#### §578.7 Responsibilities of the Continuum of Care.

(a) *Operate the Continuum of Care.* The Continuum of Care must:

(1) Hold meetings of the full membership, with published agendas, at least semi-annually;

(2) Make an invitation for new members to join publicly available within the geographic area at least annually;

(3) Adopt and follow a written process to select a board to act on behalf of the Continuum of Care. The process must be reviewed, updated, and approved by the Continuum at least once every 5 years;

(4) Appoint additional committees, subcommittees, or workgroups;

(5) In consultation with the collaborative applicant and the HMIS Lead, develop, follow, and update annually a governance charter, which will include all procedures and policies needed to comply with subpart B of this part and with HMIS requirements as prescribed by HUD; and a code of conduct and recusal process for the board, its chair(s), and any person acting on behalf of the board;

(6) Consult with recipients and subrecipients to establish performance targets appropriate for population and program type, monitor recipient and subrecipient performance, evaluate outcomes, and take action against poor performers;

(7) Evaluate outcomes of projects funded under the Emergency Solutions Grants program and the Continuum of Care program, and report to HUD;

(8) In consultation with recipients of Emergency Solutions Grants program funds within the geographic area, establish and operate either a centralized or coordinated assessment system that provides an initial, comprehensive assessment of the needs of individuals and families for housing and services. The Continuum must develop a specific policy to guide the operation of the centralized or coordinated assessment system on how its system will address the needs of individuals and families who are fleeing, or attempting to flee, domestic violence, dating violence, sexual assault, or stalking, but who are seeking shelter or services from non-victim service providers. This system must comply with any requirements established by HUD by Notice.

(9) In consultation with recipients of Emergency Solutions Grants program funds within the geographic area, establish and consistently follow written standards for providing Continuum of Care assistance. At a minimum, these written standards must include:

(i) Policies and procedures for evaluating individuals' and families' eligibility for assistance under this part;

(ii) Policies and procedures for determining and prioritizing which eligible individuals and families will receive transitional housing assistance;

(iii) Policies and procedures for determining and prioritizing which eligible individuals and families will receive rapid rehousing assistance;

(iv) Standards for determining what percentage or amount of rent each program participant must pay while receiving rapid rehousing assistance;

(v) Policies and procedures for determining and prioritizing which eligible individuals and families will receive permanent supportive housing assistance; and

(vi) Where the Continuum is designated a high-performing community, as described in subpart G of this part, policies and procedures set forth in 24 CFR 576.400(e)(3)(vi), (e)(3)(vii), (e)(3)(viii), and (e)(3)(ix).

(b) *Designating and operating an HMIS.* The Continuum of Care must:

(1) Designate a single Homeless Management Information System (HMIS) for the geographic area;

(2) Designate an eligible applicant to manage the Continuum's HMIS, which will be known as the HMIS Lead;

(3) Review, revise, and approve a privacy plan, security plan, and data quality plan for the HMIS.

(4) Ensure consistent participation of recipients and subrecipients in the HMIS; and

(5) Ensure the HMIS is administered in compliance with requirements prescribed by HUD.

(c) *Continuum of Care planning.* The Continuum must develop a plan that includes:

(1) Coordinating the implementation of a housing and service system within its geographic area that meets the needs of the homeless individuals (including unaccompanied youth) and families. At a minimum, such system encompasses the following:

(i) Outreach, engagement, and assessment;

(ii) Shelter, housing, and supportive services;

(iii) Prevention strategies.

(2) Planning for and conducting, at least biennially, a point-in-time count of homeless persons within the geographic area that meets the following requirements:

(1) Homeless persons who are living in a place not designed or ordinarily

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used as a regular sleeping accommodation for humans must be counted as unsheltered homeless persons.

(ii) Persons living in emergency shelters and transitional housing projects must be counted as sheltered homeless persons.

(iii) Other requirements established by HUD by Notice.

(3) Conducting an annual gaps analysis of the homeless needs and services available within the geographic area;

(4) Providing information required to complete the Consolidated Plan(s) within the Continuum's geographic area;

(5) Consulting with State and local government Emergency Solutions Grants program recipients within the Continuum's geographic area on the plan for allocating Emergency Solutions Grants program funds and reporting on and evaluating the performance of Emergency Solutions Grants program recipients and subrecipients.

### § 578.9 Preparing an application for funds.

(a) The Continuum must:

(1) Design, operate, and follow a collaborative process for the development of applications and approve the submission of applications in response to a NOFA published by HUD under § 578.19 of this subpart;

(2) Establish priorities for funding projects in the geographic area;

(3) Determine if one application for funding will be submitted for all projects within the geographic area or if more than one application will be submitted for the projects within the geographic area;

(i) If more than one application will be submitted, designate an eligible applicant to be the collaborative applicant that will collect and combine the required application information from all applicants and for all projects within the geographic area that the Continuum has selected funding. The collaborative applicant will also apply for Continuum of Care planning activities. If the Continuum is an eligible applicant, it may designate itself;

(ii) If only one application will be submitted, that applicant will be the collaborative applicant and will collect and combine the required application

information from all projects within the geographic area that the Continuum has selected for funding and apply for Continuum of Care planning activities;

(b) The Continuum retains all of its responsibilities, even if it designates one or more eligible applicants other than itself to apply for funds on behalf of the Continuum. This includes approving the Continuum of Care application.

### § 578.11 Unified Funding Agency.

(a) *Becoming a Unified Funding Agency.* To become designated as the Unified Funding Agency (UFA) for a Continuum, a collaborative applicant must be selected by the Continuum to apply to HUD to be designated as the UFA for the Continuum.

(b) *Criteria for designating a UFA.* HUD will consider these criteria when deciding whether to designate a collaborative applicant a UFA:

(1) The Continuum of Care it represents meets the requirements in § 578.7;

(2) The collaborative applicant has financial management systems that meet the standards set forth in 24 CFR 84.21 (for nonprofit organizations) and 24 CFR 85.20 (for States);

(3) The collaborative applicant demonstrates the ability to monitor subrecipients; and

(4) Such other criteria as HUD may establish by NOFA.

(c) *Requirements.* HUD-designated UFAs shall:

(1) Apply to HUD for funding for all of the projects within the geographic area and enter into a grant agreement with HUD for the entire geographic area.

(2) Enter into legally binding agreements with subrecipients, and receive and distribute funds to subrecipients for all projects within the geographic area.

(3) Require subrecipients to establish fiscal control and accounting procedures as necessary to assure the proper disbursement of and accounting for federal funds in accordance with the requirements of 24 CFR parts 84 and 85 and corresponding OMB circulars.

(4) Obtain approval of any proposed grant agreement amendments by the

Continuum of Care before submitting a request for an amendment to HUD.

**§ 578.13 Remedial action.**

(a) If HUD finds that the Continuum of Care for a geographic area does not meet the requirements of the Act or its implementing regulations, or that there is no Continuum for a geographic area, HUD may take remedial action to ensure fair distribution of grant funds within the geographic area. Such measures may include:

(1) Designating a replacement Continuum of Care for the geographic area;

(2) Designating a replacement collaborative applicant for the Continuum's geographic area; and

(3) Accepting applications from other eligible applicants within the Continuum's geographic area.

(b) HUD must provide a 30-day prior written notice to the Continuum and its collaborative applicant and give them an opportunity to respond.

**Subpart C—Application and Grant Award Process**

**§ 578.15 Eligible applicants.**

(a) *Who may apply.* Nonprofit organizations, States, local governments, and instrumentalities of State or local governments are eligible to apply for grants.

(b) *Designation by the Continuum of Care.* Eligible applicant(s) must have been designated by the Continuum of Care to submit an application for grant funds under this part. The designation must state whether the Continuum is designating more than one applicant to apply for funds and, if it is, which applicant is being designated as the collaborative applicant. If the Continuum is designating only one applicant to apply for funds, the Continuum must designate that applicant to be the collaborative applicant.

(c) *Exclusion.* For-profit entities are not eligible to apply for grants or to be subrecipients of grant funds.

**§ 578.17 Overview of application and grant award process.**

(a) *Formula.* (1) After enactment of the annual appropriations act for each fiscal year, and issuance of the NOFA, HUD will publish, on its Web site, the

Preliminary Pro Rata Need (PPRN) assigned to metropolitan cities, urban counties, and all other counties.

(2) HUD will apply the formula used to determine PPRN established in paragraph (a)(3) of this section, to the amount of funds being made available under the NOFA. That amount is calculated by:

(i) Determining the total amount for the Continuum of Care competition in accordance with section 413 of the Act or as otherwise directed by the annual appropriations act;

(ii) From the amount in paragraph (a)(2)(i) of this section, deducting the amount published in the NOFA as being set aside to provide a bonus to geographic areas for activities that have proven to be effective in reducing homelessness generally or for specific subpopulations listed in the NOFA or achieving homeless prevention and independent living goals established in the NOFA and to meet policy priorities set in the NOFA; and

(iii) Deducting the amount of funding necessary for Continuum of Care planning activities and UFA costs.

(3) PPRN is calculated on the amount determined under paragraph (a)(2) of this section by using the following formula:

(i) Two percent will be allocated among the four insular areas (American Samoa, Guam, the Commonwealth of the Northern Marianas, and the Virgin Islands) on the basis of the ratio of the population of each insular area to the population of all insular areas.

(ii) Seventy-five percent of the remaining amount will be allocated, using the Community Development Block Grant (CDBG) formula, to metropolitan cities and urban counties that have been funded under either the Emergency Shelter Grants or Emergency Solutions Grants programs in any one year since 2004.

(iii) The amount remaining after the allocation under paragraphs (a)(1) and (2) of this section will be allocated, using the CDBG formula, to metropolitan cities and urban counties that have not been funded under the Emergency Solutions Grants program in any year since 2004 and all other counties in the United States and Puerto Rico.

(4) If the calculation in paragraph (a)(2) of this section results in an amount less than the amount required to renew all projects eligible for renewal in that year for at least one year, after making adjustments proportional to increases in fair market rents for the geographic area for leasing, operating, and rental assistance for permanent housing, HUD will reduce, proportionately, the total amount required to renew all projects eligible for renewal in that year for at least one year, for each Continuum of Care. HUD will publish, via the NOFA, the total dollar amount that every Continuum will be required to deduct from renewal projects Continuum-wide.

(b) *Calculating a Continuum of Care's maximum award amount.* (1) *Establish the PPRN amount.* First, HUD will total the PPRN amounts for each metropolitan city, urban county, other county, and insular area claimed by the Continuum as part of its geographic area, excluding any counties applying for or receiving funding from the Rural Housing Stability Assistance program under 24 CFR part 579.

(2) *Establishing renewal demand.* Next, HUD will determine the renewal demand within the Continuum's geographic area. Renewal demand is the sum of the annual renewal amounts of all projects within the Continuum eligible to apply for renewal in that fiscal year's competition, before any adjustments to rental assistance, leasing, and operating line items based on FMR changes.

(3) *Establishing FPRN.* The higher of PPRN or renewal demand for the Continuum of Care is the FPRN, which is the base for the maximum award amount for the Continuum.

(4) *Establishing the maximum award amount.* The maximum award amount for the Continuum is the FPRN amount plus any additional eligible amounts for Continuum planning; UFA costs; adjustments to leasing, operating and rental assistance line items based on changes to FMR; and available bonuses.

#### §578.19 Application process.

(a) *Notice of Funding Availability.* After enactment of the annual appropriations act for the fiscal year, HUD

will issue a NOFA in accordance with the requirements of 24 CFR part 4.

(b) *Applications.* All applications to HUD, including applications for grant funds and requests for designation as a UFA or HPC, must be submitted at such time and in such manner as HUD may require, and contain such information as HUD determines necessary. At a minimum, an application for grant funds must contain a list of the projects for which it is applying for funds; a description of the projects; a list of the projects that will be carried out by subrecipients and the names of the subrecipients; a description of the subpopulations of homeless or at risk of homelessness to be served by projects; the number of units to be provided and/or the number of persons to be served by each project; a budget request by project; and reasonable assurances that the applicant, or the subrecipient, will own or have control of a site for the proposed project not later than the expiration of the 12-month period beginning upon notification of an award for grant assistance.

#### §578.21 Awarding funds.

(a) *Selection.* HUD will review applications in accordance with the guidelines and procedures provided in the NOFA and will award funds to recipients through a national competition based on selection criteria as defined in section 427 of the Act.

(b) *Announcement of awards.* HUD will announce awards and notify selected applicants of any conditions imposed on awards. Conditions must be satisfied before HUD will execute a grant agreement with the applicant.

(c) *Satisfying conditions.* HUD will withdraw an award if the applicant does not satisfy all conditions imposed on it. Correcting all issues and conditions attached to an award must be completed within the time frame established in the NOFA. Proof of site control, match, environmental review, and the documentation of financial feasibility must be completed within 12 months of the announcement of the award, or 24 months in the case of funds for acquisition, rehabilitation, or new construction. The 12-month deadline may be extended by HUD for up to 12 additional months upon a showing of

compelling reasons for delay due to factors beyond the control of the recipient or subrecipient.

**§578.23 Executing grant agreements.**

(a) *Deadline.* No later than 45 days from the date when all conditions are satisfied, the recipient and HUD must execute the grant agreement.

(b) *Grant agreements.* (1) *Multiple applicants for one Continuum.* If a Continuum designates more than one applicant for the geographic area, HUD will enter into a grant agreement with each designated applicant for which an award is announced.

(2) *One applicant for a Continuum.* If a Continuum designates only one applicant for the geographic area, after awarding funds, HUD may enter into a grant agreement with that applicant for new awards, if any, and one grant agreement for renewals, Continuum of Care planning, and UFA costs, if any. These two grants will cover the entire geographic area. A default by the recipient under one of those grant agreements will also be a default under the other.

(3) *Unified Funding Agencies.* If a Continuum is a UFA that HUD has approved, then HUD will enter into one grant agreement with the UFA for new awards, if any, and one grant agreement for renewals, Continuum of Care planning and UFA costs, if any. These two grants will cover the entire geographic area. A default by the UFA under one of those grant agreements will also be a default under the other.

(c) *Required agreements.* Recipients will be required to sign a grant agreement in which the recipient agrees:

(1) To ensure the operation of the project(s) in accordance with the provisions of the McKinney-Veto Act and all requirements under 24 CFR part 578;

(2) To monitor and report the progress of the project(s) to the Continuum of Care and HUD;

(3) To ensure, to the maximum extent practicable, that individuals and families experiencing homelessness are involved, through employment, provision of volunteer services, or otherwise, in constructing, rehabilitating, maintaining, and operating facilities for the project and in providing supportive services for the project;

(4) To require certification from all subrecipients that:

(i) Subrecipients will maintain the confidentiality of records pertaining to any individual or family that was provided family violence prevention or treatment services through the project;

(ii) The address or location of any family violence project assisted under this part will not be made public, except with written authorization of the person responsible for the operation of such project;

(iii) Subrecipients will establish policies and practices that are consistent with, and do not restrict, the exercise of rights provided by subtitle B of title VII of the Act and other laws relating to the provision of educational and related services to individuals and families experiencing homelessness;

(iv) In the case of projects that provide housing or services to families, that subrecipients will designate a staff person to be responsible for ensuring that children being served in the program are enrolled in school and connected to appropriate services in the community, including early childhood programs such as Head Start, part C of the Individuals with Disabilities Education Act, and programs authorized under subtitle B of title VII of the Act;

(v) The subrecipient, its officers, and employees are not debarred or suspended from doing business with the Federal Government; and

(vi) Subrecipients will provide information, such as data and reports, as required by HUD; and

(5) To establish such fiscal control and accounting procedures as may be necessary to assure the proper disbursement of, and accounting for grant funds in order to ensure that all financial transactions are conducted, and records maintained in accordance with generally accepted accounting principles, if the recipient is a UFA;

(6) To monitor subrecipient match and report on match to HUD;

(7) To take the educational needs of children into account when families are placed in housing and will, to the maximum extent practicable, place families with children as close as possible to their school of origin so as not to disrupt such children's education;



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(8) To monitor subrecipients at least annually;

(9) To use the centralized or coordinated assessment system established by the Continuum of Care as set forth in §578.7(a)(8). A victim service provider may choose not to use the Continuum of Care's centralized or coordinated assessment system, provided that victim service providers in the area use a centralized or coordinated assessment system that meets HUD's minimum requirements and the victim service provider uses that system instead;

(10) To follow the written standards for providing Continuum of Care assistance developed by the Continuum of Care, including the minimum requirements set forth in §578.7(a)(9);

(11) Enter into subrecipient agreements requiring subrecipients to operate the project(s) in accordance with the provisions of this Act and all requirements under 24 CFR part 578; and

(12) To comply with such other terms and conditions as HUD may establish by NOFA.

### §578.25 Site control.

(a) *In general.* When grant funds will be used for acquisition, rehabilitation, new construction, operating costs, or to provide supportive services, the recipient or subrecipient must demonstrate that it has site control within the time frame established in section §578.21 before HUD will execute a grant agreement. This requirement does not apply to funds used for housing that will eventually be owned or controlled by the individuals or families served or for supportive services provided at sites not operated by the recipient or subrecipient.

(b) *Evidence.* Acceptable evidence of site control is a deed or lease. If grant funds will be used for acquisition, acceptable evidence of site control will be a purchase agreement. The owner, lessee, and purchaser shown on these documents must be the selected applicant or intended subrecipient identified in the application for assistance.

(c) *Tax credit projects.* (1) Applicants that plan to use the low-income housing tax credit authorized under 26 U.S.C. 42 to finance a project must prove to HUD's satisfaction that the

applicant or subrecipient identified in the application is in control of the limited partnership or limited liability corporation that has a deed or lease for the project site.

(i) To have control of the limited partnership, the applicant or subrecipient must be the general partner of the limited partnership or have a 51 percent controlling interest in that general partner.

(ii) To have control of the limited liability company, the applicant or subrecipient must be the sole managing member.

(2) If grant funds are to be used for acquisition, rehabilitation, or new construction, the recipient or subrecipient must maintain control of the partnership or corporation and must ensure that the project is operated in compliance with law and regulation for 15 years from the date of initial occupancy or initial service provision. The partnership or corporation must own the project site throughout the 15-year period. If grant funds were not used for acquisition, rehabilitation, or new construction, then the recipient or subrecipient must maintain control for the term of the grant agreement and any renewals thereof.

### §578.27 Consolidated plan.

(a) *States or units of general local government.* An applicant that is a State or a unit of general local government must have a HUD-approved, complete or abbreviated, consolidated plan in accordance with 24 CFR part 91. The applicant must submit a certification that the application for funding is consistent with the HUD-approved consolidated plan(s) for the jurisdiction(s) in which the proposed project will be located. Funded applicants must certify in a grant agreement that they are following the HUD-approved consolidated plan.

(b) *Other applicants.* Applicants that are not States or units of general local government must submit a certification by the jurisdiction(s) in which the proposed project will be located that the applicant's application for funding is consistent with the jurisdiction's HUD-approved consolidated plan. The certification must be made by the unit of general local government or the

State, in accordance with the consistency certification provisions under 24 CFR part 91, subpart F. If the jurisdiction refuses to provide a certification of consistency, the applicant may appeal to HUD under § 578.35.

(c) *Timing of consolidated plan certification submissions.* The required certification that the application for funding is consistent with the HUD-approved consolidated plan must be submitted by the funding application submission deadline announced in the NOFA.

#### § 578.29 Subsidy layering.

HUD may provide assistance under this program only in accordance with HUD subsidy layering requirements in section 102 of the Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3545) and 24 CFR part 4, subpart A. An applicant must submit information in its application on other sources of governmental assistance that the applicant has received, or reasonably expects to receive, for a proposed project or activities. HUD's review of this information is intended to prevent excessive public assistance for proposed project or activities by combining (layering) assistance under this program with other governmental housing assistance from federal, State, or local agencies, including assistance such as tax concessions or tax credits.

#### § 578.31 Environmental review.

(a) Activities under this part are subject to environmental review by HUD under 24 CFR part 50. The recipient or subrecipient shall supply all available, relevant information necessary for HUD to perform, for each property, any environmental review required by 24 CFR part 50. The recipient or subrecipient must carry out mitigating measures required by HUD or select an alternate eligible property. HUD may eliminate from consideration any application that would require an Environmental Impact Statement.

(b) The recipient or subrecipient, its project partners, and their contractors may not acquire, rehabilitate, convert, lease, repair, dispose of, demolish, or construct property for a project under this part, or commit or expend HUD or local funds for such eligible activities under this part, until HUD has per-

formed an environmental review under 24 CFR part 50 and the recipient or subrecipient has received HUD approval of the property.

#### § 578.33 Renewals.

(a) *In general.* Awards made under this part and title IV of the Act, as in effect before August 30, 2012 (the Supportive Housing Program and the Shelter Plus Care program), may be renewed to continue ongoing leasing, operations, supportive services, rental assistance, HMIS, and administration beyond the initial funding period. To be considered for funding, recipients must submit a request in a form specified by HUD, must meet the requirements of this part, and must submit the request within the time frame established by HUD.

(b) *Length of renewal.* HUD may award up to 3 years of funds for supportive services, leasing, HMIS, and operating costs. Renewals of tenant-based and sponsor-based rental assistance may be for up to one year of rental assistance. Renewals of project-based rental assistance may be for up to 15 years of rental assistance, subject to availability of annual appropriations.

(c) *Assistance available.* (1) Assistance during each year of a renewal period may be for:

(i) Up to 100 percent of the amount for supportive services and HMIS costs in the final year of the prior funding period;

(ii) Up to 100 percent of the amount for leasing and operating in the final year of the prior funding period adjusted in proportion to changes in the FMR for the geographic area; and

(iii) For rental assistance, up to 100 percent of the result of multiplying the number and unit size(s) in the grant agreement by the number of months in the renewal grant term and the applicable FMR.

(d) *Review criteria.* (1) Awards made under title IV of the Act, as in effect before August 30, 2012 are eligible for renewal in the Continuum of Care program even if the awardees would not be eligible for a new grant under the program, so long as they continue to serve the same population and the same number of persons or units in the same type of housing as identified in their

most recently amended grant agreement signed before August 30, 2012. Grants will be renewed if HUD receives a certification from the Continuum that there is a demonstrated need for the project, and HUD finds that the project complied with program requirements applicable before August 30, 2012. For purposes of meeting the requirements of this part, a project will continue to be administered in accordance with 24 CFR 582.330, if the project received funding under the Shelter Plus Care program, or 24 CFR 583.325, if the project received funding under the Supportive Housing Program.

(2) *Renewal of awards made after August 30, 2012.* Review criteria for competitively awarded renewals made after August 30, 2012 will be described in the NOFA.

(e) *Unsuccessful projects.* HUD may renew a project that was eligible for renewal in the competition and was part of an application that was not funded despite having been submitted on time, in the manner required by HUD, and containing the information required by HUD, upon a finding that the project meets the purposes of the Continuum of Care program. The renewal will not exceed more than one year and will be under such conditions as HUD deems appropriate.

(f) *Annual Performance Report condition.* HUD may terminate the renewal of any grant and require the recipient to repay the renewal grant if:

(1) The recipient fails to timely submit a HUD Annual Performance Report (APR) for the grant year immediately prior to renewal; or

(2) The recipient submits an APR that HUD deems unacceptable or shows noncompliance with the requirements of the grant and this part.

#### § 578.35 Appeal.

(a) *In general.* Failure to follow the procedures or meet the deadlines established in this section will result in denial of the appeal.

(b) *Solo applicants.* (1) *Who may appeal.* Nonprofits, States, and local governments, and instrumentalities of State or local governments that attempted to participate in the Continuum of Care planning process in the geographic area in which they operate,

that believe they were denied the right to participate in a reasonable manner, and that submitted a solo application for funding by the application deadline established in the NOFA, may appeal the decision of the Continuum to HUD.

(2) *Notice of intent to appeal.* The solo applicant must submit a written notice of intent to appeal, with a copy to the Continuum, with their funding application.

(3) *Deadline for submitting proof.* No later than 30 days after the date that HUD announces the awards, the solo applicant shall submit in writing, with a copy to the Continuum, all relevant evidence supporting its claim, in such manner as HUD may require by Notice.

(4) *Response from the Continuum of Care.* The Continuum shall have 30 days from the date of its receipt of the solo applicant's evidence to respond to HUD in writing and in such manner as HUD may require, with a copy to the solo applicant.

(5) *Decision.* HUD will notify the solo applicant and the Continuum of its decision within 60 days of receipt of the Continuum's response.

(6) *Funding.* If HUD finds that the solo applicant was not permitted to participate in the Continuum of Care planning process in a reasonable manner, then HUD may award a grant to the solo applicant when funds next become available and may direct the Continuum of Care to take remedial steps to ensure reasonable participation in the future. HUD may also reduce the award to the Continuum's applicant(s).

(c) *Denied or decreased funding.* (1) *Who may appeal.* Eligible applicants that are denied funds by HUD, or that requested more funds than HUD awarded to them, may appeal the award by filing a written appeal, in such form and manner as HUD may require by Notice, within 45 days of the date of HUD's announcement of the award.

(2) *Decision.* HUD will notify the applicant of its decision on the appeal within 60 days of HUD's receipt of the written appeal. HUD will reverse a decision only when the applicant can show that HUD error caused the denial or decrease.

(3) *Funding.* Awards and increases to awards made upon appeal will be made from next available funds.

(d) *Competing Continuums of Care.* (1) *In general.* If more than one Continuum of Care claims the same geographic area, HUD will award funds to the Continuum applicant(s) whose application(s) has the highest total score. No projects will be funded from the lower scoring Continuum. No projects that are submitted in two or more competing Continuum of Care applications will be funded.

(2) *Who may appeal.* The designated applicant(s) for the lower scoring Continuum may appeal HUD's decision to fund the application(s) from the competing Continuum by filing a written appeal, in such form and manner as HUD may require by Notice, within 45 days of the date of HUD's announcement of the award.

(3) *Decision.* HUD will notify the applicant(s) of its decision on the appeal within 60 days of the date of HUD's receipt of the written appeal. HUD will reverse a decision only upon a showing by the applicant that HUD error caused the denial.

(e) *Consolidated plan certification.* (1) *In general.* An applicant may appeal to HUD a jurisdiction's refusal to provide a certification of consistency with the Consolidated Plan.

(2) *Procedure.* The applicant must submit a written appeal with its application to HUD and send a copy of the appeal to the jurisdiction that denied the certification of consistency. The appeal must include, at a minimum:

(i) A copy of the applicant's request to the jurisdiction for the certification of consistency with the Consolidated Plan;

(ii) A copy of the jurisdiction's response stating the reasons for denial, including the reasons the proposed project is not consistent with the jurisdiction's Consolidated Plan in accordance with 24 CFR 91.500(c); and

(iii) A statement of the reasons why the applicant believes its project is consistent with the jurisdiction's Consolidated Plan.

(3) *Jurisdiction response.* The jurisdiction that refused to provide the certification of consistency with the jurisdiction's Consolidated Plan shall have 10

days after receipt of a copy of the appeal to submit a written explanation of the reasons originally given for refusing to provide the certification and a written rebuttal to any claims made by the applicant in the appeal.

(4) *HUD review.* (i) HUD will issue its decision within 45 days of the date of HUD's receipt of the jurisdiction's response. As part of its review, HUD will consider:

(A) Whether the applicant submitted the request to the appropriate political jurisdiction; and

(B) The reasonableness of the jurisdiction's refusal to provide the certificate.

(ii) If the jurisdiction did not provide written reasons for refusal, including the reasons why the project is not consistent with the jurisdiction's Consolidated Plan in its initial response to the applicant's request for a certification, HUD will find for the applicant without further inquiry or response from the political jurisdiction.

#### Subpart D—Program Components and Eligible Costs

##### § 578.37 Program components and uses of assistance.

(a) Continuum of Care funds may be used to pay for the eligible costs listed in § 578.39 through § 578.63 when used to establish and operate projects under five program components: permanent housing; transitional housing; supportive services only; HMIS; and, in some cases, homelessness prevention. Although grant funds may be used by recipients and subrecipients in all components for the eligible costs of contributing data to the HMIS designated by the Continuum of Care, only HMIS Leads may use grant funds for an HMIS component. Administrative costs are eligible for all components. All components are subject to the restrictions on combining funds for certain eligible activities in a single project found in § 578.37(c). The eligible program components are:

(1) *Permanent housing (PH).* Permanent housing is community-based housing, the purpose of which is to provide housing without a designated length of

stay. Grant funds may be used for acquisition, rehabilitation, new construction, leasing, rental assistance, operating costs, and supportive services. PH includes:

(i) *Permanent supportive housing for persons with disabilities (PSH)*. PSH can only provide assistance to individuals with disabilities and families in which one adult or child has a disability. Supportive services designed to meet the needs of the program participants must be made available to the program participants.

(ii) *Rapid rehousing*. Continuum of Care funds may provide supportive services, as set forth in § 578.53, and/or short-term (up to 3 months) and/or medium-term (for 3 to 24 months) tenant-based rental assistance, as set forth in § 578.51(c), as necessary to help a homeless individual or family, with or without disabilities, move as quickly as possible into permanent housing and achieve stability in that housing. When providing short-term and/or medium-term rental assistance to program participants, the rental assistance is subject to § 578.51(a)(1), but not § 578.51(a)(1)(i) and (ii); (a)(2); (c) and (f) through (i); and (1)(1). These projects:

(A) Must follow the written policies and procedures established by the Continuum of Care for determining and prioritizing which eligible families and individuals will receive rapid rehousing assistance, as well as the amount or percentage of rent that each program participant must pay.

(B) May set a maximum amount or percentage of rental assistance that a program participant may receive, a maximum number of months that a program participant may receive rental assistance, and/or a maximum number of times that a program participant may receive rental assistance. The recipient or subrecipient may also require program participants to share in the costs of rent. For the purposes of calculating rent for rapid rehousing, the rent shall equal the sum of the total monthly rent for the unit and, if the tenant pays separately for utilities, the monthly allowance for utilities (excluding telephone) established by the public housing authority for the area in which the housing is located.

(C) Limit rental assistance to no more than 24 months to a household.

(D) May provide supportive services for no longer than 6 months after rental assistance stops.

(E) Must re-evaluate, not less than once annually, that the program participant lacks sufficient resources and support networks necessary to retain housing without Continuum of Care assistance and the types and amounts of assistance that the program participant needs to retain housing. The recipient or subrecipient may require each program participant receiving assistance to notify the recipient or subrecipient of changes in the program participant's income or other circumstances (e.g., changes in household composition) that affect the program participant's need for assistance. When notified of a relevant change, the recipient or subrecipient must reevaluate the program participant's eligibility and the amount and types of assistance that the program participant needs.

(F) Require the program participant to meet with a case manager not less than once per month to assist the program participant in ensuring long-term housing stability. The project is exempt from this requirement if the Violence Against Women Act of 1994 (42 U.S.C. 13925 *et seq.*) or the Family Violence Prevention and Services Act (42 U.S.C. 10401 *et seq.*) prohibits the recipient carrying out the project from making its housing conditional on the participant's acceptance of services.

(2) *Transitional Housing (TH)*. Transitional housing facilitates the movement of homeless individuals and families to PH within 24 months of entering TH. Grant funds may be used for acquisition, rehabilitation, new construction, leasing, rental assistance, operating costs, and supportive services.

(3) *Supportive Service Only (SSO)*. Funds may be used for acquisition, rehabilitation, relocation costs, or leasing of a facility from which supportive services will be provided, and supportive services in order to provide supportive services to unsheltered and sheltered homeless persons for whom the recipient or subrecipient is not providing housing or housing assistance. SSO includes street outreach.

(4) *HMIS*. Funds may be used by HMIS Leads to lease a structure in which the HMIS is operated or as operating funds to operate a structure in which the HMIS is operated, and for other costs eligible in §578.57.

(5) *Homelessness prevention*. Funds may be used by recipients in Continuums of Care-designated high-performing communities for housing relocation and stabilization services, and short- and/or medium-term rental assistance, as described in 24 CFR 576.105 and 24 CFR 576.106, that are necessary to prevent an individual or family from becoming homeless.

(b) *Uses of assistance*. Funds are available to pay for the eligible costs listed in §578.39 through §578.63 when used to:

(1) Establish new housing or new facilities to provide supportive services;

(2) Expand existing housing and facilities in order to increase the number of homeless persons served;

(3) Bring existing housing and facilities into compliance with State and local government health and safety standards, as described in §578.87;

(4) Preserve existing permanent housing and facilities that provide supportive services;

(5) Provide supportive services for residents of supportive housing or for homeless persons not residing in supportive housing;

(6) Continue funding permanent housing when the recipient has received funding under this part for leasing, supportive services, operating costs, or rental assistance;

(7) Establish and operate an HMIS or comparable database; and

(8) Establish and carry out a Continuum of Care planning process and operate a Continuum of Care.

(c) *Multiple purposes*. Structures used to provide housing, supportive housing, supportive services, or as a facility for HMIS activities may also be used for other purposes. However, assistance under this part will be available only in proportion to the use of the structure for supportive housing or supportive services. If eligible and ineligible activities are carried out in separate portions of the same structure or in separate structures, grant funds may not be used to pay for more than the actual cost of acquisition, con-

struction, or rehabilitation of the portion of the structure or structures used for eligible activities. If eligible and ineligible activities are carried out in the same structure, the costs will be prorated based on the amount of time that the space is used for eligible versus ineligible activities.

#### §578.39 Continuum of Care planning activities.

(a) *In general*. Collaborative applicants may use up to 3 percent of their FPRN, or a maximum amount to be established by the NOFA, for costs of:

(1) Designing and carrying out a collaborative process for the development of an application to HUD;

(2) Evaluating the outcomes of projects for which funds are awarded in the geographic area under the Continuum of Care and the Emergency Solutions Grants programs; and

(3) Participating in the consolidated plan(s) for the geographic area(s).

(b) *Continuum of Care planning activities*. Eligible planning costs include the costs of:

(1) Developing a communitywide or regionwide process involving the coordination of nonprofit homeless providers, victim service providers, faith-based organizations, governments, businesses, advocates, public housing agencies, school districts, social service providers, mental health agencies, hospitals, universities, affordable housing developers, law enforcement, organizations that serve veterans, and homeless and formerly homeless individuals;

(2) Determining the geographic area that the Continuum of Care will serve;

(3) Developing a Continuum of Care system;

(4) Evaluating the outcomes of projects for which funds are awarded in the geographic area, including the Emergency Solutions Grants program;

(5) Participating in the consolidated plan(s) of the jurisdiction(s) in the geographic area; and

(6) Preparing and submitting an application to HUD on behalf of the entire Continuum of Care membership, including conducting a sheltered and unsheltered point-in-time count and other data collection as required by HUD.

## § 578.41

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(c) *Monitoring costs.* The costs of monitoring recipients and subrecipients and enforcing compliance with program requirements are eligible.

### § 578.41 Unified Funding Agency costs.

(a) *In general.* UFAs may use up to 3 percent of their FPRN, or a maximum amount to be established by the NOFA, whichever is less, for fiscal control and accounting costs necessary to assure the proper disbursement of, and accounting for, federal funds awarded to subrecipients under the Continuum of Care program.

(b) *UFA costs.* UFA costs include costs of ensuring that all financial transactions carried out under the Continuum of Care program are conducted and records are maintained in accordance with generally accepted accounting principles, including arranging for an annual survey, audit, or evaluation of the financial records of each project carried out by a subrecipient funded by a grant received through the Continuum of Care program.

(c) *Monitoring costs.* The costs of monitoring subrecipients and enforcing compliance with program requirements are eligible for costs.

### § 578.43 Acquisition.

Grant funds may be used to pay up to 100 percent of the cost of acquisition of real property selected by the recipient or subrecipient for use in the provision of housing or supportive services for homeless persons.

### § 578.45 Rehabilitation.

(a) *Use.* Grant funds may be used to pay up to 100 percent of the cost of rehabilitation of structures to provide housing or supportive services to homeless persons.

(b) *Eligible costs.* Eligible rehabilitation costs include installing cost-effective energy measures, and bringing an existing structure to State and local government health and safety standards.

(c) *Ineligible costs.* Grant funds may not be used for rehabilitation of leased property.

### § 578.47 New construction.

(a) *Use.* Grant funds may be used to:

(1) Pay up to 100 percent of the cost of new construction, including the building of a new structure or building an addition to an existing structure that increases the floor area by 100 percent or more, and the cost of land associated with that construction, for use as housing.

(2) If grant funds are used for new construction, the applicant must demonstrate that the costs of new construction are substantially less than the costs of rehabilitation or that there is a lack of available appropriate units that could be rehabilitated at a cost less than new construction. For purposes of this cost comparison, costs of rehabilitation or new construction may include the cost of real property acquisition.

(b) *Ineligible costs.* Grant funds may not be used for new construction on leased property.

### § 578.49 Leasing.

(a) *Use.* (1) Where the recipient or subrecipient is leasing the structure, or portions thereof, grant funds may be used to pay for 100 percent of the costs of leasing a structure or structures, or portions thereof, to provide housing or supportive services to homeless persons for up to 3 years. Leasing funds may not be used to lease units or structures owned by the recipient, subrecipient, their parent organization(s), any other related organization(s), or organizations that are members of a partnership, where the partnership owns the structure, unless HUD authorized an exception for good cause.

(2) Any request for an exception must include the following:

(i) A description of how leasing these structures is in the best interest of the program;

(ii) Supporting documentation showing that the leasing charges paid with grant funds are reasonable for the market; and

(iii) A copy of the written policy for resolving disputes between the landlord and tenant, including a recusal for officers, agents, and staff who work for both the landlord and tenant.

(b) *Requirements.* (1) *Leasing structures.* When grants are used to pay rent for all or part of a structure or structures, the rent paid must be reasonable

in relation to rents being charged in the area for comparable space. In addition, the rent paid may not exceed rents currently being charged by the same owner for comparable unassisted space.

(2) *Leasing individual units.* When grants are used to pay rent for individual housing units, the rent paid must be reasonable in relation to rents being charged for comparable units, taking into account the location, size, type, quality, amenities, facilities, and management services. In addition, the rents may not exceed rents currently being charged for comparable units, and the rent paid may not exceed HUD-determined fair market rents.

(3) *Utilities.* If electricity, gas, and water are included in the rent, these utilities may be paid from leasing funds. If utilities are not provided by the landlord, these utility costs are an operating cost, except for supportive service facilities. If the structure is being used as a supportive service facility, then these utility costs are a supportive service cost.

(4) *Security deposits and first and last month's rent.* Recipients and subrecipients may use grant funds to pay security deposits, in an amount not to exceed 2 months of actual rent. An advance payment of the last month's rent may be provided to the landlord in addition to the security deposit and payment of the first month's rent.

(5) *Occupancy agreements and subleases.* Occupancy agreements and subleases are required as specified in §578.77(a).

(6) *Calculation of occupancy charges and rent.* Occupancy charges and rent from program participants must be calculated as provided in §578.77.

(7) *Program income.* Occupancy charges and rent collected from program participants are program income and may be used as provided under §578.97.

(8) *Transition.* Beginning in the first year awards are made under the Continuum of Care program, renewals of grants for leasing funds entered into under the authority of title IV, subtitle D of the Act as it existed before May 20, 2009, will be renewed either as grants for leasing or as rental assistance, depending on the characteristics

of the project. Leasing funds will be renewed as rental assistance if the funds are used to pay rent on units where the lease is between the program participant and the landowner or sublessor. Projects requesting leasing funds will be renewed as leasing if the funds were used to lease a unit or structure and the lease is between the recipient or subrecipient and the landowner.

#### § 578.51 Rental assistance.

(a) *Use.* (1) Grant funds may be used for rental assistance for homeless individuals and families. Rental assistance cannot be provided to a program participant who is already receiving rental assistance, or living in a housing unit receiving rental assistance or operating assistance through other federal, State, or local sources.

(i) The rental assistance may be short-term, up to 3 months of rent; medium-term, for 3 to 24 months of rent; or long-term, for longer than 24 months of rent and must be administered in accordance with the policies and procedures established by the Continuum as set forth in §578.7(a)(9) and this section.

(ii) The rental assistance may be tenant-based, project-based, or sponsor-based, and may be for transitional or permanent housing.

(2) Grant funds may be used for security deposits in an amount not to exceed 2 months of rent. An advance payment of the last month's rent may be provided to the landlord, in addition to the security deposit and payment of first month's rent.

(b) *Rental assistance administrator.* Rental assistance must be administered by a State, unit of general local government, or a public housing agency.

(c) *Tenant-based rental assistance.* Tenant-based rental assistance is rental assistance in which program participants choose housing of an appropriate size in which to reside. When necessary to facilitate the coordination of supportive services, recipients and subrecipients may require program participants to live in a specific area for their entire period of participation, or in a specific structure for the first year and in a specific area for the remainder



of their period of participation. Program participants who are receiving rental assistance in transitional housing may be required to live in a specific structure for their entire period of participation in transitional housing.

(1) Up to 5 years worth of rental assistance may be awarded to a project in one competition.

(2) Program participants who have complied with all program requirements during their residence retain the rental assistance if they move within the Continuum of Care geographic area.

(3) Program participants who have complied with all program requirements during their residence and who have been a victim of domestic violence, dating violence, sexual assault, or stalking, and who reasonably believe they are imminently threatened by harm from further domestic violence, dating violence, sexual assault, or stalking (which would include threats from a third party, such as a friend or family member of the perpetrator of the violence), if they remain in the assisted unit, and are able to document the violence and basis for their belief, may retain the rental assistance and move to a different Continuum of Care geographic area if they move out of the assisted unit to protect their health and safety.

(d) *Sponsor-based rental assistance.* Sponsor-based rental assistance is provided through contracts between the recipient and sponsor organization. A sponsor may be a private, nonprofit organization, or a community mental health agency established as a public nonprofit organization. Program participants must reside in housing owned or leased by the sponsor. Up to 5 years worth of rental assistance may be awarded to a project in one competition.

(e) *Project-based rental assistance.* Project-based rental assistance is provided through a contract with the owner of an existing structure, where the owner agrees to lease the subsidized units to program participants. Program participants will not retain rental assistance if they move. Up to 15 years of rental assistance may be awarded in one competition.

(f) *Grant amount.* The amount of rental assistance in each project will be based on the number and size of units proposed by the applicant to be assisted over the grant period. The amount of rental assistance in each project will be calculated by multiplying the number and size of units proposed by the FMR of each unit on the date the application is submitted to HUD, by the term of the grant.

(g) *Rent reasonableness.* HUD will only provide rental assistance for a unit if the rent is reasonable. The recipient or subrecipient must determine whether the rent charged for the unit receiving rental assistance is reasonable in relation to rents being charged for comparable unassisted units, taking into account the location, size, type, quality, amenities, facilities, and management and maintenance of each unit. Reasonable rent must not exceed rents currently being charged by the same owner for comparable unassisted units.

(h) *Payment of grant.* (1) The amount of rental assistance in each project will be reserved for rental assistance over the grant period. An applicant's request for rental assistance in each grant is an estimate of the amount needed for rental assistance. Recipients will make draws from the grant funds to pay the actual costs of rental assistance for program participants.

(2) For tenant-based rental assistance, on demonstration of need:

(i) Up to 25 percent of the total rental assistance awarded may be spent in any year of a 5-year grant term; or

(ii) A higher percentage if approved in advance by HUD, if the recipient provides evidence satisfactory to HUD that it is financially committed to providing the housing assistance described in the application for the full 5-year period.

(3) A recipient must serve at least as many program participants as shown in its application for assistance.

(4) If the amount in each grant reserved for rental assistance over the grant period exceeds the amount that will be needed to pay the actual costs of rental assistance, due to such factors as contract rents being lower than FMRs and program participants being able to pay a portion of the rent, recipients or subrecipients may use the

excess funds for covering the costs of rent increases, or for serving a greater number of program participants.

(i) *Vacancies.* If a unit assisted under this section is vacated before the expiration of the lease, the assistance for the unit may continue for a maximum of 30 days from the end of the month in which the unit was vacated, unless occupied by another eligible person. No additional assistance will be paid until the unit is occupied by another eligible person. Brief periods of stays in institutions, not to exceed 90 days for each occurrence, are not considered vacancies.

(j) *Property damage.* Recipients and subrecipients may use grant funds in an amount not to exceed one month's rent to pay for any damage to housing due to the action of a program participant. This shall be a one-time cost per participant, incurred at the time a participant exits a housing unit.

(k) *Resident rent.* Rent must be calculated as provided in § 578.77. Rents collected from program participants are program income and may be used as provided under § 578.97.

(l) *Leases.* (1) *Initial lease.* For project-based, sponsor-based, or tenant-based rental assistance, program participants must enter into a lease agreement for a term of at least one year, which is terminable for cause. The leases must be automatically renewable upon expiration for terms that are a minimum of one month long, except on prior notice by either party.

(2) *Initial lease for transitional housing.* Program participants in transitional housing must enter into a lease agreement for a term of at least one month. The lease must be automatically renewable upon expiration, except on prior notice by either party, up to a maximum term of 24 months.

#### § 578.53 Supportive services.

(a) *In general.* Grant funds may be used to pay the eligible costs of supportive services that address the special needs of the program participants. If the supportive services are provided in a supportive service facility not contained in a housing structure, the costs of day-to-day operation of the supportive service facility, including maintenance, repair, building security,

furniture, utilities, and equipment are eligible as a supportive service.

(1) Supportive services must be necessary to assist program participants obtain and maintain housing.

(2) Recipients and subrecipients shall conduct an annual assessment of the service needs of the program participants and should adjust services accordingly.

(b) *Duration.* (1) For a transitional housing project, supportive services must be made available to residents throughout the duration of their residence in the project.

(2) Permanent supportive housing projects must provide supportive services for the residents to enable them to live as independently as is practicable throughout the duration of their residence in the project.

(3) Services may also be provided to former residents of transitional housing and current residents of permanent housing who were homeless in the prior 6 months, for no more than 6 months after leaving transitional housing or homelessness, respectively, to assist their adjustment to independent living.

(4) Rapid rehousing projects must require the program participant to meet with a case manager not less than once per month as set forth in § 578.37(a)(1)(ii)(F), to assist the program participant in maintaining long-term housing stability.

(c) *Special populations.* All eligible costs are eligible to the same extent for program participants who are unaccompanied homeless youth; persons living with HIV/AIDS; and victims of domestic violence, dating violence, sexual assault, or stalking.

(d) *Ineligible costs.* Any cost that is not described as an eligible cost under this section is not an eligible cost of providing supportive services using Continuum of Care program funds. Staff training and the costs of obtaining professional licenses or certifications needed to provide supportive services are not eligible costs.

(e) *Eligible costs.*

(1) *Annual Assessment of Service Needs.* The costs of the assessment required by § 578.53(a)(2) are eligible costs.

(2) *Assistance with moving costs.* Reasonable one-time moving costs are eligible and include truck rental and hiring a moving company.

(3) *Case management.* The costs of assessing, arranging, coordinating, and monitoring the delivery of individualized services to meet the needs of the program participant(s) are eligible costs. Component services and activities consist of:

- (i) Counseling;
- (ii) Developing, securing, and coordinating services;
- (iii) Using the centralized or coordinated assessment system as required under §578.23(c)(9).
- (iv) Obtaining federal, State, and local benefits;
- (v) Monitoring and evaluating program participant progress;
- (vi) Providing information and referrals to other providers;
- (vii) Providing ongoing risk assessment and safety planning with victims of domestic violence, dating violence, sexual assault, and stalking; and
- (viii) Developing an individualized housing and service plan, including planning a path to permanent housing stability.

(4) *Child care.* The costs of establishing and operating child care, and providing child-care vouchers, for children from families experiencing homelessness, including providing meals and snacks, and comprehensive and coordinated developmental activities, are eligible.

(i) The children must be under the age of 13, unless they are disabled children.

(ii) Disabled children must be under the age of 18.

(iii) The child-care center must be licensed by the jurisdiction in which it operates in order for its costs to be eligible.

(5) *Education services.* The costs of improving knowledge and basic educational skills are eligible.

(i) Services include instruction or training in consumer education, health education, substance abuse prevention, literacy, English as a Second Language, and General Educational Development (GED).

(ii) Component services or activities are screening, assessment and testing;

individual or group instruction; tutoring; provision of books, supplies, and instructional material; counseling; and referral to community resources.

(6) *Employment assistance and job training.* The costs of establishing and operating employment assistance and job training programs are eligible, including classroom, online and/or computer instruction, on-the-job instruction, services that assist individuals in securing employment, acquiring learning skills, and/or increasing earning potential. The cost of providing reasonable stipends to program participants in employment assistance and job training programs is also an eligible cost.

(i) Learning skills include those skills that can be used to secure and retain a job, including the acquisition of vocational licenses and/or certificates.

(ii) Services that assist individuals in securing employment consist of:

- (A) Employment screening, assessment, or testing;
- (B) Structured job skills and job-seeking skills;
- (C) Special training and tutoring, including literacy training and pre-vocational training;
- (D) Books and instructional material;
- (E) Counseling or job coaching; and
- (F) Referral to community resources.

(7) *Food.* The cost of providing meals or groceries to program participants is eligible.

(8) *Housing search and counseling services.* Costs of assisting eligible program participants to locate, obtain, and retain suitable housing are eligible.

(i) Component services or activities are tenant counseling; assisting individuals and families to understand leases; securing utilities; and making moving arrangements.

(ii) Other eligible costs are:

(A) Mediation with property owners and landlords on behalf of eligible program participants;

(B) Credit counseling, accessing a free personal credit report, and resolving personal credit issues; and

(C) The payment of rental application fees.

(9) *Legal services.* Eligible costs are the fees charged by licensed attorneys and by person(s) under the supervision

of licensed attorneys, for advice and representation in matters that interfere with the homeless individual or family's ability to obtain and retain housing.

(i) Eligible subject matters are child support; guardianship; paternity; emancipation; legal separation; orders of protection and other civil remedies for victims of domestic violence, dating violence, sexual assault, and stalking; appeal of veterans and public benefit claim denials; landlord tenant disputes; and the resolution of outstanding criminal warrants.

(ii) Component services or activities may include receiving and preparing cases for trial, provision of legal advice, representation at hearings, and counseling.

(iii) Fees based on the actual service performed (i.e., fee for service) are also eligible, but only if the cost would be less than the cost of hourly fees. Filing fees and other necessary court costs are also eligible. If the subrecipient is a legal services provider and performs the services itself, the eligible costs are the subrecipient's employees' salaries and other costs necessary to perform the services.

(iv) Legal services for immigration and citizenship matters and issues related to mortgages and homeownership are ineligible. Retainer fee arrangements and contingency fee arrangements are ineligible.

(10) *Life skills training.* The costs of teaching critical life management skills that may never have been learned or have been lost during the course of physical or mental illness, domestic violence, substance abuse, and homelessness are eligible. These services must be necessary to assist the program participant to function independently in the community. Component life skills training are the budgeting of resources and money management, household management, conflict management, shopping for food and other needed items, nutrition, the use of public transportation, and parent training.

(11) *Mental health services.* Eligible costs are the direct outpatient treatment of mental health conditions that are provided by licensed professionals. Component services are crisis interven-

tions; counseling; individual, family, or group therapy sessions; the prescription of psychotropic medications or explanations about the use and management of medications; and combinations of therapeutic approaches to address multiple problems.

(12) *Outpatient health services.* Eligible costs are the direct outpatient treatment of medical conditions when provided by licensed medical professionals including:

(i) Providing an analysis or assessment of an individual's health problems and the development of a treatment plan;

(ii) Assisting individuals to understand their health needs;

(iii) Providing directly or assisting individuals to obtain and utilize appropriate medical treatment;

(iv) Preventive medical care and health maintenance services, including in-home health services and emergency medical services;

(v) Provision of appropriate medication;

(vi) Providing follow-up services; and

(vii) Preventive and noncosmetic dental care.

(13) *Outreach services.* The costs of activities to engage persons for the purpose of providing immediate support and intervention, as well as identifying potential program participants, are eligible.

(i) Eligible costs include the outreach worker's transportation costs and a cell phone to be used by the individual performing the outreach.

(ii) Component activities and services consist of: initial assessment; crisis counseling; addressing urgent physical needs, such as providing meals, blankets, clothes, or toiletries; actively connecting and providing people with information and referrals to homeless and mainstream programs; and publicizing the availability of the housing and/or services provided within the geographic area covered by the Continuum of Care.

(14) *Substance abuse treatment services.* The costs of program participant intake and assessment, outpatient treatment, group and individual counseling, and drug testing are eligible. Inpatient detoxification and other inpatient drug or alcohol treatment are ineligible.

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(15) *Transportation.* Eligible costs are:

(i) The costs of program participant's travel on public transportation or in a vehicle provided by the recipient or subrecipient to and from medical care, employment, child care, or other services eligible under this section.

(ii) Mileage allowance for service workers to visit program participants and to carry out housing quality inspections;

(iii) The cost of purchasing or leasing a vehicle in which staff transports program participants and/or staff serving program participants;

(iv) The cost of gas, insurance, taxes, and maintenance for the vehicle;

(v) The costs of recipient or subrecipient staff to accompany or assist program participants to utilize public transportation; and

(vi) If public transportation options are not sufficient within the area, the recipient may make a one-time payment on behalf of a program participant needing car repairs or maintenance required to operate a personal vehicle, subject to the following:

(A) Payments for car repairs or maintenance on behalf of the program participant may not exceed 10 percent of the Blue Book value of the vehicle (Blue Book refers to the guidebook that compiles and quotes prices for new and used automobiles and other vehicles of all makes, models, and types);

(B) Payments for car repairs or maintenance must be paid by the recipient or subrecipient directly to the third party that repairs or maintains the car; and

(C) The recipients or subrecipients may require program participants to share in the cost of car repairs or maintenance as a condition of receiving assistance with car repairs or maintenance.

(16) *Utility deposits.* This form of assistance consists of paying for utility deposits. Utility deposits must be a one-time fee, paid to utility companies.

(17) *Direct provision of services.* If the service described in paragraphs (e)(1) through (e)(16) of this section is being directly delivered by the recipient or subrecipient, eligible costs for those services also include:

(i) The costs of labor or supplies, and materials incurred by the recipient or

subrecipient in directly providing supportive services to program participants; and

(ii) The salary and benefit packages of the recipient and subrecipient staff who directly deliver the services.

**§578.55 Operating costs.**

(a) *Use.* Grant funds may be used to pay the costs of the day-to-day operation of transitional and permanent housing in a single structure or individual housing units.

(b) *Eligible costs.* (1) The maintenance and repair of housing;

(2) Property taxes and insurance;

(3) Scheduled payments to a reserve for replacement of major systems of the housing (provided that the payments must be based on the useful life of the system and expected replacement cost);

(4) Building security for a structure where more than 50 percent of the units or area is paid for with grant funds;

(5) Electricity, gas, and water;

(6) Furniture; and

(7) Equipment.

(c) *Ineligible costs.* Program funds may not be used for rental assistance and operating costs in the same project. Program funds may not be used for the operating costs of emergency shelter- and supportive service-only facilities. Program funds may not be used for the maintenance and repair of housing where the costs of maintaining and repairing the housing are included in the lease.

**§578.57 Homeless Management Information System.**

(a) *Eligible costs.* (1) The recipient or subrecipient may use Continuum of Care program funds to pay the costs of contributing data to the HMIS designated by the Continuum of Care, including the costs of:

(i) Purchasing or leasing computer hardware;

(ii) Purchasing software or software licenses;

(iii) Purchasing or leasing equipment, including telephones, fax machines, and furniture;

(iv) Obtaining technical support;

(v) Leasing office space;

(vi) Paying charges for electricity, gas, water, phone service, and high-speed data transmission necessary to operate or contribute data to the HMIS;

(vii) Paying salaries for operating HMIS, including:

(A) Completing data entry;

(B) Monitoring and reviewing data quality;

(C) Completing data analysis;

(D) Reporting to the HMIS Lead;

(E) Training staff on using the HMIS; and

(F) Implementing and complying with HMIS requirements;

(viii) Paying costs of staff to travel to and attend HUD-sponsored and HUD-approved training on HMIS and programs authorized by Title IV of the McKinney-Vento Homeless Assistance Act;

(ix) Paying staff travel costs to conduct intake; and

(x) Paying participation fees charged by the HMIS Lead, as authorized by HUD, if the recipient or subrecipient is not the HMIS Lead.

(2) If the recipient or subrecipient is the HMIS Lead, it may also use Continuum of Care funds to pay the costs of:

(i) Hosting and maintaining HMIS software or data;

(ii) Backing up, recovering, or repairing HMIS software or data;

(iii) Upgrading, customizing, and enhancing the HMIS;

(iv) Integrating and warehousing data, including development of a data warehouse for use in aggregating data from subrecipients using multiple software systems;

(v) Administering the system;

(vi) Reporting to providers, the Continuum of Care, and HUD; and

(vii) Conducting training on using the system, including traveling to the training.

(3) If the recipient or subrecipient is a victim services provider, or a legal services provider, it may use Continuum of Care funds to establish and operate a comparable database that complies with HUD's HMIS requirements.

(b) *General restrictions.* Activities funded under this section must comply with the HMIS requirements.

#### § 578.59 Project administrative costs.

(a) *Eligible costs.* The recipient or subrecipient may use up to 10 percent of any grant awarded under this part, excluding the amount for Continuum of Care Planning Activities and UFA costs, for the payment of project administrative costs related to the planning and execution of Continuum of Care activities. This does not include staff and overhead costs directly related to carrying out activities eligible under § 578.43 through § 578.57, because those costs are eligible as part of those activities. Eligible administrative costs include:

(1) *General management, oversight, and coordination.* Costs of overall program management, coordination, monitoring, and evaluation. These costs include, but are not limited to, necessary expenditures for the following:

(i) Salaries, wages, and related costs of the recipient's staff, the staff of subrecipients, or other staff engaged in program administration. In charging costs to this category, the recipient may include the entire salary, wages, and related costs allocable to the program of each person whose primary responsibilities with regard to the program involve program administration assignments, or the pro rata share of the salary, wages, and related costs of each person whose job includes any program administration assignments. The recipient may use only one of these methods for each fiscal year grant. Program administration assignments include the following:

(A) Preparing program budgets and schedules, and amendments to those budgets and schedules;

(B) Developing systems for assuring compliance with program requirements;

(C) Developing agreements with subrecipients and contractors to carry out program activities;

(D) Monitoring program activities for progress and compliance with program requirements;

(E) Preparing reports and other documents directly related to the program for submission to HUD;

(F) Coordinating the resolution of audit and monitoring findings;

(G) Evaluating program results against stated objectives; and

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(H) Managing or supervising persons whose primary responsibilities with regard to the program include such assignments as those described in paragraph (a)(1)(i)(A) through (G) of this section.

(ii) Travel costs incurred for monitoring of subrecipients;

(iii) Administrative services performed under third-party contracts or agreements, including general legal services, accounting services, and audit services; and

(iv) Other costs for goods and services required for administration of the program, including rental or purchase of equipment, insurance, utilities, office supplies, and rental and maintenance (but not purchase) of office space.

(2) *Training on Continuum of Care requirements.* Costs of providing training on Continuum of Care requirements and attending HUD-sponsored Continuum of Care trainings.

(3) *Environmental review.* Costs of carrying out the environmental review responsibilities under §578.31.

(b) *Sharing requirement.* (1) *UFAs.* If the recipient is a UFA that carries out a project, it may use up to 10 percent of the grant amount awarded for the project on project administrative costs. The UFA must share the remaining project administrative funds with its subrecipients.

(2) *Recipients that are not UFAs.* If the recipient is not a UFA, it must share at least 50 percent of project administrative funds with its subrecipients.

## §578.61 Relocation costs.

(a) *In general.* Relocation costs under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 are eligible.

(b) *Eligible relocation costs.* Eligible costs are costs to provide relocation payments and other assistance to persons displaced by a project assisted with grant funds in accordance with §578.83.

## §578.63 Indirect costs.

(a) *In general.* Continuum of Care funds may be used to pay indirect costs in accordance with OMB Circulars A-87 or A-122, as applicable.

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(b) *Allocation.* Indirect costs may be allocated to each eligible activity as provided in subpart D, so long as that allocation is consistent with an indirect cost rate proposal developed in accordance with OMB Circulars A-87 or A-122, as applicable.

(c) *Expenditure limits.* The indirect costs charged to an activity subject to an expenditure limit under §§578.39, 578.41, and 578.59 must be added to the direct costs charged for that activity when determining the total costs subject to the expenditure limits.

## Subpart E—High-Performing Communities

### §578.65 Standards.

(a) *In general.* The collaborative applicant for a Continuum may apply to HUD to have the Continuum be designated a high-performing community (HPC). The designation shall be for grants awarded in the same competition in which the designation is applied for and made.

(b) *Applying for HPC designation.* The application must be submitted at such time and in such manner as HUD may require, must use HMIS data where required to show the standards for qualifying are met, and must contain such information as HUD requires, including at a minimum:

(1) A report showing how the Continuum of Care program funds received in the preceding year were expended;

(2) A specific plan for how grant funds will be expended; and

(3) Information establishing that the Continuum of Care meets the standards for HPCs.

(c) *Standards for qualifying as an HPC.* To qualify as an HPC, a Continuum must demonstrate through:

(1) Reliable data generated by the Continuum of Care's HMIS that it meets all of the following standards:

(1) *Mean length of homelessness.* Either the mean length of episode of homelessness within the Continuum's geographic area is fewer than 20 days, or the mean length of episodes of homelessness for individuals or families in similar circumstances was reduced by at least 10 percent from the preceding federal fiscal year.

(ii) *Reduced recidivism.* Of individuals and families who leave homelessness, less than 5 percent become homeless again at any time within the next 2 years; or the percentage of individuals and families in similar circumstances who become homeless again within 2 years after leaving homelessness was decreased by at least 20 percent from the preceding federal fiscal year.

(iii) *HMIS coverage.* The Continuum's HMIS must have a bed coverage rate of 80 percent and a service volume coverage rate of 80 percent as calculated in accordance with HUD's HMIS requirements.

(iv) *Serving families and youth.* With respect to Continuums that served homeless families and youth defined as homeless under other federal statutes in paragraph (3) of the definition of homeless in § 576.2:

(A) 95 percent of those families and youth did not become homeless again within a 2-year period following termination of assistance; or

(B) 85 percent of those families achieved independent living in permanent housing for at least 2 years following termination of assistance.

(2) Reliable data generated from sources other than the Continuum's HMIS that is provided in a narrative or other form prescribed by HUD that it meets both of the following standards:

(i) *Community action.* All the metropolitan cities and counties within the Continuum's geographic area have a comprehensive outreach plan, including specific steps for identifying homeless persons and referring them to appropriate housing and services in that geographic area.

(ii) *Renewing HPC status.* If the Continuum was designated an HPC in the previous federal fiscal year and used Continuum of Care grant funds for activities described under § 578.71, that such activities were effective at reducing the number of individuals and families who became homeless in that community.

#### § 578.67 Publication of application.

HUD will publish the application to be designated an HPC through the HUD Web site, for public comment as to whether the Continuum seeking des-

ignation as an HPC meets the standards for being one.

#### § 578.69 Cooperation among entities.

An HPC must cooperate with HUD in distributing information about its successful efforts to reduce homelessness.

#### § 578.71 HPC-eligible activities.

In addition to using grant funds for the eligible costs described in subpart D of this part, recipients and subrecipients in Continuums of Care designated as HPCs may also use grant funds to provide housing relocation and stabilization services and short- and/or medium-term rental assistance to individuals and families at risk of homelessness as set forth in 24 CFR 576.103 and 24 CFR 576.104, if necessary to prevent the individual or family from becoming homeless. Activities must be carried out in accordance with the plan submitted in the application. When carrying out housing relocation and stabilization services and short- and/or medium-term rental assistance, the written standards set forth in § 578.7(a)(9)(v) and recordkeeping requirements of 24 CFR 576.500 apply.

### Subpart F—Program Requirements

#### § 578.73 Matching requirements.

(a) *In general.* The recipient or subrecipient must match all grant funds, except for leasing funds, with no less than 25 percent of funds or in-kind contributions from other sources. For Continuum of Care geographic areas in which there is more than one grant agreement, the 25 percent match must be provided on a grant-by-grant basis. Recipients that are UFAs or are the sole recipient for their Continuum, may provide match on a Continuum-wide basis. Cash match must be used for the costs of activities that are eligible under subpart D of this part, except that HPCs may use such match for the costs of activities that are eligible under § 578.71.

(b) *Cash sources.* A recipient or subrecipient may use funds from any source, including any other federal sources (excluding Continuum of Care program funds), as well as State, local, and private sources, provided that



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funds from the source are not statutorily prohibited to be used as a match. The recipient must ensure that any funds used to satisfy the matching requirements of this section are eligible under the laws governing the funds in order to be used as matching funds for a grant awarded under this program.

(c) *In-kind contributions.* (1) The recipient or subrecipient may use the value of any real property, equipment, goods, or services contributed to the project as match, provided that if the recipient or subrecipient had to pay for them with grant funds, the costs would have been eligible under Subpart D, or, in the case of HPCs, eligible under § 578.71.

(2) The requirements of 24 CFR 84.23 and 85.24 apply.

(3) Before grant execution, services to be provided by a third party must be documented by a memorandum of understanding (MOU) between the recipient or subrecipient and the third party that will provide the services. Services provided by individuals must be valued at rates consistent with those ordinarily paid for similar work in the recipient's or subrecipient's organization. If the recipient or subrecipient does not have employees performing similar work, the rates must be consistent with those ordinarily paid by other employers for similar work in the same labor market.

(i) The MOU must establish the unconditional commitment, except for selection to receive a grant, by the third party to provide the services, the specific service to be provided, the profession of the persons providing the service, and the hourly cost of the service to be provided.

(ii) During the term of the grant, the recipient or subrecipient must keep and make available, for inspection, records documenting the service hours provided.

### § 578.75 General operations.

(a) *State and local requirements.* (1) Housing and facilities constructed or rehabilitated with assistance under this part must meet State or local building codes, and in the absence of State or local building codes, the International Residential Code or International Building Code (as applicable

to the type of structure) of the International Code Council.

(2) Services provided with assistance under this part must be provided in compliance with all applicable State and local requirements, including licensing requirements.

(b) *Housing quality standards.* Housing leased with Continuum of Care program funds, or for which rental assistance payments are made with Continuum of Care program funds, must meet the applicable housing quality standards (HQS) under 24 CFR 982.401 of this title, except that 24 CFR 982.401(j) applies only to housing occupied by program participants receiving tenant-based rental assistance. For housing rehabilitated with funds under this part, the lead-based paint requirements in 24 CFR part 35, subparts A, B, J, and R apply. For housing that receives project-based or sponsor-based rental assistance, 24 CFR part 35, subparts A, B, H, and R apply. For residential property for which funds under this part are used for acquisition, leasing, services, or operating costs, 24 CFR part 35, subparts A, B, K, and R apply.

(1) Before any assistance will be provided on behalf of a program participant, the recipient, or subrecipient, must physically inspect each unit to assure that the unit meets HQS. Assistance will not be provided for units that fail to meet HQS, unless the owner corrects any deficiencies within 30 days from the date of the initial inspection and the recipient or subrecipient verifies that all deficiencies have been corrected.

(2) Recipients or subrecipients must inspect all units at least annually during the grant period to ensure that the units continue to meet HQS.

(c) *Suitable dwelling size.* The dwelling unit must have at least one bedroom or living/sleeping room for each two persons.

(1) Children of opposite sex, other than very young children, may not be required to occupy the same bedroom or living/sleeping room.

(2) If household composition changes during the term of assistance, recipients and subrecipients may relocate the household to a more appropriately sized unit. The household must still

have access to appropriate supportive services.

(d) *Meals.* Each recipient and subrecipient of assistance under this part who provides supportive housing for homeless persons with disabilities must provide meals or meal preparation facilities for residents.

(e) *Ongoing assessment of supportive services.* To the extent practicable, each project must provide supportive services for residents of the project and homeless persons using the project, which may be designed by the recipient or participants. Each recipient and subrecipient of assistance under this part must conduct an ongoing assessment of the supportive services needed by the residents of the project, the availability of such services, and the coordination of services needed to ensure long-term housing stability and must make adjustments, as appropriate.

(f) *Residential supervision.* Each recipient and subrecipient of assistance under this part must provide residential supervision as necessary to facilitate the adequate provision of supportive services to the residents of the housing throughout the term of the commitment to operate supportive housing. Residential supervision may include the employment of a full- or part-time residential supervisor with sufficient knowledge to provide or to supervise the provision of supportive services to the residents.

(g) *Participation of homeless individuals.* (1) Each recipient and subrecipient must provide for the participation of not less than one homeless individual or formerly homeless individual on the board of directors or other equivalent policymaking entity of the recipient or subrecipient, to the extent that such entity considers and makes policies and decisions regarding any project, supportive services, or assistance provided under this part. This requirement is waived if a recipient or subrecipient is unable to meet such requirement and obtains HUD approval for a plan to otherwise consult with homeless or formerly homeless persons when considering and making policies and decisions.

(2) Each recipient and subrecipient of assistance under this part must, to the

maximum extent practicable, involve homeless individuals and families through employment; volunteer services; or otherwise in constructing, rehabilitating, maintaining, and operating the project, and in providing supportive services for the project.

(h) *Supportive service agreement.* Recipients and subrecipients may require the program participants to take part in supportive services that are not disability-related services provided through the project as a condition of continued participation in the program. Examples of disability-related services include, but are not limited to, mental health services, outpatient health services, and provision of medication, which are provided to a person with a disability to address a condition caused by the disability. Notwithstanding this provision, if the purpose of the project is to provide substance abuse treatment services, recipients and subrecipients may require program participants to take part in such services as a condition of continued participation in the program.

(i) *Retention of assistance after death, incarceration, or institutionalization for more than 90 days of qualifying member.* For permanent supportive housing projects surviving, members of any household who were living in a unit assisted under this part at the time of the qualifying member's death, long-term incarceration, or long-term institutionalization, have the right to rental assistance under this section until the expiration of the lease in effect at the time of the qualifying member's death, long-term incarceration, or long-term institutionalization.

#### § 578.77 Calculating occupancy charges and rent.

(a) *Occupancy agreements and leases.* Recipients and subrecipients must have signed occupancy agreements or leases (or subleases) with program participants residing in housing.

(b) *Calculation of occupancy charges.* Recipients and subrecipients are not required to impose occupancy charges on program participants as a condition of residing in the housing. However, if occupancy charges are imposed, they may not exceed the highest of:

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(1) 30 percent of the family's monthly adjusted income (adjustment factors include the number of people in the family, age of family members, medical expenses, and child-care expenses);

(2) 10 percent of the family's monthly income; or

(3) If the family is receiving payments for welfare assistance from a public agency and a part of the payments (adjusted in accordance with the family's actual housing costs) is specifically designated by the agency to meet the family's housing costs, the portion of the payments that is designated for housing costs.

(4) *Income.* Income must be calculated in accordance with 24 CFR 5.609 and 24 CFR 5.611(a). Recipients and subrecipients must examine a program participant's income initially, and if there is a change in family composition (e.g., birth of a child) or a decrease in the resident's income during the year, the resident may request an interim reexamination, and the occupancy charge will be adjusted accordingly.

(c) *Resident rent.* (1) *Amount of rent.* (i) Each program participant on whose behalf rental assistance payments are made must pay a contribution toward rent in accordance with section 3(a)(1) of the U.S. Housing Act of 1937 (42 U.S.C. 1437a(a)(1)).

(ii) Income of program participants must be calculated in accordance with 24 CFR 5.609 and 24 CFR 5.611(a).

(2) *Review.* Recipients or subrecipients must examine a program participant's income initially, and at least annually thereafter, to determine the amount of the contribution toward rent payable by the program participant. Adjustments to a program participant's contribution toward the rental payment must be made as changes in income are identified.

(3) *Verification.* As a condition of participation in the program, each program participant must agree to supply the information or documentation necessary to verify the program participant's income. Program participants must provide the recipient or subrecipient with information at any time regarding changes in income or other circumstances that may result in changes to a program participant's

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contribution toward the rental payment.

**§ 578.79 Limitation on transitional housing.**

A homeless individual or family may remain in transitional housing for a period longer than 24 months, if permanent housing for the individual or family has not been located or if the individual or family requires additional time to prepare for independent living. However, HUD may discontinue assistance for a transitional housing project if more than half of the homeless individuals or families remain in that project longer than 24 months.

**§ 578.81 Term of commitment, repayment of grants, and prevention of undue benefits.**

(a) *In general.* All recipients and subrecipients receiving grant funds for acquisition, rehabilitation, or new construction must operate the housing or provide supportive services in accordance with this part, for at least 15 years from the date of initial occupancy or date of initial service provision. Recipient and subrecipients must execute and record a HUD-approved Declaration of Restrictive Covenants before receiving payment of grant funds.

(b) *Conversion.* Recipients and subrecipients carrying out a project that provides transitional or permanent housing or supportive services in a structure may submit a request to HUD to convert a project for the direct benefit of very low-income persons. The request must be made while the project is operating as homeless housing or supportive services for homeless individuals and families, must be in writing, and must include an explanation of why the project is no longer needed to provide transitional or permanent housing or supportive services. The primary factor in HUD's decision on the proposed conversion is the unmet need for transitional or permanent housing or supportive services in the Continuum of Care's geographic area.

(c) *Repayment of grant funds.* If a project is not operated as transitional or permanent housing for 10 years following the date of initial occupancy,

HUD will require repayment of the entire amount of the grant used for acquisition, rehabilitation, or new construction, unless conversion of the project has been authorized under paragraph (b) of this section. If the housing is used for such purposes for more than 10 years, the payment amount will be reduced by 20 percentage points for each year, beyond the 10-year period in which the project is used for transitional or permanent housing.

(d) *Prevention of undue benefits.* Except as provided under paragraph (e) of this section, upon any sale or other disposition of a project site that received grant funds for acquisition, rehabilitation, or new construction, occurring before the 15-year period, the recipient must comply with such terms and conditions as HUD may prescribe to prevent the recipient or subrecipient from unduly benefiting from such sale or disposition.

(e) *Exception.* A recipient or subrecipient will not be required to comply with the terms and conditions prescribed under paragraphs (c) and (d) of this section if:

(1) The sale or disposition of the property used for the project results in the use of the property for the direct benefit of very low-income persons;

(2) All the proceeds are used to provide transitional or permanent housing that meet the requirements of this part;

(3) Project-based rental assistance or operating cost assistance from any federal program or an equivalent State or local program is no longer made available and the project is meeting applicable performance standards, provided that the portion of the project that had benefitted from such assistance continues to meet the tenant income and rent restrictions for low-income units under section 42(g) of the Internal Revenue Code of 1986; or

(4) There are no individuals and families in the Continuum of Care geographic area who are homeless, in which case the project may serve individuals and families at risk of homelessness.

#### § 578.83. Displacement, relocation, and acquisition.

(a) *Minimizing displacement.* Consistent with the other goals and objectives of this part, recipients and subrecipients must ensure that they have taken all reasonable steps to minimize the displacement of persons (families, individuals, businesses, nonprofit organizations, and farms) as a result of projects assisted under this part. "Project," as used in this section, means any activity or series of activities assisted with Continuum of Care funds received or anticipated in any phase of an undertaking.

(b) *Temporary relocation.* (1) *Existing Building Not Assisted under Title IV of the McKinney-Vento Act.* No tenant may be required to relocate temporarily for a project if the building in which the project is being undertaken or will be undertaken is not currently assisted under Title IV of the McKinney-Vento Act. The absence of such assistance to the building means the tenants are not homeless and the tenants are therefore not eligible to receive assistance under the Continuum of Care program. When a tenant moves for such a project under conditions that cause the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA), 42 U.S.C. 4601-4655, to apply, the tenant must be treated as permanently displaced and offered relocation assistance and payments consistent with paragraph (c) of this section.

(2) *Existing Transitional Housing or Permanent Housing Projects Assisted Under Title IV of the McKinney-Vento Act.* Consistent with paragraph (c)(2)(i) of this section, no program participant may be required to relocate temporarily for a project if the person cannot be offered a decent, safe, and sanitary unit in the same building or complex upon project completion under reasonable terms and conditions. The length of occupancy requirements in § 578.79 may prevent a program participant from returning to the property upon completion (See paragraph (c)(2)(ii)(D) of this section). Any program participant who has been temporarily relocated for a period beyond one year

must be treated as permanently displaced and offered relocation assistance and payments consistent with paragraph (c) of this section. Program participants temporarily relocated in accordance with the policies described in this paragraph must be provided:

(i) Reimbursement for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the cost of moving to and from the temporarily occupied housing and any increase in monthly rent/occupancy charges and utility costs; and

(ii) Appropriate advisory services, including reasonable advance written notice of:

(A) The date and approximate duration of the temporary relocation;

(B) The location of the suitable, decent, safe, and sanitary dwelling to be made available for the temporary period;

(C) The reasonable terms and conditions under which the program participant will be able to occupy a suitable, decent, safe, and sanitary dwelling in the building or complex upon completion of the project; and

(D) The provisions of paragraph (b)(2)(i) of this section.

(c) *Relocation assistance for displaced persons.* (1) *In general.* A displaced person (defined in paragraph (c)(2) of this section) must be provided relocation assistance in accordance with the requirements of the URA and implementing regulations at 49 CFR part 24. A displaced person must be advised of his or her rights under the Fair Housing Act. Whenever possible, minority persons must be given reasonable opportunities to relocate to decent, safe, and sanitary replacement dwellings, not located in an area of minority concentration, that are within their financial means. This policy, however, does not require providing a person a larger payment than is necessary to enable a person to relocate to a comparable replacement dwelling. See 49 CFR 24.205(c)(2)(ii)(D).

(2) *Displaced person.* (i) For the purposes of paragraph (c) of this section, the term "displaced person" means any person (family, individual, business, nonprofit organization, or farm) that moves from real property, or moves personal property from real property,

permanently, as a direct result of acquisition, rehabilitation, or demolition for a project. This includes any permanent, involuntary move for a project, including any permanent move from the real property that is made:

(A) After the owner (or person in control of the site) issues a notice to move permanently from the property, or refuses to renew an expiring lease, if the move occurs after the date of the submission by the recipient or subrecipient of an application for assistance to HUD (or the recipient, as applicable) that is later approved and funded and the recipient or subrecipient has site control as evidenced in accordance with § 578.25(b); or

(B) After the owner (or person in control of the site) issues a notice to move permanently from the property, or refuses to renew an expiring lease, if the move occurs after the date the recipient or subrecipient obtains site control, as evidenced in accordance with § 578.25(b), if that occurs after the application for assistance; or

(C) Before the date described under paragraph (c)(2)(i)(A) or (B) of this section, if the recipient or HUD determines that the displacement resulted directly from acquisition, rehabilitation, or demolition for the project; or

(D) By a tenant of a building that is not assisted under Title IV of the McKinney-Vento Act, if the tenant moves after execution of the agreement covering the acquisition, rehabilitation, or demolition of the property for the project; or

(ii) For the purposes of paragraph (c) of this section, the term "displaced person" means any person (family, individual, business, nonprofit organization, or farm) that moves from real property, or moves personal property from real property, permanently, as a direct result of acquisition, rehabilitation, or demolition for a project. This includes any permanent, involuntary move for a project that is made by a program participant occupying transitional housing or permanent housing assisted under Title IV of the McKinney-Vento Act, if any one of the following three situations occurs:

(A) The program participant moves after execution of the agreement covering the acquisition, rehabilitation, or

demolition of the property for the project and is either not eligible to return upon project completion or the move occurs before the program participant is provided written notice offering the program participant an opportunity to occupy a suitable, decent, safe, and sanitary dwelling in the same building or complex upon project completion under reasonable terms and conditions. Such reasonable terms and conditions must include a lease (or occupancy agreement, as applicable) consistent with Continuum of Care program requirements, including a monthly rent or occupancy charge and monthly utility costs that does not exceed the maximum amounts established in § 578.77; or

(B) The program participant is required to relocate temporarily, does not return to the building or complex, and any one of the following situations occurs:

(1) The program participant is not offered payment for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation;

(2) The program participant is not eligible to return to the building or complex upon project completion; or

(3) Other conditions of the temporary relocation are not reasonable; or

(C) The program participant is required to move to another unit in the same building or complex, and any one of the following situations occurs:

(1) The program participant is not offered reimbursement for all reasonable out-of-pocket expenses incurred in connection with the move;

(2) The program participant is not eligible to remain in the building or complex upon project completion; or

(3) Other conditions of the move are not reasonable.

(iii) Notwithstanding the provisions of paragraph (c)(2)(i) or (ii) of this section, a person does not qualify as a "displaced person" if:

(A) The person has been evicted for serious or repeated violation of the terms and conditions of the lease or occupancy agreement; the eviction complied with applicable federal, State, or local requirements (see § 578.91); and the recipient or subrecipient determines that the eviction was not undertaken for the purpose of evading the

obligation to provide relocation assistance;

(B) The person moved into the property after the submission of the application but, before signing a lease or occupancy agreement and commencing occupancy, was provided written notice of the project's possible impact on the person (e.g., the person may be displaced, temporarily relocated, or incur a rent increase) and the fact that the person would not qualify as a "displaced person" (or for any relocation assistance provided under this section), as a result of the project;

(C) The person is ineligible under 49 CFR 24.2(a)(9)(ii);

(D) The person is a program participant occupying transitional housing or permanent housing assisted under Title IV of the Act who must move as a direct result of the length-of-occupancy restriction under § 578.79; or

(E) HUD determines that the person was not displaced as a direct result of acquisition, rehabilitation, or demolition for the project.

(iv) The recipient may request, at any time, HUD's determination of whether a displacement is or would be covered under this section.

(3) *Initiation of negotiations.* For purposes of determining the formula for computing replacement housing payment assistance to be provided to a displaced person pursuant to this section, if the displacement is a direct result of privately undertaken rehabilitation, demolition, or acquisition of the real property, "initiation of negotiations" means the execution of the agreement between the recipient and the subrecipient, or between the recipient (or subrecipient, as applicable) and the person owning or controlling the property. In the case of an option contract to acquire property, the initiation of negotiations does not become effective until execution of a written agreement that creates a legally enforceable commitment to proceed with the purchase, such as a purchase agreement.

(d) *Real property acquisition requirements.* Except for acquisitions described in 49 CFR 24.101(b)(1) through (5), the URA and the requirements of 49 CFR part 24, subpart B apply to any acquisition of real property for a project

where there are Continuum of Care funds in any part of the project costs.

(e) *Appeals.* A person who disagrees with the recipient's (or subrecipient's, if applicable) determination concerning whether the person qualifies as a displaced person, or the amount of relocation assistance for which the person is eligible, may file a written appeal of that determination with the recipient (see 49 CFR 24.10). A low-income person who is dissatisfied with the recipient's determination on his or her appeal may submit a written request for review of that determination to the local HUD field office.

**§ 578.85 Timeliness standards.**

(a) *In general.* Recipients must initiate approved activities and projects promptly.

(b) *Construction activities.* Recipients of funds for rehabilitation or new construction must meet the following standards:

(1) Construction activities must begin within 9 months of the later of signing of the grant agreement or of signing an addendum to the grant agreement authorizing use of grant funds for the project.

(2) Construction activities must be completed within 24 months of signing the grant agreement.

(3) Activities that cannot begin until after construction activities are completed must begin within 3 months of the date that construction activities are completed.

(c) *Distribution.* A recipient that receives funds through this part must:

(1) Distribute the funds to subrecipients (in advance of expenditures by the subrecipients);

(2) Distribute the appropriate portion of the funds to a subrecipient no later than 45 days after receiving an approvable request for such distribution from the subrecipient; and

(3) Draw down funds at least once per quarter of the program year, after eligible activities commence.

**§ 578.87 Limitation on use of funds.**

(a) *Maintenance of effort.* No assistance provided under this part (or any State or local government funds used to supplement this assistance) may be used to replace State or local funds

previously used, or designated for use, to assist homeless persons.

(b) *Faith-based activities.* (1) *Equal treatment of program participants and program beneficiaries.* (i) *Program participants.* Organizations that are religious or faith-based are eligible, on the same basis as any other organization, to participate in the Continuum of Care program. Neither the Federal Government nor a State or local government receiving funds under the Continuum of Care program shall discriminate against an organization on the basis of the organization's religious character or affiliation. Recipients and subrecipients of program funds shall not, in providing program assistance, discriminate against a program participant or prospective program participant on the basis of religion or religious belief.

(ii) *Beneficiaries.* In providing services supported in whole or in part with federal financial assistance, and in their outreach activities related to such services, program participants shall not discriminate against current or prospective program beneficiaries on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice.

(2) *Separation of explicitly religious activities.* Recipients and subrecipients of Continuum of Care funds that engage in explicitly religious activities, including activities that involve overt religious content such as worship, religious instruction, or proselytization, must perform such activities and offer such services outside of programs that are supported with federal financial assistance separately, in time or location, from the programs or services funded under this part, and participation in any such explicitly religious activities must be voluntary for the program beneficiaries of the HUD-funded programs or services.

(3) *Religious identity.* A faith-based organization that is a recipient or subrecipient of Continuum of Care program funds is eligible to use such funds as provided under the regulations of this part without impairing its independence, autonomy, expression of religious beliefs, or religious character. Such organization will retain its independence from federal, State, and local

government, and may continue to carry out its mission, including the definition, development, practice, and expression of its religious beliefs, provided that it does not use direct program funds to support or engage in any explicitly religious activities, including activities that involve overt religious content, such as worship, religious instruction, or proselytization, or any manner prohibited by law. Among other things, faith-based organizations may use space in their facilities to provide program-funded services, without removing or altering religious art, icons, scriptures, or other religious symbols. In addition, a Continuum of Care program-funded religious organization retains its authority over its internal governance, and it may retain religious terms in its organization's name, select its board members on a religious basis, and include religious references in its organization's mission statements and other governing documents.

(4) *Alternative provider.* If a program participant or prospective program participant of the Continuum of Care program supported by HUD objects to the religious character of an organization that provides services under the program, that organization shall, within a reasonably prompt time after the objection, undertake reasonable efforts to identify and refer the program participant to an alternative provider to which the prospective program participant has no objection. Except for services provided by telephone, the Internet, or similar means, the referral must be to an alternate provider in reasonable geographic proximity to the organization making the referral. In making the referral, the organization shall comply with applicable privacy laws and regulations. Recipients and subrecipients shall document any objections from program participants and prospective program participants and any efforts to refer such participants to alternative providers in accordance with the requirements of § 578.103(a)(13). Recipients shall ensure that all subrecipient agreements make organizations receiving program funds aware of these requirements.

(5) *Structures.* Program funds may not be used for the acquisition, construc-

tion, or rehabilitation of structures to the extent that those structures are used for explicitly religious activities. Program funds may be used for the acquisition, construction, or rehabilitation of structures only to the extent that those structures are used for conducting eligible activities under this part. When a structure is used for both eligible and explicitly religious activities, program funds may not exceed the cost of those portions of the acquisition, new construction, or rehabilitation that are attributable to eligible activities in accordance with the cost accounting requirements applicable to the Continuum of Care program. Sanctuaries, chapels, or other rooms that a Continuum of Care program-funded religious congregation uses as its principal place of worship, however, are ineligible for Continuum of Care program-funded improvements. Disposition of real property after the term of the grant, or any change in the use of the property during the term of the grant, is subject to governmentwide regulations governing real property disposition (see 24 CFR parts 84 and 85).

(6) *Supplemental funds.* If a State or local government voluntarily contributes its own funds to supplement federally funded activities, the State or local government has the option to segregate the federal funds or commingle them. However, if the funds are commingled, this section applies to all of the commingled funds.

(c) *Restriction on combining funds.* In a single structure or housing unit, the following types of assistance may not be combined:

- (1) Leasing and acquisition, rehabilitation, or new construction;
- (2) Tenant-based rental assistance and acquisition, rehabilitation, or new construction;
- (3) Short- or medium-term rental assistance and acquisition, rehabilitation, or new construction;
- (4) Rental assistance and leasing; or
- (5) Rental assistance and operating.

(d) *Program fees.* Recipients and subrecipients may not charge program participants program fees.



**§578.89 Limitation on use of grant funds to serve persons defined as homeless under other federal laws.**

(a) *Application requirement.* Applicants that intend to serve unaccompanied youth and families with children and youth defined as homeless under other federal laws in paragraph (3) of the homeless definition in §576.2 must demonstrate in their application, to HUD's satisfaction, that the use of grant funds to serve such persons is an equal or greater priority than serving persons defined as homeless under paragraphs (1), (2), and (4) of the definition of homeless in §576.2. To demonstrate that it is of equal or greater priority, applicants must show that it is equally or more cost effective in meeting the overall goals and objectives of the plan submitted under section 427(b)(1)(B) of the Act, especially with respect to children and unaccompanied youth.

(b) *Limit.* No more than 10 percent of the funds awarded to recipients within a single Continuum of Care's geographic area may be used to serve such persons.

(c) *Exception.* The 10 percent limitation does not apply to Continuums in which the rate of homelessness, as calculated in the most recent point-in-time count, is less than one-tenth of one percent of the total population.

**§578.91 Termination of assistance to program participants.**

(a) *Termination of assistance.* The recipient or subrecipient may terminate assistance to a program participant who violates program requirements or conditions of occupancy. Termination under this section does not bar the recipient or subrecipient from providing further assistance at a later date to the same individual or family.

(b) *Due process.* In terminating assistance to a program participant, the recipient or subrecipient must provide a formal process that recognizes the rights of individuals receiving assistance under the due process of law. This process, at a minimum, must consist of:

(1) Providing the program participant with a written copy of the program rules and the termination process be-

fore the participant begins to receive assistance;

(2) Written notice to the program participant containing a clear statement of the reasons for termination;

(3) A review of the decision, in which the program participant is given the opportunity to present written or oral objections before a person other than the person (or a subordinate of that person) who made or approved the termination decision; and

(4) Prompt written notice of the final decision to the program participant.

(c) *Hard-to-house populations.* Recipients and subrecipients that are providing permanent supportive housing for hard-to-house populations of homeless persons must exercise judgment and examine all extenuating circumstances in determining when violations are serious enough to warrant termination so that a program participant's assistance is terminated only in the most severe cases.

**§578.93 Fair Housing and Equal Opportunity.**

(a) *Nondiscrimination and equal opportunity requirements.* The nondiscrimination and equal opportunity requirements set forth in 24 CFR 5.105(a) are applicable.

(b) *Housing for specific subpopulations.* Recipients and subrecipients may exclusively serve a particular homeless subpopulation in transitional or permanent housing if the housing addresses a need identified by the Continuum of Care for the geographic area and meets one of the following:

(1) The housing may be limited to one sex where such housing consists of a single structure with shared bedrooms or bathing facilities such that the considerations of personal privacy and the physical limitations of the configuration of the housing make it appropriate for the housing to be limited to one sex;

(2) The housing may be limited to a specific subpopulation, so long as admission does not discriminate against any protected class under federal nondiscrimination laws in 24 CFR 5.105 (e.g., the housing may be limited to homeless veterans, victims of domestic violence and their children, or chronically homeless persons and families).

(3) The housing may be limited to families with children.

(4) If the housing has in residence at least one family with a child under the age of 18, the housing may exclude registered sex offenders and persons with a criminal record that includes a violent crime from the project so long as the child resides in the housing.

(5) Sober housing may exclude persons who refuse to sign an occupancy agreement or lease that prohibits program participants from possessing, using, or being under the influence of illegal substances and/or alcohol on the premises.

(6) If the housing is assisted with funds under a federal program that is limited by federal statute or Executive Order to a specific subpopulation, the housing may be limited to that subpopulation (*e.g.*, housing also assisted with funding from the Housing Opportunities for Persons with AIDS program under 24 CFR part 574 may be limited to persons with acquired immunodeficiency syndrome or related diseases).

(7) Recipients may limit admission to or provide a preference for the housing to subpopulations of homeless persons and families who need the specialized supportive services that are provided in the housing (*e.g.*, substance abuse addiction treatment, domestic violence services, or a high intensity package designed to meet the needs of hard-to-reach homeless persons). While the housing may offer services for a particular type of disability, no otherwise eligible individuals with disabilities or families including an individual with a disability, who may benefit from the services provided may be excluded on the grounds that they do not have a particular disability.

(c) *Affirmatively furthering fair housing.* A recipient must implement its programs in a manner that affirmatively furthers fair housing, which means that the recipient must:

(1) Affirmatively market their housing and supportive services to eligible persons regardless of race, color, national origin, religion, sex, age, familial status, or handicap who are least likely to apply in the absence of special outreach, and maintain records of those marketing activities;

(2) Where a recipient encounters a condition or action that impedes fair housing choice for current or prospective program participants, provide such information to the jurisdiction that provided the certification of consistency with the Consolidated Plan; and

(3) Provide program participants with information on rights and remedies available under applicable federal, State and local fair housing and civil rights laws.

(d) *Accessibility and integrative housing and services for persons with disabilities.* Recipients and subrecipients must comply with the accessibility requirements of the Fair Housing Act (24 CFR part 100), Section 504 of the Rehabilitation Act of 1973 (24 CFR part 8), and Titles II and III of the Americans with Disabilities Act, as applicable (28 CFR parts 35 and 36). In accordance with the requirements of 24 CFR 8.4(d), recipients must ensure that their program's housing and supportive services are provided in the most integrated setting appropriate to the needs of persons with disabilities.

(e) *Prohibition against involuntary family separation.* The age and gender of a child under age 18 must not be used as a basis for denying any family's admission to a project that receives funds under this part.

#### § 578.95 Conflicts of interest.

(a) *Procurement.* For the procurement of property (goods, supplies, or equipment) and services, the recipient and its subrecipients must comply with the codes of conduct and conflict-of-interest requirements under 24 CFR 85.36 (for governments) and 24 CFR 84.42 (for private nonprofit organizations).

(b) *Continuum of Care board members.* No Continuum of Care board member may participate in or influence discussions or resulting decisions concerning the award of a grant or other financial benefits to the organization that the member represents.

(c) *Organizational conflict.* An organizational conflict of interest arises when, because of activities or relationships with other persons or organizations, the recipient or subrecipient is unable or potentially unable to render impartial assistance in the provision of any type or amount of assistance under

this part, or when a covered person's, as in paragraph (d)(1) of this section, objectivity in performing work with respect to any activity assisted under this part is or might be otherwise impaired. Such an organizational conflict would arise when a board member of an applicant participates in decision of the applicant concerning the award of a grant, or provision of other financial benefits, to the organization that such member represents. It would also arise when an employee of a recipient or subrecipient participates in making rent reasonableness determinations under §578.49(b)(2) and §578.51(g) and housing quality inspections of property under §578.75(b) that the recipient, subrecipient, or related entity owns.

(d) *Other conflicts.* For all other transactions and activities, the following restrictions apply:

(1) No covered person, meaning a person who is an employee, agent, consultant, officer, or elected or appointed official of the recipient or its subrecipients and who exercises or has exercised any functions or responsibilities with respect to activities assisted under this part, or who is in a position to participate in a decision-making process or gain inside information with regard to activities assisted under this part, may obtain a financial interest or benefit from an assisted activity, have a financial interest in any contract, subcontract, or agreement with respect to an assisted activity, or have a financial interest in the proceeds derived from an assisted activity, either for him or herself or for those with whom he or she has immediate family or business ties, during his or her tenure or during the one-year period following his or her tenure.

(2) *Exceptions.* Upon the written request of the recipient, HUD may grant an exception to the provisions of this section on a case-by-case basis, taking into account the cumulative effects of the criteria in paragraph (d)(2)(ii) of this section, provided that the recipient has satisfactorily met the threshold requirements of paragraph (d)(2)(ii) of this section.

(i) *Threshold requirements.* HUD will consider an exception only after the recipient has provided the following documentation:

(A) Disclosure of the nature of the conflict, accompanied by a written assurance, if the recipient is a government, that there has been public disclosure of the conflict and a description of how the public disclosure was made; and if the recipient is a private nonprofit organization, that the conflict has been disclosed in accordance with their written code of conduct or other conflict-of-interest policy; and

(B) An opinion of the recipient's attorney that the interest for which the exception is sought would not violate State or local law, or if the subrecipient is a private nonprofit organization, the exception would not violate the organization's internal policies.

(ii) *Factors to be considered for exceptions.* In determining whether to grant a requested exception after the recipient has satisfactorily met the threshold requirements under paragraph (c)(3)(1) of this section, HUD must conclude that the exception will serve to further the purposes of the Continuum of Care program and the effective and efficient administration of the recipient's or subrecipient's project, taking into account the cumulative effect of the following factors, as applicable:

(A) Whether the exception would provide a significant cost benefit or an essential degree of expertise to the program or project that would otherwise not be available;

(B) Whether an opportunity was provided for open competitive bidding or negotiation;

(C) Whether the affected person has withdrawn from his or her functions, responsibilities, or the decision-making process with respect to the specific activity in question;

(D) Whether the interest or benefit was present before the affected person was in the position described in paragraph (c)(1) of this section;

(E) Whether undue hardship will result to the recipient, the subrecipient, or the person affected, when weighed against the public interest served by avoiding the prohibited conflict;

(F) Whether the person affected is a member of a group or class of persons intended to be the beneficiaries of the assisted activity, and the exception will permit such person to receive generally the same interests or benefits as

are being made available or provided to the group or class; and

(G) Any other relevant considerations.

#### § 578.97 Program income.

(a) *Defined.* Program income is the income received by the recipient or subrecipient directly generated by a grant-supported activity.

(b) *Use.* Program income earned during the grant term shall be retained by the recipient, and added to funds committed to the project by HUD and the recipient, used for eligible activities in accordance with the requirements of this part. Costs incident to the generation of program income may be deducted from gross income to calculate program income, provided that the costs have not been charged to grant funds.

(c) *Rent and occupancy charges.* Rents and occupancy charges collected from program participants are program income. In addition, rents and occupancy charges collected from residents of transitional housing may be reserved, in whole or in part, to assist the residents from whom they are collected to move to permanent housing.

#### § 578.99 Applicability of other federal requirements.

In addition to the requirements set forth in 24 CFR part 5, use of assistance provided under this part must comply with the following federal requirements:

(a) *Environmental review.* Activities under this part are subject to environmental review by HUD under 24 CFR part 50 as noted in § 578.31.

(b) *Section 6002 of the Solid Waste Disposal Act.* State agencies and agencies of a political subdivision of a state that are using assistance under this part for procurement, and any person contracting with such an agency with respect to work performed under an assisted contract, must comply with the requirements of Section 6003 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. In accordance with Section 6002, these agencies and persons must:

(1) Procure items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part

247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired in the preceding fiscal year exceeded \$10,000;

(2) Procure solid waste management services in a manner that maximizes energy and resource recovery; and

(3) Must have established an affirmative procurement program for the procurement of recovered materials identified in the EPA guidelines.

(c) *Transparency Act Reporting.* Section 872 of the Duncan Hunter Defense Appropriations Act of 2009, and additional requirements published by the Office of Management and Budget (OMB), requires recipients to report subawards made either as pass-through awards, subrecipient awards, or vendor awards in the Federal Government Web site [www.fdrs.gov](http://www.fdrs.gov) or its successor system. The reporting of award and subaward information is in accordance with the requirements of the Federal Financial Assistance Accountability and Transparency Act of 2006, as amended by section 6202 of Public Law 110-252 and in OMB Policy Guidance issued to the federal agencies on September 14, 2010 (75 FR 55669).

(d) *The Coastal Barrier Resources Act of 1982* (16 U.S.C. 3501 *et seq.*) may apply to proposals under this part, depending on the assistance requested.

(e) *Applicability of OMB Circulars.* The requirements of 24 CFR part 85—Administrative Requirements for Grants and Cooperative Agreements to State, Local, and Federally Recognized Indian Tribal Governments and 2 CFR part 225—Cost Principles for State, Local and Indian Tribal Governments (OMB Circular A-87)—apply to governmental recipients and subrecipients except where inconsistent with the provisions of this part. The requirements of 24 CFR part 84—Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations; 2 CFR part 230—Cost Principles for Non-Profit Organizations (OMB Circular A-122); and 2 CFR part

220—Cost Principles for Education Institutions apply to the nonprofit recipients and subrecipients, except where inconsistent with the provisions of the McKinney-Vento Act or this part.

(f) *Lead-based paint.* The Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851-4856), and implementing regulations at 24 CFR part 35, subparts A, B, H, J, K, M, and R apply to activities under this program.

(g) *Audit.* Recipients and subrecipients must comply with the audit requirements of OMB Circular A-133, "Audits of States, Local Governments, and Non-profit Organizations."

(h) *Davis-Bacon Act.* The provisions of the Davis-Bacon Act do not apply to this program.

(i) *Section 3 of the Housing and Urban Development Act.* Recipients and subrecipients must, as applicable, comply with Section 3 of the Housing and Urban Development Act of 1968 and its implementing regulations at 24 CFR part 135, as applicable.

### Subpart G—Grant Administration

#### §578.101 Technical assistance.

(a) *Purpose.* The purpose of Continuum of Care technical assistance is to increase the effectiveness with which Continuums of Care, eligible applicants, recipients, subrecipients, and UFAs implement and administer their Continuum of Care planning process; improve their capacity to prepare applications; prevent the separation of families in projects funded under the Emergency Solutions Grants, Continuum of Care, and Rural Housing Stability Assistance programs; and adopt and provide best practices in housing and services for persons experiencing homelessness.

(b) *Defined.* Technical assistance means the transfer of skills and knowledge to entities that may need, but do not possess, such skills and knowledge. The assistance may include, but is not limited to, written information such as papers, manuals, guides, and brochures; person-to-person exchanges; web-based curriculums, training and Webinars, and their costs.

(c) *Set-aside.* HUD may set aside funds annually to provide technical assistance, either directly by HUD staff or indirectly through third-party providers.

(d) *Awards.* From time to time, as HUD determines the need, HUD may advertise and competitively select providers to deliver technical assistance. HUD may enter into contracts, grants, or cooperative agreements, when necessary, to implement the technical assistance. HUD may also enter into agreements with other federal agencies for awarding the technical assistance funds.

#### §578.103 Recordkeeping requirements.

(a) *In general.* The recipient and its subrecipients must establish and maintain standard operating procedures for ensuring that Continuum of Care program funds are used in accordance with the requirements of this part and must establish and maintain sufficient records to enable HUD to determine whether the recipient and its subrecipients are meeting the requirements of this part, including:

(1) *Continuum of Care records.* Each collaborative applicant must keep the following documentation related to establishing and operating a Continuum of Care:

(i) Evidence that the Board selected by the Continuum of Care meets the requirements of §578.5(b);

(ii) Evidence that the Continuum has been established and operated as set forth in subpart B of this part, including published agendas and meeting minutes, an approved Governance Charter that is reviewed and updated annually, a written process for selecting a board that is reviewed and updated at least once every 5 years, evidence required for designating a single HMIS for the Continuum, and monitoring reports of recipients and subrecipients;

(iii) Evidence that the Continuum has prepared the application for funds as set forth in §578.9, including the designation of the eligible applicant to be the collaborative applicant.

(2) *Unified funding agency records.* UFAs that requested grant amendments from HUD, as set forth in §578.105, must keep evidence that the

grant amendment was approved by the Continuum. This evidence may include minutes of meetings at which the grant amendment was discussed and approved.

(3) *Homeless status.* Acceptable evidence of the homeless as status is set forth in 24 CFR 576.500(b).

(4) *At risk of homelessness status.* For those recipients and subrecipients that serve persons at risk of homelessness, the recipient or subrecipient must keep records that establish "at risk of homelessness" status of each individual or family who receives Continuum of Care homelessness prevention assistance. Acceptable evidence is found in 24 CFR 576.500(c).

(5) *Records of reasonable belief of imminent threat of harm.* For each program participant who moved to a different Continuum of Care due to imminent threat of further domestic violence, dating violence, sexual assault, or stalking under § 578.51(c)(3), each recipient or subrecipient of assistance under this part must retain:

(i) Documentation of the original incidence of domestic violence, dating violence, sexual assault, or stalking, only if the original violence is not already documented in the program participant's case file. This may be written observation of the housing or service provider; a letter or other documentation from a victim service provider, social worker, legal assistance provider, pastoral counselor, mental health provider, or other professional from whom the victim has sought assistance; medical or dental records; court records or law enforcement records; or written certification by the program participant to whom the violence occurred or by the head of household.

(ii) Documentation of the reasonable belief of imminent threat of further domestic violence, dating violence, or sexual assault or stalking, which would include threats from a third-party, such as a friend or family member of the perpetrator of the violence. This may be written observation by the housing or service provider; a letter or other documentation from a victim service provider, social worker, legal assistance provider, pastoral counselor, mental health provider, or other pro-

fessional from whom the victim has sought assistance; current restraining order; recent court order or other court records; law enforcement report or records; communication records from the perpetrator of the violence or family members or friends of the perpetrator of the violence, including emails, voicemails, text messages, and social media posts; or a written certification by the program participant to whom the violence occurred or the head of household.

(6) *Annual income.* For each program participant who receives housing assistance where rent or an occupancy charge is paid by the program participant, the recipient or subrecipient must keep the following documentation of annual income:

(i) Income evaluation form specified by HUD and completed by the recipient or subrecipient; and

(ii) Source documents (*e.g.*, most recent wage statement, unemployment compensation statement, public benefits statement, bank statement) for the assets held by the program participant and income received before the date of the evaluation;

(iii) To the extent that source documents are unobtainable, a written statement by the relevant third party (*e.g.*, employer, government benefits administrator) or the written certification by the recipient's or subrecipient's intake staff of the oral verification by the relevant third party of the income the program participant received over the most recent period; or

(iv) To the extent that source documents and third-party verification are unobtainable, the written certification by the program participant of the amount of income that the program participant is reasonably expected to receive over the 3-month period following the evaluation.

(7) *Program participant records.* In addition to evidence of "homeless" status or "at-risk-of-homelessness" status, as applicable, the recipient or subrecipient must keep records for each program participant that document:

(i) The services and assistance provided to that program participant, including evidence that the recipient or subrecipient has conducted an annual

assessment of services for those program participants that remain in the program for more than a year and adjusted the service package accordingly, and including case management services as provided in § 578.37(a)(1)(ii)(F); and

(ii) Where applicable, compliance with the termination of assistance requirement in § 578.91.

(8) *Housing standards.* The recipient or subrecipient must retain documentation of compliance with the housing standards in § 578.75(b), including inspection reports.

(9) *Services provided.* The recipient or subrecipient must document the types of supportive services provided under the recipient's program and the amounts spent on those services. The recipient or subrecipient must keep record that these records were reviewed at least annually and that the service package offered to program participants was adjusted as necessary.

(10) *Match.* The recipient must keep records of the source and use of contributions made to satisfy the match requirement in § 578.73. The records must indicate the grant and fiscal year for which each matching contribution is counted. The records must show how the value placed on third party in-kind contributions was derived. To the extent feasible, volunteer services must be supported by the same methods that the organization uses to support the allocation of regular personnel costs.

(11) *Conflicts of interest.* The recipient and its subrecipients must keep records to show compliance with the organizational conflict-of-interest requirements in § 578.95(c), the Continuum of Care board conflict-of-interest requirements in § 578.95(b), the other conflict requirements in § 578.95(d), a copy of the personal conflict-of-interest policy developed and implemented to comply with the requirements in § 578.95, and records supporting exceptions to the personal conflict-of-interest prohibitions.

(12) *Homeless participation.* The recipient or subrecipient must document its compliance with the homeless participation requirements under § 578.75(g).

(13) *Faith-based activities.* The recipient and its subrecipients must document their compliance with the faith-

based activities requirements under § 578.87(b).

(14) *Affirmatively Furthering Fair Housing.* Recipients and subrecipients must maintain copies of their marketing, outreach, and other materials used to inform eligible persons of the program to document compliance with the requirements in § 578.93(c).

(15) *Other federal requirements.* The recipient and its subrecipients must document their compliance with the federal requirements in § 578.99, as applicable.

(16) *Subrecipients and contractors.* (i) The recipient must retain copies of all solicitations of and agreements with subrecipients, records of all payment requests by and dates of payments made to subrecipients, and documentation of all monitoring and sanctions of subrecipients, as applicable.

(ii) The recipient must retain documentation of monitoring subrecipients, including any monitoring findings and corrective actions required.

(iii) The recipient and its subrecipients must retain copies of all procurement contracts and documentation of compliance with the procurement requirements in 24 CFR 85.36 and 24 CFR part 84.

(17) *Other records specified by HUD.* The recipient and subrecipients must keep other records specified by HUD.

(b) *Confidentiality.* In addition to meeting the specific confidentiality and security requirements for HMIS data, the recipient and its subrecipients must develop and implement written procedures to ensure:

(1) All records containing protected identifying information of any individual or family who applies for and/or receives Continuum of Care assistance will be kept secure and confidential;

(2) The address or location of any family violence project assisted with Continuum of Care funds will not be made public, except with written authorization of the person responsible for the operation of the project; and

(3) The address or location of any housing of a program participant will not be made public, except as provided under a preexisting privacy policy of

the recipient or subrecipient and consistent with State and local laws regarding privacy and obligations of confidentiality;

(c) *Period of record retention.* All records pertaining to Continuum of Care funds must be retained for the greater of 5 years or the period specified below. Copies made by microfilming, photocopying, or similar methods may be substituted for the original records.

(1) Documentation of each program participant's qualification as a family or individual at risk of homelessness or as a homeless family or individual and other program participant records must be retained for 5 years after the expenditure of all funds from the grant under which the program participant was served; and

(2) Where Continuum of Care funds are used for the acquisition, new construction, or rehabilitation of a project site, records must be retained until 15 years after the date that the project site is first occupied, or used, by program participants.

(d) *Access to records.* (1) *Federal Government rights.* Notwithstanding the confidentiality procedures established under paragraph (b) of this section, HUD, the HUD Office of the Inspector General, and the Comptroller General of the United States, or any of their authorized representatives, must have the right of access to all books, documents, papers, or other records of the recipient and its subrecipients that are pertinent to the Continuum of Care grant, in order to make audits, examinations, excerpts, and transcripts. These rights of access are not limited to the required retention period, but last as long as the records are retained.

(2) *Public rights.* The recipient must provide citizens, public agencies, and other interested parties with reasonable access to records regarding any uses of Continuum of Care funds the recipient received during the preceding 5 years, consistent with State and local laws regarding privacy and obligations of confidentiality and confidentiality requirements in this part.

(e) *Reports.* In addition to the reporting requirements in 24 CFR parts 84 and 85, the recipient must collect and report data on its use of Continuum of

Care funds in an Annual Performance Report (APR), as well as in any additional reports as and when required by HUD. Projects receiving grant funds only for acquisition, rehabilitation, or new construction must submit APRs for 15 years from the date of initial occupancy or the date of initial service provision, unless HUD provides an exception under § 578.81(e).

#### § 578.105 Grant and project changes.

(a) *For Unified Funding Agencies and Continuums having only one recipient.* (1) The recipient may not make any significant changes without prior HUD approval, evidenced by a grant amendment signed by HUD and the recipient. Significant grant changes include a change of recipient, a shift in a single year of more than 10 percent of the total amount awarded under the grant for one approved eligible activity category to another activity and a permanent change in the subpopulation served by any one project funded under the grant, as well as a permanent proposed reduction in the total number of units funded under the grant.

(2) Approval of substitution of the recipient is contingent on the new recipient meeting the capacity criteria in the NOFA under which the grant was awarded, or the most recent NOFA. Approval of shifting funds between activities and changing subpopulations is contingent on the change being necessary to better serve eligible persons within the geographic area and ensuring that the priorities established under the NOFA in which the grant was originally awarded, or the most recent NOFA, are met.

(b) *For Continuums having more than one recipient.* (1) The recipients or subrecipients may not make any significant changes to a project without prior HUD approval, evidenced by a grant amendment signed by HUD and the recipient. Significant changes include a change of recipient, a change of project site, additions or deletions in the types of eligible activities approved for a project, a shift of more than 10 percent from one approved eligible activity to another, a reduction in the number of units, and a change in the subpopulation served.



(2) Approval of substitution of the recipient is contingent on the new recipient meeting the capacity criteria in the NOFA under which the grant was awarded, or the most recent NOFA. Approval of shifting funds between activities and changing subpopulations is contingent on the change being necessary to better serve eligible persons within the geographic area and ensuring that the priorities established under the NOFA in which the grant was originally awarded, or the most recent NOFA, are met.

(c) *Documentation of changes not requiring a grant amendment.* Any other changes to an approved grant or project must be fully documented in the recipient's or subrecipient's records.

#### §578.107 Sanctions.

(a) *Performance reviews.* (1) HUD will review the performance of each recipient in carrying out its responsibilities under this part, with or without prior notice to the recipient. In conducting performance reviews, HUD will rely primarily on information obtained from the records and reports from the recipient and subrecipients, as well as information from on-site monitoring, audit reports, and information generated from HUD's financial and reporting systems (e.g., LOCCS and e-snaps) and HMIS. Where applicable, HUD may also consider relevant information pertaining to the recipient's performance gained from other sources, including citizen comments, complaint determinations, and litigation.

(2) If HUD determines preliminarily that the recipient or one of its subrecipients has not complied with a program requirement, HUD will give the recipient notice of this determination and an opportunity to demonstrate, within the time prescribed by HUD and on the basis of substantial facts and data that the recipient has complied with the requirements. HUD may change the method of payment to require the recipient to submit documentation before payment and obtain HUD's prior approval each time the recipient draws down funds. To obtain prior approval, the recipient may be required to manually submit its payment requests and supporting documentation

to HUD in order to show that the funds to be drawn down will be expended on eligible activities in accordance with all program requirements.

(3) If the recipient fails to demonstrate to HUD's satisfaction that the activities were carried out in compliance with program requirements, HUD may take one or more of the remedial actions or sanctions specified in paragraph (b) of this section.

(b) *Remedial actions and sanctions.* Remedial actions and sanctions for a failure to meet a program requirement will be designed to prevent a continuation of the deficiency; to mitigate, to the extent possible, its adverse effects or consequences; and to prevent its recurrence.

(1) HUD may instruct the recipient to submit and comply with proposals for action to correct, mitigate, and prevent noncompliance with program requirements, including:

(i) Preparing and following a schedule of actions for carrying out activities and projects affected by the noncompliance, including schedules, timetables, and milestones necessary to implement the affected activities and projects;

(ii) Establishing and following a management plan that assigns responsibilities for carrying out the remedial actions;

(iii) Canceling or revising activities or projects likely to be affected by the noncompliance, before expending grant funds for them;

(iv) Reprogramming grant funds that have not yet been expended from affected activities or projects to other eligible activities or projects;

(v) Suspending disbursement of grant funds for some or all activities or projects;

(vi) Reducing or terminating the remaining grant of a subrecipient and either reallocating those funds to other subrecipients or returning funds to HUD; and

(vii) Making matching contributions before or as draws are made from the recipient's grant.

(2) HUD may change the method of payment to a reimbursement basis.

(3) HUD may suspend payments to the extent HUD determines necessary

to preclude the further expenditure of funds for affected activities or projects.

(4) HUD may continue the grant with a substitute recipient of HUD's choosing.

(5) HUD may deny matching credit for all or part of the cost of the affected activities and require the recipient to make further matching contributions to make up for the contribution determined to be ineligible.

(6) HUD may require the recipient to reimburse the recipient's line of credit in an amount equal to the funds used for the affected activities.

(7) HUD may reduce or terminate the remaining grant of a recipient.

(8) HUD may condition a future grant.

(9) HUD may take other remedies that are legally available.

(c) *Recipient sanctions.* If the recipient determines that a subrecipient is not complying with a program requirement or its subrecipient agreement, the recipient must take one of the actions listed in paragraphs (a) and (b) of this section.

(d) *Deobligation.* HUD may deobligate funds for the following reasons:

(1) If the timeliness standards in § 578.85 are not met;

(2) If HUD determines that delays completing construction activities for a project will mean that the funds for other funded activities cannot reasonably be expected to be expended for eligible costs during the remaining term of the grant;

(3) If the actual total cost of acquisition, rehabilitation, or new construction for a project is less than the total cost agreed to in the grant agreement;

(4) If the actual annual leasing costs, operating costs, supportive services costs, rental assistance costs, or HMIS costs are less than the total cost agreed to in the grant agreement for a one-year period;

(5) Program participants have not moved into units within 3 months of the time that the units are available for occupancy; and

(6) The grant agreement may set forth in detail other circumstances under which funds may be deobligated and other sanctions may be imposed.

#### § 578.109 Closeout.

(a) *In general.* Grants will be closed out in accordance with the requirements of 24 CFR parts 84 and 85, and closeout procedures established by HUD.

(b) *Reports.* Applicants must submit all reports required by HUD no later than 90 days from the date of the end of the project's grant term.

(c) *Closeout agreement.* Any obligations remaining as of the date of the closeout must be covered by the terms of a closeout agreement. The agreement will be prepared by HUD in consultation with the recipient. The agreement must identify the grant being closed out, and include provisions with respect to the following:

(1) Identification of any closeout costs or contingent liabilities subject to payment with Continuum of Care program funds after the closeout agreement is signed;

(2) Identification of any unused grant funds to be deobligated by HUD;

(3) Identification of any program income on deposit in financial institutions at the time the closeout agreement is signed;

(4) Description of the recipient's responsibility after closeout for:

(i) Compliance with all program requirements in using program income on deposit at the time the closeout agreement is signed and in using any other remaining Continuum of Care program funds available for closeout costs and contingent liabilities;

(ii) Use of real property assisted with Continuum of Care program funds in accordance with the terms of commitment and principles;

(iii) Use of personal property purchased with Continuum of Care program funds; and

(iv) Compliance with requirements governing program income received subsequent to grant closeout.

(5) Other provisions appropriate to any special circumstances of the grant closeout, in modification of or in addition to the obligations in paragraphs (c)(1) through (4) of this section.

July 17, 2014

Board of Commissioners  
Clackamas County

Members of the Board:

Approval of a Grant Agreement Amendment #2 from the U.S. Department of Housing and Urban Development, Continuum of Care Program, for the HOPE Leasing Program for the Purpose of Providing Permanent Housing

<b>Propose/ Outcomes</b>	Approval of a grant agreement amendment #2 for the Continuum of Care Program for the HOPE Leasing Program for the purpose of providing permanent housing and services for the homeless.
<b>Dollar Amount and Fiscal Impact</b>	Total amount of the amendment is \$198,229, bringing the grant total to \$411,531. The grant requires a 25% match or in-kind contribution, which is met through Emergency Housing Account (EHA) state funds and in-kind services from area providers. No County General Funds are involved.
<b>Funding Source</b>	U.S. Department of Housing and Urban Development
<b>Safety Impact</b>	None
<b>Duration</b>	July 1, 2014 to June 30, 2015, with an option for renewal
<b>Previous Board Action</b>	Approval to Apply for this grant was approved on December 11, 2013
<b>Contact Person</b>	Brenda Durbin, Director, Social Services Division - 503-655-8641
<b>Contract No.</b>	6292

**Background**

The Social Services Division of the Health, Housing & Human Services Department requests the approval of a grant agreement amendment #2 from the U.S. Department of Housing and Urban Development, Continuum of Care Program, for the HOPE Leasing Program, for the purpose of providing permanent housing. Chronically homeless individuals receive support services, case management and housing with the use of these grant funds. This program provides permanent housing by paying for housing deposits and rental assistance. A minimum of 15 households receive assistance each year.

The grant agreement amendment was received from HUD on June 23, 2014 and approved by County Counsel on July 8, 2014.

**Recommendation**

We recommend the approval of this grant agreement amendment and that Cindy Becker, Director of Health, Housing & Human Services is authorized to sign all documents necessary to accomplish this action on behalf of the Board of County Commissioners.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Cindy Becker", with a long horizontal flourish extending to the right.

Cindy Becker,  
Director

Tax ID Number: 93-6002286  
Grant Number: OR0100L0E071306  
DUNS Number: 096992656

EXHIBIT 2  
SCOPE OF WORK for FY2013 COMPETITION

1. This Agreement is governed by the Continuum of Care program Interim Rule attached hereto and made a part hereof as Exhibit 1a. Upon publication for effect of a Final Rule for the Continuum of Care program, the Final Rule will govern this Agreement instead of the Interim Rule. The project listed on this Exhibit at 3., below, is also subject to the terms of the FY2013 Notice of Funds Availability.
2. The Continuum that designated Recipient to apply for grant funds is not a high-performing community.
3. Recipient is not a Unified Funding Agency and was not the only Applicant the Continuum of Care designated to apply for and receive grant funds and is not the only Recipient for the Continuum of Care that designated it. HUD's total funding obligation for this grant is \$198229 for project number OR0100L0E071306. In accordance with 24 CFR 578.105(b), Recipient is prohibited from moving more than 10% from one budget line item in a project's approved budget to another without a written amendment to this Agreement. The obligation for this project shall be allocated as follows:

a. CoC Planning cost	\$ 0
b. Acquisition	\$ 0
c. New construction	\$ 0
d. Rehabilitation	\$ 0
e. Leasing	\$ 0
f. Rental assistance	\$ 123660
i. Tenant-based rental assistance	\$
ii. Project-based rental assistance	\$
iii. Sponsor-based rental assistance	\$
g. Supportive services	\$ 63342
h. Operating costs	\$ 0
i. HMIS	\$ 0
j. Administration	\$ 11227

4. No funds for new projects may be drawn down by Recipient until HUD has approved site control pursuant to §578.21 and §578.25 and no funds for renewal projects may be drawn down by Recipient before the end date of the project's final operating year under the grant that has been renewed.
5. Nothing in this grant agreement shall be construed as creating or justifying any claim against the federal government or the grantee by any third party.

This agreement is hereby executed on behalf of the parties as follows:

**UNITED STATES OF AMERICA,  
Secretary of Housing and Urban Development**

By:



\_\_\_\_\_  
(Signature)

Douglas Carlson, Director  
\_\_\_\_\_  
(Typed Name and Title)

June 23, 2014  
\_\_\_\_\_  
(Date)

**RECIPIENT**

Clackamas Dept. Health, Housing & Human Svcs  
\_\_\_\_\_  
(Name of Organization)

By:

\_\_\_\_\_  
(Signature of Authorized Official)

Cindy Becker, Director  
\_\_\_\_\_  
(Typed Name and Title of Authorized Official)

\_\_\_\_\_  
(Date)

**Exhibit 1a**

**Continuum of Care Program Interim Rule**



Ofc. of Asst. Secy., Comm. Planning, Develop., HUD

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(iv) Reprogramming ESG funds that have not yet been expended from affected activities to other eligible activities;

(v) Suspending disbursement of ESG funds for some or all activities;

(vi) Reducing or terminating the remaining grant of a subrecipient and reallocating those funds to other subrecipients; and

(vii) Making matching contributions before or as draws are made from the recipient's ESG grant.

(2) HUD may change the method of payment to a reimbursement basis.

(3) HUD may suspend payments to the extent HUD deems it necessary to preclude the further expenditure of funds for affected activities.

(4) HUD may remove the recipient from participation in reallocations of funds under subpart D of this part.

(5) HUD may deny matching credit for all or part of the cost of the affected activities and require the recipient to make further matching contributions to make up for the contribution determined to be ineligible.

(6) HUD may require the recipient to reimburse its line of credit in an amount equal to the funds used for the affected activities.

(7) HUD may reduce or terminate the remaining grant of a recipient and reallocate those funds to other recipients in accordance with subpart D of this part.

(8) HUD may condition a future grant.

(9) HUD may take other remedies that are legally available.

(c) *Recipient sanctions.* If the recipient determines that a subrecipient is not complying with an ESG program requirement or its subgrant agreement, the recipient must take appropriate actions, as prescribed for HUD in paragraphs (a) and (b) of this section. If the recipient is a State and funds become available as a result of an action under this section, the recipient must reallocate those funds to other subrecipients as soon as practicable. If the recipient is a unit of general purpose local government of territory, it must either reallocate those funds to other subrecipients or reprogram the funds for other activities to be carried out by the recipient as soon as practicable. The recipient

must amend its Consolidated Plan in accordance with its citizenship participation plan if funds become available and are reallocated or reprogrammed under this section. The reallocated or reprogrammed funds must be used by the expenditure deadline in § 576.203.

**PART 578—CONTINUUM OF CARE PROGRAM**

**Subpart A—General Provisions**

Sec.

578.1 Purpose and scope.

578.3 Definitions.

**Subpart B—Establishing and Operating a Continuum of Care**

578.5 Establishing the Continuum of Care.

578.7 Responsibilities of the Continuum of Care.

578.9 Preparing an application for funds.

578.11 Unified Funding Agency.

578.13 Remedial action.

**Subpart C—Application and Grant Award Process**

578.15 Eligible applicants.

578.17 Overview of application and grant award process.

578.19 Application process.

578.21 Awarding funds.

578.23 Executing grant agreements.

578.25 Site control.

578.27 Consolidated plan.

578.29 Subsidy layering.

578.31 Environmental review.

578.33 Renewals.

578.35 Appeal.

**Subpart D—Program Components and Eligible Costs**

578.37 Program components and uses of assistance.

578.39 Continuum of Care planning activities.

578.41 Unified Funding Agency costs.

578.43 Acquisition.

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578.59 Project administrative costs.

578.61 Relocation costs.

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## § 578.1

## 24 CFR Ch. V (4-1-13 Edition)

### Subpart E—High-Performing Communities

- 578.65 Standards.
- 578.67 Publication of application.
- 578.69 Cooperation among entities.
- 578.71 HPC-eligible activities.

### Subpart F—Program Requirements

- 578.73 Matching requirements.
- 578.75 General operations.
- 578.77 Calculating occupancy charges and rent.
- 578.79 Limitation on transitional housing.
- 578.81 Term of commitment, repayment of grants, and prevention of undue benefits.
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- 578.85 Timeliness standards.
- 578.87 Limitation on use of funds.
- 578.89 Limitation on use of grant funds to serve persons defined as homeless under other federal laws.
- 578.91 Termination of assistance to program participants.
- 578.93 Fair Housing and Equal Opportunity.
- 578.95 Conflicts of interest.
- 578.97 Program income.
- 578.99 Applicability of other federal requirements.

### Subpart G—Grant Administration

- 578.101 Technical assistance.
- 578.103 Recordkeeping requirements.
- 578.105 Grant and project changes.
- 578.107 Sanctions.
- 578.109 Closeout.

AUTHORITY: 42 U.S.C. 11371 *et seq.*, 42 U.S.C. 3535(d).

SOURCE: 77 FR 45442, July 31, 2012, unless otherwise noted.

### Subpart A—General Provisions

#### § 578.1 Purpose and scope.

(a) The Continuum of Care program is authorized by subtitle C of title IV of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11381–11389).

(b) The program is designed to:

- (1) Promote communitywide commitment to the goal of ending homelessness;
- (2) Provide funding for efforts by non-profit providers, States, and local governments to quickly rehouse homeless individuals (including unaccompanied youth) and families, while minimizing the trauma and dislocation caused to homeless individuals, families, and communities by homelessness;

(3) Promote access to and effective utilization of mainstream programs by homeless individuals and families; and

(4) Optimize self-sufficiency among individuals and families experiencing homelessness.

#### § 578.3 Definitions.

As used in this part:

*Act* means the McKinney-Vento Homeless Assistance Act as amended (42 U.S.C. 11371 *et seq.*).

*Annual renewal amount* means the amount that a grant can be awarded on an annual basis when renewed. It includes funds only for those eligible activities (operating, supportive services, leasing, rental assistance, HMIS, and administration) that were funded in the original grant (or the original grant as amended), less the unrenovable activities (acquisition, new construction, rehabilitation, and any administrative costs related to these activities).

*Applicant* means an eligible applicant that has been designated by the Continuum of Care to apply for assistance under this part on behalf of that Continuum.

*At risk of homelessness.* (1) An individual or family who:

(i) Has an annual income below 30 percent of median family income for the area, as determined by HUD;

(ii) Does not have sufficient resources or support networks, *e.g.*, family, friends, faith-based or other social networks, immediately available to prevent them from moving to an emergency shelter or another place described in paragraph (1) of the “Homeless” definition in this section; and

(iii) Meets one of the following conditions:

(A) Has moved because of economic reasons two or more times during the 60 days immediately preceding the application for homelessness prevention assistance;

(B) Is living in the home of another because of economic hardship;

(C) Has been notified in writing that their right to occupy their current housing or living situation will be terminated within 21 days of the date of application for assistance;

(D) Lives in a hotel or motel and the cost of the hotel or motel stay is not paid

by charitable organizations or by federal, State, or local government programs for low-income individuals;

(E) Lives in a single-room occupancy or efficiency apartment unit in which there reside more than two persons, or lives in a larger housing unit in which there reside more than 1.5 people per room, as defined by the U.S. Census Bureau;

(F) Is exiting a publicly funded institution, or system of care (such as a health-care facility, a mental health facility, foster care or other youth facility, or correction program or institution); or

(G) Otherwise lives in housing that has characteristics associated with instability and an increased risk of homelessness, as identified in the recipient's approved consolidated plan;

(2) A child or youth who does not qualify as "homeless" under this section, but qualifies as "homeless" under section 387(3) of the Runaway and Homeless Youth Act (42 U.S.C. 5732a(3)), section 637(11) of the Head Start Act (42 U.S.C. 9832(11)), section 41403(6) of the Violence Against Women Act of 1994 (42 U.S.C. 14043e-2(6)), section 330(h)(5)(A) of the Public Health Service Act (42 U.S.C. 254b(h)(5)(A)), section 3(m) of the Food and Nutrition Act of 2008 (7 U.S.C. 2012(m)), or section 17(b)(15) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(b)(15)); or

(3) A child or youth who does not qualify as "homeless" under this section, but qualifies as "homeless" under section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2)), and the parent(s) or guardian(s) of that child or youth if living with her or him.

*Centralized or coordinated assessment system* means a centralized or coordinated process designed to coordinate program participant intake assessment and provision of referrals. A centralized or coordinated assessment system covers the geographic area, is easily accessed by individuals and families seeking housing or services, is well advertised, and includes a comprehensive and standardized assessment tool.

*Chronically homeless.* (1) An individual who:

(i) Is homeless and lives in a place not meant for human habitation, a safe haven, or in an emergency shelter; and

(ii) Has been homeless and living or residing in a place not meant for human habitation, a safe haven, or in an emergency shelter continuously for at least one year or on at least four separate occasions in the last 3 years; and

(iii) Can be diagnosed with one or more of the following conditions: substance use disorder, serious mental illness, developmental disability (as defined in section 102 of the Developmental Disabilities Assistance Bill of Rights Act of 2000 (42 U.S.C. 15002)), post-traumatic stress disorder, cognitive impairments resulting from brain injury, or chronic physical illness or disability;

(2) An individual who has been residing in an institutional care facility, including a jail, substance abuse or mental health treatment facility, hospital, or other similar facility, for fewer than 90 days and met all of the criteria in paragraph (1) of this definition, before entering that facility; or

(3) A family with an adult head of household (or if there is no adult in the family, a minor head of household) who meets all of the criteria in paragraph (1) of this definition, including a family whose composition has fluctuated while the head of household has been homeless.

*Collaborative applicant* means the eligible applicant that has been designated by the Continuum of Care to apply for a grant for Continuum of Care planning funds under this part on behalf of the Continuum.

*Consolidated plan* means the HUD-approved plan developed in accordance with 24 CFR 91.

*Continuum of Care and Continuum* means the group organized to carry out the responsibilities required under this part and that is composed of representatives of organizations, including non-profit homeless providers, victim service providers, faith-based organizations, governments, businesses, advocates, public housing agencies, school

districts, social service providers, mental health agencies, hospitals, universities, affordable housing developers, law enforcement, organizations that serve homeless and formerly homeless veterans, and homeless and formerly homeless persons to the extent these groups are represented within the geographic area and are available to participate.

*Developmental disability* means, as defined in section 102 of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (42 U.S.C. 15002):

(1) A severe, chronic disability of an individual that—

(i) Is attributable to a mental or physical impairment or combination of mental and physical impairments;

(ii) Is manifested before the individual attains age 22;

(iii) Is likely to continue indefinitely;

(iv) Results in substantial functional limitations in three or more of the following areas of major life activity:

(A) Self-care;

(B) Receptive and expressive language;

(C) Learning;

(D) Mobility;

(E) Self-direction;

(F) Capacity for independent living;

(G) Economic self-sufficiency.

(v) Reflects the individual's need for a combination and sequence of special, interdisciplinary, or generic services, individualized supports, or other forms of assistance that are of lifelong or extended duration and are individually planned and coordinated.

(2) An individual from birth to age 9, inclusive, who has a substantial developmental delay or specific congenital or acquired condition, may be considered to have a developmental disability without meeting three or more of the criteria described in paragraphs (1)(i) through (v) of the definition of "developmental disability" in this section if the individual, without services and supports, has a high probability of meeting these criteria later in life.

*Eligible applicant* means a private nonprofit organization, State, local government, or instrumentality of State and local government.

*Emergency shelter* is defined in 24 CFR part 576.

*Emergency Solutions Grants (ESG)* means the grants provided under 24 CFR part 576.

*Fair Market Rent (FMR)* means the Fair Market Rents published in the FEDERAL REGISTER annually by HUD.

*High-performing community (HPC)* means a Continuum of Care that meets the standards in subpart E of this part and has been designated as a high-performing community by HUD.

*Homeless* means:

(1) An individual or family who lacks a fixed, regular, and adequate nighttime residence, meaning:

(i) An individual or family with a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings, including a car, park, abandoned building, bus or train station, airport, or camping ground;

(ii) An individual or family living in a supervised publicly or privately operated shelter designated to provide temporary living arrangements (including congregate shelters, transitional housing, and hotels and motels paid for by charitable organizations or by federal, State, or local government programs for low-income individuals); or

(iii) An individual who is exiting an institution where he or she resided for 90 days or less and who resided in an emergency shelter or place not meant for human habitation immediately before entering that institution;

(2) An individual or family who will imminently lose their primary nighttime residence, provided that:

(i) The primary nighttime residence will be lost within 14 days of the date of application for homeless assistance;

(ii) No subsequent residence has been identified; and

(iii) The individual or family lacks the resources or support networks, *e.g.*, family, friends, faith-based or other social networks, needed to obtain other permanent housing;

(3) Unaccompanied youth under 25 years of age, or families with children and youth, who do not otherwise qualify as homeless under this definition, but who:

(i) Are defined as homeless under section 387 of the Runaway and Homeless Youth Act (42 U.S.C. 5732a), section 637

of the Head Start Act (42 U.S.C. 9832), section 41403 of the Violence Against Women Act of 1994 (42 U.S.C. 14043e-2), section 330(h) of the Public Health Service Act (42 U.S.C. 254b(h)), section 3 of the Food and Nutrition Act of 2008 (7 U.S.C. 2012), section 17(b) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(b)), or section 725 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a);

(ii) Have not had a lease, ownership interest, or occupancy agreement in permanent housing at any time during the 60 days immediately preceding the date of application for homeless assistance;

(iii) Have experienced persistent instability as measured by two moves or more during the 60-day period immediately preceding the date of applying for homeless assistance; and

(iv) Can be expected to continue in such status for an extended period of time because of chronic disabilities; chronic physical health or mental health conditions; substance addiction; histories of domestic violence or childhood abuse (including neglect); the presence of a child or youth with a disability; or two or more barriers to employment, which include the lack of a high school degree or General Education Development (GED), illiteracy, low English proficiency, a history of incarceration or detention for criminal activity, and a history of unstable employment; or

(4) Any individual or family who:

(i) Is fleeing, or is attempting to flee, domestic violence, dating violence, sexual assault, stalking, or other dangerous or life-threatening conditions that relate to violence against the individual or a family member, including a child, that has either taken place within the individual's or family's primary nighttime residence or has made the individual or family afraid to return to their primary nighttime residence;

(ii) Has no other residence; and

(iii) Lacks the resources or support networks, e.g., family, friends, and faith-based or other social networks, to obtain other permanent housing.

*Homeless Management Information System (HMIS)* means the information system designated by the Continuum of

Care to comply with the HMIS requirements prescribed by HUD.

*HMIS Lead* means the entity designated by the Continuum of Care in accordance with this part to operate the Continuum's HMIS on its behalf.

*Permanent housing* means community-based housing without a designated length of stay, and includes both permanent supportive housing and rapid rehousing. To be permanent housing, the program participant must be the tenant on a lease for a term of at least one year, which is renewable for terms that are a minimum of one month long, and is terminable only for cause.

*Permanent supportive housing* means permanent housing in which supportive services are provided to assist homeless persons with a disability to live independently.

*Point-in-time count* means a count of sheltered and unsheltered homeless persons carried out on one night in the last 10 calendar days of January or at such other time as required by HUD.

*Private nonprofit organization* means an organization:

(1) No part of the net earnings of which inure to the benefit of any member, founder, contributor, or individual;

(2) That has a voluntary board;

(3) That has a functioning accounting system that is operated in accordance with generally accepted accounting principles, or has designated a fiscal agent that will maintain a functioning accounting system for the organization in accordance with generally accepted accounting principles; and

(4) That practices nondiscrimination in the provision of assistance.

A private nonprofit organization does not include governmental organizations, such as public housing agencies.

*Program participant* means an individual (including an unaccompanied youth) or family who is assisted with Continuum of Care program funds.

*Project* means a group of eligible activities, such as HMIS costs, identified as a project in an application to HUD for Continuum of Care funds and includes a structure (or structures) that is (are) acquired, rehabilitated, constructed, or leased with assistance provided under this part or with respect to which HUD provides rental assistance

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or annual payments for operating costs, or supportive services under this subtitle.

*Recipient* means an applicant that signs a grant agreement with HUD.

*Safe haven* means, for the purpose of defining chronically homeless, supportive housing that meets the following:

- (1) Serves hard to reach homeless persons with severe mental illness who came from the streets and have been unwilling or unable to participate in supportive services;
- (2) Provides 24-hour residence for eligible persons for an unspecified period;
- (3) Has an overnight capacity limited to 25 or fewer persons; and
- (4) Provides low-demand services and referrals for the residents.

*State* means each of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, Guam, the Commonwealth of the Northern Marianas, and the Virgin Islands.

*Subrecipient* means a private nonprofit organization, State, local government, or instrumentality of State or local government that receives a subgrant from the recipient to carry out a project.

*Transitional housing* means housing, where all program participants have signed a lease or occupancy agreement, the purpose of which is to facilitate the movement of homeless individuals and families into permanent housing within 24 months or such longer period as HUD determines necessary. The program participant must have a lease or occupancy agreement for a term of at least one month that ends in 24 months and cannot be extended.

*Unified Funding Agency* (UFA) means an eligible applicant selected by the Continuum of Care to apply for a grant for the entire Continuum, which has the capacity to carry out the duties in § 578.11(b), which is approved by HUD and to which HUD awards a grant.

*Victim service provider* means a private nonprofit organization whose primary mission is to provide services to victims of domestic violence, dating violence, sexual assault, or stalking. This term includes rape crisis centers, battered women's shelters, domestic vio-

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lence transitional housing programs, and other programs.

### Subpart B—Establishing and Operating a Continuum of Care

#### § 578.5 Establishing the Continuum of Care.

(a) *The Continuum of Care.* Representatives from relevant organizations within a geographic area shall establish a Continuum of Care for the geographic area to carry out the duties of this part. Relevant organizations include nonprofit homeless assistance providers, victim service providers, faith-based organizations, governments, businesses, advocates, public housing agencies, school districts, social service providers, mental health agencies, hospitals, universities, affordable housing developers, law enforcement, and organizations that serve veterans and homeless and formerly homeless individuals.

(b) *The board.* The Continuum of Care must establish a board to act on behalf of the Continuum using the process established as a requirement by § 578.7(a)(3) and must comply with the conflict-of-interest requirements at § 578.95(b). The board must:

- (1) Be representative of the relevant organizations and of projects serving homeless subpopulations; and
- (2) Include at least one homeless or formerly homeless individual.

(c) *Transition.* Continuums of Care shall have 2 years after August 30, 2012 to comply with the requirements of paragraph (b) of this section.

#### § 578.7 Responsibilities of the Continuum of Care.

(a) *Operate the Continuum of Care.* The Continuum of Care must:

- (1) Hold meetings of the full membership, with published agendas, at least semi-annually;
- (2) Make an invitation for new members to join publicly available within the geographic area at least annually;
- (3) Adopt and follow a written process to select a board to act on behalf of the Continuum of Care. The process must be reviewed, updated, and approved by the Continuum at least once every 5 years;

(4) Appoint additional committees, subcommittees, or workgroups;

(5) In consultation with the collaborative applicant and the HMIS Lead, develop, follow, and update annually a governance charter, which will include all procedures and policies needed to comply with subpart B of this part and with HMIS requirements as prescribed by HUD; and a code of conduct and recusal process for the board, its chair(s), and any person acting on behalf of the board;

(6) Consult with recipients and subrecipients to establish performance targets appropriate for population and program type, monitor recipient and subrecipient performance, evaluate outcomes, and take action against poor performers;

(7) Evaluate outcomes of projects funded under the Emergency Solutions Grants program and the Continuum of Care program, and report to HUD;

(8) In consultation with recipients of Emergency Solutions Grants program funds within the geographic area, establish and operate either a centralized or coordinated assessment system that provides an initial, comprehensive assessment of the needs of individuals and families for housing and services. The Continuum must develop a specific policy to guide the operation of the centralized or coordinated assessment system on how its system will address the needs of individuals and families who are fleeing, or attempting to flee, domestic violence, dating violence, sexual assault, or stalking, but who are seeking shelter or services from non-victim service providers. This system must comply with any requirements established by HUD by Notice.

(9) In consultation with recipients of Emergency Solutions Grants program funds within the geographic area, establish and consistently follow written standards for providing Continuum of Care assistance. At a minimum, these written standards must include:

(i) Policies and procedures for evaluating individuals' and families' eligibility for assistance under this part;

(ii) Policies and procedures for determining and prioritizing which eligible individuals and families will receive transitional housing assistance;

(iii) Policies and procedures for determining and prioritizing which eligible individuals and families will receive rapid rehousing assistance;

(iv) Standards for determining what percentage or amount of rent each program participant must pay while receiving rapid rehousing assistance;

(v) Policies and procedures for determining and prioritizing which eligible individuals and families will receive permanent supportive housing assistance; and

(vi) Where the Continuum is designated a high-performing community, as described in subpart G of this part, policies and procedures set forth in 24 CFR 576.400(e)(3)(vi), (e)(3)(vii), (e)(3)(viii), and (e)(3)(ix).

(b) *Designating and operating an HMIS.* The Continuum of Care must:

(1) Designate a single Homeless Management Information System (HMIS) for the geographic area;

(2) Designate an eligible applicant to manage the Continuum's HMIS, which will be known as the HMIS Lead;

(3) Review, revise, and approve a privacy plan, security plan, and data quality plan for the HMIS.

(4) Ensure consistent participation of recipients and subrecipients in the HMIS; and

(5) Ensure the HMIS is administered in compliance with requirements prescribed by HUD.

(c) *Continuum of Care planning.* The Continuum must develop a plan that includes:

(1) Coordinating the implementation of a housing and service system within its geographic area that meets the needs of the homeless individuals (including unaccompanied youth) and families. At a minimum, such system encompasses the following:

(i) Outreach, engagement, and assessment;

(ii) Shelter, housing, and supportive services;

(iii) Prevention strategies.

(2) Planning for and conducting, at least biennially, a point-in-time count of homeless persons within the geographic area that meets the following requirements:

(i) Homeless persons who are living in a place not designed or ordinarily

used as a regular sleeping accommodation for humans must be counted as unsheltered homeless persons.

(ii) Persons living in emergency shelters and transitional housing projects must be counted as sheltered homeless persons.

(iii) Other requirements established by HUD by Notice.

(3) Conducting an annual gaps analysis of the homeless needs and services available within the geographic area;

(4) Providing information required to complete the Consolidated Plan(s) within the Continuum's geographic area;

(5) Consulting with State and local government Emergency Solutions Grants program recipients within the Continuum's geographic area on the plan for allocating Emergency Solutions Grants program funds and reporting on and evaluating the performance of Emergency Solutions Grants program recipients and subrecipients.

**§ 578.9 Preparing an application for funds.**

(a) The Continuum must:

(1) Design, operate, and follow a collaborative process for the development of applications and approve the submission of applications in response to a NOFA published by HUD under § 578.19 of this subpart;

(2) Establish priorities for funding projects in the geographic area;

(3) Determine if one application for funding will be submitted for all projects within the geographic area or if more than one application will be submitted for the projects within the geographic area;

(i) If more than one application will be submitted, designate an eligible applicant to be the collaborative applicant that will collect and combine the required application information from all applicants and for all projects within the geographic area that the Continuum has selected funding. The collaborative applicant will also apply for Continuum of Care planning activities. If the Continuum is an eligible applicant, it may designate itself;

(ii) If only one application will be submitted, that applicant will be the collaborative applicant and will collect and combine the required application

information from all projects within the geographic area that the Continuum has selected for funding and apply for Continuum of Care planning activities;

(b) The Continuum retains all of its responsibilities, even if it designates one or more eligible applicants other than itself to apply for funds on behalf of the Continuum. This includes approving the Continuum of Care application.

**§ 578.11 Unified Funding Agency.**

(a) *Becoming a Unified Funding Agency.* To become designated as the Unified Funding Agency (UFA) for a Continuum, a collaborative applicant must be selected by the Continuum to apply to HUD to be designated as the UFA for the Continuum.

(b) *Criteria for designating a UFA.* HUD will consider these criteria when deciding whether to designate a collaborative applicant a UFA:

(1) The Continuum of Care it represents meets the requirements in § 578.7;

(2) The collaborative applicant has financial management systems that meet the standards set forth in 24 CFR 84.21 (for nonprofit organizations) and 24 CFR 85.20 (for States);

(3) The collaborative applicant demonstrates the ability to monitor subrecipients; and

(4) Such other criteria as HUD may establish by NOFA.

(c) *Requirements.* HUD-designated UFAs shall:

(1) Apply to HUD for funding for all of the projects within the geographic area and enter into a grant agreement with HUD for the entire geographic area.

(2) Enter into legally binding agreements with subrecipients, and receive and distribute funds to subrecipients for all projects within the geographic area.

(3) Require subrecipients to establish fiscal control and accounting procedures as necessary to assure the proper disbursement of and accounting for federal funds in accordance with the requirements of 24 CFR parts 84 and 85 and corresponding OMB circulars.

(4) Obtain approval of any proposed grant agreement amendments by the



Continuum of Care before submitting a request for an amendment to HUD.

#### §578.13 Remedial action.

(a) If HUD finds that the Continuum of Care for a geographic area does not meet the requirements of the Act or its implementing regulations, or that there is no Continuum for a geographic area, HUD may take remedial action to ensure fair distribution of grant funds within the geographic area. Such measures may include:

(1) Designating a replacement Continuum of Care for the geographic area;

(2) Designating a replacement collaborative applicant for the Continuum's geographic area; and

(3) Accepting applications from other eligible applicants within the Continuum's geographic area.

(b) HUD must provide a 30-day prior written notice to the Continuum and its collaborative applicant and give them an opportunity to respond.

### Subpart C—Application and Grant Award Process

#### §578.15 Eligible applicants.

(a) *Who may apply.* Nonprofit organizations, States, local governments, and instrumentalities of State or local governments are eligible to apply for grants.

(b) *Designation by the Continuum of Care.* Eligible applicant(s) must have been designated by the Continuum of Care to submit an application for grant funds under this part. The designation must state whether the Continuum is designating more than one applicant to apply for funds and, if it is, which applicant is being designated as the collaborative applicant. If the Continuum is designating only one applicant to apply for funds, the Continuum must designate that applicant to be the collaborative applicant.

(c) *Exclusion.* For-profit entities are not eligible to apply for grants or to be subrecipients of grant funds.

#### §578.17 Overview of application and grant award process.

(a) *Formula.* (1) After enactment of the annual appropriations act for each fiscal year, and issuance of the NOFA, HUD will publish, on its Web site, the

Preliminary Pro Rata Need (PPRN) assigned to metropolitan cities, urban counties, and all other counties.

(2) HUD will apply the formula used to determine PPRN established in paragraph (a)(3) of this section, to the amount of funds being made available under the NOFA. That amount is calculated by:

(i) Determining the total amount for the Continuum of Care competition in accordance with section 413 of the Act or as otherwise directed by the annual appropriations act;

(ii) From the amount in paragraph (a)(2)(i) of this section, deducting the amount published in the NOFA as being set aside to provide a bonus to geographic areas for activities that have proven to be effective in reducing homelessness generally or for specific subpopulations listed in the NOFA or achieving homeless prevention and independent living goals established in the NOFA and to meet policy priorities set in the NOFA; and

(iii) Deducting the amount of funding necessary for Continuum of Care planning activities and UFA costs.

(3) PPRN is calculated on the amount determined under paragraph (a)(2) of this section by using the following formula:

(i) Two percent will be allocated among the four insular areas (American Samoa, Guam, the Commonwealth of the Northern Marianas, and the Virgin Islands) on the basis of the ratio of the population of each insular area to the population of all insular areas.

(ii) Seventy-five percent of the remaining amount will be allocated, using the Community Development Block Grant (CDBG) formula, to metropolitan cities and urban counties that have been funded under either the Emergency Shelter Grants or Emergency Solutions Grants programs in any one year since 2004.

(iii) The amount remaining after the allocation under paragraphs (a)(1) and (2) of this section will be allocated, using the CDBG formula, to metropolitan cities and urban counties that have not been funded under the Emergency Solutions Grants program in any year since 2004 and all other counties in the United States and Puerto Rico.

(4) If the calculation in paragraph (a)(2) of this section results in an amount less than the amount required to renew all projects eligible for renewal in that year for at least one year, after making adjustments proportional to increases in fair market rents for the geographic area for leasing, operating, and rental assistance for permanent housing, HUD will reduce, proportionately, the total amount required to renew all projects eligible for renewal in that year for at least one year, for each Continuum of Care. HUD will publish, via the NOFA, the total dollar amount that every Continuum will be required to deduct from renewal projects Continuum-wide.

(b) *Calculating a Continuum of Care's maximum award amount.* (1) *Establish the PPRN amount.* First, HUD will total the PPRN amounts for each metropolitan city, urban county, other county, and insular area claimed by the Continuum as part of its geographic area, excluding any counties applying for or receiving funding from the Rural Housing Stability Assistance program under 24 CFR part 579.

(2) *Establishing renewal demand.* Next, HUD will determine the renewal demand within the Continuum's geographic area. Renewal demand is the sum of the annual renewal amounts of all projects within the Continuum eligible to apply for renewal in that fiscal year's competition, before any adjustments to rental assistance, leasing, and operating line items based on FMR changes.

(3) *Establishing FPRN.* The higher of PPRN or renewal demand for the Continuum of Care is the FPRN, which is the base for the maximum award amount for the Continuum.

(4) *Establishing the maximum award amount.* The maximum award amount for the Continuum is the FPRN amount plus any additional eligible amounts for Continuum planning; UFA costs; adjustments to leasing, operating and rental assistance line items based on changes to FMR; and available bonuses.

#### §578.19 Application process.

(a) *Notice of Funding Availability.* After enactment of the annual appropriations act for the fiscal year, HUD

will issue a NOFA in accordance with the requirements of 24 CFR part 4.

(b) *Applications.* All applications to HUD, including applications for grant funds and requests for designation as a UFA or HPC, must be submitted at such time and in such manner as HUD may require, and contain such information as HUD determines necessary. At a minimum, an application for grant funds must contain a list of the projects for which it is applying for funds; a description of the projects; a list of the projects that will be carried out by subrecipients and the names of the subrecipients; a description of the subpopulations of homeless or at risk of homelessness to be served by projects; the number of units to be provided and/or the number of persons to be served by each project; a budget request by project; and reasonable assurances that the applicant, or the subrecipient, will own or have control of a site for the proposed project not later than the expiration of the 12-month period beginning upon notification of an award for grant assistance.

#### §578.21 Awarding funds.

(a) *Selection.* HUD will review applications in accordance with the guidelines and procedures provided in the NOFA and will award funds to recipients through a national competition based on selection criteria as defined in section 427 of the Act.

(b) *Announcement of awards.* HUD will announce awards and notify selected applicants of any conditions imposed on awards. Conditions must be satisfied before HUD will execute a grant agreement with the applicant.

(c) *Satisfying conditions.* HUD will withdraw an award if the applicant does not satisfy all conditions imposed on it. Correcting all issues and conditions attached to an award must be completed within the time frame established in the NOFA. Proof of site control, match, environmental review, and the documentation of financial feasibility must be completed within 12 months of the announcement of the award, or 24 months in the case of funds for acquisition, rehabilitation, or new construction. The 12-month deadline may be extended by HUD for up to 12 additional months upon a showing of

compelling reasons for delay due to factors beyond the control of the recipient or subrecipient.

**§ 578.23 Executing grant agreements.**

(a) *Deadline.* No later than 45 days from the date when all conditions are satisfied, the recipient and HUD must execute the grant agreement.

(b) *Grant agreements.* (1) *Multiple applicants for one Continuum.* If a Continuum designates more than one applicant for the geographic area, HUD will enter into a grant agreement with each designated applicant for which an award is announced.

(2) *One applicant for a Continuum.* If a Continuum designates only one applicant for the geographic area, after awarding funds, HUD may enter into a grant agreement with that applicant for new awards, if any, and one grant agreement for renewals, Continuum of Care planning, and UFA costs, if any. These two grants will cover the entire geographic area. A default by the recipient under one of those grant agreements will also be a default under the other.

(3) *Unified Funding Agencies.* If a Continuum is a UFA that HUD has approved, then HUD will enter into one grant agreement with the UFA for new awards, if any, and one grant agreement for renewals, Continuum of Care planning and UFA costs, if any. These two grants will cover the entire geographic area. A default by the UFA under one of those grant agreements will also be a default under the other.

(c) *Required agreements.* Recipients will be required to sign a grant agreement in which the recipient agrees:

(1) To ensure the operation of the project(s) in accordance with the provisions of the McKinney-Veto Act and all requirements under 24 CFR part 578;

(2) To monitor and report the progress of the project(s) to the Continuum of Care and HUD;

(3) To ensure, to the maximum extent practicable, that individuals and families experiencing homelessness are involved, through employment, provision of volunteer services, or otherwise, in constructing, rehabilitating, maintaining, and operating facilities for the project and in providing supportive services for the project;

(4) To require certification from all subrecipients that:

(i) Subrecipients will maintain the confidentiality of records pertaining to any individual or family that was provided family violence prevention or treatment services through the project;

(ii) The address or location of any family violence project assisted under this part will not be made public, except with written authorization of the person responsible for the operation of such project;

(iii) Subrecipients will establish policies and practices that are consistent with, and do not restrict, the exercise of rights provided by subtitle B of title VII of the Act and other laws relating to the provision of educational and related services to individuals and families experiencing homelessness;

(iv) In the case of projects that provide housing or services to families, that subrecipients will designate a staff person to be responsible for ensuring that children being served in the program are enrolled in school and connected to appropriate services in the community, including early childhood programs such as Head Start, part C of the Individuals with Disabilities Education Act, and programs authorized under subtitle B of title VII of the Act;

(v) The subrecipient, its officers, and employees are not debarred or suspended from doing business with the Federal Government; and

(vi) Subrecipients will provide information, such as data and reports, as required by HUD; and

(5) To establish such fiscal control and accounting procedures as may be necessary to assure the proper disbursement of, and accounting for grant funds in order to ensure that all financial transactions are conducted, and records maintained in accordance with generally accepted accounting principles, if the recipient is a UFA;

(6) To monitor subrecipient match and report on match to HUD;

(7) To take the educational needs of children into account when families are placed in housing and will, to the maximum extent practicable, place families with children as close as possible to their school of origin so as not to disrupt such children's education;

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(8) To monitor subrecipients at least annually;

(9) To use the centralized or coordinated assessment system established by the Continuum of Care as set forth in § 578.7(a)(8). A victim service provider may choose not to use the Continuum of Care's centralized or coordinated assessment system, provided that victim service providers in the area use a centralized or coordinated assessment system that meets HUD's minimum requirements and the victim service provider uses that system instead;

(10) To follow the written standards for providing Continuum of Care assistance developed by the Continuum of Care, including the minimum requirements set forth in § 578.7(a)(9);

(11) Enter into subrecipient agreements requiring subrecipients to operate the project(s) in accordance with the provisions of this Act and all requirements under 24 CFR part 578; and

(12) To comply with such other terms and conditions as HUD may establish by NOFA.

### § 578.25 Site control.

(a) *In general.* When grant funds will be used for acquisition, rehabilitation, new construction, operating costs, or to provide supportive services, the recipient or subrecipient must demonstrate that it has site control within the time frame established in section § 578.21 before HUD will execute a grant agreement. This requirement does not apply to funds used for housing that will eventually be owned or controlled by the individuals or families served or for supportive services provided at sites not operated by the recipient or subrecipient.

(b) *Evidence.* Acceptable evidence of site control is a deed or lease. If grant funds will be used for acquisition, acceptable evidence of site control will be a purchase agreement. The owner, lessee, and purchaser shown on these documents must be the selected applicant or intended subrecipient identified in the application for assistance.

(c) *Tax credit projects.* (1) Applicants that plan to use the low-income housing tax credit authorized under 26 U.S.C. 42 to finance a project must prove to HUD's satisfaction that the

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applicant or subrecipient identified in the application is in control of the limited partnership or limited liability corporation that has a deed or lease for the project site.

(i) To have control of the limited partnership, the applicant or subrecipient must be the general partner of the limited partnership or have a 51 percent controlling interest in that general partner.

(ii) To have control of the limited liability company, the applicant or subrecipient must be the sole managing member.

(2) If grant funds are to be used for acquisition, rehabilitation, or new construction, the recipient or subrecipient must maintain control of the partnership or corporation and must ensure that the project is operated in compliance with law and regulation for 15 years from the date of initial occupancy or initial service provision. The partnership or corporation must own the project site throughout the 15-year period. If grant funds were not used for acquisition, rehabilitation, or new construction, then the recipient or subrecipient must maintain control for the term of the grant agreement and any renewals thereof.

### § 578.27 Consolidated plan.

(a) *States or units of general local government.* An applicant that is a State or a unit of general local government must have a HUD-approved, complete or abbreviated, consolidated plan in accordance with 24 CFR part 91. The applicant must submit a certification that the application for funding is consistent with the HUD-approved consolidated plan(s) for the jurisdiction(s) in which the proposed project will be located. Funded applicants must certify in a grant agreement that they are following the HUD-approved consolidated plan.

(b) *Other applicants.* Applicants that are not States or units of general local government must submit a certification by the jurisdiction(s) in which the proposed project will be located that the applicant's application for funding is consistent with the jurisdiction's HUD-approved consolidated plan. The certification must be made by the unit of general local government or the

State, in accordance with the consistency certification provisions under 24 CFR part 91, subpart F. If the jurisdiction refuses to provide a certification of consistency, the applicant may appeal to HUD under § 578.35.

(c) *Timing of consolidated plan certification submissions.* The required certification that the application for funding is consistent with the HUD-approved consolidated plan must be submitted by the funding application submission deadline announced in the NOFA.

#### § 578.29 Subsidy layering.

HUD may provide assistance under this program only in accordance with HUD subsidy layering requirements in section 102 of the Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3545) and 24 CFR part 4, subpart A. An applicant must submit information in its application on other sources of governmental assistance that the applicant has received, or reasonably expects to receive, for a proposed project or activities. HUD's review of this information is intended to prevent excessive public assistance for proposed project or activities by combining (layering) assistance under this program with other governmental housing assistance from federal, State, or local agencies, including assistance such as tax concessions or tax credits.

#### § 578.31 Environmental review.

(a) Activities under this part are subject to environmental review by HUD under 24 CFR part 50. The recipient or subrecipient shall supply all available, relevant information necessary for HUD to perform, for each property, any environmental review required by 24 CFR part 50. The recipient or subrecipient must carry out mitigating measures required by HUD or select an alternate eligible property. HUD may eliminate from consideration any application that would require an Environmental Impact Statement.

(b) The recipient or subrecipient, its project partners, and their contractors may not acquire, rehabilitate, convert, lease, repair, dispose of, demolish, or construct property for a project under this part, or commit or expend HUD or local funds for such eligible activities under this part, until HUD has per-

formed an environmental review under 24 CFR part 50 and the recipient or subrecipient has received HUD approval of the property.

#### § 578.33 Renewals.

(a) *In general.* Awards made under this part and title IV of the Act, as in effect before August 30, 2012 (the Supportive Housing Program and the Shelter Plus Care program), may be renewed to continue ongoing leasing, operations, supportive services, rental assistance, HMIS, and administration beyond the initial funding period. To be considered for funding, recipients must submit a request in a form specified by HUD, must meet the requirements of this part, and must submit the request within the time frame established by HUD.

(b) *Length of renewal.* HUD may award up to 3 years of funds for supportive services, leasing, HMIS, and operating costs. Renewals of tenant-based and sponsor-based rental assistance may be for up to one year of rental assistance. Renewals of project-based rental assistance may be for up to 15 years of rental assistance, subject to availability of annual appropriations.

(c) *Assistance available.* (1) Assistance during each year of a renewal period may be for:

(i) Up to 100 percent of the amount for supportive services and HMIS costs in the final year of the prior funding period;

(ii) Up to 100 percent of the amount for leasing and operating in the final year of the prior funding period adjusted in proportion to changes in the FMR for the geographic area; and

(iii) For rental assistance, up to 100 percent of the result of multiplying the number and unit size(s) in the grant agreement by the number of months in the renewal grant term and the applicable FMR.

(d) *Review criteria.* (1) Awards made under title IV of the Act, as in effect before August 30, 2012 are eligible for renewal in the Continuum of Care program even if the awardees would not be eligible for a new grant under the program, so long as they continue to serve the same population and the same number of persons or units in the same type of housing as identified in their

most recently amended grant agreement signed before August 30, 2012. Grants will be renewed if HUD receives a certification from the Continuum that there is a demonstrated need for the project, and HUD finds that the project complied with program requirements applicable before August 30, 2012. For purposes of meeting the requirements of this part, a project will continue to be administered in accordance with 24 CFR 582.330, if the project received funding under the Shelter Plus Care program, or 24 CFR 583.325, if the project received funding under the Supportive Housing Program.

(2) *Renewal of awards made after August 30, 2012.* Review criteria for competitively awarded renewals made after August 30, 2012 will be described in the NOFA.

(e) *Unsuccessful projects.* HUD may renew a project that was eligible for renewal in the competition and was part of an application that was not funded despite having been submitted on time, in the manner required by HUD, and containing the information required by HUD, upon a finding that the project meets the purposes of the Continuum of Care program. The renewal will not exceed more than one year and will be under such conditions as HUD deems appropriate.

(f) *Annual Performance Report condition.* HUD may terminate the renewal of any grant and require the recipient to repay the renewal grant if:

(1) The recipient fails to timely submit a HUD Annual Performance Report (APR) for the grant year immediately prior to renewal; or

(2) The recipient submits an APR that HUD deems unacceptable or shows noncompliance with the requirements of the grant and this part.

#### §578.35 Appeal.

(a) *In general.* Failure to follow the procedures or meet the deadlines established in this section will result in denial of the appeal.

(b) *Solo applicants.* (1) *Who may appeal.* Nonprofits, States, and local governments, and instrumentalities of State or local governments that attempted to participate in the Continuum of Care planning process in the geographic area in which they operate,

that believe they were denied the right to participate in a reasonable manner, and that submitted a solo application for funding by the application deadline established in the NOFA, may appeal the decision of the Continuum to HUD.

(2) *Notice of intent to appeal.* The solo applicant must submit a written notice of intent to appeal, with a copy to the Continuum, with their funding application.

(3) *Deadline for submitting proof.* No later than 30 days after the date that HUD announces the awards, the solo applicant shall submit in writing, with a copy to the Continuum, all relevant evidence supporting its claim, in such manner as HUD may require by Notice.

(4) *Response from the Continuum of Care.* The Continuum shall have 30 days from the date of its receipt of the solo applicant's evidence to respond to HUD in writing and in such manner as HUD may require, with a copy to the solo applicant.

(5) *Decision.* HUD will notify the solo applicant and the Continuum of its decision within 60 days of receipt of the Continuum's response.

(6) *Funding.* If HUD finds that the solo applicant was not permitted to participate in the Continuum of Care planning process in a reasonable manner, then HUD may award a grant to the solo applicant when funds next become available and may direct the Continuum of Care to take remedial steps to ensure reasonable participation in the future. HUD may also reduce the award to the Continuum's applicant(s).

(c) *Denied or decreased funding.* (1) *Who may appeal.* Eligible applicants that are denied funds by HUD, or that requested more funds than HUD awarded to them, may appeal the award by filing a written appeal, in such form and manner as HUD may require by Notice, within 45 days of the date of HUD's announcement of the award.

(2) *Decision.* HUD will notify the applicant of its decision on the appeal within 60 days of HUD's receipt of the written appeal. HUD will reverse a decision only when the applicant can show that HUD error caused the denial or decrease.

(3) *Funding.* Awards and increases to awards made upon appeal will be made from next available funds.

(d) *Competing Continuums of Care.* (1) *In general.* If more than one Continuum of Care claims the same geographic area, HUD will award funds to the Continuum applicant(s) whose application(s) has the highest total score. No projects will be funded from the lower scoring Continuum. No projects that are submitted in two or more competing Continuum of Care applications will be funded.

(2) *Who may appeal.* The designated applicant(s) for the lower scoring Continuum may appeal HUD's decision to fund the application(s) from the competing Continuum by filing a written appeal, in such form and manner as HUD may require by Notice, within 45 days of the date of HUD's announcement of the award.

(3) *Decision.* HUD will notify the applicant(s) of its decision on the appeal within 60 days of the date of HUD's receipt of the written appeal. HUD will reverse a decision only upon a showing by the applicant that HUD error caused the denial.

(e) *Consolidated plan certification.* (1) *In general.* An applicant may appeal to HUD a jurisdiction's refusal to provide a certification of consistency with the Consolidated Plan.

(2) *Procedure.* The applicant must submit a written appeal with its application to HUD and send a copy of the appeal to the jurisdiction that denied the certification of consistency. The appeal must include, at a minimum:

(i) A copy of the applicant's request to the jurisdiction for the certification of consistency with the Consolidated Plan;

(ii) A copy of the jurisdiction's response stating the reasons for denial, including the reasons the proposed project is not consistent with the jurisdiction's Consolidated Plan in accordance with 24 CFR 91.500(c); and

(iii) A statement of the reasons why the applicant believes its project is consistent with the jurisdiction's Consolidated Plan.

(3) *Jurisdiction response.* The jurisdiction that refused to provide the certification of consistency with the jurisdiction's Consolidated Plan shall have 10

days after receipt of a copy of the appeal to submit a written explanation of the reasons originally given for refusing to provide the certification and a written rebuttal to any claims made by the applicant in the appeal.

(4) *HUD review.* (i) HUD will issue its decision within 45 days of the date of HUD's receipt of the jurisdiction's response. As part of its review, HUD will consider:

(A) Whether the applicant submitted the request to the appropriate political jurisdiction; and

(B) The reasonableness of the jurisdiction's refusal to provide the certificate.

(ii) If the jurisdiction did not provide written reasons for refusal, including the reasons why the project is not consistent with the jurisdiction's Consolidated Plan in its initial response to the applicant's request for a certification, HUD will find for the applicant without further inquiry or response from the political jurisdiction.

#### Subpart D—Program Components and Eligible Costs

##### §578.37 Program components and uses of assistance.

(a) Continuum of Care funds may be used to pay for the eligible costs listed in §578.39 through §578.63 when used to establish and operate projects under five program components: permanent housing; transitional housing; supportive services only; HMIS; and, in some cases, homelessness prevention. Although grant funds may be used by recipients and subrecipients in all components for the eligible costs of contributing data to the HMIS designated by the Continuum of Care, only HMIS Leads may use grant funds for an HMIS component. Administrative costs are eligible for all components. All components are subject to the restrictions on combining funds for certain eligible activities in a single project found in §578.87(c). The eligible program components are:

(1) *Permanent housing (PH).* Permanent housing is community-based housing, the purpose of which is to provide housing without a designated length of

stay. Grant funds may be used for acquisition, rehabilitation, new construction, leasing, rental assistance, operating costs, and supportive services. PH includes:

(i) *Permanent supportive housing for persons with disabilities (PSH)*. PSH can only provide assistance to individuals with disabilities and families in which one adult or child has a disability. Supportive services designed to meet the needs of the program participants must be made available to the program participants.

(ii) *Rapid rehousing*. Continuum of Care funds may provide supportive services, as set forth in §578.53, and/or short-term (up to 3 months) and/or medium-term (for 3 to 24 months) tenant-based rental assistance, as set forth in §578.51(c), as necessary to help a homeless individual or family, with or without disabilities, move as quickly as possible into permanent housing and achieve stability in that housing. When providing short-term and/or medium-term rental assistance to program participants, the rental assistance is subject to §578.51(a)(1), but not §578.51(a)(1)(i) and (ii); (a)(2); (c) and (f) through (i); and (1)(1). These projects:

(A) Must follow the written policies and procedures established by the Continuum of Care for determining and prioritizing which eligible families and individuals will receive rapid rehousing assistance, as well as the amount or percentage of rent that each program participant must pay.

(B) May set a maximum amount or percentage of rental assistance that a program participant may receive, a maximum number of months that a program participant may receive rental assistance, and/or a maximum number of times that a program participant may receive rental assistance. The recipient or subrecipient may also require program participants to share in the costs of rent. For the purposes of calculating rent for rapid rehousing, the rent shall equal the sum of the total monthly rent for the unit and, if the tenant pays separately for utilities, the monthly allowance for utilities (excluding telephone) established by the public housing authority for the area in which the housing is located.

(C) Limit rental assistance to no more than 24 months to a household.

(D) May provide supportive services for no longer than 6 months after rental assistance stops.

(E) Must re-evaluate, not less than once annually, that the program participant lacks sufficient resources and support networks necessary to retain housing without Continuum of Care assistance and the types and amounts of assistance that the program participant needs to retain housing. The recipient or subrecipient may require each program participant receiving assistance to notify the recipient or subrecipient of changes in the program participant's income or other circumstances (e.g., changes in household composition) that affect the program participant's need for assistance. When notified of a relevant change, the recipient or subrecipient must reevaluate the program participant's eligibility and the amount and types of assistance that the program participant needs.

(F) Require the program participant to meet with a case manager not less than once per month to assist the program participant in ensuring long-term housing stability. The project is exempt from this requirement if the Violence Against Women Act of 1994 (42 U.S.C. 13925 *et seq.*) or the Family Violence Prevention and Services Act (42 U.S.C. 10401 *et seq.*) prohibits the recipient carrying out the project from making its housing conditional on the participant's acceptance of services.

(2) *Transitional Housing (TH)*. Transitional housing facilitates the movement of homeless individuals and families to PH within 24 months of entering TH. Grant funds may be used for acquisition, rehabilitation, new construction, leasing, rental assistance, operating costs, and supportive services.

(3) *Supportive Service Only (SSO)*. Funds may be used for acquisition, rehabilitation, relocation costs, or leasing of a facility from which supportive services will be provided, and supportive services in order to provide supportive services to unsheltered and sheltered homeless persons for whom the recipient or subrecipient is not providing housing or housing assistance. SSO includes street outreach.



(4) *HMIS*. Funds may be used by HMIS Leads to lease a structure in which the HMIS is operated or as operating funds to operate a structure in which the HMIS is operated, and for other costs eligible in §578.57.

(5) *Homelessness prevention*. Funds may be used by recipients in Continuums of Care-designated high-performing communities for housing relocation and stabilization services, and short- and/or medium-term rental assistance, as described in 24 CFR 576.105 and 24 CFR 576.106, that are necessary to prevent an individual or family from becoming homeless.

(b) *Uses of assistance*. Funds are available to pay for the eligible costs listed in §578.39 through §578.63 when used to:

(1) Establish new housing or new facilities to provide supportive services;

(2) Expand existing housing and facilities in order to increase the number of homeless persons served;

(3) Bring existing housing and facilities into compliance with State and local government health and safety standards, as described in §578.87;

(4) Preserve existing permanent housing and facilities that provide supportive services;

(5) Provide supportive services for residents of supportive housing or for homeless persons not residing in supportive housing;

(6) Continue funding permanent housing when the recipient has received funding under this part for leasing, supportive services, operating costs, or rental assistance;

(7) Establish and operate an HMIS or comparable database; and

(8) Establish and carry out a Continuum of Care planning process and operate a Continuum of Care.

(c) *Multiple purposes*. Structures used to provide housing, supportive housing, supportive services, or as a facility for HMIS activities may also be used for other purposes. However, assistance under this part will be available only in proportion to the use of the structure for supportive housing or supportive services. If eligible and ineligible activities are carried out in separate portions of the same structure or in separate structures, grant funds may not be used to pay for more than the actual cost of acquisition, con-

struction, or rehabilitation of the portion of the structure or structures used for eligible activities. If eligible and ineligible activities are carried out in the same structure, the costs will be prorated based on the amount of time that the space is used for eligible versus ineligible activities.

#### §578.39 Continuum of Care planning activities.

(a) *In general*. Collaborative applicants may use up to 3 percent of their FPRN, or a maximum amount to be established by the NOFA, for costs of:

(1) Designing and carrying out a collaborative process for the development of an application to HUD;

(2) Evaluating the outcomes of projects for which funds are awarded in the geographic area under the Continuum of Care and the Emergency Solutions Grants programs; and

(3) Participating in the consolidated plan(s) for the geographic area(s).

(b) *Continuum of Care planning activities*. Eligible planning costs include the costs of:

(1) Developing a communitywide or regionwide process involving the coordination of nonprofit homeless providers, victim service providers, faith-based organizations, governments, businesses, advocates, public housing agencies, school districts, social service providers, mental health agencies, hospitals, universities, affordable housing developers, law enforcement, organizations that serve veterans, and homeless and formerly homeless individuals;

(2) Determining the geographic area that the Continuum of Care will serve;

(3) Developing a Continuum of Care system;

(4) Evaluating the outcomes of projects for which funds are awarded in the geographic area, including the Emergency Solutions Grants program;

(5) Participating in the consolidated plan(s) of the jurisdiction(s) in the geographic area; and

(6) Preparing and submitting an application to HUD on behalf of the entire Continuum of Care membership, including conducting a sheltered and unsheltered point-in-time count and other data collection as required by HUD.

**§ 578.41**

**24 CFR Ch. V (4-1-13 Edition)**

(c) *Monitoring costs.* The costs of monitoring recipients and subrecipients and enforcing compliance with program requirements are eligible.

**§ 578.41 Unified Funding Agency costs.**

(a) *In general.* UFAs may use up to 3 percent of their FPRN, or a maximum amount to be established by the NOFA, whichever is less, for fiscal control and accounting costs necessary to assure the proper disbursement of, and accounting for, federal funds awarded to subrecipients under the Continuum of Care program.

(b) *UFA costs.* UFA costs include costs of ensuring that all financial transactions carried out under the Continuum of Care program are conducted and records are maintained in accordance with generally accepted accounting principles, including arranging for an annual survey, audit, or evaluation of the financial records of each project carried out by a subrecipient funded by a grant received through the Continuum of Care program.

(c) *Monitoring costs.* The costs of monitoring subrecipients and enforcing compliance with program requirements are eligible for costs.

**§ 578.43 Acquisition.**

Grant funds may be used to pay up to 100 percent of the cost of acquisition of real property selected by the recipient or subrecipient for use in the provision of housing or supportive services for homeless persons.

**§ 578.45 Rehabilitation.**

(a) *Use.* Grant funds may be used to pay up to 100 percent of the cost of rehabilitation of structures to provide housing or supportive services to homeless persons.

(b) *Eligible costs.* Eligible rehabilitation costs include installing cost-effective energy measures, and bringing an existing structure to State and local government health and safety standards.

(c) *Ineligible costs.* Grant funds may not be used for rehabilitation of leased property.

**§ 578.47 New construction.**

(a) *Use.* Grant funds may be used to:

(1) Pay up to 100 percent of the cost of new construction, including the building of a new structure or building an addition to an existing structure that increases the floor area by 100 percent or more, and the cost of land associated with that construction, for use as housing.

(2) If grant funds are used for new construction, the applicant must demonstrate that the costs of new construction are substantially less than the costs of rehabilitation or that there is a lack of available appropriate units that could be rehabilitated at a cost less than new construction. For purposes of this cost comparison, costs of rehabilitation or new construction may include the cost of real property acquisition.

(b) *Ineligible costs.* Grant funds may not be used for new construction on leased property.

**§ 578.49 Leasing.**

(a) *Use.* (1) Where the recipient or subrecipient is leasing the structure, or portions thereof, grant funds may be used to pay for 100 percent of the costs of leasing a structure or structures, or portions thereof, to provide housing or supportive services to homeless persons for up to 3 years. Leasing funds may not be used to lease units or structures owned by the recipient, subrecipient, their parent organization(s), any other related organization(s), or organizations that are members of a partnership, where the partnership owns the structure, unless HUD authorized an exception for good cause.

(2) Any request for an exception must include the following:

(i) A description of how leasing these structures is in the best interest of the program;

(ii) Supporting documentation showing that the leasing charges paid with grant funds are reasonable for the market; and

(iii) A copy of the written policy for resolving disputes between the landlord and tenant, including a recusal for officers, agents, and staff who work for both the landlord and tenant.

(b) *Requirements.* (1) *Leasing structures.* When grants are used to pay rent for all or part of a structure or structures, the rent paid must be reasonable

in relation to rents being charged in the area for comparable space. In addition, the rent paid may not exceed rents currently being charged by the same owner for comparable unassisted space.

(2) *Leasing individual units.* When grants are used to pay rent for individual housing units, the rent paid must be reasonable in relation to rents being charged for comparable units, taking into account the location, size, type, quality, amenities, facilities, and management services. In addition, the rents may not exceed rents currently being charged for comparable units, and the rent paid may not exceed HUD-determined fair market rents.

(3) *Utilities.* If electricity, gas, and water are included in the rent, these utilities may be paid from leasing funds. If utilities are not provided by the landlord, these utility costs are an operating cost, except for supportive service facilities. If the structure is being used as a supportive service facility, then these utility costs are a supportive service cost.

(4) *Security deposits and first and last month's rent.* Recipients and subrecipients may use grant funds to pay security deposits, in an amount not to exceed 2 months of actual rent. An advance payment of the last month's rent may be provided to the landlord in addition to the security deposit and payment of the first month's rent.

(5) *Occupancy agreements and subleases.* Occupancy agreements and subleases are required as specified in §578.77(a).

(6) *Calculation of occupancy charges and rent.* Occupancy charges and rent from program participants must be calculated as provided in §578.77.

(7) *Program income.* Occupancy charges and rent collected from program participants are program income and may be used as provided under §578.97.

(8) *Transition.* Beginning in the first year awards are made under the Continuum of Care program, renewals of grants for leasing funds entered into under the authority of title IV, subtitle D of the Act as it existed before May 20, 2009, will be renewed either as grants for leasing or as rental assistance, depending on the characteristics

of the project. Leasing funds will be renewed as rental assistance if the funds are used to pay rent on units where the lease is between the program participant and the landowner or sublessor. Projects requesting leasing funds will be renewed as leasing if the funds were used to lease a unit or structure and the lease is between the recipient or subrecipient and the landowner.

#### §578.51 Rental assistance.

(a) *Use.* (1) Grant funds may be used for rental assistance for homeless individuals and families. Rental assistance cannot be provided to a program participant who is already receiving rental assistance, or living in a housing unit receiving rental assistance or operating assistance through other federal, State, or local sources.

(i) The rental assistance may be short-term, up to 3 months of rent; medium-term, for 3 to 24 months of rent; or long-term, for longer than 24 months of rent and must be administered in accordance with the policies and procedures established by the Continuum as set forth in §578.7(a)(9) and this section.

(ii) The rental assistance may be tenant-based, project-based, or sponsor-based, and may be for transitional or permanent housing.

(2) Grant funds may be used for security deposits in an amount not to exceed 2 months of rent. An advance payment of the last month's rent may be provided to the landlord, in addition to the security deposit and payment of first month's rent.

(b) *Rental assistance administrator.* Rental assistance must be administered by a State, unit of general local government, or a public housing agency.

(c) *Tenant-based rental assistance.* Tenant-based rental assistance is rental assistance in which program participants choose housing of an appropriate size in which to reside. When necessary to facilitate the coordination of supportive services, recipients and subrecipients may require program participants to live in a specific area for their entire period of participation, or in a specific structure for the first year and in a specific area for the remainder

of their period of participation. Program participants who are receiving rental assistance in transitional housing may be required to live in a specific structure for their entire period of participation in transitional housing.

(1) Up to 5 years worth of rental assistance may be awarded to a project in one competition.

(2) Program participants who have complied with all program requirements during their residence retain the rental assistance if they move within the Continuum of Care geographic area.

(3) Program participants who have complied with all program requirements during their residence and who have been a victim of domestic violence, dating violence, sexual assault, or stalking, and who reasonably believe they are imminently threatened by harm from further domestic violence, dating violence, sexual assault, or stalking (which would include threats from a third party, such as a friend or family member of the perpetrator of the violence), if they remain in the assisted unit, and are able to document the violence and basis for their belief, may retain the rental assistance and move to a different Continuum of Care geographic area if they move out of the assisted unit to protect their health and safety.

(d) *Sponsor-based rental assistance.* Sponsor-based rental assistance is provided through contracts between the recipient and sponsor organization. A sponsor may be a private, nonprofit organization, or a community mental health agency established as a public nonprofit organization. Program participants must reside in housing owned or leased by the sponsor. Up to 5 years worth of rental assistance may be awarded to a project in one competition.

(e) *Project-based rental assistance.* Project-based rental assistance is provided through a contract with the owner of an existing structure, where the owner agrees to lease the subsidized units to program participants. Program participants will not retain rental assistance if they move. Up to 15 years of rental assistance may be awarded in one competition.

(f) *Grant amount.* The amount of rental assistance in each project will be based on the number and size of units proposed by the applicant to be assisted over the grant period. The amount of rental assistance in each project will be calculated by multiplying the number and size of units proposed by the FMR of each unit on the date the application is submitted to HUD, by the term of the grant.

(g) *Rent reasonableness.* HUD will only provide rental assistance for a unit if the rent is reasonable. The recipient or subrecipient must determine whether the rent charged for the unit receiving rental assistance is reasonable in relation to rents being charged for comparable unassisted units, taking into account the location, size, type, quality, amenities, facilities, and management and maintenance of each unit. Reasonable rent must not exceed rents currently being charged by the same owner for comparable unassisted units.

(1) *Payment of grant.* (1) The amount of rental assistance in each project will be reserved for rental assistance over the grant period. An applicant's request for rental assistance in each grant is an estimate of the amount needed for rental assistance. Recipients will make draws from the grant funds to pay the actual costs of rental assistance for program participants.

(2) For tenant-based rental assistance, on demonstration of need:

(i) Up to 25 percent of the total rental assistance awarded may be spent in any year of a 5-year grant term; or

(ii) A higher percentage if approved in advance by HUD, if the recipient provides evidence satisfactory to HUD that it is financially committed to providing the housing assistance described in the application for the full 5-year period.

(3) A recipient must serve at least as many program participants as shown in its application for assistance.

(4) If the amount in each grant reserved for rental assistance over the grant period exceeds the amount that will be needed to pay the actual costs of rental assistance, due to such factors as contract rents being lower than FMRs and program participants being able to pay a portion of the rent, recipients or subrecipients may use the

excess funds for covering the costs of rent increases, or for serving a greater number of program participants.

(i) *Vacancies.* If a unit assisted under this section is vacated before the expiration of the lease, the assistance for the unit may continue for a maximum of 30 days from the end of the month in which the unit was vacated, unless occupied by another eligible person. No additional assistance will be paid until the unit is occupied by another eligible person. Brief periods of stays in institutions, not to exceed 90 days for each occurrence, are not considered vacancies.

(j) *Property damage.* Recipients and subrecipients may use grant funds in an amount not to exceed one month's rent to pay for any damage to housing due to the action of a program participant. This shall be a one-time cost per participant, incurred at the time a participant exits a housing unit.

(k) *Resident rent.* Rent must be calculated as provided in §578.77. Rents collected from program participants are program income and may be used as provided under §578.97.

(l) *Leases.* (1) *Initial lease.* For project-based, sponsor-based, or tenant-based rental assistance, program participants must enter into a lease agreement for a term of at least one year, which is terminable for cause. The leases must be automatically renewable upon expiration for terms that are a minimum of one month long, except on prior notice by either party.

(2) *Initial lease for transitional housing.* Program participants in transitional housing must enter into a lease agreement for a term of at least one month. The lease must be automatically renewable upon expiration, except on prior notice by either party, up to a maximum term of 24 months.

#### §578.53 Supportive services.

(a) *In general.* Grant funds may be used to pay the eligible costs of supportive services that address the special needs of the program participants. If the supportive services are provided in a supportive service facility not contained in a housing structure, the costs of day-to-day operation of the supportive service facility, including maintenance, repair, building security,

furniture, utilities, and equipment are eligible as a supportive service.

(1) Supportive services must be necessary to assist program participants obtain and maintain housing.

(2) Recipients and subrecipients shall conduct an annual assessment of the service needs of the program participants and should adjust services accordingly.

(b) *Duration.* (1) For a transitional housing project, supportive services must be made available to residents throughout the duration of their residence in the project.

(2) Permanent supportive housing projects must provide supportive services for the residents to enable them to live as independently as is practicable throughout the duration of their residence in the project.

(3) Services may also be provided to former residents of transitional housing and current residents of permanent housing who were homeless in the prior 6 months, for no more than 6 months after leaving transitional housing or homelessness, respectively, to assist their adjustment to independent living.

(4) Rapid rehousing projects must require the program participant to meet with a case manager not less than once per month as set forth in §578.37(a)(1)(ii)(F), to assist the program participant in maintaining long-term housing stability.

(c) *Special populations.* All eligible costs are eligible to the same extent for program participants who are unaccompanied homeless youth; persons living with HIV/AIDS; and victims of domestic violence, dating violence, sexual assault, or stalking.

(d) *Ineligible costs.* Any cost that is not described as an eligible cost under this section is not an eligible cost of providing supportive services using Continuum of Care program funds. Staff training and the costs of obtaining professional licenses or certifications needed to provide supportive services are not eligible costs.

(e) *Eligible costs.*

(1) *Annual Assessment of Service Needs.* The costs of the assessment required by §578.53(a)(2) are eligible costs.

(2) *Assistance with moving costs.* Reasonable one-time moving costs are eligible and include truck rental and hiring a moving company.

(3) *Case management.* The costs of assessing, arranging, coordinating, and monitoring the delivery of individualized services to meet the needs of the program participant(s) are eligible costs. Component services and activities consist of:

- (i) Counseling;
- (ii) Developing, securing, and coordinating services;
- (iii) Using the centralized or coordinated assessment system as required under § 578.23(c)(9).
- (iv) Obtaining federal, State, and local benefits;
- (v) Monitoring and evaluating program participant progress;
- (vi) Providing information and referrals to other providers;
- (vii) Providing ongoing risk assessment and safety planning with victims of domestic violence, dating violence, sexual assault, and stalking; and
- (viii) Developing an individualized housing and service plan, including planning a path to permanent housing stability.

(4) *Child care.* The costs of establishing and operating child care, and providing child-care vouchers, for children from families experiencing homelessness, including providing meals and snacks, and comprehensive and coordinated developmental activities, are eligible.

(i) The children must be under the age of 13, unless they are disabled children.

(ii) Disabled children must be under the age of 18.

(iii) The child-care center must be licensed by the jurisdiction in which it operates in order for its costs to be eligible.

(5) *Education services.* The costs of improving knowledge and basic educational skills are eligible.

(i) Services include instruction or training in consumer education, health education, substance abuse prevention, literacy, English as a Second Language, and General Educational Development (GED).

(ii) Component services or activities are screening, assessment and testing;

individual or group instruction; tutoring; provision of books, supplies, and instructional material; counseling; and referral to community resources.

(6) *Employment assistance and job training.* The costs of establishing and operating employment assistance and job training programs are eligible, including classroom, online and/or computer instruction, on-the-job instruction, services that assist individuals in securing employment, acquiring learning skills, and/or increasing earning potential. The cost of providing reasonable stipends to program participants in employment assistance and job training programs is also an eligible cost.

(i) Learning skills include those skills that can be used to secure and retain a job, including the acquisition of vocational licenses and/or certificates.

(ii) Services that assist individuals in securing employment consist of:

- (A) Employment screening, assessment, or testing;
- (B) Structured job skills and job-seeking skills;
- (C) Special training and tutoring, including literacy training and pre-vocational training;
- (D) Books and instructional material;
- (E) Counseling or job coaching; and
- (F) Referral to community resources.

(7) *Food.* The cost of providing meals or groceries to program participants is eligible.

(8) *Housing search and counseling services.* Costs of assisting eligible program participants to locate, obtain, and retain suitable housing are eligible.

(i) Component services or activities are tenant counseling; assisting individuals and families to understand leases; securing utilities; and making moving arrangements.

(ii) Other eligible costs are:

- (A) Mediation with property owners and landlords on behalf of eligible program participants;
- (B) Credit counseling, accessing a free personal credit report, and resolving personal credit issues; and
- (C) The payment of rental application fees.

(9) *Legal services.* Eligible costs are the fees charged by licensed attorneys and by person(s) under the supervision

of licensed attorneys, for advice and representation in matters that interfere with the homeless individual or family's ability to obtain and retain housing.

(i) Eligible subject matters are child support; guardianship; paternity; emancipation; legal separation; orders of protection and other civil remedies for victims of domestic violence, dating violence, sexual assault, and stalking; appeal of veterans and public benefit claim denials; landlord tenant disputes; and the resolution of outstanding criminal warrants.

(ii) Component services or activities may include receiving and preparing cases for trial, provision of legal advice, representation at hearings, and counseling.

(iii) Fees based on the actual service performed (i.e., fee for service) are also eligible, but only if the cost would be less than the cost of hourly fees. Filing fees and other necessary court costs are also eligible. If the subrecipient is a legal services provider and performs the services itself, the eligible costs are the subrecipient's employees' salaries and other costs necessary to perform the services.

(iv) Legal services for immigration and citizenship matters and issues related to mortgages and homeownership are ineligible. Retainer fee arrangements and contingency fee arrangements are ineligible.

(10) *Life skills training.* The costs of teaching critical life management skills that may never have been learned or have been lost during the course of physical or mental illness, domestic violence, substance abuse, and homelessness are eligible. These services must be necessary to assist the program participant to function independently in the community. Component life skills training are the budgeting of resources and money management, household management, conflict management, shopping for food and other needed items, nutrition, the use of public transportation, and parent training.

(11) *Mental health services.* Eligible costs are the direct outpatient treatment of mental health conditions that are provided by licensed professionals. Component services are crisis interven-

tions; counseling; individual, family, or group therapy sessions; the prescription of psychotropic medications or explanations about the use and management of medications; and combinations of therapeutic approaches to address multiple problems.

(12) *Outpatient health services.* Eligible costs are the direct outpatient treatment of medical conditions when provided by licensed medical professionals including:

(i) Providing an analysis or assessment of an individual's health problems and the development of a treatment plan;

(ii) Assisting individuals to understand their health needs;

(iii) Providing directly or assisting individuals to obtain and utilize appropriate medical treatment;

(iv) Preventive medical care and health maintenance services, including in-home health services and emergency medical services;

(v) Provision of appropriate medication;

(vi) Providing follow-up services; and

(vii) Preventive and noncosmetic dental care.

(13) *Outreach services.* The costs of activities to engage persons for the purpose of providing immediate support and intervention, as well as identifying potential program participants, are eligible.

(i) Eligible costs include the outreach worker's transportation costs and a cell phone to be used by the individual performing the outreach.

(ii) Component activities and services consist of: initial assessment; crisis counseling; addressing urgent physical needs, such as providing meals, blankets, clothes, or toiletries; actively connecting and providing people with information and referrals to homeless and mainstream programs; and publicizing the availability of the housing and/or services provided within the geographic area covered by the Continuum of Care.

(14) *Substance abuse treatment services.* The costs of program participant intake and assessment, outpatient treatment, group and individual counseling, and drug testing are eligible. Inpatient detoxification and other inpatient drug or alcohol treatment are ineligible.

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(15) *Transportation.* Eligible costs are:

(i) The costs of program participant's travel on public transportation or in a vehicle provided by the recipient or subrecipient to and from medical care, employment, child care, or other services eligible under this section.

(ii) Mileage allowance for service workers to visit program participants and to carry out housing quality inspections;

(iii) The cost of purchasing or leasing a vehicle in which staff transports program participants and/or staff serving program participants;

(iv) The cost of gas, insurance, taxes, and maintenance for the vehicle;

(v) The costs of recipient or subrecipient staff to accompany or assist program participants to utilize public transportation; and

(vi) If public transportation options are not sufficient within the area, the recipient may make a one-time payment on behalf of a program participant needing car repairs or maintenance required to operate a personal vehicle, subject to the following:

(A) Payments for car repairs or maintenance on behalf of the program participant may not exceed 10 percent of the Blue Book value of the vehicle (Blue Book refers to the guidebook that compiles and quotes prices for new and used automobiles and other vehicles of all makes, models, and types);

(B) Payments for car repairs or maintenance must be paid by the recipient or subrecipient directly to the third party that repairs or maintains the car; and

(C) The recipients or subrecipients may require program participants to share in the cost of car repairs or maintenance as a condition of receiving assistance with car repairs or maintenance.

(16) *Utility deposits.* This form of assistance consists of paying for utility deposits. Utility deposits must be a one-time fee, paid to utility companies.

(17) *Direct provision of services.* If the service described in paragraphs (e)(1) through (e)(16) of this section is being directly delivered by the recipient or subrecipient, eligible costs for those services also include:

(i) The costs of labor or supplies, and materials incurred by the recipient or

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subrecipient in directly providing supportive services to program participants; and

(ii) The salary and benefit packages of the recipient and subrecipient staff who directly deliver the services.

**§ 578.55 Operating costs.**

(a) *Use.* Grant funds may be used to pay the costs of the day-to-day operation of transitional and permanent housing in a single structure or individual housing units.

(b) *Eligible costs.* (1) The maintenance and repair of housing;

(2) Property taxes and insurance;

(3) Scheduled payments to a reserve for replacement of major systems of the housing (provided that the payments must be based on the useful life of the system and expected replacement cost);

(4) Building security for a structure where more than 50 percent of the units or area is paid for with grant funds;

(5) Electricity, gas, and water;

(6) Furniture; and

(7) Equipment.

(c) *Ineligible costs.* Program funds may not be used for rental assistance and operating costs in the same project. Program funds may not be used for the operating costs of emergency shelter- and supportive service-only facilities. Program funds may not be used for the maintenance and repair of housing where the costs of maintaining and repairing the housing are included in the lease.

**§ 578.57 Homeless Management Information System.**

(a) *Eligible costs.* (1) The recipient or subrecipient may use Continuum of Care program funds to pay the costs of contributing data to the HMIS designated by the Continuum of Care, including the costs of:

(i) Purchasing or leasing computer hardware;

(ii) Purchasing software or software licenses;

(iii) Purchasing or leasing equipment, including telephones, fax machines, and furniture;

(iv) Obtaining technical support;

(v) Leasing office space;



(vi) Paying charges for electricity, gas, water, phone service, and high-speed data transmission necessary to operate or contribute data to the HMIS;

(vii) Paying salaries for operating HMIS, including:

(A) Completing data entry;

(B) Monitoring and reviewing data quality;

(C) Completing data analysis;

(D) Reporting to the HMIS Lead;

(E) Training staff on using the HMIS; and

(F) Implementing and complying with HMIS requirements;

(viii) Paying costs of staff to travel to and attend HUD-sponsored and HUD-approved training on HMIS and programs authorized by Title IV of the McKinney-Vento Homeless Assistance Act;

(ix) Paying staff travel costs to conduct intake; and

(x) Paying participation fees charged by the HMIS Lead, as authorized by HUD, if the recipient or subrecipient is not the HMIS Lead.

(2) If the recipient or subrecipient is the HMIS Lead, it may also use Continuum of Care funds to pay the costs of:

(i) Hosting and maintaining HMIS software or data;

(ii) Backing up, recovering, or repairing HMIS software or data;

(iii) Upgrading, customizing, and enhancing the HMIS;

(iv) Integrating and warehousing data, including development of a data warehouse for use in aggregating data from subrecipients using multiple software systems;

(v) Administering the system;

(vi) Reporting to providers, the Continuum of Care, and HUD; and

(vii) Conducting training on using the system, including traveling to the training.

(3) If the recipient or subrecipient is a victim services provider, or a legal services provider, it may use Continuum of Care funds to establish and operate a comparable database that complies with HUD's HMIS requirements.

(b) *General restrictions.* Activities funded under this section must comply with the HMIS requirements.

#### § 578.59 Project administrative costs.

(a) *Eligible costs.* The recipient or subrecipient may use up to 10 percent of any grant awarded under this part, excluding the amount for Continuum of Care Planning Activities and UFA costs, for the payment of project administrative costs related to the planning and execution of Continuum of Care activities. This does not include staff and overhead costs directly related to carrying out activities eligible under § 578.43 through § 578.57, because those costs are eligible as part of those activities. Eligible administrative costs include:

(1) *General management, oversight, and coordination.* Costs of overall program management, coordination, monitoring, and evaluation. These costs include, but are not limited to, necessary expenditures for the following:

(i) Salaries, wages, and related costs of the recipient's staff, the staff of subrecipients, or other staff engaged in program administration. In charging costs to this category, the recipient may include the entire salary, wages, and related costs allocable to the program of each person whose primary responsibilities with regard to the program involve program administration assignments, or the pro rata share of the salary, wages, and related costs of each person whose job includes any program administration assignments. The recipient may use only one of these methods for each fiscal year grant. Program administration assignments include the following:

(A) Preparing program budgets and schedules, and amendments to those budgets and schedules;

(B) Developing systems for assuring compliance with program requirements;

(C) Developing agreements with subrecipients and contractors to carry out program activities;

(D) Monitoring program activities for progress and compliance with program requirements;

(E) Preparing reports and other documents directly related to the program for submission to HUD;

(F) Coordinating the resolution of audit and monitoring findings;

(G) Evaluating program results against stated objectives; and

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(H) Managing or supervising persons whose primary responsibilities with regard to the program include such assignments as those described in paragraph (a)(1)(i)(A) through (G) of this section.

(ii) Travel costs incurred for monitoring of subrecipients;

(iii) Administrative services performed under third-party contracts or agreements, including general legal services, accounting services, and audit services; and

(iv) Other costs for goods and services required for administration of the program, including rental or purchase of equipment, insurance, utilities, office supplies, and rental and maintenance (but not purchase) of office space.

(2) *Training on Continuum of Care requirements.* Costs of providing training on Continuum of Care requirements and attending HUD-sponsored Continuum of Care trainings.

(3) *Environmental review.* Costs of carrying out the environmental review responsibilities under § 578.31.

(b) *Sharing requirement.* (1) *UFAs.* If the recipient is a UFA that carries out a project, it may use up to 10 percent of the grant amount awarded for the project on project administrative costs. The UFA must share the remaining project administrative funds with its subrecipients.

(2) *Recipients that are not UFAs.* If the recipient is not a UFA, it must share at least 50 percent of project administrative funds with its subrecipients.

## § 578.61 Relocation costs.

(a) *In general.* Relocation costs under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 are eligible.

(b) *Eligible relocation costs.* Eligible costs are costs to provide relocation payments and other assistance to persons displaced by a project assisted with grant funds in accordance with § 578.83.

## § 578.63 Indirect costs.

(a) *In general.* Continuum of Care funds may be used to pay indirect costs in accordance with OMB Circulars A-87 or A-122, as applicable.

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(b) *Allocation.* Indirect costs may be allocated to each eligible activity as provided in subpart D, so long as that allocation is consistent with an indirect cost rate proposal developed in accordance with OMB Circulars A-87 or A-122, as applicable.

(c) *Expenditure limits.* The indirect costs charged to an activity subject to an expenditure limit under §§ 578.39, 578.41, and 578.59 must be added to the direct costs charged for that activity when determining the total costs subject to the expenditure limits.

## Subpart E—High-Performing Communities

### § 578.65 Standards.

(a) *In general.* The collaborative applicant for a Continuum may apply to HUD to have the Continuum be designated a high-performing community (HPC). The designation shall be for grants awarded in the same competition in which the designation is applied for and made.

(b) *Applying for HPC designation.* The application must be submitted at such time and in such manner as HUD may require, must use HMIS data where required to show the standards for qualifying are met, and must contain such information as HUD requires, including at a minimum:

(1) A report showing how the Continuum of Care program funds received in the preceding year were expended;

(2) A specific plan for how grant funds will be expended; and

(3) Information establishing that the Continuum of Care meets the standards for HPCs.

(c) *Standards for qualifying as an HPC.* To qualify as an HPC, a Continuum must demonstrate through:

(1) Reliable data generated by the Continuum of Care's HMIS that it meets all of the following standards:

(i) *Mean length of homelessness.* Either the mean length of episode of homelessness within the Continuum's geographic area is fewer than 20 days, or the mean length of episodes of homelessness for individuals or families in similar circumstances was reduced by at least 10 percent from the preceding federal fiscal year.

(ii) *Reduced recidivism.* Of individuals and families who leave homelessness, less than 5 percent become homeless again at any time within the next 2 years; or the percentage of individuals and families in similar circumstances who become homeless again within 2 years after leaving homelessness was decreased by at least 20 percent from the preceding federal fiscal year.

(iii) *HMIS coverage.* The Continuum's HMIS must have a bed coverage rate of 80 percent and a service volume coverage rate of 80 percent as calculated in accordance with HUD's HMIS requirements.

(iv) *Serving families and youth.* With respect to Continuums that served homeless families and youth defined as homeless under other federal statutes in paragraph (3) of the definition of homeless in § 576.2:

(A) 95 percent of those families and youth did not become homeless again within a 2-year period following termination of assistance; or

(B) 85 percent of those families achieved independent living in permanent housing for at least 2 years following termination of assistance.

(2) Reliable data generated from sources other than the Continuum's HMIS that is provided in a narrative or other form prescribed by HUD that it meets both of the following standards:

(i) *Community action.* All the metropolitan cities and counties within the Continuum's geographic area have a comprehensive outreach plan, including specific steps for identifying homeless persons and referring them to appropriate housing and services in that geographic area.

(ii) *Renewing HPC status.* If the Continuum was designated an HPC in the previous federal fiscal year and used Continuum of Care grant funds for activities described under § 578.71, that such activities were effective at reducing the number of individuals and families who became homeless in that community.

#### § 578.67 Publication of application.

HUD will publish the application to be designated an HPC through the HUD Web site, for public comment as to whether the Continuum seeking des-

ignation as an HPC meets the standards for being one.

#### § 578.69 Cooperation among entities.

An HPC must cooperate with HUD in distributing information about its successful efforts to reduce homelessness.

#### § 578.71 HPC-eligible activities.

In addition to using grant funds for the eligible costs described in subpart D of this part, recipients and subrecipients in Continuums of Care designated as HPCs may also use grant funds to provide housing relocation and stabilization services and short- and/or medium-term rental assistance to individuals and families at risk of homelessness as set forth in 24 CFR 576.103 and 24 CFR 576.104, if necessary to prevent the individual or family from becoming homeless. Activities must be carried out in accordance with the plan submitted in the application. When carrying out housing relocation and stabilization services and short- and/or medium-term rental assistance, the written standards set forth in § 578.7(a)(9)(v) and recordkeeping requirements of 24 CFR 576.500 apply.

### Subpart F—Program Requirements

#### § 578.73 Matching requirements.

(a) *In general.* The recipient or subrecipient must match all grant funds, except for leasing funds, with no less than 25 percent of funds or in-kind contributions from other sources. For Continuum of Care geographic areas in which there is more than one grant agreement, the 25 percent match must be provided on a grant-by-grant basis. Recipients that are UFAs or are the sole recipient for their Continuum, may provide match on a Continuum-wide basis. Cash match must be used for the costs of activities that are eligible under subpart D of this part, except that HPCs may use such match for the costs of activities that are eligible under § 578.71.

(b) *Cash sources.* A recipient or subrecipient may use funds from any source, including any other federal sources (excluding Continuum of Care program funds), as well as State, local, and private sources, provided that

funds from the source are not statutorily prohibited to be used as a match. The recipient must ensure that any funds used to satisfy the matching requirements of this section are eligible under the laws governing the funds in order to be used as matching funds for a grant awarded under this program.

(c) *In-kind contributions.* (1) The recipient or subrecipient may use the value of any real property, equipment, goods, or services contributed to the project as match, provided that if the recipient or subrecipient had to pay for them with grant funds, the costs would have been eligible under Subpart D, or, in the case of HPCs, eligible under § 578.71.

(2) The requirements of 24 CFR 84.23 and 85.24 apply.

(3) Before grant execution, services to be provided by a third party must be documented by a memorandum of understanding (MOU) between the recipient or subrecipient and the third party that will provide the services. Services provided by individuals must be valued at rates consistent with those ordinarily paid for similar work in the recipient's or subrecipient's organization. If the recipient or subrecipient does not have employees performing similar work, the rates must be consistent with those ordinarily paid by other employers for similar work in the same labor market.

(i) The MOU must establish the unconditional commitment, except for selection to receive a grant, by the third party to provide the services, the specific service to be provided, the profession of the persons providing the service, and the hourly cost of the service to be provided.

(ii) During the term of the grant, the recipient or subrecipient must keep and make available, for inspection, records documenting the service hours provided.

#### § 578.75 General operations.

(a) *State and local requirements.* (1) Housing and facilities constructed or rehabilitated with assistance under this part must meet State or local building codes, and in the absence of State or local building codes, the International Residential Code or International Building Code (as applicable

to the type of structure) of the International Code Council.

(2) Services provided with assistance under this part must be provided in compliance with all applicable State and local requirements, including licensing requirements.

(b) *Housing quality standards.* Housing leased with Continuum of Care program funds, or for which rental assistance payments are made with Continuum of Care program funds, must meet the applicable housing quality standards (HQS) under 24 CFR 982.401 of this title, except that 24 CFR 982.401(j) applies only to housing occupied by program participants receiving tenant-based rental assistance. For housing rehabilitated with funds under this part, the lead-based paint requirements in 24 CFR part 35, subparts A, B, J, and R apply. For housing that receives project-based or sponsor-based rental assistance, 24 CFR part 35, subparts A, B, H, and R apply. For residential property for which funds under this part are used for acquisition, leasing, services, or operating costs, 24 CFR part 35, subparts A, B, K, and R apply.

(1) Before any assistance will be provided on behalf of a program participant, the recipient, or subrecipient, must physically inspect each unit to assure that the unit meets HQS. Assistance will not be provided for units that fail to meet HQS, unless the owner corrects any deficiencies within 30 days from the date of the initial inspection and the recipient or subrecipient verifies that all deficiencies have been corrected.

(2) Recipients or subrecipients must inspect all units at least annually during the grant period to ensure that the units continue to meet HQS.

(c) *Suitable dwelling size.* The dwelling unit must have at least one bedroom or living/sleeping room for each two persons.

(1) Children of opposite sex, other than very young children, may not be required to occupy the same bedroom or living/sleeping room.

(2) If household composition changes during the term of assistance, recipients and subrecipients may relocate the household to a more appropriately sized unit. The household must still

have access to appropriate supportive services.

(d) *Meals.* Each recipient and subrecipient of assistance under this part who provides supportive housing for homeless persons with disabilities must provide meals or meal preparation facilities for residents.

(e) *Ongoing assessment of supportive services.* To the extent practicable, each project must provide supportive services for residents of the project and homeless persons using the project, which may be designed by the recipient or participants. Each recipient and subrecipient of assistance under this part must conduct an ongoing assessment of the supportive services needed by the residents of the project, the availability of such services, and the coordination of services needed to ensure long-term housing stability and must make adjustments, as appropriate.

(f) *Residential supervision.* Each recipient and subrecipient of assistance under this part must provide residential supervision as necessary to facilitate the adequate provision of supportive services to the residents of the housing throughout the term of the commitment to operate supportive housing. Residential supervision may include the employment of a full- or part-time residential supervisor with sufficient knowledge to provide or to supervise the provision of supportive services to the residents.

(g) *Participation of homeless individuals.* (1) Each recipient and subrecipient must provide for the participation of not less than one homeless individual or formerly homeless individual on the board of directors or other equivalent policymaking entity of the recipient or subrecipient, to the extent that such entity considers and makes policies and decisions regarding any project, supportive services, or assistance provided under this part. This requirement is waived if a recipient or subrecipient is unable to meet such requirement and obtains HUD approval for a plan to otherwise consult with homeless or formerly homeless persons when considering and making policies and decisions.

(2) Each recipient and subrecipient of assistance under this part must, to the

maximum extent practicable, involve homeless individuals and families through employment; volunteer services; or otherwise in constructing, rehabilitating, maintaining, and operating the project, and in providing supportive services for the project.

(h) *Supportive service agreement.* Recipients and subrecipients may require the program participants to take part in supportive services that are not disability-related services provided through the project as a condition of continued participation in the program. Examples of disability-related services include, but are not limited to, mental health services, outpatient health services, and provision of medication, which are provided to a person with a disability to address a condition caused by the disability. Notwithstanding this provision, if the purpose of the project is to provide substance abuse treatment services, recipients and subrecipients may require program participants to take part in such services as a condition of continued participation in the program.

(i) *Retention of assistance after death, incarceration, or institutionalization for more than 90 days of qualifying member.* For permanent supportive housing projects surviving, members of any household who were living in a unit assisted under this part at the time of the qualifying member's death, long-term incarceration, or long-term institutionalization, have the right to rental assistance under this section until the expiration of the lease in effect at the time of the qualifying member's death, long-term incarceration, or long-term institutionalization.

#### §578.77 Calculating occupancy charges and rent.

(a) *Occupancy agreements and leases.* Recipients and subrecipients must have signed occupancy agreements or leases (or subleases) with program participants residing in housing.

(b) *Calculation of occupancy charges.* Recipients and subrecipients are not required to impose occupancy charges on program participants as a condition of residing in the housing. However, if occupancy charges are imposed, they may not exceed the highest of:

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(1) 30 percent of the family's monthly adjusted income (adjustment factors include the number of people in the family, age of family members, medical expenses, and child-care expenses);

(2) 10 percent of the family's monthly income; or

(3) If the family is receiving payments for welfare assistance from a public agency and a part of the payments (adjusted in accordance with the family's actual housing costs) is specifically designated by the agency to meet the family's housing costs, the portion of the payments that is designated for housing costs.

(4) *Income.* Income must be calculated in accordance with 24 CFR 5.609 and 24 CFR 5.611(a). Recipients and subrecipients must examine a program participant's income initially, and if there is a change in family composition (e.g., birth of a child) or a decrease in the resident's income during the year, the resident may request an interim reexamination, and the occupancy charge will be adjusted accordingly.

(c) *Resident rent.* (1) *Amount of rent.* (i) Each program participant on whose behalf rental assistance payments are made must pay a contribution toward rent in accordance with section 3(a)(1) of the U.S. Housing Act of 1937 (42 U.S.C. 1437a(a)(1)).

(ii) Income of program participants must be calculated in accordance with 24 CFR 5.609 and 24 CFR 5.611(a).

(2) *Review.* Recipients or subrecipients must examine a program participant's income initially, and at least annually thereafter, to determine the amount of the contribution toward rent payable by the program participant. Adjustments to a program participant's contribution toward the rental payment must be made as changes in income are identified.

(3) *Verification.* As a condition of participation in the program, each program participant must agree to supply the information or documentation necessary to verify the program participant's income. Program participants must provide the recipient or subrecipient with information at any time regarding changes in income or other circumstances that may result in changes to a program participant's

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contribution toward the rental payment.

**§ 578.79 Limitation on transitional housing.**

A homeless individual or family may remain in transitional housing for a period longer than 24 months, if permanent housing for the individual or family has not been located or if the individual or family requires additional time to prepare for independent living. However, HUD may discontinue assistance for a transitional housing project if more than half of the homeless individuals or families remain in that project longer than 24 months.

**§ 578.81 Term of commitment, repayment of grants, and prevention of undue benefits.**

(a) *In general.* All recipients and subrecipients receiving grant funds for acquisition, rehabilitation, or new construction must operate the housing or provide supportive services in accordance with this part, for at least 15 years from the date of initial occupancy or date of initial service provision. Recipient and subrecipients must execute and record a HUD-approved Declaration of Restrictive Covenants before receiving payment of grant funds.

(b) *Conversion.* Recipients and subrecipients carrying out a project that provides transitional or permanent housing or supportive services in a structure may submit a request to HUD to convert a project for the direct benefit of very low-income persons. The request must be made while the project is operating as homeless housing or supportive services for homeless individuals and families, must be in writing, and must include an explanation of why the project is no longer needed to provide transitional or permanent housing or supportive services. The primary factor in HUD's decision on the proposed conversion is the unmet need for transitional or permanent housing or supportive services in the Continuum of Care's geographic area.

(c) *Repayment of grant funds.* If a project is not operated as transitional or permanent housing for 10 years following the date of initial occupancy,

HUD will require repayment of the entire amount of the grant used for acquisition, rehabilitation, or new construction, unless conversion of the project has been authorized under paragraph (b) of this section. If the housing is used for such purposes for more than 10 years, the payment amount will be reduced by 20 percentage points for each year, beyond the 10-year period in which the project is used for transitional or permanent housing.

(d) *Prevention of undue benefits.* Except as provided under paragraph (e) of this section, upon any sale or other disposition of a project site that received grant funds for acquisition, rehabilitation, or new construction, occurring before the 15-year period, the recipient must comply with such terms and conditions as HUD may prescribe to prevent the recipient or subrecipient from unduly benefiting from such sale or disposition.

(e) *Exception.* A recipient or subrecipient will not be required to comply with the terms and conditions prescribed under paragraphs (c) and (d) of this section if:

(1) The sale or disposition of the property used for the project results in the use of the property for the direct benefit of very low-income persons;

(2) All the proceeds are used to provide transitional or permanent housing that meet the requirements of this part;

(3) Project-based rental assistance or operating cost assistance from any federal program or an equivalent State or local program is no longer made available and the project is meeting applicable performance standards, provided that the portion of the project that had benefitted from such assistance continues to meet the tenant income and rent restrictions for low-income units under section 42(g) of the Internal Revenue Code of 1986; or

(4) There are no individuals and families in the Continuum of Care geographic area who are homeless, in which case the project may serve individuals and families at risk of homelessness.

#### §578.83 Displacement, relocation, and acquisition.

(a) *Minimizing displacement.* Consistent with the other goals and objectives of this part, recipients and subrecipients must ensure that they have taken all reasonable steps to minimize the displacement of persons (families, individuals, businesses, nonprofit organizations, and farms) as a result of projects assisted under this part. "Project," as used in this section, means any activity or series of activities assisted with Continuum of Care funds received or anticipated in any phase of an undertaking.

(b) *Temporary relocation.* (1) *Existing Building Not Assisted under Title IV of the McKinney-Vento Act.* No tenant may be required to relocate temporarily for a project if the building in which the project is being undertaken or will be undertaken is not currently assisted under Title IV of the McKinney-Vento Act. The absence of such assistance to the building means the tenants are not homeless and the tenants are therefore not eligible to receive assistance under the Continuum of Care program. When a tenant moves for such a project under conditions that cause the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA), 42 U.S.C. 4601-4655, to apply, the tenant must be treated as permanently displaced and offered relocation assistance and payments consistent with paragraph (c) of this section.

(2) *Existing Transitional Housing or Permanent Housing Projects Assisted Under Title IV of the McKinney-Vento Act.* Consistent with paragraph (c)(2)(ii) of this section, no program participant may be required to relocate temporarily for a project if the person cannot be offered a decent, safe, and sanitary unit in the same building or complex upon project completion under reasonable terms and conditions. The length of occupancy requirements in §578.79 may prevent a program participant from returning to the property upon completion (See paragraph (c)(2)(iii)(D) of this section). Any program participant who has been temporarily relocated for a period beyond one year

must be treated as permanently displaced and offered relocation assistance and payments consistent with paragraph (c) of this section. Program participants temporarily relocated in accordance with the policies described in this paragraph must be provided:

(i) Reimbursement for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the cost of moving to and from the temporarily occupied housing and any increase in monthly rent/occupancy charges and utility costs; and

(ii) Appropriate advisory services, including reasonable advance written notice of:

(A) The date and approximate duration of the temporary relocation;

(B) The location of the suitable, decent, safe, and sanitary dwelling to be made available for the temporary period;

(C) The reasonable terms and conditions under which the program participant will be able to occupy a suitable, decent, safe, and sanitary dwelling in the building or complex upon completion of the project; and

(D) The provisions of paragraph (b)(2)(i) of this section.

(c) *Relocation assistance for displaced persons.* (1) *In general.* A displaced person (defined in paragraph (c)(2) of this section) must be provided relocation assistance in accordance with the requirements of the URA and implementing regulations at 49 CFR part 24. A displaced person must be advised of his or her rights under the Fair Housing Act. Whenever possible, minority persons must be given reasonable opportunities to relocate to decent, safe, and sanitary replacement dwellings, not located in an area of minority concentration, that are within their financial means. This policy, however, does not require providing a person a larger payment than is necessary to enable a person to relocate to a comparable replacement dwelling. See 49 CFR 24.205(c)(2)(ii)(D).

(2) *Displaced person.* (i) For the purposes of paragraph (c) of this section, the term "displaced person" means any person (family, individual, business, nonprofit organization, or farm) that moves from real property, or moves personal property from real property,

permanently, as a direct result of acquisition, rehabilitation, or demolition for a project. This includes any permanent, involuntary move for a project, including any permanent move from the real property that is made:

(A) After the owner (or person in control of the site) issues a notice to move permanently from the property, or refuses to renew an expiring lease, if the move occurs after the date of the submission by the recipient or subrecipient of an application for assistance to HUD (or the recipient, as applicable) that is later approved and funded and the recipient or subrecipient has site control as evidenced in accordance with §578.25(b); or

(B) After the owner (or person in control of the site) issues a notice to move permanently from the property, or refuses to renew an expiring lease, if the move occurs after the date the recipient or subrecipient obtains site control, as evidenced in accordance with §578.25(b), if that occurs after the application for assistance; or

(C) Before the date described under paragraph (c)(2)(i)(A) or (B) of this section, if the recipient or HUD determines that the displacement resulted directly from acquisition, rehabilitation, or demolition for the project; or

(D) By a tenant of a building that is not assisted under Title IV of the McKinney-Vento Act, if the tenant moves after execution of the agreement covering the acquisition, rehabilitation, or demolition of the property for the project; or

(ii) For the purposes of paragraph (c) of this section, the term "displaced person" means any person (family, individual, business, nonprofit organization, or farm) that moves from real property, or moves personal property from real property, permanently, as a direct result of acquisition, rehabilitation, or demolition for a project. This includes any permanent, involuntary move for a project that is made by a program participant occupying transitional housing or permanent housing assisted under Title IV of the McKinney-Vento Act, if any one of the following three situations occurs:

(A) The program participant moves after execution of the agreement covering the acquisition, rehabilitation, or



demolition of the property for the project and is either not eligible to return upon project completion or the move occurs before the program participant is provided written notice offering the program participant an opportunity to occupy a suitable, decent, safe, and sanitary dwelling in the same building or complex upon project completion under reasonable terms and conditions. Such reasonable terms and conditions must include a lease (or occupancy agreement, as applicable) consistent with Continuum of Care program requirements, including a monthly rent or occupancy charge and monthly utility costs that does not exceed the maximum amounts established in § 578.77; or

(B) The program participant is required to relocate temporarily, does not return to the building or complex, and any one of the following situations occurs:

(1) The program participant is not offered payment for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation;

(2) The program participant is not eligible to return to the building or complex upon project completion; or

(3) Other conditions of the temporary relocation are not reasonable; or

(C) The program participant is required to move to another unit in the same building or complex, and any one of the following situations occurs:

(1) The program participant is not offered reimbursement for all reasonable out-of-pocket expenses incurred in connection with the move;

(2) The program participant is not eligible to remain in the building or complex upon project completion; or

(3) Other conditions of the move are not reasonable.

(iii) Notwithstanding the provisions of paragraph (c)(2)(i) or (ii) of this section, a person does not qualify as a "displaced person" if:

(A) The person has been evicted for serious or repeated violation of the terms and conditions of the lease or occupancy agreement; the eviction complied with applicable federal, State, or local requirements (see § 578.91); and the recipient or subrecipient determines that the eviction was not undertaken for the purpose of evading the

obligation to provide relocation assistance;

(B) The person moved into the property after the submission of the application but, before signing a lease or occupancy agreement and commencing occupancy, was provided written notice of the project's possible impact on the person (e.g., the person may be displaced, temporarily relocated, or incur a rent increase) and the fact that the person would not qualify as a "displaced person" (or for any relocation assistance provided under this section), as a result of the project;

(C) The person is ineligible under 49 CFR 24.2(a)(9)(ii);

(D) The person is a program participant occupying transitional housing or permanent housing assisted under Title IV of the Act who must move as a direct result of the length-of-occupancy restriction under § 578.79; or

(E) HUD determines that the person was not displaced as a direct result of acquisition, rehabilitation, or demolition for the project.

(iv) The recipient may request, at any time, HUD's determination of whether a displacement is or would be covered under this section.

(3) *Initiation of negotiations.* For purposes of determining the formula for computing replacement housing payment assistance to be provided to a displaced person pursuant to this section, if the displacement is a direct result of privately undertaken rehabilitation, demolition, or acquisition of the real property, "initiation of negotiations" means the execution of the agreement between the recipient and the subrecipient, or between the recipient (or subrecipient, as applicable) and the person owning or controlling the property. In the case of an option contract to acquire property, the initiation of negotiations does not become effective until execution of a written agreement that creates a legally enforceable commitment to proceed with the purchase, such as a purchase agreement.

(d) *Real property acquisition requirements.* Except for acquisitions described in 49 CFR 24.101(b)(1) through (5), the URA and the requirements of 49 CFR part 24, subpart B apply to any acquisition of real property for a project

where there are Continuum of Care funds in any part of the project costs.

(e) *Appeals.* A person who disagrees with the recipient's (or subrecipient's, if applicable) determination concerning whether the person qualifies as a displaced person, or the amount of relocation assistance for which the person is eligible, may file a written appeal of that determination with the recipient (see 49 CFR 24.10). A low-income person who is dissatisfied with the recipient's determination on his or her appeal may submit a written request for review of that determination to the local HUD field office.

**§ 578.85 Timeliness standards.**

(a) *In general.* Recipients must initiate approved activities and projects promptly.

(b) *Construction activities.* Recipients of funds for rehabilitation or new construction must meet the following standards:

(1) Construction activities must begin within 9 months of the later of signing of the grant agreement or of signing an addendum to the grant agreement authorizing use of grant funds for the project.

(2) Construction activities must be completed within 24 months of signing the grant agreement.

(3) Activities that cannot begin until after construction activities are completed must begin within 3 months of the date that construction activities are completed.

(c) *Distribution.* A recipient that receives funds through this part must:

(1) Distribute the funds to subrecipients (in advance of expenditures by the subrecipients);

(2) Distribute the appropriate portion of the funds to a subrecipient no later than 45 days after receiving an approvable request for such distribution from the subrecipient; and

(3) Draw down funds at least once per quarter of the program year, after eligible activities commence.

**§ 578.87 Limitation on use of funds.**

(a) *Maintenance of effort.* No assistance provided under this part (or any State or local government funds used to supplement this assistance) may be used to replace State or local funds

previously used, or designated for use, to assist homeless persons.

(b) *Faith-based activities.* (1) *Equal treatment of program participants and program beneficiaries.* (i) *Program participants.* Organizations that are religious or faith-based are eligible, on the same basis as any other organization, to participate in the Continuum of Care program. Neither the Federal Government nor a State or local government receiving funds under the Continuum of Care program shall discriminate against an organization on the basis of the organization's religious character or affiliation. Recipients and subrecipients of program funds shall not, in providing program assistance, discriminate against a program participant or prospective program participant on the basis of religion or religious belief.

(ii) *Beneficiaries.* In providing services supported in whole or in part with federal financial assistance, and in their outreach activities related to such services, program participants shall not discriminate against current or prospective program beneficiaries on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice.

(2) *Separation of explicitly religious activities.* Recipients and subrecipients of Continuum of Care funds that engage in explicitly religious activities, including activities that involve overt religious content such as worship, religious instruction, or proselytization, must perform such activities and offer such services outside of programs that are supported with federal financial assistance separately, in time or location, from the programs or services funded under this part, and participation in any such explicitly religious activities must be voluntary for the program beneficiaries of the HUD-funded programs or services.

(3) *Religious identity.* A faith-based organization that is a recipient or subrecipient of Continuum of Care program funds is eligible to use such funds as provided under the regulations of this part without impairing its independence, autonomy, expression of religious beliefs, or religious character. Such organization will retain its independence from federal, State, and local

government, and may continue to carry out its mission, including the definition, development, practice, and expression of its religious beliefs, provided that it does not use direct program funds to support or engage in any explicitly religious activities, including activities that involve overt religious content, such as worship, religious instruction, or proselytization, or any manner prohibited by law. Among other things, faith-based organizations may use space in their facilities to provide program-funded services, without removing or altering religious art, icons, scriptures, or other religious symbols. In addition, a Continuum of Care program-funded religious organization retains its authority over its internal governance, and it may retain religious terms in its organization's name, select its board members on a religious basis, and include religious references in its organization's mission statements and other governing documents.

(4) *Alternative provider.* If a program participant or prospective program participant of the Continuum of Care program supported by HUD objects to the religious character of an organization that provides services under the program, that organization shall, within a reasonably prompt time after the objection, undertake reasonable efforts to identify and refer the program participant to an alternative provider to which the prospective program participant has no objection. Except for services provided by telephone, the Internet, or similar means, the referral must be to an alternate provider in reasonable geographic proximity to the organization making the referral. In making the referral, the organization shall comply with applicable privacy laws and regulations. Recipients and subrecipients shall document any objections from program participants and prospective program participants and any efforts to refer such participants to alternative providers in accordance with the requirements of §578.103(a)(13). Recipients shall ensure that all subrecipient agreements make organizations receiving program funds aware of these requirements.

(5) *Structures.* Program funds may not be used for the acquisition, construc-

tion, or rehabilitation of structures to the extent that those structures are used for explicitly religious activities. Program funds may be used for the acquisition, construction, or rehabilitation of structures only to the extent that those structures are used for conducting eligible activities under this part. When a structure is used for both eligible and explicitly religious activities, program funds may not exceed the cost of those portions of the acquisition, new construction, or rehabilitation that are attributable to eligible activities in accordance with the cost accounting requirements applicable to the Continuum of Care program. Sanctuaries, chapels, or other rooms that a Continuum of Care program-funded religious congregation uses as its principal place of worship, however, are ineligible for Continuum of Care program-funded improvements. Disposition of real property after the term of the grant, or any change in the use of the property during the term of the grant, is subject to governmentwide regulations governing real property disposition (see 24 CFR parts 84 and 85).

(6) *Supplemental funds.* If a State or local government voluntarily contributes its own funds to supplement federally funded activities, the State or local government has the option to segregate the federal funds or commingle them. However, if the funds are commingled, this section applies to all of the commingled funds.

(c) *Restriction on combining funds.* In a single structure or housing unit, the following types of assistance may not be combined:

(1) Leasing and acquisition, rehabilitation, or new construction;

(2) Tenant-based rental assistance and acquisition, rehabilitation, or new construction;

(3) Short- or medium-term rental assistance and acquisition, rehabilitation, or new construction;

(4) Rental assistance and leasing; or

(5) Rental assistance and operating.

(d) *Program fees.* Recipients and subrecipients may not charge program participants program fees.

**§ 578.89 Limitation on use of grant funds to serve persons defined as homeless under other federal laws.**

(a) *Application requirement.* Applicants that intend to serve unaccompanied youth and families with children and youth defined as homeless under other federal laws in paragraph (3) of the homeless definition in § 576.2 must demonstrate in their application, to HUD's satisfaction, that the use of grant funds to serve such persons is an equal or greater priority than serving persons defined as homeless under paragraphs (1), (2), and (4) of the definition of homeless in § 576.2. To demonstrate that it is of equal or greater priority, applicants must show that it is equally or more cost effective in meeting the overall goals and objectives of the plan submitted under section 427(b)(1)(B) of the Act, especially with respect to children and unaccompanied youth.

(b) *Limit.* No more than 10 percent of the funds awarded to recipients within a single Continuum of Care's geographic area may be used to serve such persons.

(c) *Exception.* The 10 percent limitation does not apply to Continuums in which the rate of homelessness, as calculated in the most recent point-in-time count, is less than one-tenth of one percent of the total population.

**§ 578.91 Termination of assistance to program participants.**

(a) *Termination of assistance.* The recipient or subrecipient may terminate assistance to a program participant who violates program requirements or conditions of occupancy. Termination under this section does not bar the recipient or subrecipient from providing further assistance at a later date to the same individual or family.

(b) *Due process.* In terminating assistance to a program participant, the recipient or subrecipient must provide a formal process that recognizes the rights of individuals receiving assistance under the due process of law. This process, at a minimum, must consist of:

(1) Providing the program participant with a written copy of the program rules and the termination process be-

fore the participant begins to receive assistance;

(2) Written notice to the program participant containing a clear statement of the reasons for termination;

(3) A review of the decision, in which the program participant is given the opportunity to present written or oral objections before a person other than the person (or a subordinate of that person) who made or approved the termination decision; and

(4) Prompt written notice of the final decision to the program participant.

(c) *Hard-to-house populations.* Recipients and subrecipients that are providing permanent supportive housing for hard-to-house populations of homeless persons must exercise judgment and examine all extenuating circumstances in determining when violations are serious enough to warrant termination so that a program participant's assistance is terminated only in the most severe cases.

**§ 578.93 Fair Housing and Equal Opportunity.**

(a) *Nondiscrimination and equal opportunity requirements.* The nondiscrimination and equal opportunity requirements set forth in 24 CFR 5.105(a) are applicable.

(b) *Housing for specific subpopulations.* Recipients and subrecipients may exclusively serve a particular homeless subpopulation in transitional or permanent housing if the housing addresses a need identified by the Continuum of Care for the geographic area and meets one of the following:

(1) The housing may be limited to one sex where such housing consists of a single structure with shared bedrooms or bathing facilities such that the considerations of personal privacy and the physical limitations of the configuration of the housing make it appropriate for the housing to be limited to one sex;

(2) The housing may be limited to a specific subpopulation, so long as admission does not discriminate against any protected class under federal nondiscrimination laws in 24 CFR 5.105 (*e.g.*, the housing may be limited to homeless veterans, victims of domestic violence and their children, or chronically homeless persons and families).

(3) The housing may be limited to families with children.

(4) If the housing has in residence at least one family with a child under the age of 18, the housing may exclude registered sex offenders and persons with a criminal record that includes a violent crime from the project so long as the child resides in the housing.

(5) Sober housing may exclude persons who refuse to sign an occupancy agreement or lease that prohibits program participants from possessing, using, or being under the influence of illegal substances and/or alcohol on the premises.

(6) If the housing is assisted with funds under a federal program that is limited by federal statute or Executive Order to a specific subpopulation, the housing may be limited to that subpopulation (e.g., housing also assisted with funding from the Housing Opportunities for Persons with AIDS program under 24 CFR part 574 may be limited to persons with acquired immunodeficiency syndrome or related diseases).

(7) Recipients may limit admission to or provide a preference for the housing to subpopulations of homeless persons and families who need the specialized supportive services that are provided in the housing (e.g., substance abuse addiction treatment, domestic violence services, or a high intensity package designed to meet the needs of hard-to-reach homeless persons). While the housing may offer services for a particular type of disability, no otherwise eligible individuals with disabilities or families including an individual with a disability, who may benefit from the services provided may be excluded on the grounds that they do not have a particular disability.

(c) *Affirmatively furthering fair housing.* A recipient must implement its programs in a manner that affirmatively furthers fair housing, which means that the recipient must:

(1) Affirmatively market their housing and supportive services to eligible persons regardless of race, color, national origin, religion, sex, age, familial status, or handicap who are least likely to apply in the absence of special outreach, and maintain records of those marketing activities;

(2) Where a recipient encounters a condition or action that impedes fair housing choice for current or prospective program participants, provide such information to the jurisdiction that provided the certification of consistency with the Consolidated Plan; and

(3) Provide program participants with information on rights and remedies available under applicable federal, State and local fair housing and civil rights laws.

(d) *Accessibility and integrative housing and services for persons with disabilities.* Recipients and subrecipients must comply with the accessibility requirements of the Fair Housing Act (24 CFR part 100), Section 504 of the Rehabilitation Act of 1973 (24 CFR part 8), and Titles II and III of the Americans with Disabilities Act, as applicable (28 CFR parts 35 and 36). In accordance with the requirements of 24 CFR 8.4(d), recipients must ensure that their program's housing and supportive services are provided in the most integrated setting appropriate to the needs of persons with disabilities.

(e) *Prohibition against involuntary family separation.* The age and gender of a child under age 18 must not be used as a basis for denying any family's admission to a project that receives funds under this part.

#### § 578.95 Conflicts of interest.

(a) *Procurement.* For the procurement of property (goods, supplies, or equipment) and services, the recipient and its subrecipients must comply with the codes of conduct and conflict-of-interest requirements under 24 CFR 85.36 (for governments) and 24 CFR 84.42 (for private nonprofit organizations).

(b) *Continuum of Care board members.* No Continuum of Care board member may participate in or influence discussions or resulting decisions concerning the award of a grant or other financial benefits to the organization that the member represents.

(c) *Organizational conflict.* An organizational conflict of interest arises when, because of activities or relationships with other persons or organizations, the recipient or subrecipient is unable or potentially unable to render impartial assistance in the provision of any type or amount of assistance under

this part, or when a covered person's, as in paragraph (d)(1) of this section, objectivity in performing work with respect to any activity assisted under this part is or might be otherwise impaired. Such an organizational conflict would arise when a board member of an applicant participates in decision of the applicant concerning the award of a grant, or provision of other financial benefits, to the organization that such member represents. It would also arise when an employee of a recipient or subrecipient participates in making rent reasonableness determinations under § 578.49(b)(2) and § 578.51(g) and housing quality inspections of property under § 578.75(b) that the recipient, subrecipient, or related entity owns.

(d) *Other conflicts.* For all other transactions and activities, the following restrictions apply:

(1) No covered person, meaning a person who is an employee, agent, consultant, officer, or elected or appointed official of the recipient or its subrecipients and who exercises or has exercised any functions or responsibilities with respect to activities assisted under this part, or who is in a position to participate in a decision-making process or gain inside information with regard to activities assisted under this part, may obtain a financial interest or benefit from an assisted activity, have a financial interest in any contract, subcontract, or agreement with respect to an assisted activity, or have a financial interest in the proceeds derived from an assisted activity, either for him or herself or for those with whom he or she has immediate family or business ties, during his or her tenure or during the one-year period following his or her tenure.

(2) *Exceptions.* Upon the written request of the recipient, HUD may grant an exception to the provisions of this section on a case-by-case basis, taking into account the cumulative effects of the criteria in paragraph (d)(2)(i) of this section, provided that the recipient has satisfactorily met the threshold requirements of paragraph (d)(2)(i) of this section.

(i) *Threshold requirements.* HUD will consider an exception only after the recipient has provided the following documentation:

(A) Disclosure of the nature of the conflict, accompanied by a written assurance, if the recipient is a government, that there has been public disclosure of the conflict and a description of how the public disclosure was made; and if the recipient is a private nonprofit organization, that the conflict has been disclosed in accordance with their written code of conduct or other conflict-of-interest policy; and

(B) An opinion of the recipient's attorney that the interest for which the exception is sought would not violate State or local law, or if the subrecipient is a private nonprofit organization, the exception would not violate the organization's internal policies.

(i) *Factors to be considered for exceptions.* In determining whether to grant a requested exception after the recipient has satisfactorily met the threshold requirements under paragraph (c)(3)(1) of this section, HUD must conclude that the exception will serve to further the purposes of the Continuum of Care program and the effective and efficient administration of the recipient's or subrecipient's project, taking into account the cumulative effect of the following factors, as applicable:

(A) Whether the exception would provide a significant cost benefit or an essential degree of expertise to the program or project that would otherwise not be available;

(B) Whether an opportunity was provided for open competitive bidding or negotiation;

(C) Whether the affected person has withdrawn from his or her functions, responsibilities, or the decision-making process with respect to the specific activity in question;

(D) Whether the interest or benefit was present before the affected person was in the position described in paragraph (c)(1) of this section;

(E) Whether undue hardship will result to the recipient, the subrecipient, or the person affected, when weighed against the public interest served by avoiding the prohibited conflict;

(F) Whether the person affected is a member of a group or class of persons intended to be the beneficiaries of the assisted activity, and the exception will permit such person to receive generally the same interests or benefits as

are being made available or provided to the group or class; and

(G) Any other relevant considerations.

**§ 578.97 Program income.**

(a) *Defined.* Program income is the income received by the recipient or subrecipient directly generated by a grant-supported activity.

(b) *Use.* Program income earned during the grant term shall be retained by the recipient, and added to funds committed to the project by HUD and the recipient, used for eligible activities in accordance with the requirements of this part. Costs incident to the generation of program income may be deducted from gross income to calculate program income, provided that the costs have not been charged to grant funds.

(c) *Rent and occupancy charges.* Rents and occupancy charges collected from program participants are program income. In addition, rents and occupancy charges collected from residents of transitional housing may be reserved, in whole or in part, to assist the residents from whom they are collected to move to permanent housing.

**§ 578.99 Applicability of other federal requirements.**

In addition to the requirements set forth in 24 CFR part 5, use of assistance provided under this part must comply with the following federal requirements:

(a) *Environmental review.* Activities under this part are subject to environmental review by HUD under 24 CFR part 50 as noted in § 578.31.

(b) *Section 6002 of the Solid Waste Disposal Act.* State agencies and agencies of a political subdivision of a state that are using assistance under this part for procurement, and any person contracting with such an agency with respect to work performed under an assisted contract, must comply with the requirements of Section 6003 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. In accordance with Section 6002, these agencies and persons must:

(1) Procure items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part

247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired in the preceding fiscal year exceeded \$10,000;

(2) Procure solid waste management services in a manner that maximizes energy and resource recovery; and

(3) Must have established an affirmative procurement program for the procurement of recovered materials identified in the EPA guidelines.

(c) *Transparency Act Reporting.* Section 872 of the Duncan Hunter Defense Appropriations Act of 2009, and additional requirements published by the Office of Management and Budget (OMB), requires recipients to report subawards made either as pass-through awards, subrecipient awards, or vendor awards in the Federal Government Web site [www.fgws.gov](http://www.fgws.gov) or its successor system. The reporting of award and subaward information is in accordance with the requirements of the Federal Financial Assistance Accountability and Transparency Act of 2006, as amended by section 6202 of Public Law 110-252 and in OMB Policy Guidance issued to the federal agencies on September 14, 2010 (75 FR 55669).

(d) *The Coastal Barrier Resources Act of 1982* (16 U.S.C. 3501 *et seq.*) may apply to proposals under this part, depending on the assistance requested.

(e) *Applicability of OMB Circulars.* The requirements of 24 CFR part 85—Administrative Requirements for Grants and Cooperative Agreements to State, Local, and Federally Recognized Indian Tribal Governments and 2 CFR part 225—Cost Principles for State, Local and Indian Tribal Governments (OMB Circular A-87)—apply to governmental recipients and subrecipients except where inconsistent with the provisions of this part. The requirements of 24 CFR part 84—Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations; 2 CFR part 230—Cost Principles for Non-Profit Organizations (OMB Circular A-122); and 2 CFR part

220—Cost Principles for Education Institutions apply to the nonprofit recipients and subrecipients, except where inconsistent with the provisions of the McKinney-Vento Act or this part.

(f) *Lead-based paint.* The Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4351-4356), and implementing regulations at 24 CFR part 35, subparts A, B, H, J, K, M, and R apply to activities under this program.

(g) *Audit.* Recipients and subrecipients must comply with the audit requirements of OMB Circular A-133, "Audits of States, Local Governments, and Non-profit Organizations."

(h) *Davis-Bacon Act.* The provisions of the Davis-Bacon Act do not apply to this program.

(i) *Section 3 of the Housing and Urban Development Act.* Recipients and subrecipients must, as applicable, comply with Section 3 of the Housing and Urban Development Act of 1968 and its implementing regulations at 24 CFR part 135, as applicable.

### Subpart G—Grant Administration

#### § 578.101 Technical assistance.

(a) *Purpose.* The purpose of Continuum of Care technical assistance is to increase the effectiveness with which Continuums of Care, eligible applicants, recipients, subrecipients, and UFAs implement and administer their Continuum of Care planning process; improve their capacity to prepare applications; prevent the separation of families in projects funded under the Emergency Solutions Grants, Continuum of Care, and Rural Housing Stability Assistance programs; and adopt and provide best practices in housing and services for persons experiencing homelessness.

(b) *Defined.* Technical assistance means the transfer of skills and knowledge to entities that may need, but do not possess, such skills and knowledge. The assistance may include, but is not limited to, written information such as papers, manuals, guides, and brochures; person-to-person exchanges; web-based curriculums, training and Webinars, and their costs.

(c) *Set-aside.* HUD may set aside funds annually to provide technical assistance, either directly by HUD staff or indirectly through third-party providers.

(d) *Awards.* From time to time, as HUD determines the need, HUD may advertise and competitively select providers to deliver technical assistance. HUD may enter into contracts, grants, or cooperative agreements, when necessary, to implement the technical assistance. HUD may also enter into agreements with other federal agencies for awarding the technical assistance funds.

#### § 578.103 Recordkeeping requirements.

(a) *In general.* The recipient and its subrecipients must establish and maintain standard operating procedures for ensuring that Continuum of Care program funds are used in accordance with the requirements of this part and must establish and maintain sufficient records to enable HUD to determine whether the recipient and its subrecipients are meeting the requirements of this part, including:

(1) *Continuum of Care records.* Each collaborative applicant must keep the following documentation related to establishing and operating a Continuum of Care:

(i) Evidence that the Board selected by the Continuum of Care meets the requirements of § 578.5(b);

(ii) Evidence that the Continuum has been established and operated as set forth in subpart B of this part, including published agendas and meeting minutes, an approved Governance Charter that is reviewed and updated annually, a written process for selecting a board that is reviewed and updated at least once every 5 years, evidence required for designating a single HMIS for the Continuum, and monitoring reports of recipients and subrecipients;

(iii) Evidence that the Continuum has prepared the application for funds as set forth in § 578.9, including the designation of the eligible applicant to be the collaborative applicant.

(2) *Unified funding agency records.* UFAs that requested grant amendments from HUD, as set forth in § 578.105, must keep evidence that the



grant amendment was approved by the Continuum. This evidence may include minutes of meetings at which the grant amendment was discussed and approved.

(3) *Homeless status.* Acceptable evidence of the homeless as status is set forth in 24 CFR 576.500(b).

(4) *At risk of homelessness status.* For those recipients and subrecipients that serve persons at risk of homelessness, the recipient or subrecipient must keep records that establish "at risk of homelessness" status of each individual or family who receives Continuum of Care homelessness prevention assistance. Acceptable evidence is found in 24 CFR 576.500(c).

(5) *Records of reasonable belief of imminent threat of harm.* For each program participant who moved to a different Continuum of Care due to imminent threat of further domestic violence, dating violence, sexual assault, or stalking under § 578.51(c)(3), each recipient or subrecipient of assistance under this part must retain:

(i) Documentation of the original incidence of domestic violence, dating violence, sexual assault, or stalking, only if the original violence is not already documented in the program participant's case file. This may be written observation of the housing or service provider; a letter or other documentation from a victim service provider, social worker, legal assistance provider, pastoral counselor, mental health provider, or other professional from whom the victim has sought assistance; medical or dental records; court records or law enforcement records; or written certification by the program participant to whom the violence occurred or by the head of household.

(ii) Documentation of the reasonable belief of imminent threat of further domestic violence, dating violence, or sexual assault or stalking, which would include threats from a third-party, such as a friend or family member of the perpetrator of the violence. This may be written observation by the housing or service provider; a letter or other documentation from a victim service provider, social worker, legal assistance provider, pastoral counselor, mental health provider, or other pro-

fessional from whom the victim has sought assistance; current restraining order; recent court order or other court records; law enforcement report or records; communication records from the perpetrator of the violence or family members or friends of the perpetrator of the violence, including emails, voicemails, text messages, and social media posts; or a written certification by the program participant to whom the violence occurred or the head of household.

(6) *Annual income.* For each program participant who receives housing assistance where rent or an occupancy charge is paid by the program participant, the recipient or subrecipient must keep the following documentation of annual income:

(i) Income evaluation form specified by HUD and completed by the recipient or subrecipient; and

(ii) Source documents (e.g., most recent wage statement, unemployment compensation statement, public benefits statement, bank statement) for the assets held by the program participant and income received before the date of the evaluation;

(iii) To the extent that source documents are unobtainable, a written statement by the relevant third party (e.g., employer, government benefits administrator) or the written certification by the recipient's or subrecipient's intake staff of the oral verification by the relevant third party of the income the program participant received over the most recent period; or

(iv) To the extent that source documents and third-party verification are unobtainable, the written certification by the program participant of the amount of income that the program participant is reasonably expected to receive over the 3-month period following the evaluation.

(7) *Program participant records.* In addition to evidence of "homeless" status or "at-risk-of-homelessness" status, as applicable, the recipient or subrecipient must keep records for each program participant that document:

(i) The services and assistance provided to that program participant, including evidence that the recipient or subrecipient has conducted an annual

assessment of services for those program participants that remain in the program for more than a year and adjusted the service package accordingly, and including case management services as provided in § 578.37(a)(1)(ii)(F); and

(ii) Where applicable, compliance with the termination of assistance requirement in § 578.91.

(8) *Housing standards.* The recipient or subrecipient must retain documentation of compliance with the housing standards in § 578.75(b), including inspection reports.

(9) *Services provided.* The recipient or subrecipient must document the types of supportive services provided under the recipient's program and the amounts spent on those services. The recipient or subrecipient must keep record that these records were reviewed at least annually and that the service package offered to program participants was adjusted as necessary.

(10) *Match.* The recipient must keep records of the source and use of contributions made to satisfy the match requirement in § 578.73. The records must indicate the grant and fiscal year for which each matching contribution is counted. The records must show how the value placed on third party in-kind contributions was derived. To the extent feasible, volunteer services must be supported by the same methods that the organization uses to support the allocation of regular personnel costs.

(11) *Conflicts of interest.* The recipient and its subrecipients must keep records to show compliance with the organizational conflict-of-interest requirements in § 578.95(c), the Continuum of Care board conflict-of-interest requirements in § 578.95(b), the other conflict requirements in § 578.95(d), a copy of the personal conflict-of-interest policy developed and implemented to comply with the requirements in § 578.95, and records supporting exceptions to the personal conflict-of-interest prohibitions.

(12) *Homeless participation.* The recipient or subrecipient must document its compliance with the homeless participation requirements under § 578.75(g).

(13) *Faith-based activities.* The recipient and its subrecipients must document their compliance with the faith-

based activities requirements under § 578.87(b).

(14) *Affirmatively Furthering Fair Housing.* Recipients and subrecipients must maintain copies of their marketing, outreach, and other materials used to inform eligible persons of the program to document compliance with the requirements in § 578.93(c).

(15) *Other federal requirements.* The recipient and its subrecipients must document their compliance with the federal requirements in § 578.99, as applicable.

(16) *Subrecipients and contractors.* (i) The recipient must retain copies of all solicitations of and agreements with subrecipients, records of all payment requests by and dates of payments made to subrecipients, and documentation of all monitoring and sanctions of subrecipients, as applicable.

(ii) The recipient must retain documentation of monitoring subrecipients, including any monitoring findings and corrective actions required.

(iii) The recipient and its subrecipients must retain copies of all procurement contracts and documentation of compliance with the procurement requirements in 24 CFR 85.36 and 24 CFR part 84.

(17) *Other records specified by HUD.* The recipient and subrecipients must keep other records specified by HUD.

(b) *Confidentiality.* In addition to meeting the specific confidentiality and security requirements for HMIS data, the recipient and its subrecipients must develop and implement written procedures to ensure:

(1) All records containing protected identifying information of any individual or family who applies for and/or receives Continuum of Care assistance will be kept secure and confidential;

(2) The address or location of any family violence project assisted with Continuum of Care funds will not be made public, except with written authorization of the person responsible for the operation of the project; and

(3) The address or location of any housing of a program participant will not be made public, except as provided under a preexisting privacy policy of

the recipient or subrecipient and consistent with State and local laws regarding privacy and obligations of confidentiality;

(c) *Period of record retention.* All records pertaining to Continuum of Care funds must be retained for the greater of 5 years or the period specified below. Copies made by microfilming, photocopying, or similar methods may be substituted for the original records.

(1) Documentation of each program participant's qualification as a family or individual at risk of homelessness or as a homeless family or individual and other program participant records must be retained for 5 years after the expenditure of all funds from the grant under which the program participant was served; and

(2) Where Continuum of Care funds are used for the acquisition, new construction, or rehabilitation of a project site, records must be retained until 15 years after the date that the project site is first occupied, or used, by program participants.

(d) *Access to records.* (1) *Federal Government rights.* Notwithstanding the confidentiality procedures established under paragraph (b) of this section, HUD, the HUD Office of the Inspector General, and the Comptroller General of the United States, or any of their authorized representatives, must have the right of access to all books, documents, papers, or other records of the recipient and its subrecipients that are pertinent to the Continuum of Care grant, in order to make audits, examinations, excerpts, and transcripts. These rights of access are not limited to the required retention period, but last as long as the records are retained.

(2) *Public rights.* The recipient must provide citizens, public agencies, and other interested parties with reasonable access to records regarding any uses of Continuum of Care funds the recipient received during the preceding 5 years, consistent with State and local laws regarding privacy and obligations of confidentiality and confidentiality requirements in this part.

(e) *Reports.* In addition to the reporting requirements in 24 CFR parts 84 and 85, the recipient must collect and report data on its use of Continuum of

Care funds in an Annual Performance Report (APR), as well as in any additional reports as and when required by HUD. Projects receiving grant funds only for acquisition, rehabilitation, or new construction must submit APRs for 15 years from the date of initial occupancy or the date of initial service provision, unless HUD provides an exception under § 578.81(e).

#### § 578.105 Grant and project changes.

(a) *For Unified Funding Agencies and Continuums having only one recipient.* (1) The recipient may not make any significant changes without prior HUD approval, evidenced by a grant amendment signed by HUD and the recipient. Significant grant changes include a change of recipient, a shift in a single year of more than 10 percent of the total amount awarded under the grant for one approved eligible activity category to another activity and a permanent change in the subpopulation served by any one project funded under the grant, as well as a permanent proposed reduction in the total number of units funded under the grant.

(2) Approval of substitution of the recipient is contingent on the new recipient meeting the capacity criteria in the NOFA under which the grant was awarded, or the most recent NOFA. Approval of shifting funds between activities and changing subpopulations is contingent on the change being necessary to better serve eligible persons within the geographic area and ensuring that the priorities established under the NOFA in which the grant was originally awarded, or the most recent NOFA, are met.

(b) *For Continuums having more than one recipient.* (1) The recipients or subrecipients may not make any significant changes to a project without prior HUD approval, evidenced by a grant amendment signed by HUD and the recipient. Significant changes include a change of recipient, a change of project site, additions or deletions in the types of eligible activities approved for a project, a shift of more than 10 percent from one approved eligible activity to another, a reduction in the number of units, and a change in the subpopulation served.

(2) Approval of substitution of the recipient is contingent on the new recipient meeting the capacity criteria in the NOFA under which the grant was awarded, or the most recent NOFA. Approval of shifting funds between activities and changing subpopulations is contingent on the change being necessary to better serve eligible persons within the geographic area and ensuring that the priorities established under the NOFA in which the grant was originally awarded, or the most recent NOFA, are met.

(c) *Documentation of changes not requiring a grant amendment.* Any other changes to an approved grant or project must be fully documented in the recipient's or subrecipient's records.

#### § 578.107 Sanctions.

(a) *Performance reviews.* (1) HUD will review the performance of each recipient in carrying out its responsibilities under this part, with or without prior notice to the recipient. In conducting performance reviews, HUD will rely primarily on information obtained from the records and reports from the recipient and subrecipients, as well as information from on-site monitoring, audit reports, and information generated from HUD's financial and reporting systems (e.g., LOCCS and e-snaps) and HMIS. Where applicable, HUD may also consider relevant information pertaining to the recipient's performance gained from other sources, including citizen comments, complaint determinations, and litigation.

(2) If HUD determines preliminarily that the recipient or one of its subrecipients has not complied with a program requirement, HUD will give the recipient notice of this determination and an opportunity to demonstrate, within the time prescribed by HUD and on the basis of substantial facts and data that the recipient has complied with the requirements. HUD may change the method of payment to require the recipient to submit documentation before payment and obtain HUD's prior approval each time the recipient draws down funds. To obtain prior approval, the recipient may be required to manually submit its payment requests and supporting documentation

to HUD in order to show that the funds to be drawn down will be expended on eligible activities in accordance with all program requirements.

(3) If the recipient fails to demonstrate to HUD's satisfaction that the activities were carried out in compliance with program requirements, HUD may take one or more of the remedial actions or sanctions specified in paragraph (b) of this section.

(b) *Remedial actions and sanctions.* Remedial actions and sanctions for a failure to meet a program requirement will be designed to prevent a continuation of the deficiency; to mitigate, to the extent possible, its adverse effects or consequences; and to prevent its recurrence.

(1) HUD may instruct the recipient to submit and comply with proposals for action to correct, mitigate, and prevent noncompliance with program requirements, including:

(i) Preparing and following a schedule of actions for carrying out activities and projects affected by the noncompliance, including schedules, timetables, and milestones necessary to implement the affected activities and projects;

(ii) Establishing and following a management plan that assigns responsibilities for carrying out the remedial actions;

(iii) Canceling or revising activities or projects likely to be affected by the noncompliance, before expending grant funds for them;

(iv) Reprogramming grant funds that have not yet been expended from affected activities or projects to other eligible activities or projects;

(v) Suspending disbursement of grant funds for some or all activities or projects;

(vi) Reducing or terminating the remaining grant of a subrecipient and either reallocating those funds to other subrecipients or returning funds to HUD; and

(vii) Making matching contributions before or as draws are made from the recipient's grant.

(2) HUD may change the method of payment to a reimbursement basis.

(3) HUD may suspend payments to the extent HUD determines necessary

to preclude the further expenditure of funds for affected activities or projects.

(4) HUD may continue the grant with a substitute recipient of HUD's choosing.

(5) HUD may deny matching credit for all or part of the cost of the affected activities and require the recipient to make further matching contributions to make up for the contribution determined to be ineligible.

(6) HUD may require the recipient to reimburse the recipient's line of credit in an amount equal to the funds used for the affected activities.

(7) HUD may reduce or terminate the remaining grant of a recipient.

(8) HUD may condition a future grant.

(9) HUD may take other remedies that are legally available.

(c) *Recipient sanctions.* If the recipient determines that a subrecipient is not complying with a program requirement or its subrecipient agreement, the recipient must take one of the actions listed in paragraphs (a) and (b) of this section.

(d) *Deobligation.* HUD may deobligate funds for the following reasons:

(1) If the timeliness standards in § 578.85 are not met;

(2) If HUD determines that delays completing construction activities for a project will mean that the funds for other funded activities cannot reasonably be expected to be expended for eligible costs during the remaining term of the grant;

(3) If the actual total cost of acquisition, rehabilitation, or new construction for a project is less than the total cost agreed to in the grant agreement;

(4) If the actual annual leasing costs, operating costs, supportive services costs, rental assistance costs, or HMIS costs are less than the total cost agreed to in the grant agreement for a one-year period;

(5) Program participants have not moved into units within 3 months of the time that the units are available for occupancy; and

(6) The grant agreement may set forth in detail other circumstances under which funds may be deobligated and other sanctions may be imposed.

#### § 578.109 Closeout.

(a) *In general.* Grants will be closed out in accordance with the requirements of 24 CFR parts 84 and 85, and closeout procedures established by HUD.

(b) *Reports.* Applicants must submit all reports required by HUD no later than 90 days from the date of the end of the project's grant term.

(c) *Closeout agreement.* Any obligations remaining as of the date of the closeout must be covered by the terms of a closeout agreement. The agreement will be prepared by HUD in consultation with the recipient. The agreement must identify the grant being closed out, and include provisions with respect to the following:

(1) Identification of any closeout costs or contingent liabilities subject to payment with Continuum of Care program funds after the closeout agreement is signed;

(2) Identification of any unused grant funds to be deobligated by HUD;

(3) Identification of any program income on deposit in financial institutions at the time the closeout agreement is signed;

(4) Description of the recipient's responsibility after closeout for:

(i) Compliance with all program requirements in using program income on deposit at the time the closeout agreement is signed and in using any other remaining Continuum of Care program funds available for closeout costs and contingent liabilities;

(ii) Use of real property assisted with Continuum of Care program funds in accordance with the terms of commitment and principles;

(iii) Use of personal property purchased with Continuum of Care program funds; and

(iv) Compliance with requirements governing program income received subsequent to grant closeout.

(5) Other provisions appropriate to any special circumstances of the grant closeout, in modification of or in addition to the obligations in paragraphs (c)(1) through (4) of this section.



10 COPY

M. BARBARA CARTMILL  
DIRECTOR

**DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT**

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

July 17, 2014

Board of County Commissioners  
Clackamas County

Members of the Board:

**Approval of a Resolution Declaring the Public Necessity and Purpose  
for Acquisition of Rights of Way and Easements  
for the Pudding River (Whiskey Hill Road) Bridge Project and  
Authorizing Negotiations and Eminent Domain Actions**

<b>Purpose/Outcomes</b>	Under ORS 35.235 and the federal Uniform Act, a local governmental agency is required to declare by resolution or ordinance the necessity and the purpose for which the project is required by enacting a Condemnation Resolution prior to initiating acquisition of the easements or other property rights from abutters to the project.
<b>Dollar Amount and Fiscal Impact</b>	The right of way budget for the project is \$260,000 and is included within the \$8,769,000 total approved project budget.
<b>Funding Source</b>	Total Project Budget: \$8,769,000 Federal-Aid Surface Transportation Program (STP): \$6,971,124 Highway Bridge Program (HBP): \$897,300 County Road Fund: \$900,576
<b>Safety Impact</b>	The existing bridge has been the site of numerous accidents due to its alignment along a horizontal curve with poor sight distance. In addition, it has a perpetual scour problem, which has not abated with scour countermeasures that have been installed.
<b>Duration</b>	The Resolution remains active throughout the project's duration and terminates upon completion of the project or when all litigation associated with the project is concluded.
<b>Previous Board Action</b>	4/14/11 – BCC Approval of Agreement No. 27472 for design of the subject project 7/18/13 – BCC Approval of Agreement No. 27929 for right of way services for the subject project 7/25/13 – BCC Approval of Amendment #1 to Agreement No. 27472 for the construction of the subject project
<b>Contact Person(s)</b>	Joel Howie, DTD Project Mgr @ 503-742-4658 Kath Rose, DTD Sr. Right of Way Agent @ 503-742-4713

**BACKGROUND:**

The Board of County Commissioners has approved funding for the Pudding River (Whiskey Hill Road) Bridge Project No. 22184. This project will design and construct a replacement for the existing bridge with a new structure that meets current design standards. The existing bridge is narrow, functionally obsolete and structurally deficient. The Board has authority under ORS Chapter 35 to acquire rights of way and easements by purchase or condemnation proceedings.

The project has been planned and located in a manner which is most compatible with the greatest public good and which causes the least private injury. The Department of Transportation and Development (Department) shall negotiate in good faith in an attempt to reach agreement as to the amount of just compensation owed each affected property owner. To fairly determine the amount of just compensation, staff will utilize the expertise of authorized real estate appraisers and other such experts.

The Department has developed the final legal descriptions required for acquisition of the rights of way and easements for the seven properties affected by the Project. If during the course of the project design/construction modifications should effect acquisitions, staff will bring subsequent revisions to the Board for authorization.

The resolution directs the Department to resolve issues of just compensation through good faith negotiations. It requires the Director of the Department to notify the Board if exercise of the power of eminent domain becomes necessary. Only after this process is completed does it authorize the Office of County Counsel to file a condemnation action.

Staff respectfully requests that the Board approve a Resolution of Necessity and Purpose for the Pudding River (Whiskey Hill Road) Bridge Project for the acquisition of necessary rights of way and easements to provide for construction of the project.

The Resolution has been reviewed and approved by County Counsel.

**RECOMMENDATION:**

Staff respectfully recommends that the Board of County Commissioners approves the Resolution authorizing the acquisition of rights of way and easements by negotiation if possible, or condemnation, if necessary.

Sincerely,



Mike Bezner, PE  
Transportation Engineering Manager

Attachment

For information on this issue or copies of attachments  
please contact Kath Rose, Sr. Right of Way Agent at (503) 742-4713

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

In the Matter of the Pudding River (Whiskey Hill Road) Bridge Project, Declaring the Necessity and Purpose for Acquisition of Rights of Way and Easements, and Authorizing Negotiations and Eminent Domain Actions



Order No. \_\_\_\_\_  
(Page 1 of 2)

This matter comes before the Board of County Commissioners of Clackamas County, Oregon (the "Board") at its regularly scheduled meeting on July 17, 2014; and,

It appearing that the Board previously approved funding for the Pudding River (Whiskey Hill Road) Bridge Project No. 22184 ("Project"), which will provide for the construction of a new bridge, replacing the existing bridge over the Pudding River, spanning Clackamas and Marion Counties, that the Project is consistent with the powers and purposes of County government, and that the Project is necessary for the continued growth, safety and welfare of the community; and,

It further appearing to the Board that the Project has been planned and located in a manner which is most compatible with the greatest public good and causes the least private injury; and,

It further appearing to the Board that the acquisition of the rights of way and easements, described in Exhibit "A" is a necessary part of the Project and therefore is also consistent with the powers and purposes of County government, and necessary for the continued growth, safety and welfare of the community; and,

It further appearing to the Board that immediate possession of the rights of way and easements described in Exhibit "A" may be necessary and will be in the public interest in order to commence and complete the Project in a timely manner; and,

It further appearing that the Board has authority under ORS Chapter 35 to acquire rights of way and easements by purchase or eminent domain proceedings.

NOW, THEREFORE, IT IS HEREBY RESOLVED that this Board declares it necessary and in the public interest that the County immediately start acquisition of rights of way and easements described in Exhibit "A", either through negotiation and agreement, purchase, or, if necessary, by commencement of eminent domain proceedings.



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

In the Matter of the Pudding River (Whiskey Hill Road) Bridge Project, Declaring the Necessity and Purpose for Acquisition of Rights of Way and Easements, and Authorizing Negotiations and Eminent Domain Actions



Order No. \_\_\_\_\_  
(Page 2 of 2)

IT IS FURTHER ORDERED THAT:

1). The Department of Transportation and Development immediately, and in good faith, attempt to negotiate agreements as to amount of just compensation owed each owner of each property identified in Exhibit "A". In so doing, the department is authorized to retain real estate appraisers, negotiators, and other such experts deemed necessary to fairly determine the amount of just compensation owed; and,

2). If the Director of the Clackamas County Development (the "Director") determines that changes to the design of the Project, unanticipated field conditions, or the need to accommodate uneconomic remnants makes it necessary or desirable to modify the rights of way and easements required for the Project, the Director shall promptly bring before the Board, and the Board shall promptly consider a resolution amending Exhibit "A"; and,

3). It is the intention of the Board that the required rights of way and easements identified in Exhibit "A" be obtained through good faith negotiation. The Board acknowledges that the exercise of the power of eminent domain may be necessary. The Director shall inform the Board when the Manager deems eminent domain necessary. Thereafter, the Office of County Counsel is authorized to file complaints in condemnation and take such other steps as it determines necessary for the immediate possession of required rights of way and easements and the successful litigation of the condemnation action, including the retention of real estate appraisers, experts and other consultants deemed necessary to the successful conclusion of that litigation.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
John Ludlow, Chair

\_\_\_\_\_  
Mary Raethke, Recording Secretary

**Exhibit "A"**  
**Project Legal Descriptions**  
**Clackamas County**  
**Pudding River (Whiskey Hill Road) Bridge Project**

**Property No. 01; Tax Lot 41W36 00705**

Permanent Right of Way Easement for Road Purposes

A parcel of land lying in the Southwest One-Quarter and the Southeast One-Quarter of Section 36, Township 4 South, Range 1 West, of the Willamette Meridian, Clackamas County, Oregon, being a portion of that property described by that certain Statutory Warranty Deed recorded on March 26, 2013, as Record No. 2013-020709, Clackamas County Deed Records, said parcel being that portion of said property lying Northerly of the following described line, said line to be lengthened or shortened to terminate at the boundary line of said property:

Beginning at a point 40.00 feet right of the Design Whiskey Hill Road Centerline Station 138+72;

Thence Southeasterly, along a curve to the right 40.00 foot offset right from the Design Centerline, said curve having a radius of 720.00 feet a length of 156.69 feet to a point 40.00 feet right of the Design Centerline Station 140+71;

Thence Southerly, in a straight line, to a point 60.43 feet right of the Design Centerline Station 140+91;

Thence Southeasterly, in a straight line, to a point 63.86 feet right of the Design Centerline Station 141+50;

Thence Southeasterly, in a straight line, to a point 53.25 feet right of the Design Centerline Station 142+74;

Thence Southeasterly, in a straight line, to a point 69.21 feet right of the Design Centerline Station 143+30;

Thence Southeasterly, in a straight line, to a point 63.32 feet right of the Design Centerline Station 143+67.

The Parcel of land to which this description applies contains 10,125 square feet more or less.

Temporary Construction Easement

A parcel of land lying in the Southwest One-Quarter and the Southeast One-Quarter of Section 36, Township 4 South, Range 1 West, of the Willamette Meridian, Clackamas County, Oregon, being a portion of that property described by that certain Statutory Warranty Deed recorded on March 26, 2013, as Record No. 2013-020709, Clackamas County Deed Records, said parcel being that portion of said property lying Northerly of the following described line, said line to be lengthened or shortened to terminate at the boundary line of said property:

Beginning at a point 41.07 feet right of the Design Whiskey Hill Road Centerline Station 138+70;

Thence Southeasterly, in a straight line, to a point 73.88 feet right of the Design Centerline Station 141+50;

Thence Southeasterly, in a straight line, to a point 63.37 feet right of the Design Centerline Station 142+73;

Thence Southeasterly, in a straight line, to a point 79.43 feet right of the Design Centerline Station 143+29;

Thence Southeasterly, in a straight line, to a point 72.16 feet right of the Design Centerline Station 143+75.

The Parcel of land to which this description applies contains 7,063 square feet more or less.

The stationing used to describe these parcels described above is based on the Design Centerline of Whiskey Hill Road, being more particularly described as follows:

Beginning at a point in the Centerline of Whiskey Hill Road, said point being a 3" Brass Cap in Monument Box being the Northeasterly corner of the A. Dimmick DLC #64 as shown on MCSR 34656, Survey for Marion County, Market Road 9, Whiskey Hill Road, beginning stationing of 106+61.93 is derived from the as-built records as shown on CS 11236 recorded in the Marion County Records;

Thence S87°17'34"E 2,466.04 feet along the existing centerline of Whiskey Hill Road, MR 9 to Centerline Station 131+27.97;

Thence N84°42'56"E 302.02 feet to Centerline Station 134+29.99 and the beginning of a 760.00 foot radius curve to the right, having a central angle of 49°45'35", said point being the beginning of the Design Centerline;

Thence along said Design Centerline of Whiskey Hill Road, along the arc of said curve to the right (the long chord of which bears S70°24'16"E 639.49 feet) 660.04 feet to Station 140+90.03, said station ties back to the Existing Centerline;

Thence along the Existing Centerline S 45°31'29"E 247.55 feet to the existing centerline Station 143+37.58;

Thence continuing along the Centerline of the Existing Centerline S45°31'29"E to Centerline Station 156+00.24.

**Property No. 02; Tax Lot 41W36 00702**

**Permanent Right of Way Easement for Road Purposes**

A parcel of land lying in the Southeast One-Quarter of Section 36, Township 4 South, Range 1 West, of the Willamette Meridian, Clackamas County, Oregon, being a portion of that property

described by that certain Warranty Deed recorded on September 21, 2009, as Record No. 2009-066271, Clackamas County Deed Records, said parcel being that portion of said property lying Northerly of the following described line, said line to be lengthened or shortened to terminate at the boundary line of said property:

Beginning at a point 67.00 feet right of the Design Whiskey Hill Road Centerline Station 143+43;

Thence Southeasterly, in a straight line, to a point 30.00 feet right of the Design Centerline Station 145+78.

The Parcel of land to which this description applies contains 4,435 square feet more or less.

Temporary Construction Easement

A parcel of land lying in the Southeast One-Quarter of Section 36, Township 4 South, Range 1 West, of the Willamette Meridian, Clackamas County, Oregon, being a portion of that property described by that certain Warranty Deed recorded on September 21, 2009, as Record No. 2009-066271, Clackamas County Deed Records, said parcel being that portion of said property lying southerly of the following described line, said line to be lengthened or shortened to terminate at the boundary line of said property:

Beginning at a point 75.90 feet right of the Design Whiskey Hill Road Centerline Station 143+52;

Thence Southeasterly, in a straight line, to a point 30.00 feet right of the Design Centerline Station 146+44.

The Parcel of land to which this description applies contains 2,550 square feet more or less.

Property No. 03; Tax Lot 41W36 00701

Permanent Right of Way Easement for Road Purposes (Relocation of Co. Road 850)

A parcel of land lying in the Southeast One-Quarter of Section 36, Township 4 South, Range 1 West, of the Willamette Meridian, Clackamas County, Oregon, being a portion of that property described by that certain Statutory Bargain and Sale Deed recorded on September 09, 2010, as Record No. 2010-056306, Clackamas County Deed Records, said parcel being a 16 foot wide Roadway Easement for the relocation of County Road 850, said easement being 8 feet equally offset from the Centerline described below:

Beginning at a point 30.00 feet left of the Design Whiskey Hill Road Centerline Station 142+93;

Thence through the lands of the Grantee the following four (4) courses and distances:

N44°28'31" E 8.37 feet to the point of curvature of a 38.00 foot radius curve to the left;

Along said curve to the left a distance of 65.43 feet to the point of Tangency, said curve having a Chord of N04°50'56"W 57.64 feet';

Thence N54°10'23"W 96.26 feet to the point of curvature of a 25.00 foot radius curve to the right;

Along said curve to the right a distance of 38.29 feet, said curve having a Chord of N10°18'04"W 34.65 feet to the Terminus of said Easement, said point being 81.38 feet left of the Design Whiskey Hill Road Centerline Station 141+26.

The Parcel of land to which this description applies contains 3,327 square feet more or less.

Permanent Right of Way Easement for Road Purposes

A parcel of land lying in the Southeast One-Quarter of Section 36, Township 4 South, Range 1 West, of the Willamette Meridian, Clackamas County, Oregon, being a portion of that property described by that certain Statutory Bargain and Sale Deed recorded on September 09, 2010, as Record No. 2010-056306, Clackamas County Deed Records, said parcel being that portion of said property lying southerly of the following described line, said line to be lengthened or shortened to terminate at the boundary line of said property:

Beginning at a point 53.87 feet left of the Design Whiskey Hill Road Centerline Station 140+26;

Thence Southeasterly, in a straight line, to a point 81.38 feet left of the Design Centerline Station 141+26;

Thence Southeasterly, in a straight line, to a point 94.52 feet left of the Design Centerline Station 142+75;

Thence Southerly, in a straight line, to a point 88.24 feet left of the Design Centerline Station 142+75;

Thence along a non-tangent curve to the right that has a radius of 54.00 feet a distance of 64.57 feet (said curve having a chord of S10°13'03"W 60.80') to a point 38.37 feet left of the Design Centerline Station 143+09.

Thence Southerly, in a straight line, to a point 30.00 feet left of the Design Centerline Station 143+09.

EXCEPTING therefrom that portion of a 16 foot wide County Road 850 as defined as Item 5 in Document 78-49862 filed in the Clackamas County Records.

EXCEPTING therefrom that portion of a Permanent Right-of-Way Easement for Roadway Purposes as described above being 16 feet wide Roadway Easement for the relocation of County Road 850

The Parcel of land to which this description applies contains 10,535 square feet more or less.

Temporary Construction Easement

A parcel of land lying in the Southeast One-Quarter of Section 36, Township 4 South, Range 1 West, of the Willamette Meridian, Clackamas County, Oregon, being a portion of that property.

described by that certain Statutory Bargain and Sale Deed recorded on September 09, 2010, as Record No. 2010-056306, Clackamas County Deed Records, said parcel being that portion of said property lying southerly of the following described line, said line to be lengthened or shortened to terminate at the boundary line of said property:

Beginning at a point 89.57 feet left of the Design Whiskey Hill Road Centerline Station 140+65;

Thence Southeasterly, in a straight line, to a point 104.58 feet left of the Design Centerline Station 142+74;

Thence Southeasterly, in a straight line, to a point 30.00 feet left of the Design Centerline Station 144+70.

The Parcel of land to which this description applies contains 4,750 square feet more or less.

#### Permanent Slope Easement

A parcel of land lying in the Southeast One-Quarter of Section 36, Township 4 South, Range 1 West, of the Willamette Meridian, Clackamas County, Oregon, being a portion of that property described by that certain Statutory Bargain and Sale Deed recorded on September 09, 2010, as Record No. 2010-056306, Clackamas County Deed Records, said parcel being that portion of said property lying southerly of the following described line, said line to be lengthened or shortened to terminate at the boundary line of said property:

Beginning at a point 30.00 feet left of the Design Whiskey Hill Road Centerline Station 144+43;

Thence Northwesterly, in a straight line, to a point 94.52 feet left of the Design Centerline Station 142+75;

Thence Southerly, in a straight line, to a point 88.24 feet left of the Design Centerline Station 142+75;

Thence along a non-tangent curve to the right that has a radius of 54.00 feet a distance of 64.57 feet (said curve having a chord of S10°13'03"W 60.80') to a point 38.37 feet left of the Design Centerline Station 143+09.

Thence Southerly, in a straight line, to a point 30.00 feet left of the Design Centerline Station 143+09;

The Parcel of land to which this description applies contains 3,923 square feet more or less.

The stationing used to describe all the parcels is based on the Design Centerline of Whiskey Hill Road, being more particularly described as follows:

Beginning at a point in the Centerline of Whiskey Hill Road, said point being a 3" Brass Cap in Monument Box being the Northeasterly corner of the A. Dimmick DLC #64 as shown on MCSR 34656, Survey for Marion County, Market Road 9, Whiskey Hill Road, beginning stationing of 106+61.93 is derived from the as-built records as shown on CS 11236 recorded in the Marion County Records;

Thence S87°17'34"E 2,466.04 feet along the existing centerline of Whiskey Hill Road, MR 9 to Centerline Station 131+27.97;

Thence N84°42'56"E 302.02 feet to Centerline Station 134+29.99 and the beginning of a 760.00 foot radius curve to the right, having a central angle of 49°45'35", said point being the beginning of the Design Centerline;

Thence along said Design Centerline of Whiskey Hill Road, along the arc of said curve to the right (the long chord of which bears S70°24'16"E 639.49 feet) 660.04 feet to Station 140+90.03, said station ties back to the Existing Centerline;

Thence along the Existing Centerline S 45°31'29"E 247.55 feet to the existing centerline Station 143+37.58;

Thence continuing along the Centerline of the Existing Centerline S45°31'29"E to Centerline Station 156+00.24.

**Property No. 04; Tax Lot 41W36 00102**

**Parcel 1: Permanent Right of Way Easement for Road Purposes**

A parcel of land lying in the Northwest and Northeast One-Quarter of Section 36, Township 4 South, Range 1 West, of the Willamette Meridian, Clackamas County, Oregon, being a portion of the property described by that certain Warranty Deed recorded on November 21, 1978, as Record No. 78-49862, Clackamas County Deed Records, said parcel being that portion of said property lying Northerly of the following described line and Southerly of the existing centerline of Whiskey Hill road:

Beginning at a point 40.00 feet right of the Design Whiskey Hill Road Centerline Station 137+35;

Thence Easterly, along a curve to the right 40.00 foot offset right from the Design Centerline, said curve having a radius of 720.00 feet a length of 126.56 feet to a point 40.00 feet right of the Design Centerline Station 139+50.

Parcel 1 to which this description applies contains 4,253 square feet more or less.

The stationing used to describe this parcel is based on the Design Centerline of Whiskey Hill Road, being more particularly described as follows:

Beginning at a point in the Centerline of Whiskey Hill Road, said point being a 3" Brass Cap in Monument Box being the Northeasterly corner of the A. Dimmick DLC #64 as shown on MCSR 34656, Survey for Marion County, Market Road 9, Whiskey Hill Road, beginning stationing of 106+61.93 is derived from the as-built records as shown on CS 11236 recorded in the Marion County Records;

Thence S87°17'34"E 2,466.04 feet along the existing centerline of Whiskey Hill Road, MR 9 to Centerline Station 131+27.97;

Thence N84°42'56"E 302.02 feet to Centerline Station 134+29.99 and the beginning of a 760.00 foot radius curve to the right, having a central angle of 49°45'35", said point being the beginning of the Design Centerline;

Thence along said Design Centerline of Whiskey Hill Road, along the arc of said curve to the right (the long chord of which bears S70°24'16"E 639.49 feet) 660.04 feet to Station 140+90.03, said station ties back to the Existing Centerline;

Thence along the Existing Centerline S 45°31'29"E 247.55 feet to the existing centerline Station 143+37.58;

Thence continuing along the Centerline of the Existing Centerline S45°31'29"E to Centerline Station 156+00.24.

Parcel 2: Permanent Right of Way Easement for Road Purposes

A parcel of land lying in the Northwest and Northeast One-Quarter of Section 36, Township 4 South, Range 1 West, of the Willamette Meridian, Clackamas County, Oregon, being a portion of the property described by that certain Warranty Deed recorded on November 21, 1978, as Record No. 78-49862, Clackamas County Deed Records, said parcel being that portion of said property lying Southerly of the following described line and Northerly of the existing centerline of Whiskey Hill road:

Beginning at a point 42.31 feet left of the Design Whiskey Hill Road Centerline Station 139+57;

Thence Southeasterly, in a straight line, to a point 63.80 feet left of the Design Centerline Station 140+66.

Parcel 2 to which this description applies contains 855 square feet more or less.

The stationing used to describe this parcel is based on the Design Centerline of Whiskey Hill Road described in Parcel 1 above.

Parcel 3: Temporary Construction Easement

A parcel of land lying in the Northwest and Northeast One-Quarter of Section 36, Township 4 South, Range 1 West, of the Willamette Meridian, Clackamas County, Oregon, being a portion of the property described by that certain Warranty Deed recorded on November 21, 1978, as Record No. 78-49862, Clackamas County Deed Records, said parcel being that portion of said property lying Southerly of the following described line and Northerly of the existing centerline of Whiskey Hill road;

Beginning at a point 76.00 feet left of the Design Whiskey Hill Road Centerline Station 139+00;

Thence Southeasterly, in a straight line, to a point 88.83 feet left of the Design Centerline Station 140+30;

Thence Southeasterly, in a straight line, to a point 91.47 feet left of the Design Centerline Station 140+94.



Excepting therefrom that portion described above as Parcel 2.

Parcel 3 to which this description applies contains 5,582 square feet more or less.

The stationing used to describe this parcel is based on the Design Centerline of Whiskey Hill Road described in Parcel 1 above.

# Approval of Previous Business Meeting Minutes: June 19, 2014

(minutes attached)

# **BOARD OF COUNTY COMMISSIONERS BUSINESS MEETING MINUTES**

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

<http://www.clackamas.us/bcc/business.html>

**Thursday, June 19, 2014 - 6:00 PM**

**Public Services Building**

**2051 Kaen Rd., Oregon City, OR 97045**

**PRESENT: Commissioner John Ludlow, Chair  
Commissioner Jim Bernard  
Commissioner Paul Savas  
Commissioner Martha Schrader  
Commissioner Tootie Smith  
Housing Authority Commissioner Paul Reynolds**

## **I. CALL TO ORDER**

- Roll Call
- Pledge of Allegiance

*Chair Ludlow announced the Board will convene as the Housing Authority Board for the first item; he introduced Housing Authority Commissioner Paul Reynolds.*

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

Chair Ludlow asked the Clerk to read the Consent Agenda by title, he then asked for a motion.

1. Resolution No. 1905, Approving the Housing Authority Fiscal Year 2014-2015 Budgets
2. In the Matter of Writing off Uncollectible Accounts for the Fourth Quarter of FY 2014

### **MOTION:**

Commissioner Reynolds: I move we approve the Housing Authority Consent Agenda.

Commissioner Bernard: Second.

Clerk calls the poll:

Commissioner Reynolds: Aye.

Commissioner Savas: Aye.

Commissioner Schrader: Aye.

Commissioner Smith: Aye.

Commissioner Bernard: Aye.

Chair Ludlow: Aye - the motion passes 6-0

*Chair Ludlow adjourned as the Housing Authority Board and convened as the Board of County Commissioners for the remainder of the meeting.*

## **II. PRESENTATION**

1. State of the County Presentation

A video was shown regarding the State of the County.

Commissioner followed the video with a speech talking about the state of the County.

## **III. CITIZEN COMMUNICATION**

<http://www.clackamas.us/bcc/business.html>

1. Les Poole, Gladstone – spoke regarding Gladstone Library, Livestock barn at Fair Grounds and the upgrade of County web page.
2. Kevin Johnson, Gladstone – spoke regarding the Livestock barn at Fair Grounds.

*~Board Discussion~*

**IV. DISCUSSION ITEMS**

***~NO DISCUSSION ITEMS SCHEDULED***

**V. CONSENT AGENDA**

Chair Ludlow asked the Clerk to read the Consent Agenda by title, he then asked for a motion.

**MOTION:**

Commissioner Schrader: I move we approve the Consent Agenda.

Commissioner Bernard: Second.

Clerk calls the poll:

Commissioner Bernard: Aye.

Commissioner Smith: Aye.

Commissioner Schrader: Aye.

Commissioner Savas: Aye.

Chair Ludlow: Aye - the motion passes 5-0

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

1. Approval for renewal of Revenue Intergovernmental Agreement with Clackamas County Community Corrections, to provide Behavioral Health Services to Community Corrections Consumers – *Health Centers*
2. Approval of Amendment No. 3 to Professional, Technical, and Consultant Service Contract with Resource Connections of Oregon to provide Fiscal Intermediary Services for Persons with Developmental Disabilities – *Social Services*
3. Approval of an Agency Service Agreement with Albertina Kerr Centers for Sub-Acute Psychiatric Services – *Behavioral Health*
4. Approval of a Subrecipient Grant Agreement with CODA, Inc. for the Housing Assistance Program – *Behavioral Health*
5. Approval of an Agency Service Agreement with Lori Olson, PMHNP for Outpatient Mental Health Services – *Behavioral Health*

**B. Department of Transportation & Development**

1. Approval of a Contract with D & T Excavation, Inc. for the Barlow Road, Zimmerman Road Intersection Improvement Project - *Purchasing*

**C. Elected Officials**

1. Approval of Previous Business Meeting Minutes – *BCC*
2. Approval of an Intergovernmental Agreement with the City of Damascus to Provided Judicial Services through the Clackamas County Justice Court – *Justice Court*

**VI. DEVELOPMENT AGENCY**

1. Approval of Landlord Estoppel Certificate, Consent to Change in Ownership, and Waiver and Consent Forms for Oregon Iron Works, Inc.

**VII. WATER ENVIRONMENT SERVICES**

1. Approval of an Agreement between Clackamas County Service District No. 1 and JRT Mechanical, Inc for the Kellogg Creek WPCP Blower Building HVAC Improvement Project
2. Board Order No. **2014-56** Approving the Transfer of Appropriations within Clackamas County Service District No. 1 2013-2014 Fiscal Year Budget
3. Board Order No. **2014-57** Approving the Transfer of Appropriations for the Tri-City Service District 2013-2014 Fiscal Year Budget

**VIII. COUNTY ADMINISTRATOR UPDATE**

<http://www.clackamas.us/bcc/business.html>

**IX. COMMISSIONERS COMMUNICATION**

<http://www.clackamas.us/bcc/business.html>

**MEETING ADJOURNED – 7:00 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 by the following Saturday. You may also order copies from any library in Clackamas County or the Clackamas County Government Channel.**

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



NANCY S. BUSH  
DIRECTOR

DEPARTMENT OF EMERGENCY MANAGEMENT

July 17, 2014

COMMUNICATIONS AND EMERGENCY OPERATIONS CENTER  
2200 KAEN ROAD | OREGON CITY, OR 97045

Board of County Commissioner  
Clackamas County

Members of the Board:

Approval of two FY12 Urban Area Security Initiative (UASI)  
Subrecipient Grant Agreements with Clackamas Fire District #1

<b>Purpose/Outcomes</b>	Approving two FY12 Subrecipient Grant Agreements between Clackamas County and Clackamas Clackamas Fire District #1 (CFD#1) allows CFD#1 to receive and/or benefit from UASI grant funds that pass through Clackamas County.
<b>Dollar Amount and Fiscal Impact</b>	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. Upon approval of the Subrecipient Grant Agreements, CFD#1 will be eligible to receive \$70,000 for an Emergency Medical System (EMS)/Urban Search and Rescue (USAR) Consortium Equipment Vehicle and up to \$35,000 for hazardous material training.
<b>Funding Source</b>	The United States Department of Homeland Security, Federal Emergency Management Agency - no County General Funds are involved.
<b>Safety Impact</b>	CFD#1 will enhance their disaster response capability with funds from this grant.
<b>Duration</b>	The FY12 UASI grant award period is effective from the date of signature by both parties through August 31, 2014.
<b>Previous Board Action</b>	The FY12 UASI Intergovernmental Agreement, which serves as the basis for this agreement, was approved by the Board of County Commissioners during the August 29, 2013 business meeting – agenda item 082913-E2.
<b>Contact Person</b>	Nancy Bush, Director, 503-655-8665
<b>Contract No.</b>	Subrecipient grant agreements 14-025 and 14-026

**BACKGROUND:**

Clackamas County is a signatory to the FY12 UASI Intergovernmental Agreement with the City of Portland that requires 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 FY12 UASI Subrecipient Grant Agreements with CFD#1 will allow the District to receive \$70,000 for an EMS/USAR Consortium Equipment Vehicle, up to \$35,000 for hazardous materials training, as well as to be eligible to benefit from any future FY12 UASI funding opportunities.

The agreement has been reviewed and approved by County Counsel.

**RECOMMENDATION:**

Staff respectfully recommends the Board approve two FY12 Subrecipient Grant Agreements (#14-025 and #14-026) between Clackamas County and the CFD#1.

Respectfully submitted,

  
Nancy Bush, Director

**CLACKAMAS COUNTY, OREGON  
SUBRECIPIENT GRANT AGREEMENT 14-025**

Project Name: *UA12-0065 Clackamas Fire District #1 Hazardous Materials Training*  
Project Number: *11011*

This Agreement is between Clackamas County, Oregon, acting by and through its  
Department of Emergency Management and Clackamas Fire District #1 (Subrecipient).

**Clackamas County Data**

Grant Accountant: *Judy Anderson-Smith*

Clackamas County – Finance  
2051 Kaen Road  
Oregon City, OR 97045  
503-742-5422  
jsmith2@co.clackamas.or.us

Program Manager: *Sarah Stegmuller-Eckman*

Clackamas County – Emergency Management  
2200 Kaen Road  
Oregon City, OR 97045  
503-650-3381  
sarahste@co.clackamas.or.us

**Subrecipient Data**

Finance/Fiscal Representative: *Tyler Spath*

Clackamas Fire District #1  
11300 SE Fuller Road  
Milwaukie, OR 97222  
503-742-2656  
Tyler.spath@clackamasfire.com  
DUNS: 111798764

Program Representative: *Captain Michael Carlson*

Clackamas Fire District #1  
9339 SE Causey Avenue  
Clackamas, OR 97086  
503-742-2605  
Michael.carlsen@clackamasfire.com

**URBAN AREA SECURITY INITIATIVE (UASI)**

THIS IS an intergovernmental agreement (Agreement) between Clackamas County, Oregon ("County") Clackamas Fire District #1 ("Subrecipient") entered into pursuant to the authority granted in Oregon Revised Statutes (ORS) Chapter 190 for the coordination of activities related to 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, respond to, and recover from acts of terrorism.

**SECTION I. RECITALS**

WHEREAS, the United States Department of Homeland Security, Federal Emergency Management Subrecipient (FEMA) Grant Programs Directorate, provided UASI grant funding in the amount of \$2,049,396, in Fiscal Year 2012 to the State of Oregon (State) for distribution to the Portland Urban Area (PUA); and

WHEREAS, the State awarded UASI Grant #12-170 (CFDA #97.008) to the City of Portland, Bureau of Emergency Management (PBEM), as sub grantee, for Fiscal Year 2012 in the amount of \$2,049,396, a copy of which is attached to this Agreement and incorporated herein as Exhibit A; and

WHEREAS, UASI Grant #12-170 is intended to increase the capabilities of the PUA, which includes jurisdictions, agencies, and organizations in Multnomah, Clackamas, Columbia, and Clackamas counties in Oregon and Clark County in Washington, to prevent, protect against, respond to, and recover from threats and acts of terrorism; and

WHEREAS, a list of equipment, supplies, professional services, training, and exercises to be funded by the grant has been developed through the application process and coordination with the State; and

WHEREAS, 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; and

WHEREAS, PBEM, as Grant Administrator, is required to make periodic reports to the 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; and

WHEREAS, the City of Portland and all other PUA jurisdictions, agencies, and organizations that receive direct benefit from UASI grant purchases are required to comply with all terms of the UASI Grant # 12-170 award including, but not limited to, obligations regarding reporting, access to records, financial tracking and procurement, and supplanting of funds; and

WHEREAS, the City of Portland has entered into an agreement with Clackamas County to secure the County's commitment to follow the City of Portland-developed procurement, delivery, reimbursement, and reporting procedures, to ensure its compliance with all terms of the grant, and to obligate it to coordinate with and obtain similar assurances from directly benefiting jurisdictions, agencies, and organizations within the County.

WHEREAS, 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 the COUNTY and SUBRECIPIENT agree as follows:

- 1. Effective Date and Duration.** This Agreement shall be effective from the date both parties have signed and shall be terminated on **August 31, 2014**, unless sooner terminated or extended pursuant to the terms hereof.
- 2. 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 UASI Grant #12-170, that is the source of the grant funding, in addition to compliance with requirements of Title 44 of the *Code of Federal Regulations*, Part 13. A copy of the grant award has been provided to SUBRECIPIENT by the COUNTY, which is attached to and made a part of this Agreement by this reference.
- 3. Grant Funds.** The COUNTY's funding for this Agreement is the **Non-Profit Security Program (UASI) (CFDA 97.008)** issued to the 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 **\$35,000.00**. Disbursements will be made in accordance with the schedule and requirements contained in Exhibit D: Clackamas County Invoice Voucher Template and Exhibit E: Biannual Dashboard Report. Failure to comply with the terms of this Agreement may result in withholding of payment.
- 4. Amendments.** The terms of this Agreement shall not be waived, altered, modified, supplemented, or amended, in any manner whatsoever, except by written instrument signed by both parties. **SUBRECIPIENT must submit a written request including a justification for any amendment to the COUNTY in writing at least forty five (45) calendar days before this Agreement expires.** No payment will be made for any services performed before the beginning date or after the expiration date of this Agreement. If the maximum compensation amount is increased by amendment, the amendment must be fully effective before SUBRECIPIENT performs work subject to the amendment.
- 5. Termination.** Either party may terminate this Agreement in the event the other fails to comply with its obligations under the Agreement. If the Agreement is terminated due to the Sub-recipient's failure or



inability to comply with the provisions of the grant or the Agreement, the Sub-recipient will be liable to Clackamas County for the full cost of any equipment, materials, or services provided to the Sub-recipient, and any penalties imposed by the State or Federal Government. Each party will notify the other, in writing, of its intention to terminate this Agreement and the reasons therefore. The other party shall have fourteen days, or such other time as the parties may agree, from the date of the notice in which to correct or otherwise address the compliance failure which is the subject of the notice.

6. **Funds Available and Authorized.** The COUNTY certifies that it has sufficient funds currently authorized for expenditure to finance the costs of this Agreement within the current fiscal year budget. SUBRECIPIENT understands and agrees that payment of amounts under this Agreement is contingent on the COUNTY receiving appropriations or other expenditure authority sufficient to allow the COUNTY, in the exercise of its reasonable administrative discretion, to continue to make payments under this Agreement.
7. **Future Support.** COUNTY makes no commitment of future support and assumes no obligation for future support for the activity contracted herein except as set forth in this agreement.
8. **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 #12-170, 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.
  - b) That the SUBRECIPIENT may charge to the award only allowable costs resulting from obligations incurred during the funding period also known at the period of availability.
  - c) To comply with all Clackamas County, City of Portland, and State and Federal financial management and procurement requirements, including competitive bid 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 (CFR) and Office of Management and Budget (OMB) circulars. A nonexclusive list of regulations commonly applicable to DHS grants includes:
    - i. Administrative Requirements: 44 CFR Part 13 (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). These 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.
    - iii. Audit Requirements: OMB Circular A-133. The SUBRECIPIENT shall comply with the audit requirements prescribed in the Single Audit Act Amendments and revised OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations". SUBRECIPIENT expenditures of \$500,000 or more in Federal funds require an annual Single Audit. SUBRECIPIENT is required to hire an independent auditor qualified to perform an A-133 audit and submit the audit reports to the COUNTY within 9 months from the SUBRECIPIENT'S fiscal year end or 30 days after issuance of the reports, whichever is sooner.

- d) That all equipment, supplies, and services purchased by the City of Portland or Clackamas County on behalf of the Sub-recipient, or purchased by the Sub-recipient and reimbursed by the County are as described in the approved grant budget documents, which the Sub-recipient has seen.
- e) That it will not deviate from the items listed in the approved grant budget documents without first securing written authority from the Clackamas County. See budget document attached in Exhibit B.
- f) The SUBRECIPIENT shall comply with 2 CFR 25.200-205 and apply for a unique universal identification number (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>.
- g) The SUBRECIPIENT shall comply with 2 CFR 180 and 901. This common rule restricts sub-awards 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>.
- h) The SUBRECIPIENT agrees 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 which prohibits the use of Federal grant funds for litigation against the United States. See Exhibit C: Lobby and Litigation Certificate.
- i) The SUBRECIPIENT agrees to allow access to conduct site visits and inspections of financial records for the purpose of monitoring. The COUNTY, the City of Portland, the Federal or State 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.
- j) To comply with all property and equipment tracking and monitoring processes required by the grants, this Agreement, the City of Portland, Clackamas County and the State and Federal government.
- k) To treat all single items of equipment valued over \$5,000 as fixed assets and to provide Clackamas County with a list of such equipment. The list should include, but is not limited to, dates of purchase, equipment description, serial numbers, and locations where the equipment is housed or stored. All requirements for the tracking and monitoring of fixed assets are set forth in 44 CFR Part 13.32.
- l) To maintain and store all equipment and supplies, provided or purchased, in a manner that will best prolong its life and keep it in good working order at all times.
- m) That regardless of how it is procured, all equipment and supplies purchased shall be recorded as an asset of the Sub-recipient. The Sub-recipient shall be responsible for inventory tracking, maintenance, and storage while in possession of such equipment and supplies. Sub-recipient shall obtain from Clackamas County approval to dispose of all equipment and supplies, as title remains vested in the Federal Government in accordance with 44 CFR Part 13.32(f).

- n) That any request or invoice it submits for reimbursement of costs is consistent with the items identified in the approved grant budget documents.
- o) That it understands and accepts full financial responsibility and may not be reimbursed for costs incurred which have not been approved by the Clackamas County, City of Portland, State, and the U.S. Department of Homeland Security, FEMA Grant Programs Directorate.
- p) That all publications created with funding under this grant shall prominently contain 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."
- q) That all financial records and supporting documentation, and all other records pertinent to this grant or agreements under this grant, shall be retained for a minimum of 10 years following termination, completion, or expiration of this Agreement for purposes of City of Portland, Clackamas County, State, or federal examination and audit.
- r) To obtain a copy of 44 CFR Part 13 and all applicable OMB circulars, and to apprise itself of all rules and regulations set forth.
- s) Not to supplant its local funds with federal and to, instead, 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.
- t) To comply with National Incident Management System (NIMS) objectives identified as requirements by the State.
- u) To comply with all applicable federal, state, and local environmental and historic preservation (EHP) requirements and provide information requested to ensure compliance with applicable laws.
- v) To provide timely compliance with all reporting obligations required by the grant's terms to Clackamas County.
- w) To provide Clackamas County with Performance Reports, Financial Reimbursement Reports, and Audit Reports as required by the City of Portland and Clackamas County and in the form required by the City of Portland and Clackamas County.
  - i. Performance Reports are due to the Portland Bureau of Emergency Management (PBEM) biannually on June 15th and December 15th during the term of the grant agreement. Late Performance Reports could result in the suspension and/or termination of the grant.
  - ii. Financial Reimbursement Reports are due to Clackamas County no less frequently than quarterly during the term of the grant agreement. Late Financial Reimbursement Reports could result in the suspension and/or termination of the grant.
  - iii. Per UASI Grant #12-170, Section K.2.b., reimbursement for expenses may be withheld if performance reports are not submitted by the specified dates or are incomplete.
  - iv. Single Audit Certification Form is to be completed and returned to Clackamas County within 30 days from receipt.

- x) To follow the travel expense and per diem guidelines set forth by the U.S. General Services Administration (GSA) as well as the guidelines of the City of Portland and State. Per UASI Grant #12-170, Section K.2.c., reimbursements rates for travel expenses shall not exceed those allowed by the State. Requests for reimbursement for travel must be supported with a detailed statement identifying the person who traveled, the purpose of the travel, the dates, times, and places of travel, and the actual expense or authorized rates incurred.

GSA per diem rates can be found on the GSA website:  
<http://www.gsa.gov/portal/category/21287>.

The City of Portland's guidelines can be found on the Office of the City Auditor's website:  
BCP-FIN-6.13 Travel:  
<http://www.portlandonline.com/auditor/index.cfm?&c=34747&a=160271>

BCP-FIN-6.14 Non-travel Meals, Light Refreshments and Related Miscellaneous Expenses: <http://www.portlandonline.com/auditor/index.cfm?&a=160283&c=34747>

- y) To comply with all of its obligations under this Agreement and any applicable, incorporated document or documents. SUBRECIPIENT acknowledges and agrees that this agreement and the terms and conditions therein are essential terms in allowing the relationship between COUNTY and SUBRECIPIENT to continue, and that failure to comply with such terms and conditions represents a material breach of the original contract and this agreement. Such material breach shall give rise to the COUNTY's right, but not obligation, to withhold SUBRECIPIENT grant funds until compliance is met or to terminate this relationship including the original contract and all associated amendments.
9. **Governing Law.** 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 that arises from or relates to this Agreement shall be brought and conducted exclusively within the Circuit Court of Clackamas County for the state of Oregon. In the event a claim is brought in a federal forum, then it shall be brought and conducted solely and exclusively in the United States District Court for the District of Oregon, Portland Division.
10. **Counterparts.** This Agreement may be executed in several counterparts, each of which shall be an original, all of which shall constitute one and the same instrument.
11. **Survival.** The terms, conditions, representations, and all warranties in this Agreement shall survive the termination or expiration of this Agreement.
12. **Force Majeure.** Neither party shall be held responsible for delay or default caused by fire, riot, acts of God, or war where such cause was beyond reasonable control. Each party shall make all reasonable efforts to remove or eliminate such a cause of delay or default and shall, upon cessation of the cause, diligently pursue performance of its obligations under this Agreement.
13. **Indemnification.** Sub-recipient shall indemnify, defend and hold harmless the County and the City of Portland, their officers, employees and agents from and against any and all liability, claims, damages, losses, and expenses, arising out of or relating to the performance of this Agreement, unless such liability, claims, damages, losses and expenses are due solely to the act of the County or the City of Portland.
14. **Insurance.** Sub-recipient shall obtain, at Sub-recipient's expense, and keep in effect during the term of this contract, Commercial General Liability Insurance covering Bodily Injury and Property Damage on an "occurrence" form in the amount of not less than \$1 Million per occurrence/\$2 Million general aggregate for the protection of the County, its officers, commissioners, and

employees. This coverage shall include Contractual Liability Insurance for the indemnity provided under this Agreement. Alternatively, Sub-recipient may provide the County with evidence of a sufficient self-insurance in lieu of purchasing commercial general liability insurance described herein.

15. **Third Party Beneficiaries.** The County and the Sub-recipient are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives, or 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 persons are individually identified by name herein.
16. **Entire Agreement.** The parties agree and acknowledge that this Agreement is a complete, integrated agreement that supersedes any prior understandings related to implementation of the FY12 UASI program grant and that it is the entire agreement between them relative to that grant.
17. **Worker's Compensation.** Sub-recipient shall be responsible for providing worker's compensation insurance in compliance with ORS 656.017, which requires subject employers to provide Oregon workers' compensation coverage for all their subject workers (contractors with one or more employees, unless exempt under ORS 656.027).
18. **Nondiscrimination.** Each party shall comply with all requirements of federal and state civil rights and rehabilitation statutes and local non-discrimination ordinances.
19. **Access to Records.** Each party shall maintain, and shall have access to the books, documents, papers, and other records of the other party which are related to this Agreement for the purpose of making audit, examination, excerpts, and transcripts. Copies of applicable records shall be made available upon request. Access to records for Oregon Emergency Management (OEM), the Oregon Secretary of State, the Office of the Comptroller, the General Accounting Office (GAO), or any of their authorized representatives, shall not be limited to the required retention period but shall last as long as records are retained.
20. **Subcontracts and Assignment.** Neither party will subcontract or assign any part of this Agreement without the prior written consent of the other party. Notwithstanding County approval of a subcontractor, the Sub-recipient shall remain obligated for full performance hereunder, and the County shall incur no obligation other than its obligations to the Sub-recipient hereunder.

(Signature Page Attached)

Signature Page to SUBRECIPIENT GRANT Agreement

AGREED as of the Effective Date.

**CLACKAMAS COUNTY**, a political  
subdivision of the State of Oregon

By: \_\_\_\_\_  
Authorized Signature

Date: \_\_\_\_\_, 2014

Approved as to form

By: \_\_\_\_\_  
County Counsel

Date: 6/26/14, 2014

**SUB-RECIPIENT**

By: Ryan Now  
Authorized Signature

For: Clackamas Fire District #1  
Sub-recipient

Date: 7-7, 2014

Approved as to form

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

Date: \_\_\_\_\_, 2014

- Exhibit A: UASI GRANT AGREEMENT #12-170
- Exhibit B: SUBRECIPIENT Program Budget
- Exhibit C: Lobbying and Litigation Certificate
- Exhibit D: Clackamas County Invoice Voucher Template
- Exhibit E: Biannual Dashboard Report

**CLACKAMAS COUNTY, OREGON  
SUBRECIPIENT GRANT AGREEMENT 14-028**

**Project Name: UA12-0053 Clackamas Fire Incident Response Truck: EMS USAR Consortium Equip. Vehicle**  
**Project Number: 11011**

This Agreement is between Clackamas County, Oregon, acting by and through its  
Department of Emergency Management and Clackamas Fire District #1 (Subrecipient).

**Clackamas County Data**

**Grant Accountant: *Judy Anderson-Smith***

Clackamas County – Finance  
2051 Keen Road  
Oregon City, OR 97045  
503-742-5422  
jemith2@co.clackamas.or.us

**Program Manager: *Sarah Stegmuller-Eckman***

Clackamas County – Emergency Management  
2200 Keen Road  
Oregon City, OR 97045  
503-650-3381  
sarahste@co.clackamas.or.us

**Subrecipient Data**

**Finance/Fiscal Representative: *Tyler Speth***

Clackamas Fire District #1  
11300 SE Fuller Road  
Milwaukie, OR 97222  
503-742-2656  
Tyler.speth@clackamasfire.com

**Program Representative: *Captain Michael Carlsen***

Clackamas Fire District #1  
9339 SE Causey Avenue  
Clackamas, OR 97086  
503-742-2605  
Michael.carlsen@clackamasfire.com

DUNS: 111798764

**URBAN AREA SECURITY INITIATIVE (UASI)**

THIS IS an intergovernmental agreement (Agreement) between Clackamas County, Oregon ("County") Clackamas Fire District #1 ("Subrecipient") entered into pursuant to the authority granted in Oregon Revised Statutes (ORS) Chapter 190 for the coordination of activities related to 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, respond to, and recover from acts of terrorism.

**SECTION I. RECITALS**

WHEREAS, the United States Department of Homeland Security, Federal Emergency Management Subrecipient (FEMA) Grant Programs Directorate, provided UASI grant funding in the amount of \$2,049,396, in Fiscal Year 2012 to the State of Oregon (State) for distribution to the Portland Urban Area (PUA); and

WHEREAS, the State awarded UASI Grant #12-170 (CFDA #97.008) to the City of Portland, Bureau of Emergency Management (PBEM), as sub grantee, for Fiscal Year 2012 in the amount of \$2,049,396, a copy of which is attached to this Agreement and incorporated herein as Exhibit A; and

WHEREAS, UASI Grant #12-170 is intended to increase the capabilities of the PUA, which includes jurisdictions, agencies, and organizations in Multnomah, Clackamas, Columbia, and Clackamas counties in Oregon and Clark County in Washington, to prevent, protect against, respond to, and recover from threats and acts of terrorism; and

WHEREAS, a list of equipment, supplies, professional services, training, and exercises to be funded by the grant has been developed through the application process and coordination with the State; and

WHEREAS, 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; and

WHEREAS, PBEM, as Grant Administrator, is required to make periodic reports to the 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; and

WHEREAS, the City of Portland and all other PUA jurisdictions, agencies, and organizations that receive direct benefit from UASI grant purchases are required to comply with all terms of the UASI Grant # 12-170 award including, but not limited to, obligations regarding reporting, access to records, financial tracking and procurement, and supplanting of funds; and

WHEREAS, the City of Portland has entered into an agreement with Clackamas County to secure the County's commitment to follow the City of Portland-developed procurement, delivery, reimbursement, and reporting procedures, to ensure its compliance with all terms of the grant, and to obligate it to coordinate with and obtain similar assurances from directly benefiting jurisdictions, agencies, and organizations within the County.

WHEREAS, 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 the COUNTY and SUBRECIPIENT agree as follows:

1. **Effective Date and Duration.** This Agreement shall be effective from the date both parties have signed and shall be terminated on **August 31, 2014**, unless sooner terminated or extended pursuant to the terms hereof.
2. **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 UASI Grant #12-170, that is the source of the grant funding, in addition to compliance with requirements of Title 44 of the *Code of Federal Regulations*, Part 13. A copy of the grant award has been provided to SUBRECIPIENT by the COUNTY, which is attached to and made a part of this Agreement by this reference.
3. **Grant Funds.** The COUNTY's funding for this Agreement is the **Non-Profit Security Program (UASI) (CFDA 97.008)** issued to the 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 **\$70,000**. Disbursements will be made in accordance with the schedule and requirements contained in Exhibit D: Clackamas County Invoice Voucher Template and Exhibit E: Biannual Dashboard Report. Failure to comply with the terms of this Agreement may result in withholding of payment.
4. **Amendments.** The terms of this Agreement shall not be waived, altered, modified, supplemented, or amended, in any manner whatsoever, except by written instrument signed by both parties. **SUBRECIPIENT must submit a written request including a justification for any amendment to the COUNTY in writing at least forty five (45) calendar days before this Agreement expires.** No payment will be made for any services performed before the beginning date or after the expiration date of this Agreement. If the maximum compensation amount is increased by amendment, the amendment must be fully effective before SUBRECIPIENT performs work subject to the amendment.
5. **Termination.** Either party may terminate this Agreement in the event the other fails to comply with its obligations under the Agreement. If the Agreement is terminated due to the Sub-recipient's failure or inability to comply with the provisions of the grant or the Agreement, the Sub-recipient will be liable to



Clackamas County for the full cost of any equipment, materials, or services provided to the Subrecipient, and any penalties imposed by the State or Federal Government. Each party will notify the other, in writing, of its intention to terminate this Agreement and the reasons therefore. The other party shall have fourteen days, or such other time as the parties may agree, from the date of the notice in which to correct or otherwise address the compliance failure which is the subject of the notice.

6. **Funds Available and Authorized.** The COUNTY certifies that it has sufficient funds currently authorized for expenditure to finance the costs of this Agreement within the current fiscal year budget. SUBRECIPIENT understands and agrees that payment of amounts under this Agreement is contingent on the COUNTY receiving appropriations or other expenditure authority sufficient to allow the COUNTY, in the exercise of its reasonable administrative discretion, to continue to make payments under this Agreement.
7. **Future Support.** COUNTY makes no commitment of future support and assumes no obligation for future support for the activity contracted herein except as set forth in this agreement.
8. **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 #12-170, 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.
  - b) That the SUBRECIPIENT may charge to the award only allowable costs resulting from obligations incurred during the funding period also known as the period of availability.
  - c) To comply with all Clackamas County, City of Portland, and State and Federal financial management and procurement requirements, including competitive bid 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 (CFR) and Office of Management and Budget (OMB) circulars. A nonexclusive list of regulations commonly applicable to DHS grants includes:
    - i. Administrative Requirements: 44 CFR Part 13 (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). These 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.
    - iii. Audit Requirements: OMB Circular A-133. The SUBRECIPIENT shall comply with the audit requirements prescribed in the Single Audit Act Amendments and revised OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations". SUBRECIPIENT expenditures of \$500,000 or more in Federal funds require an annual Single Audit. SUBRECIPIENT is required to hire an independent auditor qualified to perform an A-133 audit and submit the audit reports to the COUNTY within 9 months from the SUBRECIPIENT'S fiscal year end or 30 days after issuance of the reports, whichever is sooner.

- d) That all equipment, supplies, and services purchased by the City of Portland or Clackamas County on behalf of the Sub-recipient, or purchased by the Sub-recipient and reimbursed by the County are as described in the approved grant budget documents, which the Sub-recipient has seen.
- e) That it will not deviate from the items listed in the approved grant budget documents without first securing written authority from the Clackamas County. See budget document attached in Exhibit B.
- f) The SUBRECIPIENT shall comply with 2 CFR 25.200-205 and apply for a unique universal identification number (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>.
- g) The SUBRECIPIENT shall comply with 2 CFR 180 and 901. This common rule restricts sub-awards 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>
- h) The SUBRECIPIENT agrees 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 which prohibits the use of Federal grant funds for litigation against the United States. See Exhibit C: Lobby and Litigation Certificate.
- i) The SUBRECIPIENT agrees to allow access to conduct site visits and inspections of financial records for the purpose of monitoring. The COUNTY, the City of Portland, the Federal or State 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.
- j) To comply with all property and equipment tracking and monitoring processes required by the grants, this Agreement, the City of Portland, Clackamas County and the State and Federal government.
- k) To treat all single items of equipment valued over \$5,000 as fixed assets and to provide Clackamas County with a list of such equipment. The list should include, but is not limited to, dates of purchase, equipment description, serial numbers, and locations where the equipment is housed or stored. All requirements for the tracking and monitoring of fixed assets are set forth in 44 CFR Part 13.32.
- l) To maintain and store all equipment and supplies, provided or purchased, in a manner that will best prolong its life and keep it in good working order at all times.
- m) That regardless of how it is procured, all equipment and supplies purchased shall be recorded as an asset of the Sub-recipient. The Sub-recipient shall be responsible for inventory tracking, maintenance, and storage while in possession of such equipment and supplies. Sub-recipient shall obtain from Clackamas County approval to dispose of all equipment and supplies, as title remains vested in the Federal Government in accordance with 44 CFR Part 13.32(f).

- n) That any request or invoice it submits for reimbursement of costs is consistent with the items identified in the approved grant budget documents.
- o) That it understands and accepts full financial responsibility and may not be reimbursed for costs incurred which have not been approved by the Clackamas County, City of Portland, State, and the U.S. Department of Homeland Security, FEMA Grant Programs Directorate.
- p) That all publications created with funding under this grant shall prominently contain 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."
- q) That all financial records and supporting documentation, and all other records pertinent to this grant or agreements under this grant, shall be retained for a minimum of 10 years following termination, completion, or expiration of this Agreement for purposes of City of Portland, Clackamas County, State, or federal examination and audit.
- r) To obtain a copy of 44 CFR Part 13 and all applicable OMB circulars, and to apprise itself of all rules and regulations set forth.
- s) Not to supplant its local funds with federal and to, instead, 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.
- t) To comply with National Incident Management System (NIMS) objectives identified as requirements by the State.
- u) To comply with all applicable federal, state, and local environmental and historic preservation (EHP) requirements and provide information requested to ensure compliance with applicable laws.
- v) To provide timely compliance with all reporting obligations required by the grant's terms to Clackamas County.
- w) To provide Clackamas County with Performance Reports, Financial Reimbursement Reports, and Audit Reports as required by the City of Portland and Clackamas County and in the form required by the City of Portland and Clackamas County.
  - i. Performance Reports are due to the Portland Bureau of Emergency Management (PBEM) biannually on June 15th and December 15th during the term of the grant agreement. Late Performance Reports could result in the suspension and/or termination of the grant.
  - ii. Financial Reimbursement Reports are due to Clackamas County no less frequently than quarterly during the term of the grant agreement. Late Financial Reimbursement Reports could result in the suspension and/or termination of the grant.
  - iii. Per UASI Grant #12-170, Section K.2.b., reimbursement for expenses may be withheld if performance reports are not submitted by the specified dates or are incomplete.
  - iv. Single Audit Certification Form is to be completed and returned to Clackamas County within 30 days from receipt.

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(Signature Page Attached)

Signature Page to SUBRECIPIENT GRANT Agreement

AGREED as of the Effective Date.

**CLACKAMAS COUNTY**, a political  
subdivision of the State of Oregon

By: \_\_\_\_\_  
Authorized Signature

Date: \_\_\_\_\_, 2014

Approved as to form

By: \_\_\_\_\_  
County Counsel

Date: 6/26/ 2014

**SUB-RECIPIENT**

By: \_\_\_\_\_  
Authorized Signature

For: Clackamas Fire Dist #1  
Sub-recipient

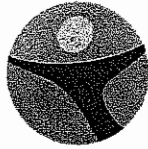
Date: 7-7 \_\_\_\_\_, 2014

Approved as to form

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

Date: \_\_\_\_\_, 2014

- Exhibit A: UASI GRANT AGREEMENT #12-170
- Exhibit B: SUBRECIPIENT Program Budget
- Exhibit C: Lobbying and Litigation Certificate
- Exhibit D: Clackamas County Invoice Voucher Template
- Exhibit E: Biannual Dashboard Report



**NORTH CLACKAMAS  
PARKS & RECREATION DISTRICT**

Administration

150 Beaver Creek Rd.  
Oregon City, OR 97045  
503 742 4348 phone 503.742.4349 fax  
ncprd.com

13

July 17, 2014

Board of County Commissioners acting as the Governing Body  
of the North Clackamas Parks and Recreation District

Members of the Board:

Approval of an Amended and Restated Intergovernmental Agreement (IGA) related to the Acquisition,  
Ownership, Development and Easements related to the Lents II/Luther Road project.

<b>Purpose/Outcomes</b>	Amended and Restated IGA to address ownership, project implementation and easements associated with the construction of the Lents II/Luther Road sewer line, channel change and open space improvements.
<b>Dollar Amount and Fiscal Impact</b>	NCPRD has budgeted funds to assume phased-in maintenance and management responsibilities for the completed project - \$3,500 annual.
<b>Funding Source</b>	Staff time will be paid for by NCPRD general fund.
<b>Safety Impact</b>	Improvements to the site will result in lower likelihood of flooding and riparian zone damage, and fewer hiding places for homeless camps.
<b>Duration</b>	This amendment continues the previous provision for in perpetuity due to ownership and maintenance obligations.
<b>Previous Board Action/Review</b>	The project is included in the NCPRD capital list.
<b>Contact Person</b>	Jeroen Kok, NCPRD Planning, Development & Resource Manager, 503-742-4421


**BACKGROUND:**

IN 2008, NCPRD entered into an IGA with the City of Portland Bureau of Environmental Services (BES), and Metro to purchase property in the Johnson Creek Target Area, with the goals of a major repair to the Lents II sewer line, Johnson Creek Channel relocation and improvements, acquisition of open space and public access to the Johnson Creek corridor. The IGA identified specific parcels for acquisition and enhancements. Since that time, certain parcels have been secured, while other parcels have not due to unwilling sellers. However, sufficient ownership and easements have been secured to complete the sewer repair and channel changes, while also providing open space and trail improvements to the property that will be managed by NCPRD for park and open space purposes. Additionally, a channel change and vegetation management easement, with a temporary construction easement has been negotiated between the project partners, along with a sewer easement. The purpose of the amended and restated IGA is to document the partners intents based on these current circumstances and updated agreements. County counsel has provided input during the process of drafting the easements and restated IGA and has approved the final forms.

**RECOMMENDATION:**

Staff respectfully recommends that The Board of County Commissioners, acting as the Governing Body of the North Clackamas Parks and Recreation District, approve and sign the attached Amended and Restated IGA with the City of Portland Bureau of Environmental Services and Metro to reflect the current ownership, easements, and management responsibilities for the various improvements that will be constructed on the 10-acre property owned by NCPRD.

Respectfully submitted,

  
Gary Barth  
Director

**AMENDED AND RESTATED  
INTERGOVERNMENTAL AGREEMENT**

**Lents II/Luther Road  
Acquisition and Ownership Agreement**

This Intergovernmental Agreement (this "Agreement") is made and entered into as of April 23, 2014 (the "Effective Date") by and among Metro, an Oregon municipal corporation; the City of Portland (the "City"), an Oregon municipal corporation, through its Bureau of Environmental Services ("BES"); and the North Clackamas Parks and Recreation District ("NCPRD"), a county service district of Clackamas County organized pursuant to ORS chapter 451 (collectively, the "Parties," and each individually a "Party").

RECITALS

WHEREAS, the Parties entered into that certain Intergovernmental Agreement dated April 29, 2009 (the "First IGA") concerning real property located in unincorporated Clackamas County, identified as follows:

- A. "Parcel A": At address 8855 SE 76th Drive, Portland, Oregon, commonly known as Tax Lots 3609, 3700 and 3800, in Township 1 South, Range 2 East, Section 29AB, Willamette Meridian, which Parcel A was acquired by NCPRD with funds contributed by Metro, NCPRD, and BES;
- B. "Parcel B": At address 7800 SE Luther Road, Portland, Oregon, commonly known as Tax Lot 3500 in Township 1 South, Range 2 East, Section 29AB, Willamette Meridian; and
- C. "Parcel C": At address 8710 SE 76th Drive, Portland, Oregon, commonly known as Tax Lot 3604 in Township 1 South, Range 2 East, Section 29AB, Willamette Meridian.

WHEREAS, the First IGA provided, generally, that the Parties would each contribute funds to the acquisition of these properties, or interests therein, and it set forth the terms of the financial contribution and management of the properties thereafter;

WHEREAS, circumstances have changed since the execution of the First IGA. Among other things, the Parties have been unable to acquire Parcel B or Parcel C, and BES has determined that its Luther Road Habitat Restoration Project (the "Project"), the goals of which include the construction and maintenance of improvements to a City sewer line traversing Parcels A, B, and C; the construction of approximately 2,000 feet of Johnson Creek stream channel, including side channels; and post-construction restoration, will require construction and improvements on an additional eight (8) parcels belonging to seven (7) separate owners (the "Industrial Parcels"), located to the south of Parcels A, B, and C and depicted on **Attachment A**, and on two (2) additional, City-owned parcels to the west of Parcel A (the "Parks Parcels"), depicted on **Attachment B**.



WHEREAS, due to these changed circumstances, the parties now desire to amend and restate the First IGA, in order to update the Parties' obligations with regard to properties described above, all upon the terms and conditions set forth in this Agreement.

NOW THEREFORE, in consideration of the foregoing recitals and other good and valuable consideration which is hereby acknowledged, the Parties hereby amend and restate the First IGA to read in its entirety as follows:

## TERMS

### **1. Parcel A.**

A. NCPRD acknowledges and agrees that Metro conducted commercially reasonable due diligence with respect to Parcel A. NCPRD's decision to accept title to Parcel A shall be deemed NCPRD's conclusive decision that it is satisfied with the due diligence completed for Parcel A. NCPRD hereby releases Metro from any and all rights, liabilities, claims, demands, damages, actions, causes of action, suits, and causes of suit of any kind or nature whatsoever related to or arising out of NCPRD's ownership or acquisition of Parcel A, except to the extent that such claims are required to be reserved in order for NCPRD to assert a title insurance claim and such claim is asserted.

B. At the request of BES, NCPRD shall grant the City (i) a permanent sewer easement and (ii) a permanent channel change and vegetative maintenance easement (collectively, the "Parcel A Easements"), in the forms attached hereto as **Attachment C** and **Attachment D**. If BES constructs or installs sewer, channel or vegetation improvements on Parcel A (at its sole cost), BES shall be responsible for the operation, maintenance and repair of such improvements, except that five (5) years after completion of all construction on Parcel A by BES, NCPRD shall be responsible for the management and maintenance of any vegetation improvements installed by BES.

**2. Parcel B.** NCPRD and BES acknowledge and agree that Metro has made a good faith effort to acquire Parcel B and that the owner of Parcel B does not appear to be a willing seller at this time. Metro shall continue to monitor Parcel B and engage with its owner, to the extent Metro deems reasonable (given limited Natural Areas Bond staff and time resources), and agrees to consult with NCPRD and BES if it appears that the owner of Parcel B may be a willing seller in the future. Nothing herein shall prevent BES from independently seeking to acquire easements from the owner of Parcel B. Metro makes no representation that any funds will be available for this potential acquisition in the future.

**3. Parcel C.** BES is seeking to acquire a permanent sewer easement and a channel change and vegetative maintenance easement (collectively, the "Parcel C Easements") across Parcel C, at its sole expense. The Parcel C Easements will benefit both the City and NCPRD. If BES constructs or installs sewer, channel or vegetation improvements on Parcel C (at its sole cost), BES shall be responsible for the operation, maintenance and repair of such improvements, except that five (5) years after completion of all construction on Parcel C by BES, NCPRD shall be responsible for the management and maintenance of vegetation on the area, as consistent with the agreed to

plans and specifications for riparian and stream channel modifications and enhancements encumbered by any Parcel C Easements, to the extent that reasonable maintenance and management access has been secured.

#### **4. The Industrial Parcels.**

A. BES is seeking at its sole expense to acquire channel change and vegetative maintenance easements (collectively, the "Industrial Parcels Easements") across the Industrial Parcels. The channel change portion of the easements will benefit the City alone; the vegetative maintenance portion of the easements will benefit the City and NCPRD. The Industrial Parcels Easements shall be in the form attached as **Attachment E**, and any changes to the form shall require the prior written consent of NCPRD. Easements shall include reasonable access so that NCPRD crews and equipment can easily access all areas it agrees to manage and maintain.

B. If BES constructs or installs sewer, channel or vegetation improvements on the Industrial Parcels (at its sole cost), BES shall be responsible for the operation, maintenance and repair of such improvements, except that five (5) years after completion of all construction on the Industrial Parcels by BES, NCPRD shall be responsible for the management and maintenance of vegetation on the area encumbered by any Industrial Parcels Easements.

**5. The Parks Parcels.** The City will grant NCPRD vegetative maintenance easements, at no cost to NCPRD, across the Parks Parcels, in the form attached as **Attachment E**, or as otherwise agreed by BES and NCPRD. BES will perform all construction it deems necessary on the Parks Parcels and will maintain the resulting improvements during construction and for a period of five (5) years following construction. After five (5) years following construction, NCPRD will manage, operate and maintain the Parks Parcels.

#### **6. Management of Parcel A.**

A. NCPRD shall manage, maintain, secure, and operate Parcel A as a natural area, to protect and enhance the property's natural resources and wildlife habitat, while providing for reasonable and appropriate public access and use except within BES's easements, in accordance with and in a manner consistent with the Metro Greenspaces Master Plan, the 2006 Natural Areas Bond Measure, NCPRD's Comprehensive Plan, and this Agreement (this Agreement and these plans collectively referred to herein as the "Plans"). In case of conflict among Plans, the Plan affording the highest level of resource protection shall govern. Trails developed by the City will also be maintained by NCPRD following the 5-year City maintenance period.

B. If NCPRD seeks to develop or improve Parcel A, it shall submit an area-specific master plan for Parcel A (the "Master Plan") to Metro, for Metro's approval, which approval shall not be unreasonably withheld, conditioned or delayed, provided that the Master Plan meets the requirements of this Section and this Agreement. The Master Plan shall set forth the property's intended use and development, identify its natural resource areas and how they will be managed and protected, and otherwise provide for the property's management, operation, and maintenance. The Master Plan shall set forth the types and levels of programmed and public use,

and trail and improvement standards. The Master Plan and all trails and improvements on Parcel A shall conform to the Metro Greenspaces Master Plan and to this Agreement.

C. Notwithstanding anything to the contrary in this Section 6, the Master Plan may identify a portion of Parcel A where active recreational park uses would be permitted (the “Park Development”). The Park Development, if any, may not occupy more than five (5) acres of Parcel A unless jointly approved in writing by Metro and BES.

## **7. Parcel A Interim Protection Period Management Guidelines.**

A. Access. In the Interim Period, NCPRD shall use commercially reasonable efforts to control access to Parcel A. NCPRD may, at its discretion, allow informal public access for passive recreation, habitat enhancement, pedestrian activity, and non-motorized bicycle use consistent with the Plans. NCPRD shall not allow any such informal use if to do so would, in NCPRD’s or Metro’s reasonable judgment, effectively preclude any other likely potential uses of Parcel A that could later be allowed by the Master Plan, or if it would adversely affect the use of Parcel A for the Project, in BES’s reasonable discretion.

B. No Development or Improvement. Prior to Metro’s approval of the Master Plan (the “Interim Period”), NCPRD shall not undertake, allow or permit any alteration of any water, timber, mineral, or other resource on Parcel A, except for the control of exotic, non-native, invasive, or pest plant species, as necessary to prevent the property’s degradation, or to address public safety concerns. With the exception of trails constructed by the City as part of its work on Parcel A, no capital improvements, creation of park improvements, or trails shall be constructed on Parcel A, and no alteration of water, habitat, or timber resource shall occur that are inconsistent with this Agreement or that would effectively preclude any potential uses of Parcel A that could later be allowed in the Management Plan. Notwithstanding the foregoing, the parties acknowledge that interim uses may be allowed during the Interim Period on a portion of Parcel A with the City and Metro’s prior written consent. Such interim use shall occur outside of (1) the areas encompassed by the Parcel A Easements, and (2) any essential habitat areas identified as such by Metro.

**Bond Covenants.** The source of Metro’s contribution to the acquisition of Parcel A was voter-approved general obligation bonds that are to be paid from ad valorem property taxes exempt from the limitations of Article XI, section 11(b), 11(c), 11(d) and 11(e) of the Oregon Constitution, and the interest paid by Metro to bondholders is currently exempt from federal and Oregon income taxes. BES and NCPRD shall take no actions, including, among other things, the lease or conveyance of any property interests in Parcel A, that would cause Metro to lose its exemption from Oregon’s constitutional limitations or the income tax-exempt status of the bond interest. If BES or NCPRD breach this covenant, Metro may pursue any available legal remedies either to cure the default or to compensate Metro for any loss it may suffer as a result thereof.

**8. Signage and Acknowledgement.** Each Party shall recognize and document in its on-site signs, publications, media presentations, web site information, press releases, or other written

materials or presentations referencing Parcel A that funding for acquisition of the property came from the Metro 2006 Natural Areas Bond Measure, NCPRD, and BES. Signs erected Parcel A shall be in prominent and highly visible locations near each primary public access point or viewing access area. Regarding acknowledgment of Metro's funding share, such signage shall be either: (a) a standard, free-standing sign provided by Metro upon request, or (b) include Metro's logo and script, as provided by Metro upon request but at no cost to Metro, in NCPRD's and BES's signage, with Metro's logo and script of a size equal and comparable to the size of NCPRD's and BES's logo and script. When Parcel A is formally opened to the public in accordance with an approved Master Plan, each Party will provide three weeks' written notice to the others of any planned community/media events to publicize the opening.

## 9. Miscellaneous Provisions

A. To the maximum extent permitted by law and subject to the limitations of the Oregon Tort Claims Act, ORS Chapter 30, and the Oregon Constitution, each Party will defend, indemnify, and hold harmless the other Parties and their officers, employees, and agents from and against any and all liabilities, damages, claims, demands, judgments, losses, costs, expenses, fines, suits, and actions, whether arising in tort, contract, or by operation of any statute, including but not limited to attorneys' fees and expenses at trial and on appeal, relating to or resulting from the Party's performance of its responsibilities under this Agreement.

B. This Agreement shall continue in perpetuity unless terminated as provided herein.

C. The Parties may mutually agree to terminate all or part of their responsibilities and obligations under this Agreement based upon a determination that such action is in the public interest. Termination under this provision will be effective ten days following the execution of a written agreement to terminate.

D. A Party may terminate this Agreement if that Party determines, in its sole discretion, that another Party has failed to comply with a material term or condition of this Agreement and is therefore in default. The terminating Party must promptly notify the other Parties in writing of that determination and document the default with reasonable particularity. The defaulting Party may cure the default within thirty days or substantially pursue a cure if completion thereof within thirty days is not possible.

E. NCPRD may, at its sole discretion, withdraw from this agreement and all of its obligations if, due to unforeseen circumstances and despite NCPRD's best reasonable efforts, funds are no longer available to pay for NCPRD's obligations under this Agreement. BES and Metro will thereupon amend this Agreement to reflect any changes necessitated by NCPRD's withdrawal.

F. The laws of the State of Oregon will govern this Agreement and the Parties will submit to the jurisdiction of the courts of the State of Oregon. All applicable provisions of ORS Chapters 279A, 279B, and 279C and all other terms and conditions necessary to be inserted into public contracts in the State of Oregon are hereby incorporated by this reference as if such provisions were a part of this Agreement.

G. This Agreement may be amended at any time with the written consent of all Parties.

H. Except as otherwise provided herein, the Parties may not assign any of their rights or responsibilities under this Agreement without prior written consent from the other Parties, but the Parties may delegate or subcontract for performance of any of their responsibilities under this Agreement.

I. All notices or other communications required or permitted under this Agreement must be addressed as follows:

To Metro: Metro Natural Areas Bond Measure Program Director  
Kathleen Brennan Hunter  
600 N.E. Grand Avenue  
Portland, OR 97232-2736  
Tel. 503-797-1948  
Fax 503-797-1849

To NCPRD: North Clackamas Parks and Recreation District  
Gary Barth, Director  
150 Beavercreek Road, 4<sup>th</sup> Floor  
Oregon City, OR 97045  
Tel. 503-742-4299  
Fax 503-742-8005

To the City: City of Portland  
Bureau of Environmental Services  
Attn: Maggie Skenderian  
1120 SW Fifth Ave., 10<sup>th</sup> Floor  
Portland, Oregon 97204  
Tel. 503-823-5334

J. If any covenant or provision of this Agreement is adjudged void, such adjudication will not affect the validity, obligation, or performance of any other covenant or provision which in itself is valid if such remainder would then continue to conform with the terms and requirements of applicable law and the intent of this Agreement.

K. This Agreement constitutes the entire agreement between the Parties and supersedes any prior oral or written agreements or representations relating to the parcels discussed herein. No waiver, consent, modification or change of terms of this Agreement will bind the Parties unless in writing and signed by each Party.

L. This Agreement may be executed in counterparts. Delivery of this executed Agreement by electronic means will be sufficient to form a binding agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

METRO

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

Approved as to form:

\_\_\_\_\_  
Assistant Metro Attorney

NORTH CLACKAMAS PARKS AND RECREATION DISTRICT

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

Approved as to form:

\_\_\_\_\_  
Assistant County Counsel

CITY OF PORTLAND

By: *Dea. Mann*  
Title: *Director, BES*  
Date: *6/26/14*

Approved as to form:

*[Signature]*  
Deputy City Attorney

- Attachment A – Depiction of the Industrial Parcels
- Attachment B – Depiction of the Parks Parcels
- Attachment C – Sewer Easement
- Attachment D – Channel Change and Vegetation Management Easement
- Attachment E – Industrial Parcel Easements

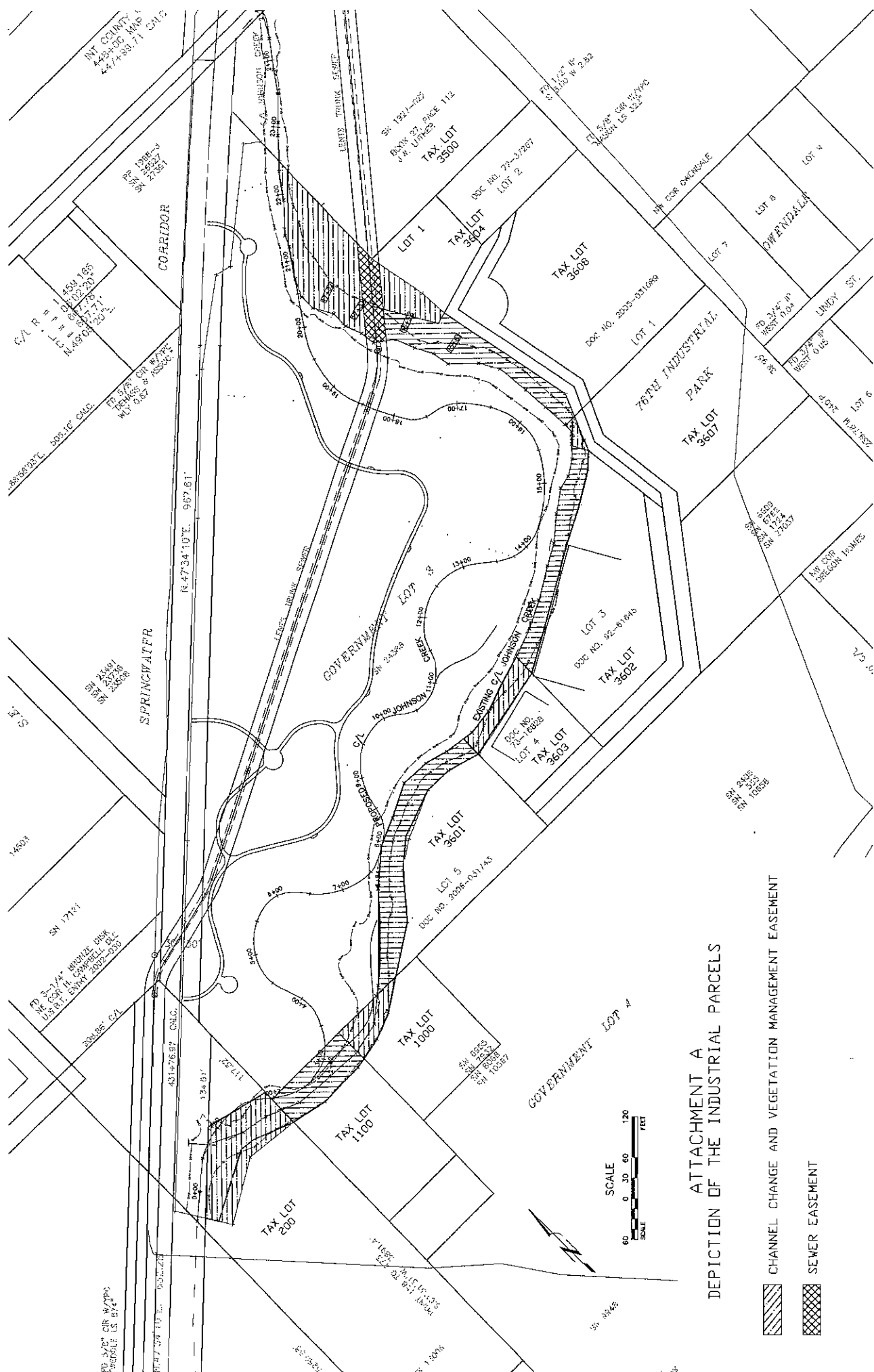


# ATTACHMENT A

## DEPICTION OF THE INDUSTRIAL PARCELS







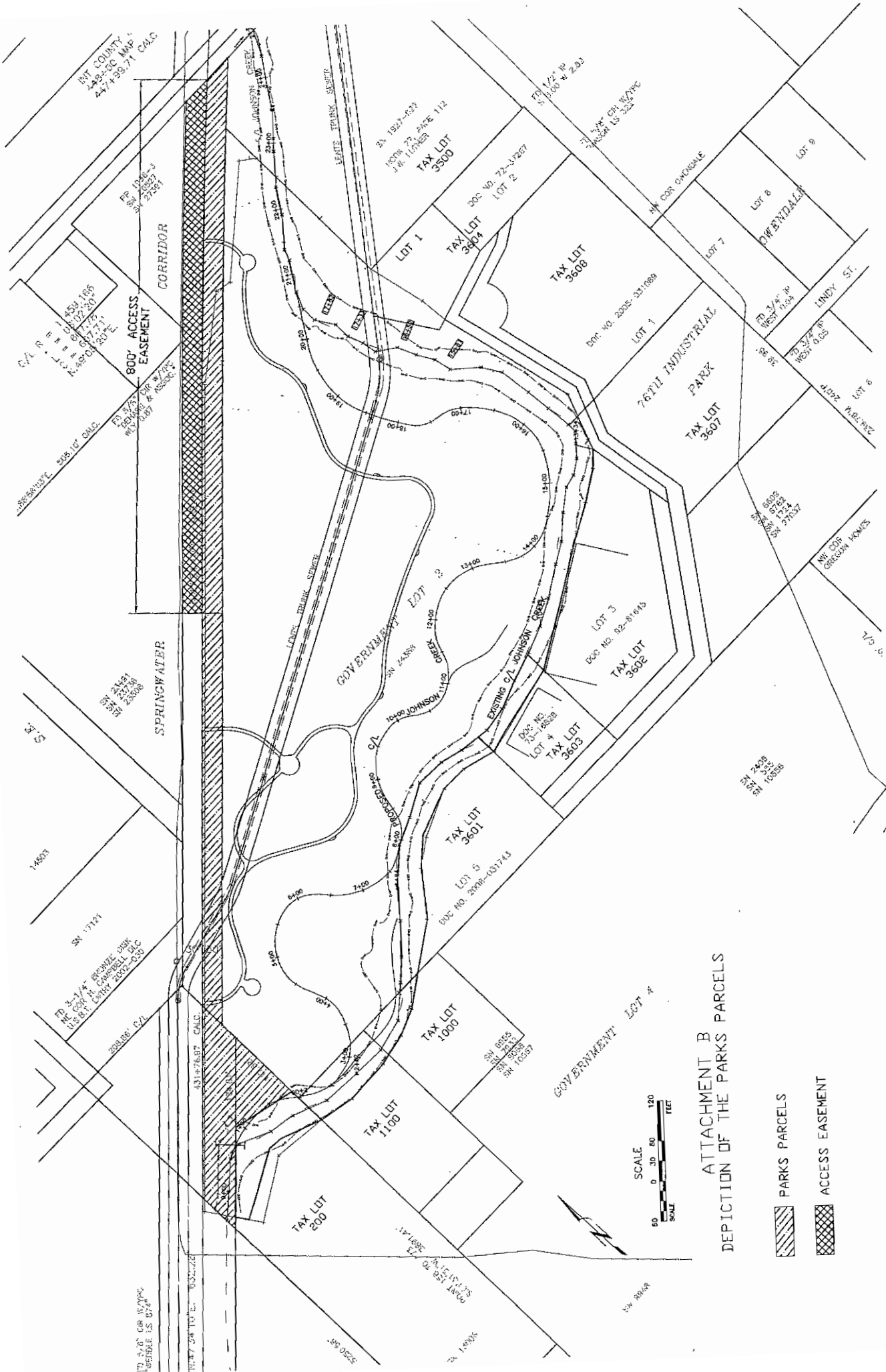
ATTACHMENT A  
 DEPICTION OF THE INDUSTRIAL PARCELS

-  CHANNEL CHANGE AND VEGETATION MANAGEMENT EASEMENT
-  SEVER EASEMENT

# ATTACHMENT B

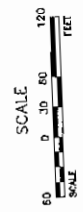
## DEPICTION OF THE PARKS PARCELS





ATTACHMENT B  
DEPICTION OF THE PARKS PARCELS

-  PARKS PARCELS
-  ACCESS EASEMENT



ATTACHMENT C

SEWER EASEMENT



**Grantor's Name & Address:**

North Clackamas Parks & Recreation District  
150 Beavercreek Rd.  
Oregon City, OR 97045

Tax Statement shall be sent to:  
No Change

**SEWER EASEMENT**

KNOW ALL PERSONS BY THESE PRESENTS, that **North Clackamas Parks and Recreation District, a county service district of Clackamas County organized pursuant to ORS chapter 451** (“Grantor”), in consideration of the sum of One and no/100 Dollars (\$1.00) and other good and valuable consideration to it paid by the City of Portland, a municipal corporation of the State of Oregon (“Grantee”), the receipt whereof is hereby acknowledged, does hereby grant unto said City of Portland an exclusive and perpetual easement for the purpose of laying down, constructing, reconstructing, operating, inspecting, monitoring and maintaining a sewer or sewers and appurtenances, through, under, over and along the following described property (“Easement Area”) as described in Exhibit A and depicted on Exhibit B attached hereto and by this reference made a part hereof. Said Easement Area contains 25,992 square feet, more or less.

IT IS UNDERSTOOD and agreed that:

- A. Grantee will restore the Easement Area to a condition that is as good as or better than the condition existing prior to the original construction, except as to permanent changes made necessary by and authorized under this easement.
- B. No other utilities, buildings, facilities, easements, material storage, grade change or tree planting will be allowed within the Easement Area without prior written consent of the Director of the Bureau of Environmental Services. Landscaping which by its nature is shallow rooted and may be easily removed to permit access to the sewer lines and facilities authorized by this easement shall not require consent.
- C. This easement includes the right of access for construction, inspection, maintenance or other sewerage system activities. Grantee shall provide reasonable notice to Grantor when such access may interfere with public access and use of the Easement Area or impact improvements within the Easement Area.
- D. This easement does not grant or convey to Grantee any right or title to the surface of the soil along the route of said sewer except for the purpose of laying down, constructing, reconstructing, operating, inspecting and maintaining the same.

R/W #6902-1, 11 & 12	After Recording Return to:
12E29AB 03609, 03700, 03800	John Devo, City of Portland
BES #E06947	1120 SW 5th Avenue, #800
	Portland, OR 97204



- E. Grantor reserves all other rights not conveyed herein, but will not exercise said rights in any manner that would be inconsistent or interfere with or materially affect rights herein granted.
- F. This easement shall bind the heirs and assigns of Grantor and shall inure to the benefit of the successors in title of Grantee.
- G. Grantor represents and warrants that it has the authority to grant this easement, that the property comprising the Easement Area is free from all liens and encumbrances that would materially affect the easement grant, and that it will defend the same to Grantee against the lawful claims and demands of all persons whomsoever.
- H. Grantor represents that to the best of its knowledge the property comprising the Easement Area is in compliance with all local, State and Federal environmental laws and regulations.
- I. The parties acknowledge that they each have disclosed to the other parties all knowledge of any release of hazardous substances onto or from the property comprising the Easement Area, and disclosed any known report, investigation, survey or environmental assessment regarding the property comprising the Easement Area. "Release" and "hazardous substance" shall have the meaning as defined under Oregon law.
- J. Grantor warrants that to the best of its knowledge there are no underground storage tanks, as defined under Oregon law, presently on or under the property comprising the Easement Area.
- K. Grantee, by accepting this easement, is not accepting liability for any preexisting release of hazardous substances onto or from the property comprising the Easement Area, and Grantor is not attempting to convey any such liability.
- L. Subject to the limits of the Oregon Constitution and the Oregon Tort Claims Act, Grantee shall hold harmless, indemnify and defend Grantor and its officers, employees, elected officials and agents from and against all claims, demands, penalties, and causes of action of any kind or character (including attorney fees) in favor of any person which arise out of, or result from, the acts or omissions of Grantee, its officers, employees, elected officials and agents with respect to the Easement Area, except to the extent that such claims are related to or arise from the negligence or willful misconduct of the Grantor. Grantor shall hold harmless, indemnify and defend Grantee and its officers, employees, elected officials and agents from and against all claims, demands, penalties, and causes of action of any kind or character (including attorney fees) in favor of any person which arise out of, or result from, the acts or omissions of Grantor, its officers, employees, elected officials and agents with respect to the Easement Area, except to the extent that such claims are related to or arise from the negligence or willful misconduct of the Grantee.

**North Clackamas Parks and Recreation District**

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

Name: Gary Barth

Title: Director, North Clackamas Parks and Recreation District

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

State of Oregon )  
 ) ss.  
County of \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me \_\_\_\_\_, the undersigned Notary Public, personally appeared \_\_\_\_\_, as Director of North Clackamas Parks and Recreation District, a county service district, personally known to me (or proved to be on the basis of satisfactory evidence) to be the person whose name is subscribed to this instrument, and acknowledged that he executed it.

\_\_\_\_\_  
Notary Public for Oregon  
My commission expires: \_\_\_\_\_

APPROVED AS TO FORM:

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

\_\_\_\_\_  
County Counsel

APPROVED:

\_\_\_\_\_  
Bureau of Environmental Services Director  
or designee

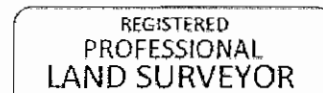
EXHIBIT A  
LUTHER ROAD HABITAT RESTORATION PROJECT  
R/W #6902-1 ,11 & 12 SEWER EASEMENT  
North Clackamas Parks and Recreation District  
1S2E29AB Tax Lots 3609(C231142), 3700(C230643), 3800(C230651)

A portion of that tract of land conveyed to the North Clackamas Parks and Recreation District by Document No. 2009-056372, recorded August 6, 2009, Clackamas County Official Records, situated in the northeast one-quarter of Section 29, Township 1 South, Range 2 East, of the Willamette Meridian in the County of Clackamas and State of Oregon, more particularly described as follows:

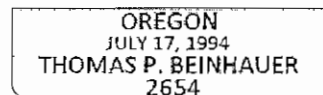
Beginning at a point on the east line of the Springwater Corridor, formerly the Portland Traction Company Railroad, said point bears N 69° 07' 41" E, a distance of 167.65 feet from the northeast corner of the Hector Campbell Donation Land Claim, which corner is marked by a 3-1/4" bronze disk, U.S.B.T. entry 2002-030; thence from the Point of Beginning, N 64° 16' 48" E, a distance of 755.21 feet to a point of curvature; thence along the arc of a 135.00 foot radius curve to the left, through a central angle of 24° 06' 40", an arc distance of 56.81 feet (the chord bears N 52° 13' 28" E, 56.39 feet) to a point of tangency; thence N 40° 10' 08" E, a distance of 22.07 feet to a point in the center of Johnson Creek, said point also being on the west line of Lot 1 of the duly recorded plat of JOHNSON CREEK - 76TH INDUSTRIAL PARK; thence S 06° 45' 33" E, along the center of Johnson Creek and said west line a distance of 14.38 feet to an angle point; thence S 52° 14' 47" E, along the center of Johnson Creek and said west line, a distance of 19.51 feet; thence leaving the center of Johnson Creek and the west line of said Lot 1, and running S 40° 10' 08" W, a distance of 13.07 feet to a point of curvature; thence along the arc of a 165.00 foot radius curve to the right, through a central angle of 24° 06' 40", an arc distance of 69.44 feet (the chord bears S 52° 13' 28" W, 68.92 feet) to a point of tangency; thence S 64° 16' 48" W, a distance of 756.74 feet to a point of curvature; thence along the arc of a 115.00 foot radius curve to the right, through a central angle of 13° 14' 47", an arc distance of 26.59 feet (the chord bears S 70° 54' 12" W, 26.53 feet) to a point of tangency; thence S 77° 31' 35" W, a distance of 35.62 feet to a point on the east line of the aforementioned Springwater Corridor; thence N 47° 34' 10" E, along said east line a distance of 65.31 feet to the Point of Beginning.

Containing an area of 25,992 square feet or 0.597 acres, more or less.

Job #06947  
November 7, 2011



*Thomas P. Beinbauer*



EXPIRES 12-31-2011

**EXHIBIT B**  
**LUTHER ROAD HABITAT RESTORATION PROJECT**  
**R/W #6902-1, 11 & 12 SEWER EASEMENT**

North Clackamas Parks & Recreation District  
 ISEEP9AB Tax Lots 3809, 3700, 3800

SN 1927-022  
 BOOK 27, PAGE 112  
 J.W. LUTHER

DOC NO. 72-37267  
 LOT 2

DOC NO. 2005-031089  
 LOT 1

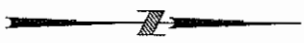
76TH INDUSTRIAL  
 PARK

DOC NO. 92-61645  
 LOT 3

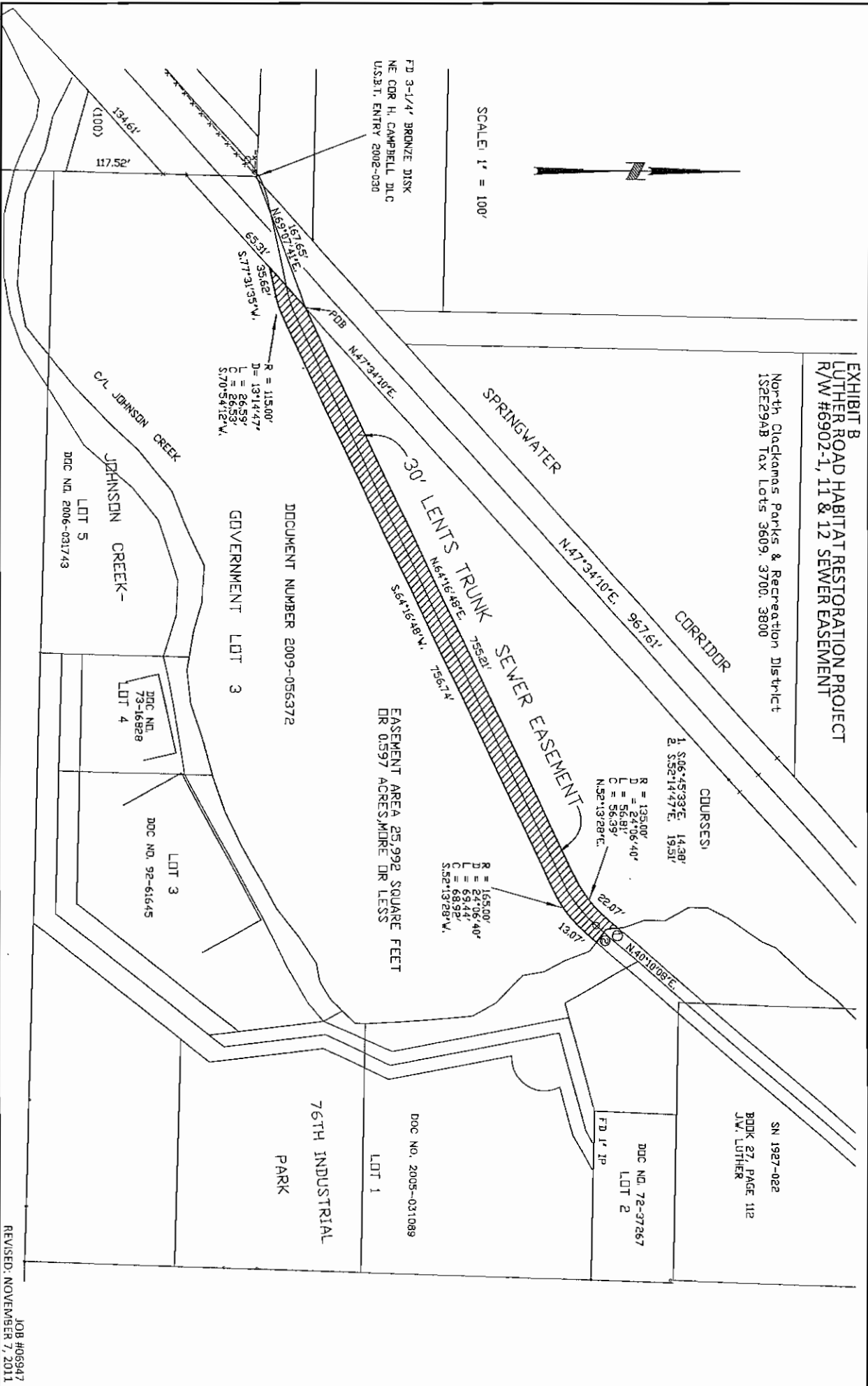
DOC NO. 73-16828  
 LOT 4

DOC NO. 2006-031743  
 LOT 5

SCALE 1" = 100'



FD 3-1/4" BRONZE DISK  
 NE COR H. CAMPBELL D/C  
 U.S.P.T. ENTRY 2002-030



# ATTACHMENT D

## CHANNEL CHANGE AND VEGETATION MANAGEMENT EASEMENT



**Grantor's Name & Address:**

North Clackamas Parks & Recreation District  
150 Beaver Creek Rd.  
Oregon City, OR 97045

Tax Statements shall be sent to:  
No Change

**CHANNEL CHANGE AND  
VEGETATION MANAGEMENT EASEMENT  
AND TEMPORARY CONSTRUCTION EASEMENT**

KNOW ALL PERSONS BY THESE PRESENTS, that **North Clackamas Parks and Recreation District, a county service district of Clackamas County organized pursuant to ORS chapter 451** ("Grantor"), in consideration of the sum of One and no/100 Dollars (\$1.00) and other good and valuable consideration to it paid by the City of Portland, a municipal corporation of the State of Oregon, the receipt whereof is hereby acknowledged, does hereby grant unto said City of Portland, acting through its Bureau of Environmental Services ("Grantee") an exclusive and perpetual easement for a channel change and vegetation management ("Permanent Easement") over and across the following described property ("Permanent Easement Area"):

As described on Exhibit A and depicted on Exhibit B attached hereto and by this reference made a part hereof. The Permanent Easement Area contains 263,254 square feet, more or less.

Together with an easement in support of construction activities associated with the Luther Road Habitat Restoration Project ("Temporary Construction Easement"). The area of the Temporary Construction Easement is described as follows ("Temporary Easement Area"):

As described on Exhibit C and depicted on Exhibit D attached hereto and by this reference made a part hereof. The Temporary Easement Area contains 414,023 square feet, more or less.

The purpose of the Permanent Easement is to allow Grantee to make changes to the location of Johnson Creek's channel, to ensure that the Permanent Easement Area will be retained in its natural state and, except as provided herein, to prevent uses of the Permanent Easement Area that would impair the natural qualities of the Permanent Easement Area.

R/W #6902-1, 11 & 12

1S2E29AB TL3609, 3700, 3800

BES #E06947

After Recording Return to:

John Devo, City of Portland

1120 SW 5th Avenue, #800

Portland, OR 97204

IT IS UNDERSTOOD and agreed that:

- A. Grantee may go upon the Permanent Easement Area for the purpose of making a channel change in Johnson Creek, as necessitated by Grantee's Luther Road Habitat Restoration Project. Grantee may use and appropriate for the project, without additional compensation, all material excavated in the making of said channel change
- B. The Temporary Construction Easement granted herein is for a term of six years, commencing no earlier than June 1, 2014, and terminating no later than May 31, 2020, for the following activities: (a) Grantee shall have exclusive use of the Temporary Easement Area for construction and construction support activities from June 1, 2014, to December 31, 2014; (b) non-exclusive use of the Temporary Easement Area from January 1, 2015, to May 31, 2015, for the purpose of revegetation and stream restoration activities, and (c) non-exclusive use of the Temporary Easement Area for 4 days each year between June 1, 2015, and May 31, 2020, for the purpose of monitoring, revegetation establishment and construction activities necessary to assure conformance with project design criteria.
- C. Grantee shall acquire no interest in the Permanent Easement Area except for the rights granted herein, nor shall Grantee be deemed to have assumed any obligation other than those specified herein.
- D. Upon completion of the channel change, the relocated channel shall become the natural channel of Johnson Creek for all intents and purposes. No property boundaries shall be altered thereby. Grantee may, but shall not be obligated to, maintain said Johnson Creek in its relocated channel, and in connection therewith Grantee may go upon the Permanent Easement Area.
- E. Grantee may alter the topography of the Permanent Easement Area, including the excavation, placement, and removal of materials including but not limited to: sand, gravel, rock, and large woody debris from or to the Permanent Easement Area only for the purposes of waterway and riparian improvements, so long as it does not impair the functionality of the remainder of the property for its intended park and open space purposes.
- F. Grantee may enter the Permanent Easement Area at any time for the purpose of inspection, improvement and management of the vegetation in the Permanent Easement Area in a manner consistent with the intent of the Permanent Easement. Grantee's rights with regard to improving the Permanent Easement Area include, but are not limited to, pruning, invasive species removal, planting, habitat restoration, stream bank stabilization and/or restoration and monitoring, and erosion control.
- G. No other utilities, buildings, facilities, easements, material storage, or grade change will be allowed within the Permanent Easement Area without prior written consent of the Director of the Bureau of Environmental Services.
- H. Grantee shall have the right to install planting, signage or other elements to delineate the boundaries of the Permanent Easement Area.



- I. Grantor reserves all other rights not conveyed herein, but will not exercise said rights in any manner that would be inconsistent or interfere with or materially affect rights herein granted.
- J. Grantor shall not undertake actions or activities that are inconsistent with common natural resource and open space best management and maintenance practices.
- K. These easements shall bind the heirs and assigns of Grantor and shall inure to the benefit of the successors-in-title of Grantee.
- L. Grantor represents and warrants that it has the authority to grant these easements, that the property comprising the Permanent Easement Area and the Temporary Easement Area is free from all liens and encumbrances that would materially affect the easement grants, and that it will defend the same to Grantee against the lawful claims and demands of all persons whomsoever.
- M. Grantor represents that to the best of its knowledge the property comprising the Permanent Easement Area and Temporary Easement Area is in compliance with all local, State and Federal environmental laws and regulations.
- N. The parties acknowledge that they each have disclosed to the other parties all knowledge of any release of hazardous substances onto or from the property comprising the Permanent Easement Area and Temporary Easement Area, and disclosed any known report, investigation, survey or environmental assessment regarding the property comprising the Permanent Easement Area and Temporary Easement Area. "Release" and "hazardous substance" shall have the meaning as defined under Oregon law.
- O. Grantor warrants that to the best of its knowledge there are no underground storage tanks, as defined under Oregon law, presently on or under the property comprising the Permanent Easement Area and Temporary Easement Area.
- P. Grantee, by accepting these easements, is not accepting liability for any preexisting release of hazardous substances onto or from the property comprising the Permanent Easement Area and the Temporary Easement Area, and Grantor is not attempting to convey any such liability.
- Q. Grantee may transfer the Permanent Easement, or portions thereof, to a qualified governmental or nonprofit entity. All transfers or assignments will require the express prior written consent of Grantor.
- R. Subject to the limits of the Oregon Constitution and the Oregon Tort Claims Act, Grantee shall hold harmless, indemnify and defend Grantor and its officers, employees, elected officials and agents from and against all claims, demands, penalties, and causes of action of any kind or character ( including attorney fees) in favor of any person which arise out of, or result from, the acts or omissions of Grantee, its officers, employees, elected officials and agents with respect to the Permanent Easement Area and Temporary Easement Area, except to the extent that such claims are related to or arise from the negligence or willful misconduct

of the Grantor. Grantor shall hold harmless, indemnify and defend Grantee and its officers, employees, elected officials and agents from and against all claims, demands, penalties, and causes of action of any kind or character (including attorney fees) in favor of any person which arise out of, or result from, the acts or omissions of Grantor, its officers, employees, elected officials and agents with respect to the Permanent Easement Area and Temporary Easement Area, except to the extent that such claims are related to or arise from the negligence or willful misconduct of the Grantee.

**North Clackamas Parks and Recreation District**

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

Name: Gary Barth

Title: Director, North Clackamas Parks and Recreation District

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

State of Oregon                    )  
  ) *ss.*  
County of \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, before me \_\_\_\_\_, the undersigned Notary Public, personally appeared \_\_\_\_\_, as Director of North Clackamas Parks and Recreation District, a county service district, personally known to me (or proved to be on the basis of satisfactory evidence) to be the person whose name is subscribed to this instrument, and acknowledged that he executed it.

\_\_\_\_\_  
Notary Public for Oregon  
My commission expires: \_\_\_\_\_

APPROVED AS TO FORM:

APPROVED AS TO FORM:

---

City Attorney

---

County Counsel

APPROVED:

---

Bureau of Environmental Services  
Director or his designee

EXHIBIT A  
LUTHER ROAD HABITAT RESTORATION PROJECT  
R/W #6902-1, 11 & 12  
CHANNEL CHANGE AND VEGETATION MANAGEMENT EASEMENT  
North Clackamas Parks and Recreation District  
1S2E29AB Tax Lots 3609(C231142), 3700(C230643), 3800(C230651)

A portion of that tract of land conveyed to the North Clackamas Parks and Recreation District by Document No. 2009-056372, recorded August 6, 2009, Clackamas County Official Records, situated in the northeast one-quarter of Section 29, Township 1 South, Range 2 East, of the Willamette Meridian in the County of Clackamas and State of Oregon, more particularly described as follows:

Beginning at the Southwest corner of said tract, being the POINT OF BEGINNING; Thence, along the West line of said tract, North 01°25'40" East, a distance of 132.13 feet; Thence North 78°09'48" East, a distance of 82.88 feet; Thence North 42°23'45" East, a distance of 45.83 feet; Thence North 38°41'09" East, a distance of 79.68 feet; Thence North 73°11'12" East, a distance of 99.46 feet; Thence North 86°37'03" East, a distance of 77.66 feet; Thence North 79°11'51" East, a distance of 127.99 feet; Thence North 80°49'03" East, a distance of 85.25 feet; Thence North 52°50'04" East, a distance of 80.06 feet; Thence North 63°56'39" East, a distance of 75.16 feet; Thence North 69°00'13" East, a distance of 99.71 feet; Thence North 16°13'44" East, a distance of 75.94 feet; Thence North 52°41'50" West, a distance of 49.41 feet; Thence North 20°34'42" West, a distance of 65.85 feet; Thence North 19°05'30" East, a distance of 113.38 feet; Thence North 08°20'41" East, a distance of 72.91 feet; Thence North 17°24'22" East, a distance of 56.48 feet; Thence North 41°38'33" East, a distance of 114.79 feet; Thence North 47°30'16" East, a distance of 173.50 feet, to the East line of said tract; Thence, along the East line of said tract, South 01°51'20" West, a distance of 74.84 feet, to the centerline of Johnson Creek; Thence the following courses along the centerline of Johnson Creek; Thence South 43°25'50" West, a distance of 15.61 feet; Thence South 36°21'52" West, a distance of 42.84 feet; Thence South 43°14'16" West, a distance of 52.42 feet; Thence South 22°49'23" West, a distance of 17.71 feet; Thence South 35°11'09" West, a distance of 48.18 feet; Thence South 25°50'09" West, a distance of 28.88 feet; Thence South 00°55'40" West, a distance of 22.91 feet; Thence South 29°22'41" East, a distance of 32.91 feet; Thence South 01°43'11" West, a distance of 25.66 feet; Thence South 19°01'21" East, a distance of 25.13 feet; Thence South 06°45'33" East, a distance of 22.52 feet; Thence South 52°14'47" East, a distance of 33.29 feet; Thence South 20°49'29" East, a distance of 30.53 feet; Thence South 27°32'03" East, a distance of 28.74 feet; Thence South 09°45'30" East, a distance of 27.09 feet; Thence South 45°33'53" East, a distance of 46.07 feet; Thence South 28°32'59" East, a distance of 32.32 feet; Thence South 05°07'00" East, a distance of 49.64 feet; Thence South 03°30'52" East, a distance of 38.94 feet; Thence South 03°01'31" East, a distance of 38.86 feet; Thence South 01°12'11" West, a distance of 14.43 feet; Thence South 44°07'06" West, a distance of 18.70 feet; Thence South 44°24'58" West, a distance of 22.13 feet; Thence South 58°36'39" West, a distance of 25.61 feet; Thence South 78°47'29" West, a distance of 21.06 feet; Thence South 55°18'38" West, a distance of 38.64 feet; Thence South 50°48'09" West, a distance of 43.29 feet; Thence South 61°59'37" West, a distance of 35.20 feet; Thence South 59°36'51" West, a distance of 51.68 feet; Thence South 64°11'01" West, a distance of 44.16 feet; Thence South 71°02'55" West, a distance of 42.80 feet; Thence South 74°24'34" West, a distance of 47.57 feet; Thence South 71°22'09" West, a distance of 46.03 feet; Thence South 83°08'10" West, a distance of 39.17 feet; Thence North

80°18'55" West, a distance of 47.69 feet; Thence North 73°26'30" West, a distance of 35.00 feet; Thence North 86°02'15" West, a distance of 44.24 feet; Thence South 63°56'57" West, a distance of 53.93 feet; Thence South 67°54'27" West, a distance of 43.85 feet; Thence South 50°15'56" West, a distance of 63.98 feet; Thence South 42°34'43" West, a distance of 50.14 feet; Thence South 45°52'46" West, a distance of 54.31 feet; Thence South 49°44'26" West, a distance of 38.31 feet; Thence South 51°31'51" West, a distance of 13.83 feet, to the South line of said tract; Thence, along the South line of said tract, North 88°35'35" West, a distance of 219.37 feet to the POINT OF BEGINNING.

Containing 263,254 square feet or 6.0435 acres, more or less.

Job No. 06947  
February 2, 2012

REGISTERED  
PROFESSIONAL  
LAND SURVEYOR

*Thomas P. Beinbauer*

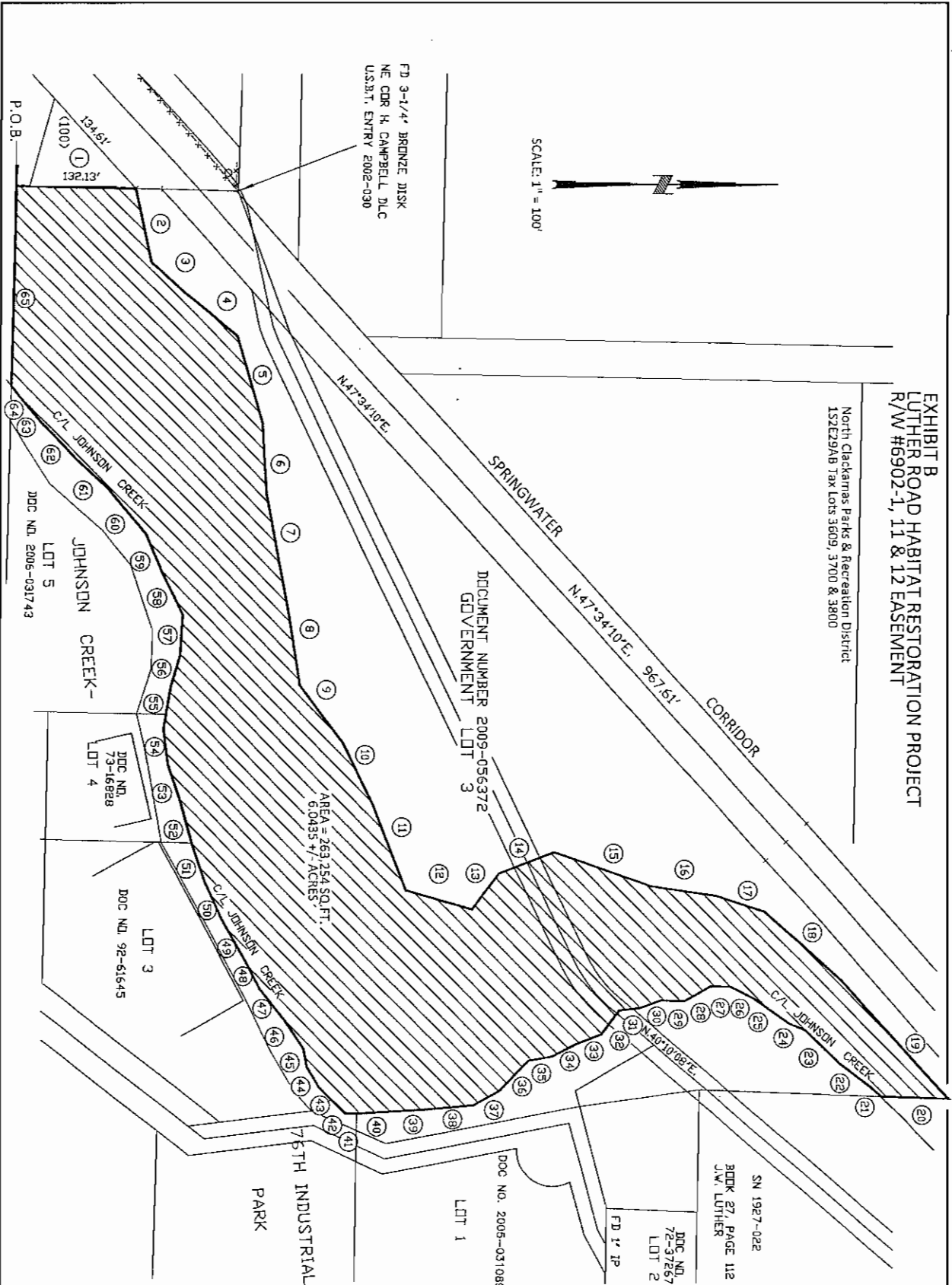
OREGON  
JULY 17, 1994  
THOMAS P. BEINHAUER  
2654  
EXPIRES 12-31-2013

**EXHIBIT B  
LUTHER ROAD HABITAT RESTORATION PROJECT  
R/W #6902-1, 11 & 12 EASEMENT**

North Clackamas Parks & Recreation District  
1S2E29AB Tax Lots 3609, 3700 & 3800

SCALE: 1" = 100'

FD 3-1/4" BRONZE DISK  
NE COR H. CAMPBELL DLG  
U.S.B.T. ENTRY 2002-030



AREA = 263,254 SQ. FT.  
6.0435 +/- ACRES

P.O.B. (100)

DOC NO. 2006-031743

DOC NO. 73-16888

DOC NO. 92-61645

DOC NO. 2006-031089

DOC NO. 72-37867

SN 1927-022  
J.W. LUTHER

COURSES	
1	N 01°25'40"E 132.13'
2	N 78°09'48"E 82.88'
3	N 48°23'45"E 45.83'
4	N 38°41'09"E 79.68'
5	N 73°11'12"E 99.46'
6	N 86°37'03"E 77.66'
7	N 79°11'51"E 127.99'
8	N 80°49'03"E 88.25'
9	N 52°50'04"E 80.05'
10	N 63°56'39"E 78.16'
11	N 69°00'13"E 93.71'
12	N 16°13'44"E 73.94'
13	N 52°41'50"W 49.41'
14	N 20°34'42"W 65.85'
15	N 19°05'30"E 114.38'
16	N 08°20'41"E 78.91'
17	N 17°24'22"E 56.48'
18	N 41°38'33"E 114.79'
19	N 47°30'16"E 173.50'
20	S 01°51'20"W 74.84'
21	S 43°28'50"W 156.61'
22	S 46°17'52"W 48.94'
23	S 43°14'16"W 58.42'
24	S 42°47'23"W 177.1'
25	S 35°11'09"W 48.18'
26	S 63°50'05"W 68.88'
27	S 60°53'40"W 64.91'
28	S 69°26'41"E 66.21'
29	S 01°03'11"W 65.66'
30	S 15°01'43"E 65.36'
31	S 09°14'39"E 65.96'
32	S 25°44'29"E 92.53'
33	S 27°28'02"E 29.73'
34	S 09°45'30"E 46.07'
35	S 45°33'32"E 49.24'
36	S 28°32'59"E 35.32'
37	S 05°07'00"E 48.44'
38	S 03°50'52"E 38.94'
39	S 01°50'31"E 38.89'
40	S 01°12'11"W 18.49'
41	S 44°10'54"W 19.71'
42	S 44°52'58"W 23.17'
43	S 58°56'39"W 25.61'
44	S 78°47'29"W 21.06'
45	S 55°16'38"W 38.64'
46	S 50°48'09"W 43.29'
47	S 61°59'37"W 38.20'
48	S 59°36'51"W 51.68'
49	S 71°02'55"W 44.15'
50	S 74°24'34"W 47.57'
51	S 71°52'09"W 46.03'
52	S 83°08'10"W 39.17'
53	N 80°18'55"W 47.69'
54	N 73°28'30"W 35.00'
55	N 86°02'15"W 44.84'
56	S 63°56'57"W 53.93'
57	S 67°54'27"W 43.85'
58	S 50°15'56"W 63.98'
59	S 48°34'43"W 50.14'
60	S 45°52'45"W 54.31'
61	S 49°44'26"W 38.31'
62	S 51°31'51"W 138.9'
63	N 88°35'35"W 219.37'

## Exhibit C

### Temporary Construction Easement

Tax Lot 3609

Part of the North one-half of the Northeast one-quarter of Section 29, Township 1 South, Range 2 East of the Willamette Meridian, in the County of Clackamas and State of Oregon, described as follows:

Beginning at a point 2.00 chains South and 18.01 chains East of the Northwest one-quarter of the Northeast one-quarter of said Section, said point also being the Northwest corner of that tract conveyed to Herbert C. Wilton, et ux, by Deed recorded February 12, 1974, Recorder's Fee No. 74-3543, Clackamas County Records; thence South along the West line of said Wilton Tract to a point on the Southerly line of that tract of land conveyed to The Oregon Water Power and Railway Company by Deed recorded February 19, 1903, in Book 86, page 239, Clackamas County Deed Records, and the true point of beginning; thence continuing South along the West line of said Wilton Tract to a point in the thread of Johnson Creek said point also being the most Northerly corner of JOHNSON CREEK-76th INDUSTRIAL PARK, a recorded plat; thence Southerly along the thread of Johnson Creek and the boundary of said recorded plat to a point on the South line of the Northwest one-quarter of the Northeast one-quarter of said Section; thence West along said South line to the Southeast corner of that tract described as Parcel III in Affidavit executed by Augusta L. Wie recorded May 11, 1971, Recorder's Fee No. 71-10059, Clackamas County Records; thence North along the East line of said Wie Tract 385 feet, more or less, to a point on the Southerly line of the aforementioned Oregon Water Power and Railway Company Tract; thence Northeasterly along said Southerly line to the true point of beginning.

TOGETHER WITH an Easement for ingress and egress over the following described tracts:

A tract of land being a portion of Lots 1, 4 and 5, JOHNSON CREEK-76TH INDUSTRIAL PARK, in the County of Clackamas and State of Oregon, to-wit:

Beginning at a point in the South boundary of Lot 1, JOHNSON CREEK-76TH INDUSTRIAL PARK, which point is 10 feet North 89°50' East from the Southeast corner of Lot 5, of said JOHNSON CREEK-76TH INDUSTRIAL PARK; thence Northerly to a point which is 10 feet West from an iron rod which is North 0°01' West 169.06 feet from the aforesaid Southeast corner of Lot 5; thence continuing Northerly to the North boundary of said Lot 5, in the thread of Johnson Creek; thence upstream along the thread of Johnson Creek to a point which is 32 feet Easterly from the previous described line when measured at right angles therefrom; thence Southerly, parallel with and 32 feet Easterly from the first line herein described, to the South boundary of Lot 1, JOHNSON CREEK-76TH INDUSTRIAL PARK; thence tracing said South boundary, South 89°50' West to the place of beginning.

AND a tract of land in the Southwest one-quarter of the Northeast one-quarter of Section 29, Township 1 South, Range 2 East of the Willamette Meridian, in the County of Clackamas and State of Oregon, to-wit:

Beginning at the East one-quarter corner of Section 29, Township 1 South, Range 2 East of the Willamette Meridian; thence North 89°55' West 1303.2 feet; thence North 0°01' East 1312.5 feet; thence South 89°48' West 407.06 feet to the Northeast corner of the tract conveyed to Glenn S. Cook, et ux, in Book 402, page 628; thence continuing South 89°48' West along the North boundary of said Cook tract, 65 feet to the true point of beginning of the tract herein to be described; thence continuing South 89°48' West along the North boundary of said Cook Tract 50 feet; thence South 0°01' East a distance of 217 feet to a point on the North line of Parcel II in that Mortgage recorded January 21, 1970, Recorder's Fee No. 70-1309; thence North 89°48' East parallel with the North line of said Cook Tract 50 feet; thence North 0°01' West parallel with the West boundary of said Cook Tract 217 feet to the true place of beginning.

AND a tract of land in the Southwest one-quarter of the Northeast one-quarter of Section 29, Township 1 South, Range 2 East of the Willamette Meridian, in the County of Clackamas and State of Oregon, to-wit:

The Easterly 40 feet of the following described property, as measured along the Northerly line thereof;

Beginning at the East one-quarter corner of Section 29, Township 1 South, Range 2 East of the Willamette Meridian; thence North 89°55' West 1303.2 feet; thence North 0°01' East 1312.5 feet; thence South 89°48' West 607.05 feet; thence South 0°01' East 217 feet to the true point of beginning; thence continuing South 0°01' East 83 feet; thence North 89°48' East 85 feet; thence South 0°01' East to the Northerly line of Johnson Creek Boulevard; thence Northeasterly along the Northerly line of said Johnson Creek Boulevard, to the Southwesterly corner of a tract conveyed to Harold R. Stier and Charlotte Stier, husband and wife, by Deed recorded in Deed Book 466, page 646; thence North 0°01' West along the Westerly line of said Stier Tract to the Northwest corner thereof; thence South 89°48' West, a distance of 125 feet to the true point of beginning.

A portion of the North one-half of the Northeast one-quarter of Section 29, Township 1 South, Range 2 East of the Willamette Meridian, in the County of Clackamas and State of Oregon, described as follows:

Beginning at the Southeast corner of that tract conveyed as Parcel B in that Deed to Ben Bader, recorded September 20, 1944 in Book 331, page 692, Deed Records, said corner being on the South line of Government Lot 3 in said Section, and 147.5 feet East of the Southwest corner thereof; thence East 95 feet, more or less, to the Southwest corner of that tract conveyed to Ben Bader by Deed recorded February 13, 1945 in Book 339, page 26, Deed Records; thence North along the West line of said Bader Tract 385 feet, more or less, to the Northwest corner thereof, said corner being on the South line of The Oregon Water Power Railway Company's right-of-way; thence Southwesterly along said South right-of-way line 130 feet, more or less, to the Northeast corner of that tract conveyed as Parcel B to Ben Bader in Book 331, page 692, Deed Records; thence South along the East line of said Bader Tract 298 feet, more or less, to the place of beginning.

Beginning at the most Southerly Southwest corner of Government Lot 3, Section 29, Township 1 South, Range 2 East of the Willamette Meridian, in the County of Clackamas and State of Oregon; thence East on the South line of said Lot, 147.5 feet to a line parallel with and 365.5 feet East of the center line of Kindorf Road extended Southerly; thence North to the Southerly line of the right-of-way of The Portland Railway Light and Power Co., formerly Oregon Water Power and Railway Company; thence Westerly along said Southerly line to the East line of the Hector Campbell Donation Land Claim; thence South on said East line to the place of beginning.

#### Tax Lot 3700

A portion of the North one-half of the Northeast one-quarter of Section 29, Township 1 South, Range 2 East of the Willamette Meridian, in the County of Clackamas and State of Oregon, described as follows:

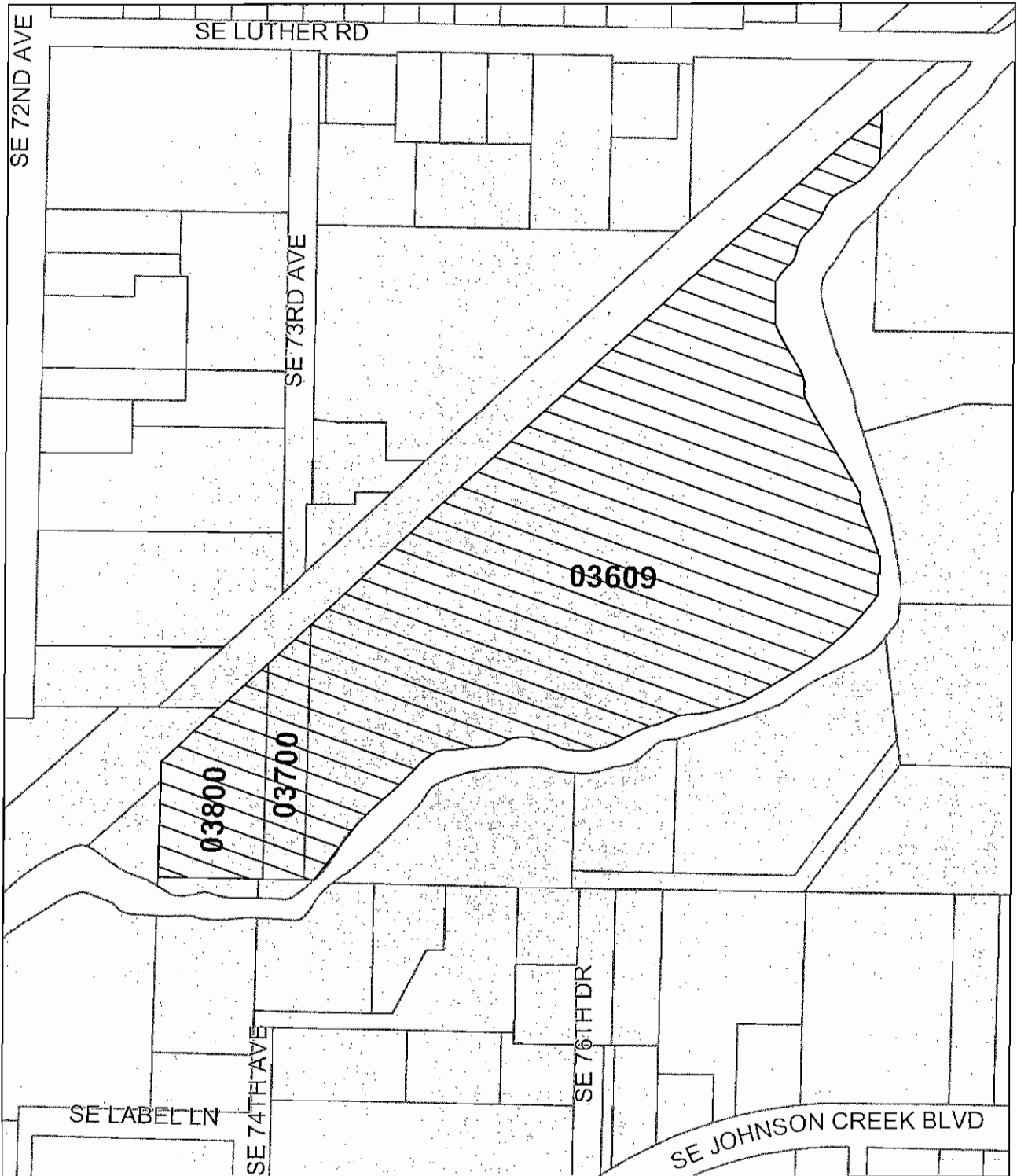
Beginning at the Southeast corner of that tract conveyed as Parcel B in that Deed to Ben Bader, recorded September 20, 1944 in Book 331, page 692, Deed Records, said corner being on the South line of Government Lot 3 in said Section, and 147.5 feet East of the Southwest corner thereof;  
Thence East 95 feet, more or less, to the Southwest corner of that tract conveyed to Ben Bader by Deed recorded February 13, 1945 in Book 339, page 26, Deed Records; thence North along the West line of said Bader Tract 385 feet, more or less, to the Northwest corner thereof, said corner being on the South line of The Oregon Water Power Railway Company's right-of-way;  
Thence Southwesterly along said South right-of-way line 130 feet, more or less, to the Northeast corner of that tract conveyed as Parcel B to Ben Bader in Book 331, page 692, Deed Records;  
Thence South along the East line of said Bader Tract 298 feet, more or less, to the place of beginning.

#### Tax Lot 3800

BEGINNING AT THE MOST SOUTHERLY SOUTHWEST CORNER OF GOVERNMENT LOT 3, SECTION 29, TOWNSHIP 1 SOUTH, RANGE 2 EAST, OF THE WILLAMETTE MERIDIAN, CLACKAMAS COUNTY, OREGON;  
THENCE EAST ON THE SOUTH LINE OF SAID LOT, 147.5 FEET TO A LINE PARALLEL WITH AND 365.5 FEET EAST OF THE CENTER LINE OF KINDORF ROAD EXTENDED SOUTHERLY;  
THENCE NORTH TO THE SOUTHERLY LINE OF THE RIGHT-OF-WAY OF THE PORTLAND RAILWAY LIGHT AND POWER CO., FORMERLY OREGON WATER POWER AND RAILWAY COMPANY;  
THENCE WESTERLY ALONG SAID SOUTHERLY LINE TO THE EAST LINE OF THE HECTOR CAMPBELL D.L.C.;  
THENCE SOUTH ON SAID EAST LINE TO THE PLACE OF BEGINNING.




# Exhibit D



## Luther Road Habitat Restoration Project

Legal: Document No. 2009-056372, CCDR

R/W: 6902-1 BES #E06947

 Temporary Construction Easement Area

1/4 Section: 3835 State ID: 12E29AB03609, 03700, 03800



1 inch = 200 feet

ATTACHMENT E  
INDUSTRIAL PARCEL EASEMENTS



Clackamas County Official Records  
Sherry Hall, County Clerk

2014-009195



\$78.00

01751173201400091950060065

02/28/2014 10:22:04 AM

D-E Cnt=1 Stn=7 BARBARA  
\$30.00 \$16.00 \$22.00 \$10.00

WP

**Document Type:** Channel Change and Vegetation Management Easement

**Grantor:** Excello Products, Inc.  
15075 Armel Dr.  
Portland, OR 97045

**Grantee:** City of Portland, Bureau of Environmental Services  
1120 SW 5<sup>th</sup> Ave., 8<sup>th</sup> Flr.  
Portland, OR 97204

**Consideration:** \$1.00

**Mail Tax Statement To:** No Change

After Recording  
Return To: John Deyo  
City of Portland  
1120 SW 5th Ave., #800  
Portland, OR 97204

Grantor's Name & Address:  
Excello Products, Inc.  
15075 Armel Dr.  
Portland, OR 97045

Tax Statements shall be sent to:  
No Change

Multnomah County Official Records  
R Weldon, Deputy Clerk

2014-015202



\$66.00

1R-EASEMT  
\$25.00 \$11.00 \$20.00 \$10.00

02/18/2014 02:28:42 PM  
Pgs=5 Stn=11 ATRJG

### CHANNEL CHANGE AND VEGETATION MANAGEMENT EASEMENT

KNOW ALL PERSONS BY THESE PRESENTS, that **Excello Products, Inc., an Oregon Corporation** ("Grantor"), in consideration of the sum of One and no/100 Dollars (\$1.00), to them paid by the City of Portland, a municipal corporation of the State of Oregon, the receipt whereof is hereby acknowledged, does hereby grant unto said City of Portland, acting through its Bureau of Environmental Services, and North Clackamas Parks and Recreation District (collectively, "Grantee") an exclusive and perpetual easement for a channel change and vegetation management over and across the following described property ("the Easement Area") as described on Exhibit A and depicted on Exhibit B attached hereto and by this reference made a part hereof. The Easement Area contains 23,755 square feet, more or less.

The purpose of the easement granted herein is to allow Grantee to make changes to the location of Johnson Creek's channel, to ensure that the Easement Area will be retained in its natural state and, except as provided herein, to prevent uses of the Easement Area that would impair the natural qualities of the Easement Area.

IT IS UNDERSTOOD and agreed that:

- A. Grantee may go upon the Easement Area for the purpose of making a channel change in Johnson Creek, as necessitated by Grantee's Luther Road Habitat Restoration Project. Grantee may use and appropriate for the project, without additional compensation, all material excavated in the making of said channel change.
- B. Grantee shall acquire no interest in the Easement Area except for the rights granted herein, nor shall Grantee be deemed to have assumed any obligation other than those specified herein.
- C. Upon completion of the channel change, the relocated channel shall become the natural channel of Johnson Creek for all intents and purposes. No property boundaries shall be

R/W #6902-14  
12E29BD00200  
BES #E06947

After Recording Return to:

John Devo, City of Portland

1120 SW 5th Avenue, #800

Portland, OR 97204

*F/O KCA/vert*

altered thereby. Grantee may, but shall not be obligated to, maintain said Johnson Creek in its relocated channel, and in connection therewith Grantee may go upon the Easement Area.

- D. Grantee may alter the topography of the Easement Area, including the excavation, placement, and removal of materials including but not limited to: sand, gravel, rock, and large woody debris from or to the Easement Area only for the purposes of waterway and riparian improvements.
- E. Grantee may enter the Easement Area at any time for the purpose of inspection, improvement and management of the vegetation in the Easement Area in a manner consistent with the intent of this easement. Grantee's rights with regard to improving the Easement Area include, but are not limited to, pruning, invasive species removal, planting, habitat restoration, stream bank stabilization and/or restoration and monitoring, and erosion control.
- F. No other utilities, buildings, facilities, easements, material storage, or grade change will be allowed within the Easement Area without prior written consent of the Director of the Bureau of Environmental Services, which consent shall not be unreasonably refused or conditioned.
- G. Grantee shall have the right to install planting, signage or other elements to delineate the boundaries of the Easement Area.
- H. Grantor reserves all other rights not conveyed herein, but will not exercise said rights in any manner that would be inconsistent or interfere with or materially affect rights herein granted. In addition, Grantor shall not do the following in the Easement Area:
  - 1) Use any herbicides, pesticides or fertilizers;
  - 2) Remove or disturb any vegetation, including harvesting of any trees or other forest resources; or
  - 3) Introduce non-native plant or animal species.
- I. This easement shall bind the heirs and assigns of Grantor and shall inure to the benefit of the successors-in-title of Grantee.
- J. This easement is granted pursuant to the exercise of the eminent domain power and authority of Grantee.
- K. Grantee may transfer this easement, or portions thereof, to a qualified governmental or nonprofit entity. All transfers or assignments will require the express prior written consent of Grantor, which consent shall not be unreasonably refused or conditioned.
- L. Grantee, by accepting this easement, is not accepting liability for any preexisting release of hazardous substances onto or from the property comprising the Easement Area, and Grantor is not attempting to convey any such liability.

IN WITNESS WHEREOF, Excello Products, Inc., an Oregon corporation, pursuant to a resolution of its Board of Directors, duly and legally adopted, has caused these presents to be signed by Dave L. Standley as President and Claudia M. Standley as Secretary this 19th day of November, 2013.

EXCELLO PRODUCTS, INC.,  
An Oregon corporation

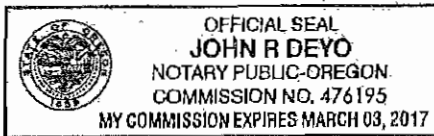
By Dave Standley  
PRESIDENT

BY Claudia Standley  
SECRETARY

STATE OF Oregon

County of Clackamas

This instrument was acknowledged before me on November 19, 2013 by Dave M. Standley as President and Claudia M. Standley as Secretary of Excello Products, Inc., an Oregon corporation.



John R. Deyo  
Notary Public for (state) Oregon  
My Commission expires March 3, 2017

APPROVED AS TO FORM

[Signature]  
CITY ATTORNEY  
City Attorney

APPROVED AS TO FORM:

[Signature]  
County Counsel

APPROVED:

[Signature]  
Bureau of Environmental Services  
Director or his designee

APPROVED:

[Signature]  
North Clackamas Parks and Recreation District  
Director or his designee

EXHIBIT A  
LUTHER ROAD HABITAT RESORATION PROJECT  
R/W #6902-3 CHANNEL CHANGE AND  
VEGETATION MANAGEMENT EASEMENT  
EXCELLO  
1S2E29AB Tax lot 3604 (C230818)

A portion of Lot 1 of the duly recorded plat of JOHNSON CREEK – 76TH INDUSTRIAL PARK, situated in the northeast one-quarter of section 29, Township 1 South, Range 2 East, of the Willamette Meridian in the County of Clackamas and State of Oregon, more particularly described as follows:

Commencing at the southwest corner of Lot 2 of said JOHNSON CREEK – 76TH INDUSTRIAL PARK, said point being marked by a one inch iron pipe; thence S 74° 49' 32" W along the northerly line of a permanent roadway easement, a distance of 115.31 feet to the grading limit line and Point of Beginning of the tract herein described; thence continuing S 74° 49' 32" W, along the westerly extension of the north line of said roadway easement, a distance of 17.69 feet; thence N 29° 43' 28" W, a distance of 100.55 feet to the centerline of the Lents Trunk Sewer; thence S 40° 10' 08" W, along said centerline a distance of 53.41 feet to the center of Johnson Creek and the westerly line of said Lot 1, JOHNSON CREEK – 76TH INDUSTRIAL PARK; thence northerly and easterly along the center of Johnson Creek and westerly line of said Lot 1 the following courses and distances: N 52° 14' 47" W, 4.50 feet; N 06° 45' 33" W, 22.52 feet; N 19° 01' 21" W, 25.13 feet; N 01° 43' 11" E, 25.66 feet; N 29° 22' 41" W, 32.91 feet; N 00° 55' 40" E, 22.91 feet; N 25° 50' 09" E, 28.88 feet; N 35° 11' 09" E, 48.18 feet; N 22° 49' 23" E, 17.71 feet; N 43° 14' 16" E, 52.42 feet; N 36° 21' 52" E, 42.84 feet; N 43° 25' 50" E, a distance of 15.61 feet to a point in the west line of the Wilton Tract as described in Document Number 2001-096096, Clackamas County Official Records; thence S 01° 51' 20" W, along said west line and the grading limit line a distance of 201.14 feet to the southwest corner of said Wilton Tract; thence S 10° 12' 57" E, along the grading limit line a distance of 90.15 feet to an angle point; thence S 02° 40' 00" E, along said grading line a distance of 43.97 feet to the Point of Beginning.

Containing an area of 23,755 square feet, more or less.

Job #06947  
November 7, 2011  
Title changed May 9, 2012

REGISTERED  
PROFESSIONAL  
LAND SURVEYOR

*Thomas P. Beinhauer*

OREGON  
JULY 17, 1994  
THOMAS P. BEINHAUER  
2654

EXPIRES 12-31-2013



EXHIBIT B  
 LUTHER ROAD HABITAT RESTORATION PROJECT  
 R/W #6902-3 CHANNEL CHANGE AND  
 VEGETATION MANAGEMENT EASEMENT  
 EXCELLO  
 1S2E29AB TAX LOT 3604 (C230818)

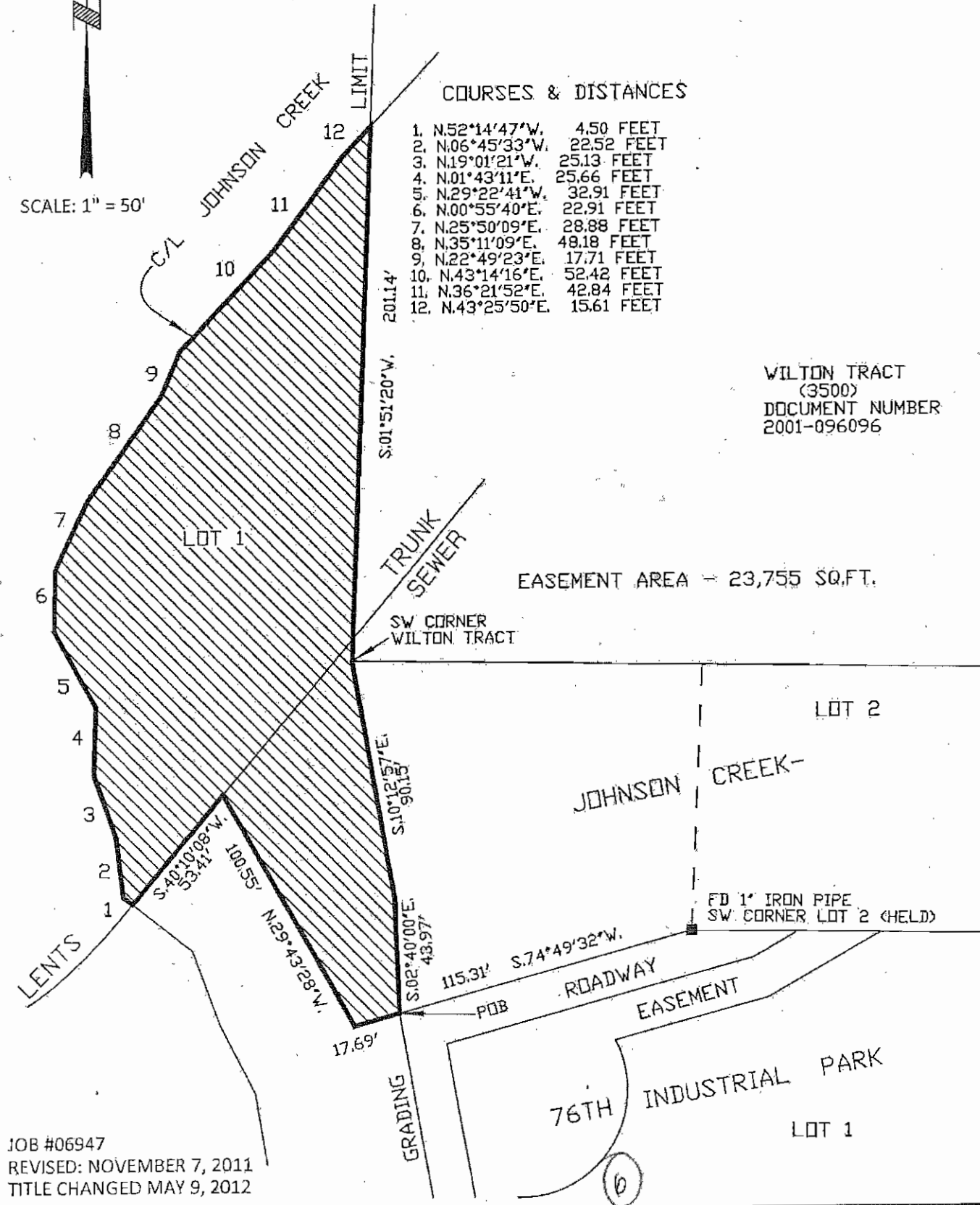
SCALE: 1" = 50'

COURSES & DISTANCES

- |     |               |            |
|-----|---------------|------------|
| 1.  | N.52°14'47"W. | 4.50 FEET  |
| 2.  | N.06°45'33"W. | 22.52 FEET |
| 3.  | N.19°01'21"W. | 25.13 FEET |
| 4.  | N.01°43'11"E. | 25.66 FEET |
| 5.  | N.29°22'41"W. | 32.91 FEET |
| 6.  | N.00°55'40"E. | 22.91 FEET |
| 7.  | N.25°50'09"E. | 28.88 FEET |
| 8.  | N.35°11'09"E. | 48.18 FEET |
| 9.  | N.22°49'23"E. | 17.71 FEET |
| 10. | N.43°14'16"E. | 52.42 FEET |
| 11. | N.36°21'52"E. | 42.84 FEET |
| 12. | N.43°25'50"E. | 15.61 FEET |

WILTON TRACT  
 (3500)  
 DOCUMENT NUMBER  
 2001-096096

EASEMENT AREA = 23,755 SQ.FT.



JOB #06947  
 REVISED: NOVEMBER 7, 2011  
 TITLE CHANGED MAY 9, 2012

Grantor's Name & Address:

Dankris Company  
1414 SE Beech Pl.  
Gresham, OR 97080



\$93.00

10/03/2013 10:06:26 AM

D-E Cnt=1 Sin=6 KARLYN  
\$30.00 \$16.00 \$17.00 \$10.00 \$20.00

Tax Statements shall be sent to:  
No Change

*Sp  
2015*

**CHANNEL CHANGE AND  
VEGETATION MANAGEMENT EASEMENT**

KNOW ALL PERSONS BY THESE PRESENTS, that Dankris Company, an Oregon corporation ("Grantor"), in consideration of the sum of Three Thousand Five Hundred and no/100 Dollars (\$3,500.00) and other good and valuable consideration to it paid by the City of Portland, a municipal corporation of the State of Oregon, does hereby grant unto said City of Portland, acting through its Bureau of Environmental Services, and North Clackamas Parks and Recreation District (collectively, "Grantee") an exclusive and perpetual easement for a channel change and vegetation management over and across the following described property ("the Easement Area") as described on Exhibit A and depicted on Exhibit B attached hereto and by this reference made a part hereof. The Easement Area contains 13,455 square feet, more or less.

The purpose of the easement granted herein is to allow Grantee to make changes to the location of Johnson Creek's channel, to ensure that the Easement Area will be retained in its natural state and, except as provided herein, to prevent uses of the Easement Area that would impair the natural qualities of the Easement Area.

IT IS UNDERSTOOD and agreed that:

- A. Grantee may go upon the Easement Area for the purpose of making a channel change in Johnson Creek, as necessitated by Grantee's Luther Road Habitat Restoration Project. Grantee may use and appropriate for the project, without additional compensation, all material excavated in the making of said channel change.
- B. Grantee shall acquire no interest in the Easement Area except for the rights granted herein, nor shall Grantee be deemed to have assumed any obligation other than those specified herein.
- C. Upon completion of the channel change, the relocated channel shall become the natural channel of Johnson Creek for all intents and purposes. No property boundaries shall be altered thereby. Grantee may, but shall not be obligated to, maintain said Johnson Creek in its relocated channel, and in connection therewith Grantee may go upon the Easement Area.

R/W #6902-4 & 5  
12E29AB03608  
BES #E06947

After Recording Return to:  
 John Devo, City of Portland *John Devo*  
 1120 SW 5th Avenue, #800  
 Portland, OR 97204

- D. Grantee may alter the topography of the Easement Area, including the excavation, placement, and removal of materials including but not limited to: sand, gravel, rock, and large woody debris from or to the Easement Area only for the purposes of waterway and riparian improvements.
- E. Grantor releases Grantee from any and all liability or claims whatsoever arising from the making of the channel change authorized by this easement.
- F. Grantee may enter the Easement Area at any time for the purpose of inspection, improvement and management of the vegetation in the Easement Area in a manner consistent with the intent of this easement. Grantee's rights with regard to improving the Easement Area include, but are not limited to, pruning, invasive species removal, planting, habitat restoration, stream bank stabilization and/or restoration and monitoring, and erosion control.
- G. No other utilities, buildings, facilities, easements, material storage, or grade change will be allowed within the Easement Area without prior written consent of the Director of the Bureau of Environmental Services.
- H. Grantee shall have the right to install planting, signage or other elements to delineate the boundaries of the Easement Area.
- I. Grantor reserves all other rights not conveyed herein, but will not exercise said rights in any manner that would be inconsistent or interfere with or materially affect rights herein granted. In addition, Grantor shall not do the following in or near the Easement Area:
  - 1) Use any herbicides, pesticides or fertilizers;
  - 2) Remove or disturb any vegetation, including harvesting of any trees or other forest resources; or
  - 3) Introduce non-native plant or animal species.
- J. This easement shall bind the heirs and assigns of Grantor and shall inure to the benefit of the successors-in-title of Grantee.
- K. Grantor represents and warrants that it has the authority to grant this easement, that the property comprising the Easement Area is free from all liens and encumbrances that would materially affect the easement grant, and that Grantor will defend the same to Grantee against the lawful claims and demands of all persons whomsoever.
- L. This easement is granted pursuant to the exercise of the eminent domain power and authority of Grantee, with the consideration paid by Grantee accepted as just compensation for the property or property rights conveyed, which includes damage to the property remainder, if any, resulting from the acquisition or use of said property or property rights.
- M. Grantor represents that to the best of its knowledge, after appropriate inquiry under the circumstances, the property comprising the Easement Area is in compliance with all local, State and Federal environmental laws and regulations.

- N. Grantor represents that it has disclosed all knowledge of any release of hazardous substances onto or from the property comprising the Easement Area, and disclosed any known report, investigation, survey, or environmental assessment regarding the property comprising the Easement Area. "Release" and "hazardous substance" shall have the meaning as defined under Oregon law.
- O. Grantor warrants that there are no underground storage tanks, as defined under Oregon law, presently on or under the property comprising the Easement Area.
- P. Grantee, by accepting this easement, is not accepting liability for any preexisting release of hazardous substances onto or from the property comprising the Easement Area, and Grantor is not attempting to convey any such liability.
- Q. Grantee may transfer this easement, or portions thereof, to a qualified governmental or nonprofit entity. All other transfers or assignments will require the express prior written consent of Grantor.

IN WITNESS WHEREOF, Dankris Company, an Oregon corporation, pursuant to a resolution of its Board of Directors, duly and legally adopted, has caused these presents to be signed by RON DIPIETRO as President and RON DIPIETRO as Secretary this 16<sup>TH</sup> day of JULY, 2013.

DANKRIS COMPANY,  
AN OREGON CORPORATION

By: [Signature]  
President

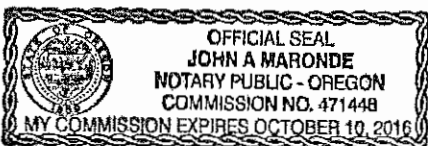
By: [Signature]  
Secretary

STATE OF OREGON

County of Multnomah

This instrument was acknowledged before me on July 16, 2013 by Ronald DiPietro as President and Ronald DiPietro as Secretary of Dankris Company, an Oregon corporation.

[Signature]  
Notary Public for Oregon  
My Commission expires 10/10/2016



APPROVED AS TO FORM

*James H. Van Dyke*  
\_\_\_\_\_  
City Attorney

APPROVED AS TO FORM:

*[Signature]*  
\_\_\_\_\_  
County Counsel

APPROVED:

*Scott J. Brown*  
\_\_\_\_\_  
Bureau of Environmental Services  
Director or his designee

APPROVED:

*Amy Bahl*  
\_\_\_\_\_  
North Clackamas Parks and Recreation District  
Director or his designee

EXHIBIT A  
LUTHER ROAD HABITAT RESTORATION PROJECT  
R/W #6902-4&5 CHANNEL CHANGE AND VEGETATION MANAGEMENT  
EASEMENT  
DANKRIS  
1S2E29AB Tax Lot 3607 (230642) & 3608 (C230900)

A portion of Parcels I and II in Lot 1 of the duly recorded plat of JOHNSON CREEK - 76TH INDUSTRIAL PARK, described in Document Number 2005-031089, recorded April 8, 2005, Clackamas County Official Records, situated in the northeast one-quarter of Section 29, Township 1 South, Range 2 East, of the Willamette Meridian in the County of Clackamas and State of Oregon, more particularly described as follows:

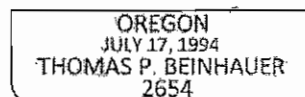
Beginning at an angle point on the westerly line of said Lot 1 that bears S 43° 33' 07" W, a distance of 445.29 feet from the southeast corner of Lot 2, JOHNSON CREEK - 76TH INDUSTRIAL PARK, said corner being marked by a 5/8" iron rod with a yellow plastic cap inscribed "Mason PLS 322"; thence from the Point of Beginning N 28° 28' 28" W, along the west line of said Lot 1, a distance of 25.58 feet to the center of Johnson Creek; thence northerly and northwesterly along said center the following courses and distances: N 44° 24' 58" E, 2.40 feet; N 44° 07' 06" E, 18.70 feet; N 01° 12' 11" E, 14.43 feet; N 03° 01' 31" W, 38.86 feet; N 03° 30' 52" W, 38.94 feet; N 05° 07' 00" W, 49.64 feet; N 28° 32' 59" W, 32.32 feet; N 45° 33' 53" W, 46.07 feet; N 09° 45' 30" W, 27.09 feet; N 27° 32' 03" W, 28.74 feet; N 20° 49' 29" W, 30.53 feet; N 52° 14' 47" W, a distance of 28.79 feet to the centerline of the Lents Trunk Sewer; thence N 40° 10' 08" E, along said centerline a distance of 53.41 feet to a point in the northerly line of said parcel II of the aforementioned document number 2005-031089; thence S 29° 43' 28" E, along said northerly line a distance of 100.55 feet to an angle point; thence N 74° 49' 32" E, along said northerly line a distance of 17.69 feet to the westerly line of a roadway easement; thence S 10° 43' 28" E, along said westerly line a distance of 216.98 feet to an angle point; thence S 23° 20' 42" W, along said westerly line a distance of 90.51 feet to the Point of Beginning.

Containing an area of 13,445 square feet, more or less.

Job #06947  
November 7, 2011  
Title changed May 9, 2012



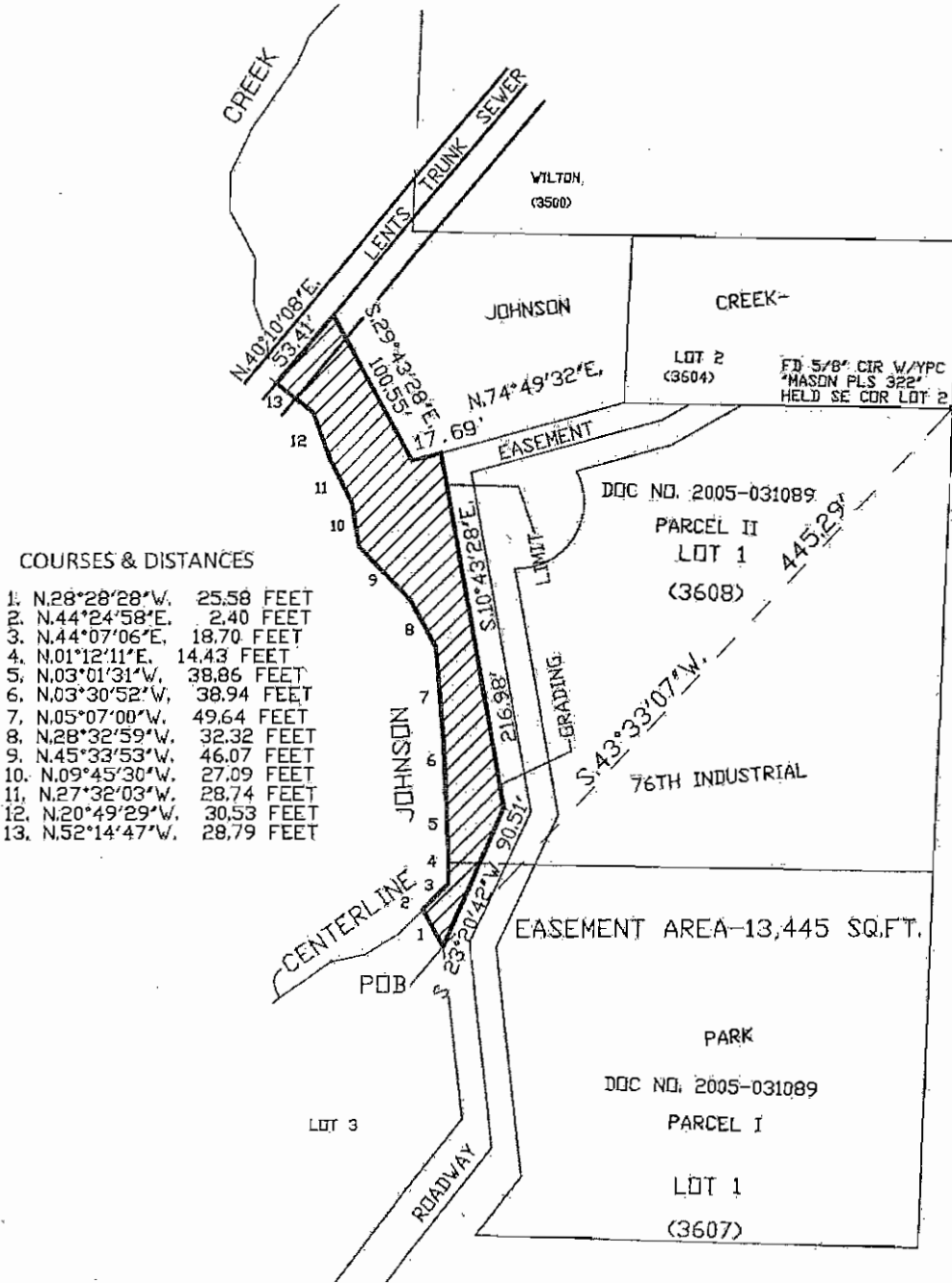
*Thomas P. Beinhauer*



EXPIRES 12-31-2013

5

EXHIBIT B  
 LUTHER ROAD HABITAT RESTORATION PROJECT  
 R/W #6902- 4 & 5 CHANNEL CHANGE AND  
 VEGETATION MANAGEMENT EASEMENT  
 DANKRIS  
 1S2E29AB TAX LOT 3607 (C230642) & 3608 (230900)



COURSES & DISTANCES

1. N.28°28'28"W, 25.58 FEET
2. N.44°24'58"E, 2.40 FEET
3. N.44°07'06"E, 18.70 FEET
4. N.01°12'11"E, 14.43 FEET
5. N.03°01'31"W, 38.86 FEET
6. N.03°30'52"W, 38.94 FEET
7. N.05°07'00"W, 49.64 FEET
8. N.28°32'59"W, 32.32 FEET
9. N.45°33'53"W, 46.07 FEET
10. N.09°45'30"W, 27.09 FEET
11. N.27°32'03"W, 28.74 FEET
12. N.20°49'29"W, 30.53 FEET
13. N.52°14'47"W, 28.79 FEET

EASEMENT AREA-13,445 SQ.FT.

SCALE: 1" = 100'

JOB #06947  
 REVISED: NOVEMBER 7, 2011  
 TITLE CHANGED MAY 9, 2012

10

Clackamas County Official Records  
Sherry Hall, County Clerk

2013-069154

**Grantor's Name & Address:**

Gulsons, LLC  
307 Lewers St., 6th Flr,  
Honolulu, HI 96815



\$93.00

10/03/2013 10:06:26 AM

Tax Statements shall be sent to:  
No Change

D-E                      Cnt=1    Stn=6    KARLYN  
\$30.00 \$16.00 \$17.00 \$10.00 \$20.00

*2013*  
*GA*

**CHANNEL CHANGE AND  
VEGETATION MANAGEMENT EASEMENT**

KNOW ALL PERSONS BY THESE PRESENTS, that **Gulsons, LLC**, a Hawaii limited liability company who acquired title as Gulsons, a Hawaii General Partnership ("Grantor"), in consideration of the sum of One Thousand Five Hundred and no/100 Dollars (\$1,500.00) and other good and valuable consideration to it paid by the City of Portland, a municipal corporation of the State of Oregon, does hereby grant unto said City of Portland, acting through its Bureau of Environmental Services, and North Clackamas Parks and Recreation District (collectively, "Grantee") an exclusive and perpetual easement for a channel change and vegetation management over and across the following described property ("the Easement Area") as described in Exhibit A and as depicted on Exhibit B, attached hereto and by this reference made a part hereof. The Easement Area contains 7,910 square feet, more or less.

The purpose of the easement granted herein is to allow Grantee to make changes to the location of Johnson Creek's channel, to ensure that the Easement Area will be retained in its natural state and, except as provided herein, to prevent uses of the Easement Area that would impair the natural qualities of the Easement Area.

IT IS UNDERSTOOD and agreed that:

- A. Grantee may go upon the Easement Area for the purpose of making a channel change in Johnson Creek, as necessitated by Grantee's Luther Road Habitat Restoration Project. Grantee may use and appropriate for the project, without additional compensation, all material excavated in the making of said channel change.
- B. Grantee shall acquire no interest in the Easement Area except for the rights granted herein, nor shall Grantee be deemed to have assumed any obligation other than those specified herein.
- C. Upon completion of the channel change, the relocated channel shall become the natural channel of Johnson Creek for all intents and purposes. No property boundaries shall be

R/W #6902-6	After Recording Return to:
12E29AB03602	John Deyo, City of Portland <i>WJ</i>
BES #E06947	1120 SW 5th Avenue, #800 <i>K Calvert</i>
	Portland, OR 97204



altered thereby. Grantee may, but shall not be obligated to, maintain said Johnson Creek in its relocated channel, and in connection therewith Grantee may go upon the Easement Area.

- D. Grantee may alter the topography of the Easement Area, including the excavation, placement, and removal of materials including but not limited to: sand, gravel, rock, and large woody debris from or to the Easement Area only for the purposes of waterway and riparian improvements.
- E. Grantee may enter the Easement Area at any time for the purpose of inspection, improvement and management of the vegetation in the Easement Area in a manner consistent with the intent of this easement. Grantee's rights with regard to improving the Easement Area include, but are not limited to, pruning, invasive species removal, planting, habitat restoration, stream bank stabilization and/or restoration and monitoring, and erosion control.
- F. No other utilities, buildings, facilities, easements, material storage, or grade change will be allowed within the Easement Area without prior written consent of the Director of the Bureau of Environmental Services.
- G. Grantee shall have the right to install planting, signage or other elements to delineate the boundaries of the Easement Area.
- H. Grantor reserves all other rights not conveyed herein, but will not exercise said rights in any manner that would be inconsistent or interfere with or materially affect rights herein granted. In addition, Grantor shall not intentionally do the following in the Easement Area:
  - 1) Use any herbicides, pesticides or fertilizers;
  - 2) Remove or disturb any vegetation, including harvesting of any trees or other forest resources; or
  - 3) Introduce non-native plant or animal species.
- I. This easement shall bind the heirs and assigns of Grantor and shall inure to the benefit of the successors-in-title of Grantee.
- J. Grantor represents and warrants that it has the authority to grant this easement, that the property comprising the Easement Area is free from all liens and encumbrances that would materially affect the easement grant, and that Grantor will defend the same to Grantee against the lawful claims and demands of all persons whomsoever.
- K. This easement is granted pursuant to the exercise of the eminent domain power and authority of Grantee, with the consideration paid by Grantee accepted as just compensation for the property or property rights conveyed, which includes damage to the property remainder, if any, resulting from the acquisition or use of said property or property rights.
- L. Grantor represents that to the best of its knowledge, the property comprising the Easement Area is in compliance with all local, State and Federal environmental laws and regulations.

- M. Grantor represents that to its actual knowledge it has disclosed all knowledge of any release of hazardous substances onto or from the property comprising the Easement Area, and disclosed any known report, investigation, survey, or environmental assessment regarding the property comprising the Easement Area. "Release" and "hazardous substance" shall have the meaning as defined under Oregon law.
- N. Grantor warrants that to the best of its knowledge there are no underground storage tanks, as defined under Oregon law, presently on or under the property comprising the Easement Area.
- O. Grantee, by accepting this easement, is not accepting liability for any preexisting release of hazardous substances onto or from the property comprising the Easement Area, and Grantor is not attempting to convey any such liability.
- P. Grantee may transfer this easement, or portions thereof, to a qualified governmental or nonprofit entity. All other transfers or assignments will require the express prior written consent of Grantor.

IN WITNESS WHEREOF, Gulsons, LLC, a Hawaii limited liability company, pursuant to its Articles of Organization, duly and legally adopted, has caused these presents to be signed by its member this 2<sup>nd</sup> day of May, 2012. 2013

GULSONS, LLC,  
A HAWAII LIMITED LIABILITY COMPANY

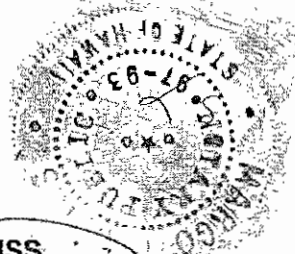
By: *Jas. Watumull*  
Member

STATE OF Hawaii  
CITY  
County of Honolulu

This instrument was acknowledged before me on May 2, 2013  
by Jaidex Watumull as a member of Gulsons, LLC, a Hawaii limited liability company.

NOTARY PUBLIC CERTIFICATION

Margo Corliss  
Doc. Description: Channel Change and Vegetation Management Easement  
No. of Pages: 4 Date of Doc: 5/2/13



*Margo Corliss*  
MARGO CORLISS  
Notary Public for (state) Hawaii  
My Commission expires 03/20/2017

L 5

3

3

APPROVED AS TO FORM:  
APPROVED AS TO FORM

*James H. Van Dyke*

City Attorney CITY ATTORNEY

APPROVED AS TO FORM:

*[Signature]*

County Counsel

APPROVED:

*Scott J. Gibson*

Bureau of Environmental Services  
Director or his designee

APPROVED:

*Amy B. H.*

North Clackamas Parks and Recreation District  
Director or his designee

EXHIBIT A  
LUTHER ROAD HABITAT RESTORATION PROJECT  
R/W #6902-6 CHANNEL CHANGE AND VEGETATION MANAGEMENT  
EASEMENT  
GULSONS, LLC.  
1S2E29AB Tax Lot 3602 (C230645)

A portion of Lot 3 of the duly recorded plat of JOHNSON CREEK - 76TH INDUSTRIAL PARK, situated in the northeast one-quarter of Section 29, Township 1 South, Range 2 East, of the Willamette Meridian in the County of Clackamas and State of Oregon, more particularly described as follows:

Commencing at the southwest corner of said Lot 3, JOHNSON CREEK - 76TH INDUSTRIAL PARK; thence N 01° 33' 25" E, along the west line of said Lot 3, a distance of 152.89 feet to the grading limit line and Point of Beginning of the tract herein described; thence continuing N 01° 33' 25" E, along said west line a distance of 33.68 feet to the center of Johnson Creek and northerly line of said Lot 3; thence northeasterly along the centerline of Johnson Creek and northerly line of said Lot 3 the following courses and distances: N 74° 24' 34" E, 3.53 feet; N 71° 02' 55" E, 42.80 feet; N 64° 11' 01" E, 44.16 feet; N 59° 36' 51" E, 51.68 feet; N 61° 59' 37" E, 35.20 feet; N 50° 48' 09" E, 43.29 feet; N 55° 18' 38" E, 38.64 feet; N 78° 47' 29" E, 21.06 feet; N 58° 36' 39" E, 25.61 feet; N 44° 24' 58" E, a distance of 19.73 feet to the east line of said Lot 3; thence S 28° 28' 28" E, along said east line a distance of 25.58 feet to the grading limit line; thence S 47° 40' 04" W, along said line a distance of 29.01 feet to an angle point; thence S 58° 58' 28" W, along said line a distance of 52.00 feet to an angle point; thence S 63° 37' 49" W, along said line a distance of 62.36 feet to an angle point; thence S 61° 10' 05" W, along said line a distance of 196.53 feet to the Point of Beginning.

Containing an area of 7,910 square feet, more or less.

Job #06947  
November 7, 2011  
Title changed May 9, 2012

REGISTERED  
PROFESSIONAL  
LAND SURVEYOR

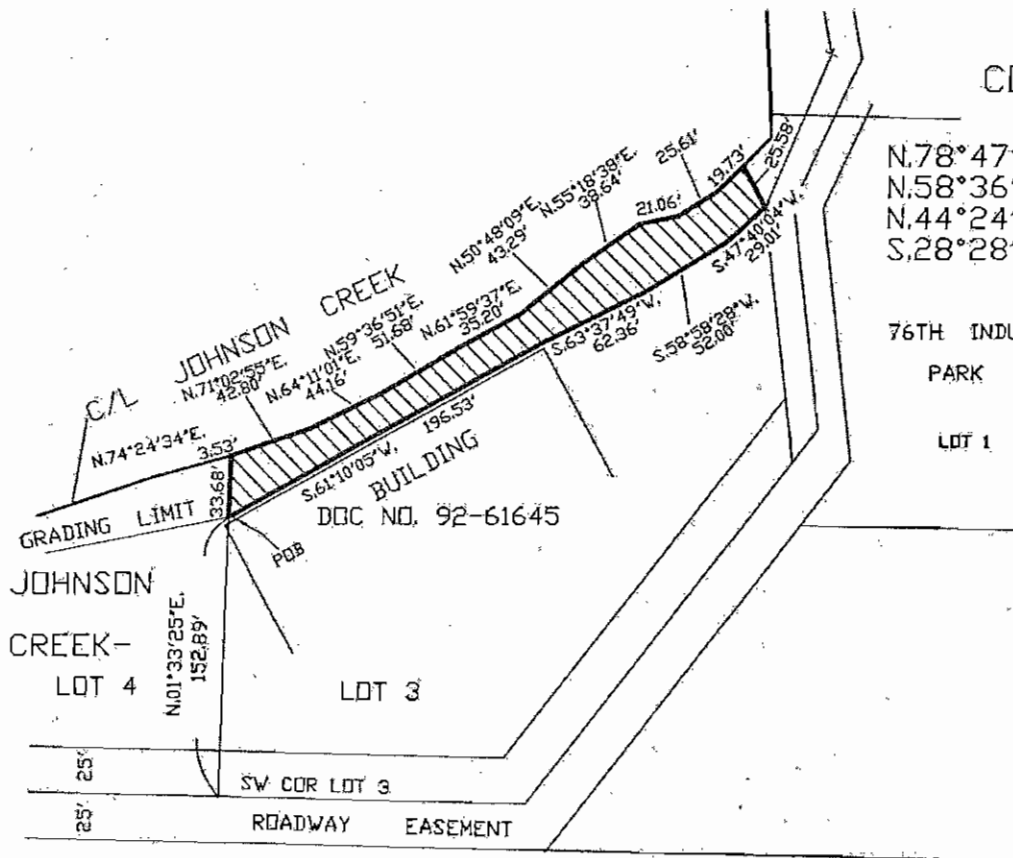
*Thomas P. Beinbauer*

OREGON  
JULY 17, 1994  
THOMAS P. BEINHAUER  
2654

EXPIRES 12-31-2013

5

EXHIBIT B  
 LUTHER ROAD HABITAT RESTORATION PROJECT  
 R/W #6902-6 CHANNEL CHANGE AND  
 VEGETATION MANAGEMENT EASEMENT  
 GULSONS, LLC  
 1S2E29AB TAX LOT 3602 (C230645)



COURSES :

N.78°47'29"E,	21.06'
N.58°36'39"E,	25.61'
N.44°24'58"E,	19.73'
S.28°28'28"E,	25.58'

76TH INDUSTRIAL  
 PARK  
 LOT 1



SCALE: 1" = 100'

EASEMENT AREA - 7,910 SQ.FT.





\$78.00

04/07/2014 02:44:18 PM

D-E Cnt=1 Stn=54 COUNTER2  
\$30.00 \$16.00 \$22.00 \$10.00

Grantor's Name & Address:  
Arthur L. and Rosina F. Bliss, Co-Trustees  
14061 Conway Dr.  
Oregon City, OR 97045

Tax Statements shall be sent to:  
No Change

**CHANNEL CHANGE AND  
VEGETATION MANAGEMENT EASEMENT**

KNOW ALL PERSONS BY THESE PRESENTS, that **Arthur L. Bliss and Rosina F. Bliss**, Co-Trustees of the "Arthur L. Bliss and Rosina F. Bliss Revocable Trust" dated September 15, 1999 ("Grantors"), in consideration of the sum of Two Thousand One Hundred and no/100 Dollars (\$2,100.00) and other good and valuable consideration to them paid by the City of Portland, a municipal corporation of the State of Oregon, do hereby grant unto said City of Portland, acting through its Bureau of Environmental Services, and North Clackamas Parks and Recreation District (collectively, "Grantee") an exclusive and perpetual easement for a channel change and vegetation management over and across the following described property ("the Easement Area") as described on Exhibit A and depicted on Exhibit B attached hereto and by this reference made a part hereof. The Easement Area contains 3,778 square feet, more or less.

The purpose of the easement granted herein is to allow Grantee to make changes to the location of Johnson Creek's channel, to ensure that the Easement Area will be retained in its natural state and, except as provided herein, to prevent uses of the Easement Area that would impair the natural qualities of the Easement Area.

IT IS UNDERSTOOD and agreed that:

- A. Grantee may go upon the Easement Area for the purpose of making a channel change in Johnson Creek, as necessitated by Grantee's Luther Road Habitat Restoration Project. Grantee may use and appropriate for the project, without additional compensation, all material excavated in the making of said channel change.
- B. Grantee shall acquire no interest in the Easement Area except for the rights granted herein, nor shall Grantee be deemed to have assumed any obligation other than those specified herein.
- C. Upon completion of the channel change, the relocated channel shall become the natural channel of Johnson Creek for all intents and purposes. No property boundaries shall be

R/W #6902-7  
12E29AB03603  
BES #E06947

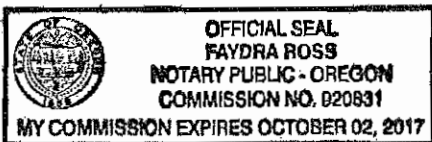
After Recording Return to:  
John Deyo, City of Portland  
1120 SW 5th Avenue, #800  
Portland, OR 97204

altered thereby. Grantee may, but shall not be obligated to, maintain said Johnson Creek in its relocated channel, and in connection therewith Grantee may go upon the Easement Area.

- D. Grantee may alter the topography of the Easement Area, including the excavation, placement, and removal of materials including but not limited to: sand, gravel, rock, and large woody debris from or to the Easement Area only for the purposes of waterway and riparian improvements.
- E. Grantors release Grantee from any and all liability or claims whatsoever arising from the making of the channel change authorized by this easement, except to the extent that such liability or claims are related to or arise from the negligence or willful misconduct of Grantee.
- F. Grantee may enter the Easement Area at any time for the purpose of inspection, improvement and management of the vegetation in the Easement Area in a manner consistent with the intent of this easement. Grantee's rights with regard to improving the Easement Area include, but are not limited to, pruning, invasive species removal, planting, habitat restoration, stream bank stabilization and/or restoration and monitoring, and erosion control.
- G. No other utilities, buildings, facilities, easements, material storage, or grade change will be allowed within the Easement Area without prior written consent of the Director of the Bureau of Environmental Services.
- H. Grantee shall have the right to install planting, signage or other elements to delineate the boundaries of the Easement Area.
- I. Grantors reserve all other rights not conveyed herein, but will not exercise said rights in any manner that would be inconsistent or interfere with or materially affect rights herein granted. In addition, Grantors shall not do the following in or near the Easement Area:
  - 1) Use any herbicides, pesticides or fertilizers;
  - 2) Remove or disturb any vegetation, including harvesting of any trees or other forest resources; or
  - 3) Introduce non-native plant or animal species.
- J. This easement shall bind the heirs and assigns of Grantors and shall inure to the benefit of the successors-in-title of Grantee.
- K. Grantors represent and warrant that they have the authority to grant this easement, that the property comprising the Easement Area is free from all liens and encumbrances that would materially affect the easement grant, and that Grantors will defend the same to Grantee against the lawful claims and demands of all persons whomsoever.
- L. This easement is granted pursuant to the exercise of the eminent domain power and authority of Grantee, with the consideration paid by Grantee accepted as just compensation for the property or property rights conveyed, which includes damage to the property remainder, if any, resulting from the acquisition or use of said property or property rights.

- M. Grantors represent that to the best of their knowledge, after appropriate inquiry under the circumstances, the property comprising the Easement Area is in compliance with all local, State and Federal environmental laws and regulations.
- N. Grantors represent that they have disclosed all knowledge of any release of hazardous substances onto or from the property comprising the Easement Area, and disclosed any known report, investigation, survey, or environmental assessment regarding the property comprising the Easement Area. "Release" and "hazardous substance" shall have the meaning as defined under Oregon law.
- O. Grantors warrant that there are no underground storage tanks, as defined under Oregon law, presently on or under the property comprising the Easement Area.
- P. Grantee, by accepting this easement, is not accepting liability for any preexisting release of hazardous substances onto or from the property comprising the Easement Area, and Grantors are not attempting to convey any such liability.
- Q. Grantee may transfer this easement, or portions thereof, to a qualified governmental or nonprofit entity. All other transfers or assignments will require the express prior written consent of Grantors.

IN WITNESS WHEREOF, the Grantors above named have hereunto set their hands this 21 day of Feb., 2014.



Arthur L. Bliss  
ARTHUR L. BLISS, CO-TRUSTEE

Rosina F. Bliss  
ROSINA F. BLISS, CO-TRUSTEE

STATE OF OREGON

County of Clatsop

This instrument was acknowledged before me on Feb. 21st, 2014 by Arthur L. Bliss and Rosina F. Bliss as Co-Trustees of the "Arthur L. Bliss and Rosina F. Bliss Revocable Trust" dated September 15, 1999.

Faydra Ross  
Notary Public for Oregon  
My Commission expires Oct. 2, 2017



APPROVED AS TO FORM:

2/25/14  
Karen L. Moynahan  
City Attorney (Deputy)

APPROVED AS TO FORM:

[Signature]  
County Counsel

APPROVED:

[Signature]  
Bureau of Environmental Services  
Director or his designee

APPROVED:

[Signature]  
North Clackamas Parks and Recreation District  
Director or his designee

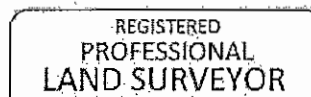
EXHIBIT A  
LUTHER ROAD HABITAT RESTORATION PROJECT  
R/W #6902-7 CHANNEL CHANGE AND VEGETATION MANAGEMENT  
EASEMENT  
BLISS  
1S2E29AB Tax Lot 3603 (C230659)

A portion of Lot 4 of the duly recorded plat of JOHNSON CREEK - 76TH INDUSTRIAL PARK situated in the northeast one-quarter of Section 29, Township 1 South, Range 2 East, of the Willamette meridian in the County of Clackamas and State of Oregon, more particularly described as follows:

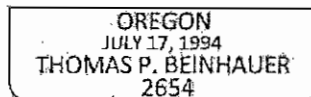
Commencing at the southwest corner of said Lot 4, JOHNSON CREEK - 76TH INDUSTRIAL PARK; thence N 01° 33' 25" E, along the west line of said Lot 4, a distance of 122.99 feet to the grading limit line and Point of Beginning of the tract herein described; thence continuing N 01° 33' 25" E, along said west line a distance of 31.63 feet to the center of Johnson Creek and the north line of said Lot 4; thence easterly along the centerline of Johnson Creek and northerly line of said Lot 4, the following courses and distances: S 80° 18' 55" E, 16.13 feet; N 83° 08' 10" E, 39.17 feet; N 71° 22' 09" E, 46.03 feet; N 74° 24' 34" E, 44.04 feet to the east line of said Lot 4, JOHNSON CREEK - 76TH INDUSTRIAL PARK; thence S 01° 33' 25" W, along said east line a distance of 33.68 feet to the grading limit line; thence S 80° 18' 50" W, along said grading limit line, a distance of 81.08 feet to an angle point; thence S 79° 16' 23" W, along said grading limit line, a distance of 28.53 feet to an angle point; thence S 77° 06' 57" W, along said grading limit line, a distance of 33.66 feet to the Point of Beginning.

Containing an area of 3,778 square feet, more or less.

Job #06947  
November 7, 2011  
Title changed May 9, 2012



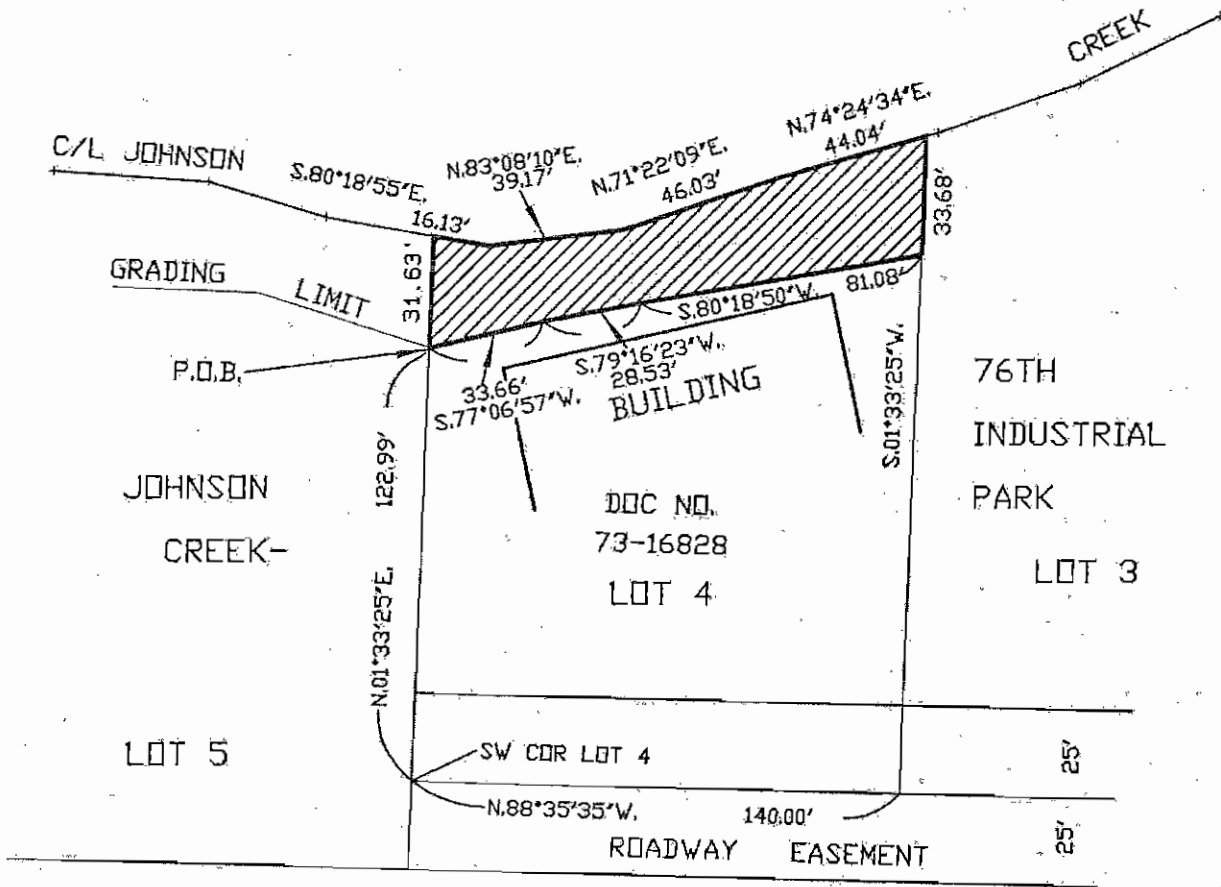
*Thomas P. Beinhauer*



EXPIRES 12-31-2013

EXHIBIT B

LUTHER ROAD HABITAT RESTORATION PROJECT  
R/W #6902-7 CHANNEL CHANGE AND  
VEGETATION MANAGEMENT EASEMENT  
BLISS  
1S2E29AB Tax Lot 3603 (C230659)



EASEMENT AREA - 3,778 SQ.FT.

SCALE: 1" = 50'

JOB #06947  
REVISED: NOVEMBER 7, 2011  
TITLE CHANGED MAY 9, 2012

**Grantor's Name & Address:**

Merrily Jean Fugate  
3028 SE Risley Ave.  
Milwaukie, OR 97267

Clackamas County Official Records  
Sherry Hall, County Clerk

2014-009198



\$78.00

02/28/2014 10:22:04 AM

Tax Statements shall be sent to:  
No Change

D-E Cnt=1 Stn=7 BARBARA  
\$30.00 \$16.00 \$22.00 \$10.00

**CHANNEL CHANGE AND  
VEGETATION MANAGEMENT EASEMENT**

KNOW ALL PERSONS BY THESE PRESENTS, that **Merrily Jean Fugate** ("Grantor"), in consideration of the sum of Three Thousand Five Hundred and no/100 Dollars (\$3,500.00) and other good and valuable consideration to her paid by the City of Portland, a municipal corporation of the State of Oregon, does hereby grant unto said City of Portland, acting through its Bureau of Environmental Services, and North Clackamas Parks and Recreation District (collectively, "Grantee") an exclusive and perpetual easement for a channel change and vegetation management over and across the following described property ("the Easement Area") as described on Exhibit A and depicted on Exhibit B attached hereto and by this reference made a part hereof. The Easement Area contains 13,009 square feet, more or less.

The purpose of the easement granted herein is to allow Grantee to make changes to the location of Johnson Creek's channel, to ensure that the Easement Area will be retained in its natural state and, except as provided herein, to prevent uses of the Easement Area that would impair the natural qualities of the Easement Area.

IT IS UNDERSTOOD and agreed that:

- A. Grantee may go upon the Easement Area for the purpose of making a channel change in Johnson Creek, as necessitated by Grantee's Luther Road Habitat Restoration Project. Grantee may use and appropriate for the project, without additional compensation, all material excavated in the making of said channel change.
- B. Grantee shall acquire no interest in the Easement Area except for the rights granted herein, nor shall Grantee be deemed to have assumed any obligation other than those specified herein.
- C. Upon completion of the channel change, the relocated channel shall become the natural channel of Johnson Creek for all intents and purposes. No property boundaries shall be

R/W #6902-8  
12E29AB03601  
BES #E06947

After Recording Return to:  
John Deyo, City of Portland  
1120 SW 5th Avenue, #800  
Portland, OR 97204

altered thereby. Grantee may, but shall not be obligated to, maintain said Johnson Creek in its relocated channel, and in connection therewith Grantee may go upon the Easement Area.

- D. Grantee may alter the topography of the Easement Area, including the excavation, placement, and removal of materials including but not limited to: sand, gravel, rock, and large woody debris from or to the Easement Area only for the purposes of waterway and riparian improvements.
- E. Grantor releases Grantee from any and all liability or claims whatsoever arising from the making of the channel change authorized by this easement.
- F. Grantee may enter the Easement Area at any time for the purpose of inspection, improvement and management of the vegetation in the Easement Area in a manner consistent with the intent of this easement. Grantee's rights with regard to improving the Easement Area include, but are not limited to, pruning, invasive species removal, planting, habitat restoration, stream bank stabilization and/or restoration and monitoring, and erosion control.
- G. No other utilities, buildings, facilities, easements, material storage, or grade change will be allowed within the Easement Area without prior written consent of the Director of the Bureau of Environmental Services.
- H. Grantee shall have the right to install planting, signage or other elements to delineate the boundaries of the Easement Area.
- I. Grantor reserves all other rights not conveyed herein, but will not exercise said rights in any manner that would be inconsistent or interfere with or materially affect rights herein granted. In addition, Grantor shall not do the following in or near the Easement Area:
  - 1) Use any herbicides, pesticides or fertilizers;
  - 2) Remove or disturb any vegetation, including harvesting of any trees or other forest resources; or
  - 3) Introduce non-native plant or animal species.
- J. This easement shall bind the heirs and assigns of Grantor and shall inure to the benefit of the successors-in-title of Grantee.
- K. Grantor represents and warrants that to the best of her knowledge she has the authority to grant this easement, that the property comprising the Easement Area is free from all liens and encumbrances that would materially affect the easement grant, and that Grantor will defend the same to Grantee against the lawful claims and demands of all persons whomsoever.
- L. This easement is granted pursuant to the exercise of the eminent domain power and authority of Grantee, with the consideration paid by Grantee accepted as just compensation for the property or property rights conveyed, which includes damage to the property remainder, if any, resulting from the acquisition or use of said property or property rights.

- M. Grantor represents that to the best of her knowledge the property comprising the Easement Area is in compliance with all local, State and Federal environmental laws and regulations.
- N. Grantor represents that to the best of her knowledge she has disclosed all knowledge of any release of hazardous substances onto or from the property comprising the Easement Area, and disclosed any known report, investigation, survey, or environmental assessment regarding the property comprising the Easement Area. "Release" and "hazardous substance" shall have the meaning as defined under Oregon law.
- O. Grantor warrants that to the best of her knowledge there are no underground storage tanks, as defined under Oregon law, presently on or under the property comprising the Easement Area.
- P. Grantee, by accepting this easement, is not accepting liability for any preexisting release of hazardous substances onto or from the property comprising the Easement Area, and Grantor is not attempting to convey any such liability.
- Q. Grantee may transfer this easement, or portions thereof, to a qualified governmental or nonprofit entity. All other transfers or assignments will require the express prior written consent of Grantor.

IN WITNESS WHEREOF, the Grantor above named has hereunto set her hand this 2<sup>nd</sup> day of January, 2014.

Merrily Jean Fugate  
 MERRILY JEAN FUGATE

STATE OF OREGON

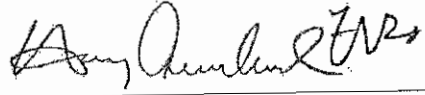
County of Clackamas

This instrument was acknowledged before me on January 2<sup>nd</sup>, 2014 by Merrily Jean Fugate.



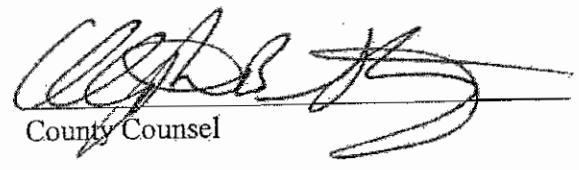
Sarah Johnston  
 Notary Public for Oregon  
 My Commission expires April 25, 2017

APPROVED AS TO FORM:  
APPROVED AS TO FORM



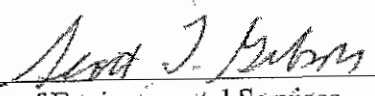
City Attorney CITY ATTORNEY

APPROVED AS TO FORM:



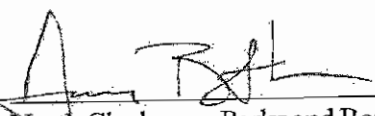
County Counsel

APPROVED:



Bureau of Environmental Services  
Director or his designee

APPROVED:



North Clackamas Parks and Recreation District  
Director or his designee

EXHIBIT A  
LUTHER ROAD HABITAT RESTORATION PROJECT  
R/W #6902-8 CHANNEL CHANGE AND VEGETATION MANAGEMENT  
EASEMENT  
FUGATE  
1S2E29AB Tax Lot 3601 (C230661)

A portion of Lot 5 of the duly recorded plat of JOHNSON CREEK - 76TH INDUSTRIAL PARK situated in the northeast one-quarter of Section 29, Township 1 South, Range 2 East, of the Willamette Meridian in the County of Clackamas and State of Oregon, more particularly described as follows:

Commencing at the southeast corner of said Lot 5, JOHNSON CREEK - 76TH INDUSTRIAL PARK; thence N 88° 35' 35" W, along the south line of said Lot 5, a distance of 316.68 feet to the grading limit line and Point of Beginning of the tract herein described; thence continuing N 88° 35' 35" W, along the south line of said Lot 5, a distance of 38.59 feet to the center of Johnson Creek and the west line of said Lot 5; thence northeasterly, upstream along the center of Johnson Creek and the westerly and northerly lines of said Lot 5, the following courses and distances: N 51° 31' 51" E, 13.83 feet; N 49° 44' 26" E, 38.31 feet; N 45° 52' 46" E, 54.31 feet; N 42° 34' 43" E, 50.14 feet; N 50° 15' 56" E, 63.98 feet; N 67° 54' 27" E, 43.85 feet; N 63° 56' 57" E, 53.93 feet; S 86° 02' 15" E, 44.24 feet; S 73° 26' 30" E, 35.00 feet; S 80° 18' 55" E, a distance of 31.55 feet to the east line of said Lot 5; thence S 01° 33' 25" W, along the east line of said Lot 5, a distance of 31.63 feet to the grading limit line; thence westerly and southerly along said grading limit line the following courses and distances: N 72° 30' 44" W, 51.59 feet; N 87° 38' 18" W, 41.37 feet; S 71° 50' 46" W, 75.78 feet; S 50° 37' 42" W, 49.47 feet; S 41° 00' 28" W, 77.42 feet; S 57° 30' 48" W, a distance of 81.81 feet to the Point of Beginning.

Containing an area of 13,009 square feet, more or less.

Job #06947  
November 7, 2011  
Title changed May 9, 2012

REGISTERED  
PROFESSIONAL  
LAND SURVEYOR

*Thomas P. Beinbauer*

OREGON  
JULY 17, 1994  
THOMAS P. BEINHAUER  
2654

EXPIRES 12-31-2013





Clackamas County Official Records  
Sherry Hall, County Clerk

2014-009196



\$83.00

01751174201400091960070079

02/28/2014 10:22:04 AM

D-E Cnt=1 Stn=7 BARBARA  
\$35.00 \$16.00 \$22.00 \$10.00

40

**Document Type:** Channel Change and Vegetation Management  
Easement

**Grantor:** Ty Wright  
7474 SE Johnson Creek Blvd.  
Portland, OR 97206

**Grantee:** City of Portland, Bureau of Environmental Services  
1120 SW 5<sup>th</sup> Ave., 8<sup>th</sup> Flr.  
Portland, OR 97204

**Consideration:** \$1,800.00

**Mail Tax  
Statement To:** No Change

After Recording Return to:  
John Deyo, City of Portland  
1120 SW 5<sup>th</sup> Avenue # 800  
Portland, OR 97204

Grantor's Name & Address:  
Ty Wright  
7474 SE Johnson Creek Blvd.  
Portland, OR 97206

Multnomah County Official Records  
R Weldon, Deputy Clerk

2014-015204



\$71.00

01297250201400152040060067

02/18/2014 02:28:42 PM

Tax Statements shall be sent to:  
No Change

1R-EASEMT  
\$30.00 \$11.00 \$20.00 \$10.00

Pgs=6 Stn=11 ATRJG

### CHANNEL CHANGE AND VEGETATION MANAGEMENT EASEMENT

KNOW ALL PERSONS BY THESE PRESENTS, that Ty Wright ("Grantor"), in consideration of the sum of One Thousand Eight Hundred and no/100 Dollars (\$1,800.00), and other good and valuable consideration, to him paid by the City of Portland, a municipal corporation of the State of Oregon, does hereby grant unto said City of Portland, by and through its Bureau of Environmental Services and North Clackamas Parks and Recreation District (collectively, "Grantee") an exclusive and perpetual easement for a channel change and vegetation management over and across the following described property ("Easement Area") as described on Exhibit A and depicted on Exhibit B attached hereto and by this reference made a part hereof. The Easement Area contains 3,877 square feet, more or less.

The purpose of the easement granted herein is to allow Grantee to make changes to the location of Johnson Creek's channel, to ensure that the Easement Area will be retained in its natural state and, except as provided herein, to prevent uses of the Easement Area that would impair the natural qualities of the Easement Area.

IT IS UNDERSTOOD and agreed that:

- A. Grantee may go upon the Easement Area for the purpose of making a channel change in Johnson Creek, as necessitated by Grantee's Luther Road Habitat Restoration Project. Grantee may use and appropriate for the project, without additional compensation, all material excavated in the making of said channel change.
- B. Grantee shall acquire no interest in the Easement Area except for the rights granted herein, nor shall Grantee be deemed to have assumed any obligation other than those specified herein.
- C. Upon completion of the channel change, the relocated channel shall become the natural channel of Johnson Creek for all intents and purposes. No property boundaries shall be

R/W #6902-9  
12E29AC01000  
BES #E06947

After Recording Return to:

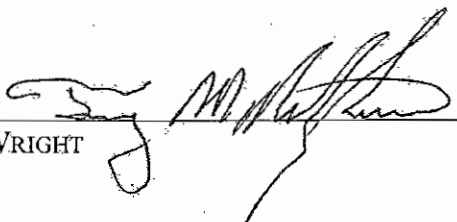
John Deyo, City of Portland *P/O K Calvert*  
1120 SW Fifth Avenue, #800  
Portland, OR 97204

altered thereby. Grantee may, but shall not be obligated to, maintain said Johnson Creek in its relocated channel, and in connection therewith Grantee may go upon the Easement Area.

- D. Grantee may alter the topography of the Easement Area, including the excavation, placement, and removal of materials including but not limited to: sand, gravel, rock, and large woody debris from or to the Easement Area only for the purposes of waterway and riparian improvements.
- E. Grantor releases Grantee from any and all liability or claims whatsoever arising from the making of the channel change authorized by this easement.
- F. Grantee may enter the Easement Area at any time for the purpose of inspection, improvement and management of the vegetation in the Easement Area in a manner consistent with the intent of this easement. Grantee's rights with regard to improving the Easement Area include, but are not limited to, pruning, invasive species removal, planting, habitat restoration, stream bank stabilization and/or restoration and monitoring, and erosion control.
- G. No other utilities, buildings, facilities, easements, material storage, or grade change will be allowed within the Easement Area without prior written consent of the Director of the Bureau of Environmental Services.
- H. Grantee shall have the right to install planting, signage or other elements to delineate the boundaries of the Easement Area.
- I. Grantor reserves all other rights not conveyed herein, but will not exercise said rights in any manner that would be inconsistent or interfere with or materially affect rights herein granted. In addition, Grantor shall not do the following in or near the Easement Area:
  - 1) Use any herbicides, pesticides or fertilizers;
  - 2) Remove or disturb any vegetation, including harvesting of any trees or other forest resources; or
  - 3) Introduce non-native plant or animal species.
- J. This easement shall bind the heirs and assigns of Grantor and shall inure to the benefit of the successors-in-title of Grantee.
- K. Grantor represents and warrants that he has the authority to grant this easement, that the property comprising the Easement Area is free from all liens and encumbrances that would materially affect the easement grant, and that Grantor will defend the same to Grantee against the lawful claims and demands of all persons whomsoever.
- L. This easement is granted pursuant to the exercise of the eminent domain power and authority of Grantee, with the consideration paid by Grantee accepted as just compensation for the property or property rights conveyed, which includes damage to the property remainder, if any, resulting from the acquisition or use of said property or property rights.

- M. Grantor represents that to the best of his knowledge, after appropriate inquiry under the circumstances, the property comprising the Easement Area is in compliance with all local, State and Federal environmental laws and regulations.
- N. Grantor represents that he has disclosed all knowledge of any release of hazardous substances onto or from the property comprising the Easement Area, and disclosed any known report, investigation, survey, or environmental assessment regarding the property comprising the Easement Area. "Release" and "hazardous substance" shall have the meaning as defined under Oregon law.
- O. Grantor warrants that there are no underground storage tanks, as defined under Oregon law, presently on or under the property comprising the Easement Area.
- P. Grantee, by accepting this easement, is not accepting liability for any preexisting release of hazardous substances onto or from the property comprising the Easement Area, and Grantor is not attempting to convey any such liability.
- Q. Grantee may transfer this easement, or portions thereof, to a qualified governmental or nonprofit entity. All other transfers or assignments will require the express prior written consent of Grantor.

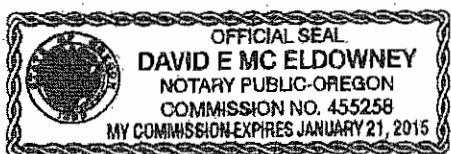
IN WITNESS WHEREOF, the Grantor above named has hereunto set his hand this 17<sup>th</sup> day of JANUARY, 2014.

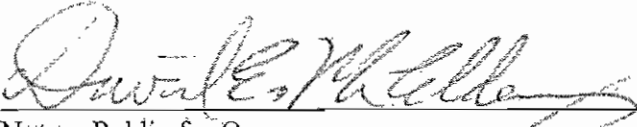
  
 \_\_\_\_\_  
 TY WRIGHT

STATE OF OREGON

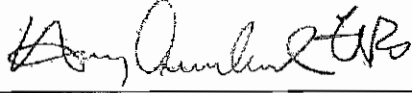
County of CLACKAMAS

This instrument was acknowledged before me on January 17<sup>th</sup>, 2014 by Ty Wright.



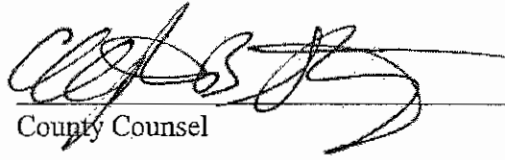
  
 \_\_\_\_\_  
 Notary Public for Oregon  
 My Commission expires 1/21/15

APPROVED AS TO FORM:  
APPROVED AS TO FORM



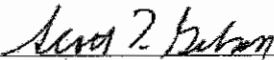
City Attorney **CITY ATTORNEY**

APPROVED AS TO FORM:



County Counsel

APPROVED:



Bureau of Environmental Services  
Director or his designee

APPROVED:



North Clackamas Parks and Recreation District  
Director or his designee

EXHIBIT A  
LUTHER ROAD HABITAT RESTORATION PROJECT  
R/W #6902-9 CHANNEL CHANGE AND VEGETATION  
MANAGEMENT EASEMENT  
WRIGHT  
1S2E29AC Tax Lot 1000 (C230669)

A tract of land situated in the northeast one-quarter of Section 29, Township 1 South, Range 2 East, of the Willamette Meridian in the County of Clackamas and State of Oregon, more particularly described as follows:

Commencing at the southwest corner of Parcel III of that certain tract of land conveyed to North Clackamas Parks and Recreation District by document number 2009-056372, recorded August 6, 2009, Clackamas County Official Records; thence S 88° 35' 35" E, along the south line of said Parcel III, a distance of 140.00 feet to the northwest corner of that tract of land conveyed to Orlando O. Voss, et ux by deed recorded October 11, 1951 in book 449, page 480, Clackamas County Deed Records, and the Point of Beginning of the tract herein described; thence S 88° 35' 35" E, along the south line of parcels III and II of said North Clackamas Parks and Recreation District tract and the south line of Lot 5 of the duly recorded plat of JOHNSON CREEK - 76TH INDUSTRIAL PARK, a distance of 118.18 feet to a point on the grading limit line; thence S 57° 30' 48" W, along the grading limit line a distance of 54.88 feet to an angle point; thence S 69° 23' 39" W, along said line a distance of 42.75 feet to an angle point; thence S 80° 12' 59" W, along said line a distance of 33.75 feet to a point in the west line of the aforementioned Voss tract; thence N 01° 31' 31" E, along said west line a distance of 53.18 feet to the Point of Beginning.

Containing an area of 3,877 square feet, more or less.

Job #06947  
November 7, 2011

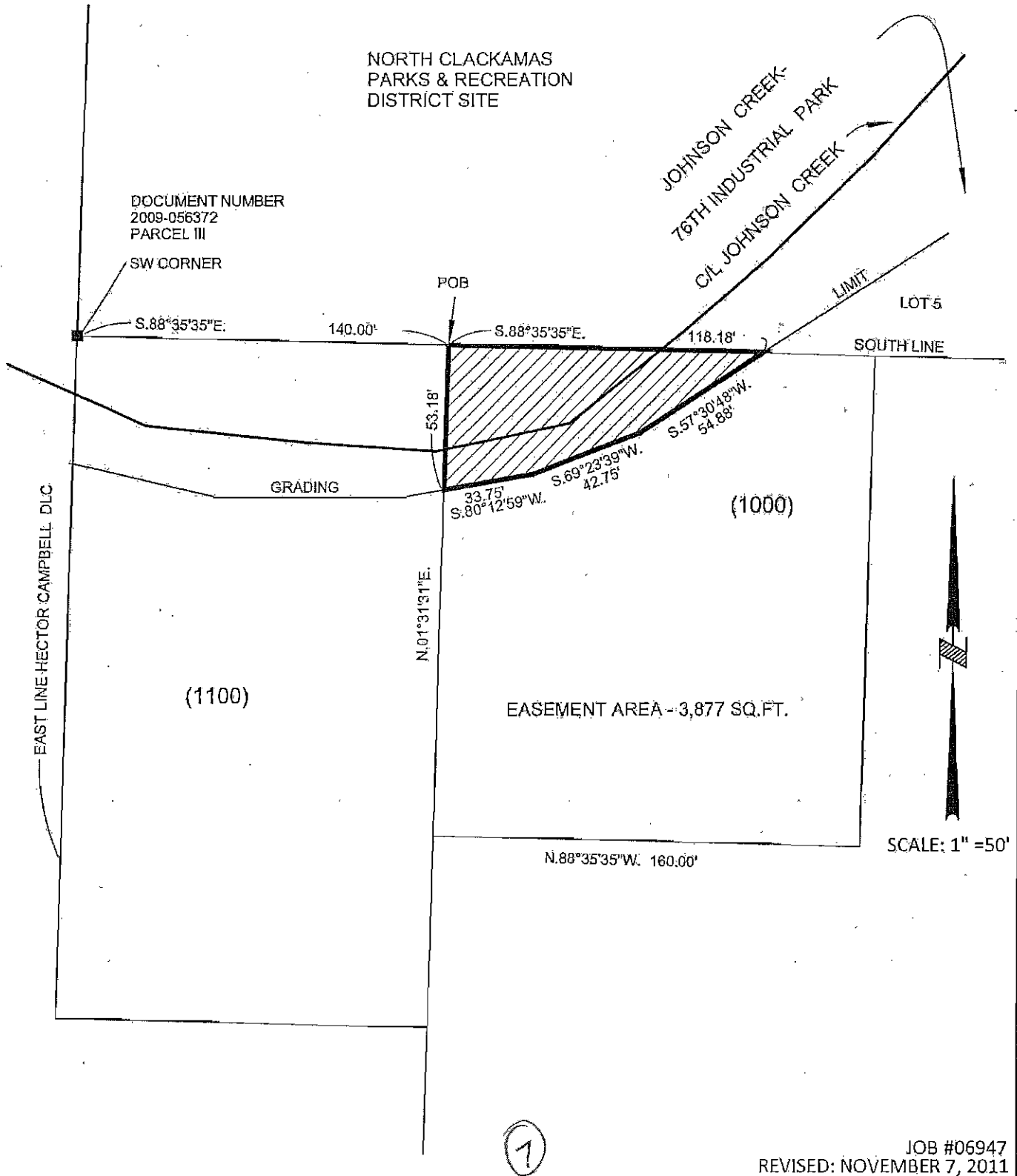
REGISTERED  
PROFESSIONAL  
LAND SURVEYOR

*Thomas P. Beinbauer*

OREGON  
JULY 17, 1994  
THOMAS P. BEINHAUER  
2654

EXPIRES 12-31-2011

EXHIBIT B  
 LUTHER ROAD HABITAT RESTORATION PROJECT  
 R/W #6902-9 CHANNEL CHANGE AND VEGETATION  
 MANAGEMENT EASEMENT  
 WRIGHT  
 1S2E29AC TAX LOT 1000 (C230669)





Grantor's Name & Address:  
Speed R. Lewis and Sheryl A. Lewis  
9009 SE 74<sup>th</sup> Ave.  
Portland, OR 97206

Clackamas County Official Records  
Sherry Hall, County Clerk

2013-064797



\$73.00

09/12/2013 11:32:38 AM

Tax Statements shall be sent to:  
No Change

D-E Cnt=1 Stn=54 COUNTER2  
\$30.00 \$16.00 \$17.00 \$10.00

### CHANNEL CHANGE AND VEGETATION MANAGEMENT EASEMENT

KNOW ALL PERSONS BY THESE PRESENTS, that Speed R. Lewis and Sheryl A. Lewis ("Grantors"), in consideration of the sum of Three Thousand Eight Hundred and no/100 Dollars (\$3,800.00) and other good and valuable consideration to them paid by the City of Portland, a municipal corporation of the State of Oregon, does hereby grant unto said City of Portland, acting through its Bureau of Environmental Services, and North Clackamas Parks and Recreation District (collectively, "Grantee") an exclusive and perpetual easement for a channel change and vegetation management over and across the following described property ("the Easement Area") as described on Exhibit A and depicted on Exhibit B attached hereto and by this reference made a part hereof. The Easement Area contains 7,711 square feet, more or less.

The purpose of the easement granted herein is to allow Grantee to make changes to the location of Johnson Creek's channel, to ensure that the Easement Area will be retained in its natural state and, except as provided herein, to prevent uses of the Easement Area that would impair the natural qualities of the Easement Area.

IT IS UNDERSTOOD and agreed that:

- A. Grantee may go upon the Easement Area for the purpose of making a channel change in Johnson Creek, as necessitated by Grantee's Luther Road Habitat Restoration Project. Grantee may use and appropriate for the project, without additional compensation, all material excavated in the making of said channel change.
- B. Grantee shall acquire no interest in the Easement Area except for the rights granted herein, nor shall Grantee be deemed to have assumed any obligation other than those specified herein.
- C. Upon completion of the channel change, the relocated channel shall become the natural channel of Johnson Creek for all intents and purposes. No property boundaries shall be

R/W #6902-10  
12E29AC01100  
BES #E06947

After Recording Return to:  
John Deyo, City of Portland  
1120 SW 5th Avenue, #800  
Portland, OR 97204  
Sarah Johnston

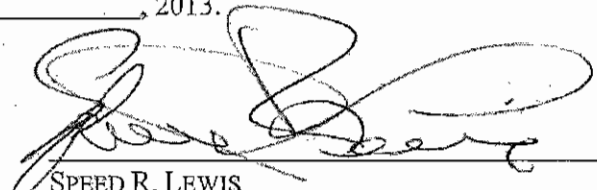
altered thereby. Grantee may, but shall not be obligated to, maintain said Johnson Creek in its relocated channel, and in connection therewith Grantee may go upon the Easement Area.

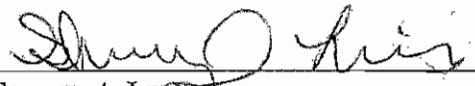
- D. Grantee may alter the topography of the Easement Area, including the excavation, placement, and removal of materials including but not limited to: sand, gravel, rock, and large woody debris from or to the Easement Area only for the purposes of waterway and riparian improvements.
- E. Grantee may enter the Easement Area at any time for the purpose of inspection, improvement and management of the vegetation in the Easement Area in a manner consistent with the intent of this easement. Grantee's rights with regard to improving the Easement Area include, but are not limited to, pruning, invasive species removal, planting, habitat restoration, stream bank stabilization and/or restoration and monitoring, and erosion control.
- F. No other utilities, buildings, facilities, easements, material storage, or grade change will be allowed within the Easement Area without prior written consent of the Director of the Bureau of Environmental Services.
- G. Grantee shall have the right to install planting, signage or other elements to delineate the boundaries of the Easement Area.
- H. Grantors reserve all other rights not conveyed herein, but will not exercise said rights in any manner that would be inconsistent or interfere with or materially affect rights herein granted. In addition, Grantors shall not do the following in the Easement Area:
  - 1) Use any herbicides, pesticides or fertilizers;
  - 2) Remove or disturb any vegetation, including harvesting of any trees or other forest resources; or
  - 3) Introduce non-native plant or animal species.
- I. This easement shall bind the heirs and assigns of Grantors and shall inure to the benefit of the successors-in-title of Grantee.
- J. Grantors represent and warrant that they have the authority to grant this easement, that the property comprising the Easement Area is free from all liens and encumbrances that would materially affect the easement grant, and that Grantors will defend the same to Grantee against the lawful claims and demands of all persons whomsoever.
- K. This easement is granted pursuant to the exercise of the eminent domain power and authority of Grantee, with the consideration paid by Grantee accepted as just compensation for the property or property rights conveyed, which includes damage to the property remainder, if any, resulting from the acquisition or use of said property or property rights.
- L. Grantors represent that to the best of their knowledge, after appropriate inquiry under the circumstances, the property comprising the Easement Area is in compliance with all local, State and Federal environmental laws and regulations.

- M. Grantors represent that they have disclosed all knowledge of any release of hazardous substances onto or from the property comprising the Easement Area, and disclosed any known report, investigation, survey, or environmental assessment regarding the property comprising the Easement Area. "Release" and "hazardous substance" shall have the meaning as defined under Oregon law.
- N. Grantors warrant that there are no underground storage tanks, as defined under Oregon law, presently on or under the property comprising the Easement Area.
- O. Grantee, by accepting this easement, is not accepting liability for any preexisting release of hazardous substances onto or from the property comprising the Easement Area, and Grantors are not attempting to convey any such liability.
- P. Grantee may transfer this easement, or portions thereof, to a qualified governmental entity. All other transfers or assignments will require the express prior written consent of Grantors.
- Q. Subject to the limits of the Oregon Constitution and the Oregon Tort Claims Act, Grantees shall hold harmless, indemnify and defend Grantor and its officers, employees and agents from and against all claims, demands, penalties, and causes of action of any kind or character (not including attorney fees) in favor of any person on account of personal injury, death, damage to property, or violation of law which arises out of, or results from, the acts or omissions of Grantees, its officers, employees, or agents within the easement area. Grantor shall hold harmless, indemnify and defend Grantees and its officers, employees, elected officials and agents from and against all claims, demands, penalties, and causes of action of any kind or character (not including attorney fees) in favor of any person on account of personal injury, death, damage to property, or violation of law which arises out of, or results from, the acts or omissions of the Grantor, its officers, employees, agents, or contractors within the easement area.

*The remainder of this page is intentionally left blank.*

IN WITNESS WHEREOF, the Grantors above named have hereunto set their hands this 5<sup>th</sup> day of April, 2013.

  
SPEED R. LEWIS

  
SHERYL A. LEWIS

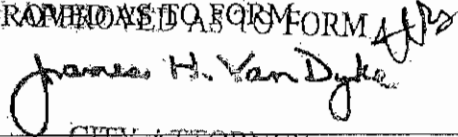
STATE OF OREGON

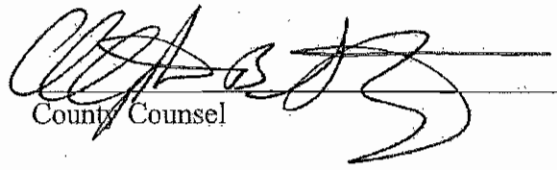
County of Clackamas

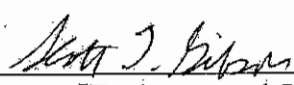
This instrument was acknowledged before me on April 5<sup>th</sup>, 2013 by Speed R. Lewis and Sheryl A. Lewis.



  
Notary Public for Oregon  
My Commission expires March 02, 2017

APPROVED AS TO FORM HLB  
  
CITY ATTORNEY  
City Attorney

APPROVED AS TO FORM:  
  
County Counsel

APPROVED:  
  
Bureau of Environmental Services  
Director or his designee

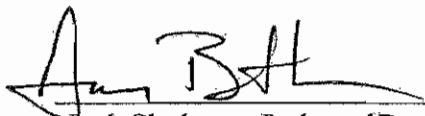
APPROVED:  
  
North Clackamas Parks and Recreation District  
Director or his designee

EXHIBIT A  
LUTHER ROAD HABITAT RESTORATION PROJECT  
R/W #6902-10 CHANNEL CHANGE AND VEGETATION  
MANAGEMENT EASEMENT  
LEWIS  
1S2E29AC Tax Lot 1100 (C230667)

A tract of land situated in the northeast one-quarter of Section 29, Township 1 South, Range 2 East, of the Willamette Meridian in the County of Clackamas and State of Oregon, more particularly described as follows:

Beginning at the southwest corner of that certain tract of land conveyed to North Clackamas Parks and Recreation District by document number 2009-056372, parcel III; thence S 88° 35' 35" E, along the south line of said tract, a distance of 140.00 feet to the northwest corner of that tract of land conveyed to Orlando O. Voss, et ux by deed recorded October 11, 1951 in book 449, page 480, Clackamas County Deed Records; thence S 01° 31' 31" W, along the west line of said Voss tract, a distance of 53.18 feet to the grading limit line; thence S 80° 12' 59" W, along the grading limit line a distance of 16.01 feet to an angle point; thence S 89° 55' 02" W, along said line a distance of 69.49 feet to an angle point; thence N 77° 06' 22" W, along said line a distance of 55.93 feet to a point in the east line of the Hector Campbell Donation Land Claim; thence N 01° 31' 31" E, along said east line a distance of 46.95 feet to the Point of Beginning.

Containing an area of 7,711 square feet, more or less.

JOB # 06947  
November 7, 2011

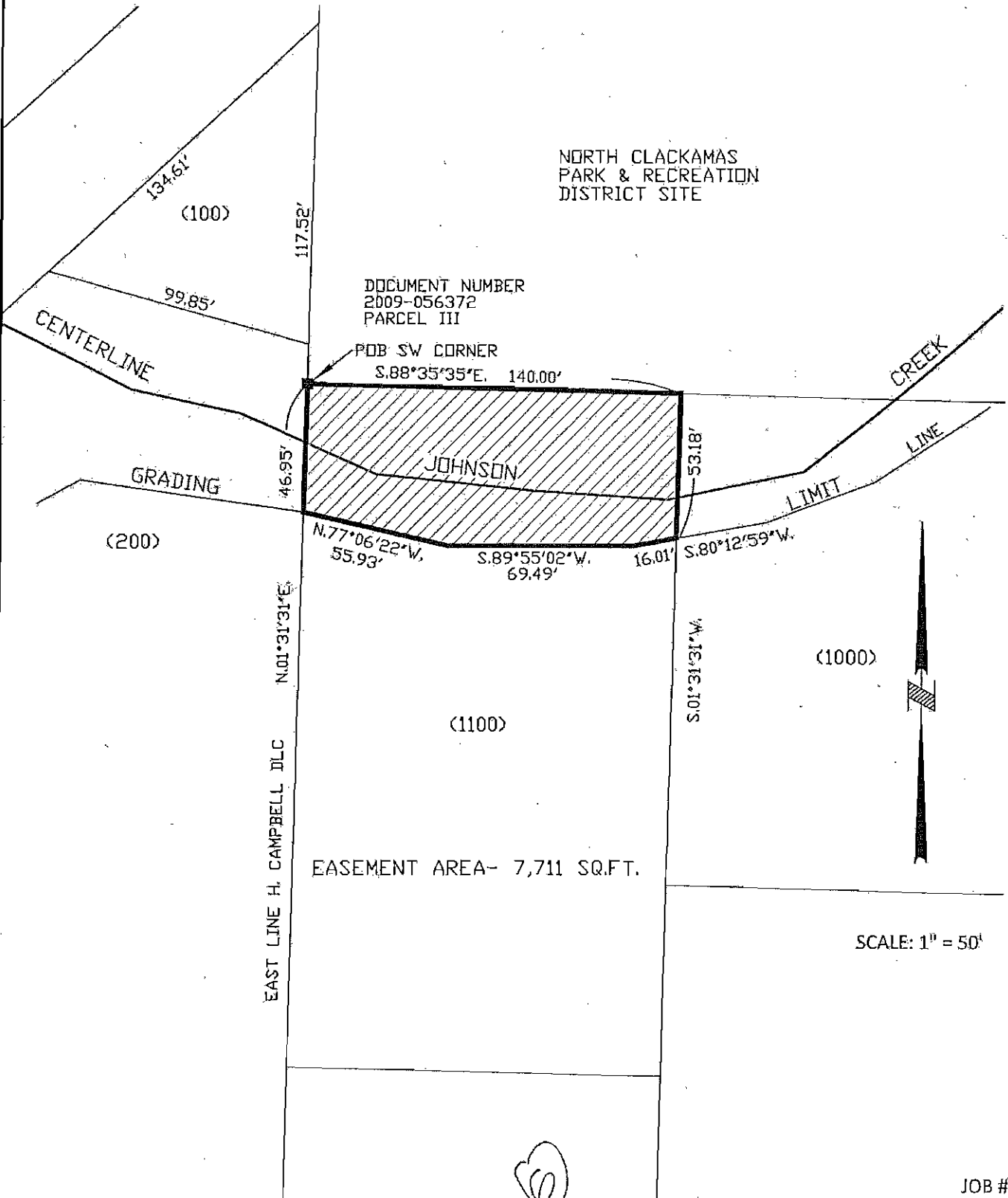
REGISTERED  
PROFESSIONAL  
LAND SURVEYOR

*Thomas P. Beinbauer*

OREGON  
JULY 17, 1994  
THOMAS P. BEINHAUER  
2654

EXPIRES 12-31-2011

EXHIBIT B  
 LUTHER ROAD HABITAT RESTORATION PROJECT  
 R/W #6902-10 CHANNEL CHANGE AND VEGETATION  
 MANAGEMENT EASEMENT  
 LEWIS  
 1S2E29AC TAX LOT 1100 (C230667)



10

Clackamas County Official Records  
Sherry Hall, County Clerk

2014-009197



\$83.00

01751175201400091970070076

02/28/2014 10:22:04 AM

D-E Cnt=1 Stn=7 BARBARA  
\$35.00 \$16.00 \$22.00 \$10.00

74

**Document Type:** Channel Change and Vegetation Management Easement

**Grantor:** Scott M. & Whitney Jo Pillsbury  
7235 SE Label Ln.  
Portland, OR 97206

**Grantee:** City of Portland, Bureau of Environmental Services  
1120 SW 5<sup>th</sup> Ave., 8<sup>th</sup> Flr.  
Portland, OR 97204

**Consideration:** \$1.00

**Mail Tax Statement To:** No Change

After Recording Return to:  
John Deyo, City of Portland  
1120 SW 5<sup>th</sup> Avenue #800  
Portland, Oregon 97204

Grantor's Name & Address:  
Scott M. Pillsbury, et al  
7235 SE Label Ln.  
Portland, OR 97206

Multnomah County Official Records  
R Weldon, Deputy Clerk

2014-015205



\$71.00

01297251201400152050060063

02/18/2014 02:28:42 PM

Tax Statements shall be sent to:  
No Change

1R-EASEMT  
\$30.00 \$11.00 \$20.00 \$10.00

Pgs=6 Stn=11 ATRJG

### CHANNEL CHANGE AND VEGETATION MANAGEMENT EASEMENT

KNOW ALL PERSONS BY THESE PRESENTS, that **Scott M. Pillsbury and Whitney Jo Pillsbury** ("Grantors"), in consideration of the sum of One and no/100 Dollars (\$1.00), to them paid by the City of Portland, a municipal corporation of the State of Oregon, the receipt whereof is hereby acknowledged, does hereby grant unto said City of Portland, acting through its Bureau of Environmental Services, and North Clackamas Parks and Recreation District (collectively, "Grantee") an exclusive and perpetual easement for a channel change and vegetation management over and across the following described property ("the Easement Area") as described on Exhibit A and depicted on Exhibit B attached hereto and by this reference made a part hereof. The Easement Area contains 9,621 square feet, more or less.

The purpose of the easement granted herein is to allow Grantee to make changes to the location of Johnson Creek's channel, to ensure that the Easement Area will be retained in its natural state and, except as provided herein, to prevent uses of the Easement Area that would impair the natural qualities of the Easement Area.

IT IS UNDERSTOOD and agreed that:

- A. Grantee may go upon the Easement Area for the purpose of making a channel change in Johnson Creek, as necessitated by Grantee's Luther Road Habitat Restoration Project. Grantee may use and appropriate for the project, without additional compensation, all material excavated in the making of said channel change.
- B. Grantee shall acquire no interest in the Easement Area except for the rights granted herein, nor shall Grantee be deemed to have assumed any obligation other than those specified herein.
- C. Upon completion of the channel change, the relocated channel shall become the natural channel of Johnson Creek for all intents and purposes. No property boundaries shall be altered thereby. Grantee may, but shall not be obligated to, maintain said Johnson Creek in its relocated channel, and in connection therewith Grantee may go upon the Easement Area.

R/W #6902-14  
12E29BD00200  
BES #E06947

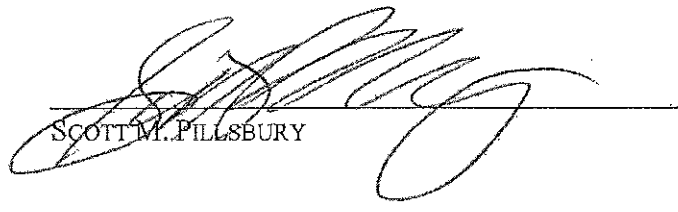
After Recording Return to:  
John Devo, City of Portland FW K Calvert  
1120 SW 5th Avenue, #800  
Portland, OR 97204



- D. Grantee may alter the topography of the Easement Area, including the excavation, placement, and removal of materials including but not limited to: sand, gravel, rock, and large woody debris from or to the Easement Area only for the purposes of waterway and riparian improvements.
- E. Grantee may enter the Easement Area at any time for the purpose of inspection, improvement and management of the vegetation in the Easement Area in a manner consistent with the intent of this easement. Grantee's rights with regard to improving the Easement Area include, but are not limited to, pruning, invasive species removal, planting, habitat restoration, stream bank stabilization and/or restoration and monitoring, and erosion control.
- F. No other utilities, buildings, facilities, easements, material storage, or grade change will be allowed within the Easement Area without prior written consent of the Director of the Bureau of Environmental Services, which consent shall not be unreasonably refused or conditioned.
- G. Grantee shall have the right to install planting, signage or other elements to delineate the boundaries of the Easement Area.
- H. Grantors reserve all other rights not conveyed herein, but will not exercise said rights in any manner that would be inconsistent or interfere with or materially affect rights herein granted. In addition, Grantors shall not do the following in the Easement Area:
- 1) Use any herbicides, pesticides or fertilizers;
  - 2) Remove or disturb any vegetation, including harvesting of any trees or other forest resources; or
  - 3) Introduce non-native plant or animal species.
- I. This easement shall bind the heirs and assigns of Grantors and shall inure to the benefit of the successors-in-title of Grantee.
- J. This easement is granted pursuant to the exercise of the eminent domain power and authority of Grantee.
- K. Grantee may transfer this easement, or portions thereof, to a qualified governmental or nonprofit entity. All transfers or assignments will require the express prior written consent of Grantors, which consent shall not be unreasonably refused or conditioned.

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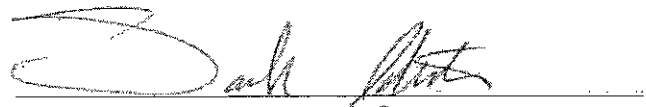
IN WITNESS WHEREOF, the Grantor above named has hereunto set his hand this 14<sup>th</sup> day of November, 2013.

  
SCOTT M. PILLSBURY


STATE OF Oregon  
County of Clackamas

This instrument was acknowledged before me on November 14<sup>th</sup>, 2013 by Scott M. Pillsbury.



  
Notary Public for (state) Oregon  
My Commission expires April 25, 2017

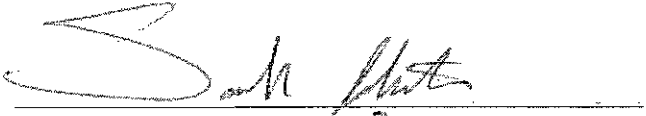
IN WITNESS WHEREOF, the Grantor above named has hereunto set his hand this 14<sup>th</sup> day of November, 2013.

  
WHITNEY JO PILLSBURY

STATE OF Oregon  
County of Clackamas

This instrument was acknowledged before me on November 14<sup>th</sup>, 2013 by Whitney Jo Pillsbury.



  
Notary Public for (state) Oregon  
My Commission expires April 25, 2017

APPROVED AS TO FORM

*Amy Overland*

City Attorney

APPROVED AS TO FORM:

*[Signature]*

County Counsel

APPROVED:

*[Signature]*

Bureau of Environmental Services  
Director or his designee

APPROVED:

*[Signature]*

North Clackamas Parks and Recreation District  
Director or his designee

EXHIBIT A  
LUTHER ROAD HABITAT RESTORATION PROJECT  
R/W #6902-14 CHANNEL CHANGE AND VEGETATION MANAGEMENT  
EASEMENT  
ROSE CITY LABEL  
1S2E29BD Tax Lot 200 (C230663)

A tract of land situated in the northwest one-quarter of Section 29, Township 1 South, Range 2 East, of the Willamette Meridian in the County of Clackamas and State of Oregon, more particularly described as follows:

Commencing at the northeast corner of the H. Campbell Donation Land Claim, which corner is marked by a 3-1/4" bronze disk, U.S.B.T. entry 2002-030; thence S 01° 31' 31" W, along the east line of said H. Campbell Donation Land Claim, a distance of 230.88 feet, to the Point of Beginning; thence continuing along said east line, S 01° 31' 31" W, a distance of 61.56 feet, to the grading limit line; thence along the grading limit line the following courses and distances; N 66° 54' 42" W, 67.34 feet; N 82° 10' 54" W, 22.35 feet; S 63° 29' 09" W, 110.75 feet; N 31° 25' 19" W, a distance of 20.46 feet, to the east line of the Springwater Corridor, formerly the Portland Traction Company Railroad; thence N 47° 34' 10" E, along the east line of the Springwater Corridor, a distance of 134.49 feet; thence S 74° 30' 58" E, a distance of 99.85 feet, to the Point of Beginning.

Containing an area of 9,621 square feet, more or less.

Job #06947  
November 7, 2011

REGISTERED  
PROFESSIONAL  
LAND SURVEYOR

*Thomas P. Beinbauer*

OREGON  
JULY 17, 1994  
THOMAS P. BEINHAUER  
2654

EXPIRES 12-31-2011