

AGENDA

Thursday, December 9, 2021 – 6:00 PM
BOARD OF COUNTY COMMISSIONERS

Beginning Board Order No. 2021-85

***Revised: Added I, Deleted II, Revised III, Added III.A – III.G, Added IV**

****Revision 2: Moved II.A.i to a discussion item from consent agenda, Pulled item III.F.2**

*****Revision 3: Added item III.F.2**

CALL TO ORDER

- Roll Call
- Pledge of Allegiance

COVID-19 Updates

- I. ***HOUSING AUTHORITY CONSENT AGENDA** (The following Items are considered to be routine, and therefore will not be allotted individual discussion time on the agenda. Many of these items have been discussed by the Board in Work Sessions. The items on the Consent Agenda will be approved in one motion unless a Board member requests, before the vote on the motion, to have an item considered at its regular place on the agenda.)
- A. Approval of Board Order No. 1960 to write-off Uncollectible Accounts for the Second Quarter of Fiscal Year 2022. Total loss is \$2,329.70. No General Funds are involved.
 - B. Approval of Amendment #2 extending to the Intergovernmental Agreement between the Housing Authority of Clackamas County and Social Services for six (6) months and adding \$55,000 for case management for program participants. New total contract value is \$280,000. Funded with County General Funds budgeted within Affordable Housing and Services.
 - C. Approval to execute a construction contract with A-1 Quality Construction for on demand services for removing and replacing flooring in Public Housing units. Total maximum contract value is \$250,000 funded through HUD Federal Capitol Grant Funds. No County General Funds are involved
- II. ****BOARD DISCUSSION ITEMS** (The following items will be individually discussed by the Board only, followed by Board action.)
- A. **Disaster Management**
 - i. Approval of Addendum #2 to Board Order #2020-71, extending the Emergency Declaration of Wildfire Debris until August 1, 2022. No County General Funds are involved.

~~**PUBLIC HEARINGS** (The following items will be individually presented by County staff or other appropriate individuals. Persons appearing shall clearly identify themselves and the department or organization they represent. In~~

~~addition, a synopsis of each item, together with a brief statement of the action being requested shall be made by those appearing on behalf of an agenda item.)~~

~~Approval of a Clackamas County Supplemental Budget Resolution for Fiscal Year 2021-2022.~~

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

A. Elected Officials

- i. Approval of Previous Business Meeting Minutes – BCC

B. Health, Housing and Human Services

- i. Approval of Amendment #02 to a Revenue Contract with Trillium Community Health Plan, Inc. for Certain Behavioral Health Services. Amendment adds \$192,000.00 for a new maximum value of \$942,000 funded through Oregon Health Plan funds. No County General Funds are involved.
- ii. Approval of a Contract with Cambridge Consultants for EMS System Planning Services. Maximum contract value is \$152,200 funded through EMS System Enhancement funds. No County General Funds are involved.
- iii. Approval of Intergovernmental Agreement with Sandy Fire District for COVID vaccine administration. Contract maximum value is \$150,000 funded through ARPA and FEMA funding. No County General Funds are involved.
- iv. Approval of Intergovernmental Agreement with Molalla Fire District for COVID vaccine administration. Contract maximum value is \$150,000 funded through ARPA and FEMA funding. No County General Funds are involved.
- v. Approval of Intergovernmental Agreement with Hoodland Fire District for COVID vaccine administration. Contract maximum value is \$150,000 funded through ARPA and FEMA funding. No County General Funds are involved.
- vi. Approval of Intergovernmental Agreement with Clackamas Fire District for COVID vaccine administration. Contract maximum value is \$150,000 funded through ARPA and FEMA funding. No County General Funds are involved.
- vii. Approval of Intergovernmental Agreement with Canby Fire District for COVID vaccine administration. Contract maximum value is \$150,000 funded through ARPA and FEMA funding. No County General Funds are involved.
- viii. Approval of Amendment #1 to the Ground Lease between the Clackamas County Development Agency and Clackamas County for the property located at 16575 SE 115th Ave. for the continued site use for the Veterans Village Program. No County General Funds are involved.
- ix. Approval of Amendment #2 extending to the Intergovernmental Agreement between the Housing Authority of Clackamas County and Social Services for six (6) months and adding \$55,000 for case management for program participants. New total contract value is \$280,000. Funded with County General Funds budgeted within Affordable Housing and Services.

C. Transportation and Development

- i. Approval of a Contract with Hart Crowser, Inc. for the Transportation Earthquake Preparation and Response Plan Project. Maximum contract value is \$168,185 funded through County Road Funds. No County General Funds are involved.
- ii. Approval of a Board Order vacating a portion of an unnamed, non-maintained Local Access Road created in 1913 through “Sunshine Valley Orchard Tracts” northwesterly of Boring, Oregon. There is no financial impact.

D. Finance Department

- i. Approval of a Resolution for Extension and 4-H Service District Supplemental Budget (Less than Ten Percent) and Transfers for Fiscal Year 2021-2022. This supplemental budget increases appropriations by \$16,500 funded through interest income, no County General Funds are involved.
- ii. Approval of a Parking Lot Space Lease Agreement between Facilities Management and Edington Properties, LLC for the lease of nine (9) Courthouse staff parking spaces located at 713 Main Street, Oregon City. Funded through current allocations some of which are County General Funds.

E. Administration

- i. Approval of an Intergovernmental Agreement between Clackamas County Equity and Inclusion (County Administration) and the City of Lake Oswego. The City of Lake Oswego is contributing \$30,000 in support of the contract Clackamas County approved with the Coalition of Communities of Color for the Racial Research Justice study. This is a reimbursement; No County General Funds are involved.
- ii. Approval of an Intergovernmental Agreement between Clackamas County Equity and Inclusion (County Administration) and Portland General Electric (PGE). PGE is contributing \$45,000 in support of the contract Clackamas County approved with the Coalition of Communities of Color for the Racial Research Justice study. This is a reimbursement; No County General Funds are involved.
- iii. Approval of an Intergovernmental Agreement between Clackamas County Equity and Inclusion (County Administration) and Oregon City. Oregon City is contributing \$8,000 in support of the contract Clackamas County approved with the Coalition of Communities of Color for the Racial Research Justice study. This is a reimbursement; No County General Funds are involved.
- iv. Approval of an Intergovernmental Agreement between Clackamas County Equity and Inclusion (County Administration) and Clackamas Community College. Clackamas Community College is contributing \$15,000 in support of the contract Clackamas County approved with the Coalition of Communities of Color for the Racial Research Justice study. This is a reimbursement; No County General Funds are involved.

F. Business and Community Services

- i. Approval of Amendment #4 of the Memorandum of Understanding between Clackamas County Business and Community Services and Hoodland Women’s Club. This Amendment extends the time to transfer properties from Clackamas County to a Local Park District upon its formation. No fiscal impact beyond ongoing operational and maintenance costs incurred by BCS while the land is under Clackamas County ownership.

- ii. ***Approval of Local Grant Agreement Amendment #6 with Micro Enterprise Services of Oregon (MESO) for provision of a small grants program in support of the local business community impacted by the COVID-19 pandemic. This amendment adds \$228,486 in CARES Act funding and \$22,614 State Lottery dollars. No County General Funds are involved.

G. Disaster Management

- i. Approval of Amendment #1 to Intergovernmental Agreement #34636 with Oregon Department of Transportation for Right-of-Way (ROW) Wildfire-Damaged Hazard Tree Removal. No County General Funds are involved.

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

- A. Approval of Amendment #1 to the Ground Lease between Clackamas County Development Agency and Clackamas County pertaining to property located at 16575 SE 115th Avenue for the continued site use for the Veterans Village Program. No County General Funds are involved.

V. PUBLIC COMMUNICATION *(The Chair of the Board will call for statements from citizens regarding issues relating to County government. It is the intention that this portion of the agenda shall be limited to items of County business which are properly the object of Board consideration and may not be of a personal nature. Testimony is limited to three (3) minutes. Comments shall be respectful and courteous to all.)*

Please note, the ideas expressed during public communication do not necessarily reflect the ideas or beliefs of Clackamas County or the Board of County Commissioners.

VI. COUNTY ADMINISTRATOR UPDATE

VII. COMMISSIONERS COMMUNICATION

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

December 9, 2021

Housing Authority Board of Commissioners
Clackamas County

Members of the Board:

Approval of a Board Order No. 1960 to write-off Uncollectible Accounts for
the Second Quarter of Fiscal Year 2022.
No General Funds Involved

Purpose/Outcomes	Approval to write off uncollectible rents, late charges and maintenance expenses for the second quarter of fiscal year 2022 by a Board Order.
Dollar Amount and Fiscal Impact	\$2,329.70 in total collection losses
Funding Source	N/A
Duration	October 1, 2021 – December 31, 2021
Previous Board Action/Review	9/16/21 - FY 22 - First quarter collection losses were approved by the Housing Authority Board of Commissioners. 12/7/21 – Item on Issues
Counsel Review	N/A
Strategic Plan Alignment	1. Efficient & effective services 2. Build Public Trust through good government
Contact Person	Toni Karter, Interim Executive Director, Housing Authority 503-650-3139

BACKGROUND:

The Housing Authority of Clackamas County (HACC), a Division of the Health, Housing and Human Services Department, requests the approval of a board order to write off uncollectible rents, late charges and maintenance expenses for the second quarter of fiscal year 2022 (October 1, 2021 – December 31, 2021) by a Board Order. The uncollectible amounts are detailed on the attached worksheets.

Uncollectible amounts for the second quarter of fiscal year 2022 will be \$2,329.70 for Low Rent Public Housing. Of the total second quarter write offs, \$912.14 was for uncollected rents and \$1,417.56 was for maintenance repairs charged to tenants for repairs required to units before HACC could lease them to a new tenant.

As a business practice, the HACC writes off debts after 90 days of collection efforts. Former residents in Public Housing that have debts that are written off, continue to be tracked and are reported to a Federal Government database that prohibits their participation in any other Public Housing program nationally until such debt is paid.

The total amount proposed for transfer from Accounts Receivable to Collection Loss for the second quarter of fiscal year 2022 will be \$2,329.70.

RECOMMENDATION:

HACC staff recommends the approval of HACC Board Order No.1960 to write off uncollectible rents, late charges and maintenance expenses and to authorize the transfer of these accounts from Accounts Receivable to Collection Loss.

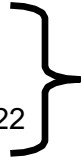
Respectfully submitted,

A handwritten signature in cursive script that reads "Rodney Cook".

Rodney A. Cook, Director
Health, Housing and Human Services

**BEFORE THE CLACKAMAS COUNTY
HOUSING AUTHORITY BOARD
CLACKAMAS COUNTY, OREGON**

In the Matter of Writing off
Uncollectible Accounts for the
Second Quarter of Fiscal Year 2022



Board Order # 1960
Page 1 of 1

This matter coming regularly before the Housing Authority Board of Clackamas County, and it appearing that; as a best practice, the Housing Authority of Clackamas County writes off debts after 90 days of collection efforts; and

Whereas, there are uncollectible amounts of \$2,329.70 for Low Rent Public Housing in Accounts Receivable for the second quarter of fiscal year 2022; and

Whereas, of the total uncollectible debt, \$912.14 was for uncollected rent payments and \$1,417.56 was for unit maintenance repairs charged to tenants; and

Whereas, former residents in Public Housing that have had debts that are written off continue to be tracked and are reported to a Federal Government database that prohibits their participation in any other Public Housing Program nationally until such debt is paid; and

Whereas, the full amount of uncollectible debt for the Housing Authority in the second quarter of fiscal year 2022 will be \$2,329.70; and

It further appearing that, it is in the best interest of the Housing Authority of Clackamas County to transfer \$2,329.70 in uncollectable debts from Accounts Receivable to Collections Loss for the second quarter of fiscal year 2022.

NOW, THEREFORE, IT IS HEREBY ORDERED that the Housing Authority of Clackamas County to approve the transfer of \$2,329.70 of uncollectable debt from Accounts Receivable to Collections Loss for the second quarter of fiscal year 2022.

DATED this _____ day of _____, 2021

**CLACKAMAS COUNTY
HOUSING AUTHORITY BOARD**

Chair

Recording Secretary

December 9, 2021

Housing Authority Board of Commissioners
Clackamas County

Members of the Board:

Approval of Amendment #2 extending to the Intergovernmental Agreement between the Housing Authority of Clackamas County and Social Services for six (6) months and adding \$55,000 for case management to assist Public Housing residents.

Funded with County General Funds through the Affordable Housing and Services Fund

Purpose/Outcomes	Approval of Amendment #2 to the Intergovernmental Agreement between the Housing Authority and Social Services for case management for HACC program participants
Dollar Amount and Fiscal Impact	Amendment #2 will add \$55,000 to the total contract value. Total contract value over 3 years with Amendments will be \$280,000.
Funding Source(s)	Affordable Housing & Services – General Funds
Duration	Extension of contract January 1, 2022 - June 30, 2022. Full contract terms July 1, 2019 – June 30, 2022
Previous Board Action	May 16, 2019 - Board approved IGA (fully executed May 28, 2019) May 20, 2021 - Board approved Amendment #1 December 7, 2021 – Item at Issues
Strategic Plan Alignment	<ol style="list-style-type: none"> 1. This funding is in alignment with the H3S priority that residents experience opportunities for stable, affordable and quality housing by providing stabilizing case management services for HACC program residents. 2. This funding aligns with the County’s strategic priority to ensure safe, healthy and secure communities.
Counsel Review	Andrew Naylor, November 22, 2021
Contact Person	Toni Karter, HACC Interim Executive Director (503) 351-2496
Contract Number	Contract No. 9247

BACKGROUND:

The Housing Authority of Clackamas County (HACC), a Division of the Health, Housing and Human Services Department (H3S), requests approval to extend the Intergovernmental Agreement with Social Services, a Division of H3S, to ensure the continuation of case management for families participating in HACC programs.

Amendment #2 to the IGA contract No.9247, extends the term of the agreement by six (6) months, from January 1, 2022 through June 30, 2022 and increases the total contract value by \$55,000. The continuation of this contract to the end of the fiscal year will bring it into alignment with other Affordable Housing and Services Contracts in preparation for a new procurement for these funds for next fiscal year.

This contract funds a full-time case manager for residents of HACC programs. HACC program clients are selected from the wait list. Many are homeless and/or have high barriers and therefore are in need of intensive case management to be successfully housed. The Case Manager works in collaboration with the Social Services Supportive Housing Team (“Housing Pod”) with most of the work taking place at tenant units and in the community.

The scope of work for the case manager is as follows:

- Eligibility and Intake
- Documentation of Homelessness and compliance
- Housing Stability and Increasing Income
- Eviction Prevention
- Vulnerable residents will be connected to support services
- Advocacy for residents to navigate systems
- Tracking Interventions and outcomes, with the goal of supporting long term sustainability, collaboration between service systems, and to keep at risk residents in their housing and off the streets.

RECOMMENDATION:

Staff recommends the Board approve Amendment #2 extending to the IGA between HACC and Social Services for six (6) months for a full-time case manager to assist the residents of Public Housing, adding \$55,000 to the total contract value. Staff recommends the Board authorize Commissioner Tootie Smith, Chair, to sign on behalf of the Housing Authority Board and on behalf of the Board of County Commissioners.

Respectfully submitted,



Rodney A. Cook, Director
Health, Housing and Human Services

Intergovernmental Agreement
Between Housing Authority of Clackamas County and Social Services Division
for the Public Housing Case Manager H3S Contract No. 9247

INTERGOVERNMENTAL AGREEMENT AMENDMENT #2

This Amendment #2 is entered into between **the Housing Authority of Clackamas County** (“HACC”) and **Clackamas County**, on behalf of its Social Services Department (“SSD”), and shall become part of the intergovernmental agreement (“Agreement”) entered into between both parties on May 28, 2019.

The purpose of this Amendment #2 is to make the following changes to the Agreement:

Article III, Section A, Budget and Terms of Payment for Services Rendered, is hereby amended as follows: In consideration for SSD providing a half time Case Manager to HACC during the extended term of this Agreement, HACC agrees to pay SSD an additional \$55,000.00

Article VI, Term of Agreement, Section A, is hereby amended to extend the termination date from December 31, 2021 to **June 30, 2022**.

IN WITNESS HEREOF, the Parties have executed this Amendment #2 by the date set forth opposite their names below.

**HOUSING AUTHORITY OF
CLACKAMAS COUNTY BOARD**

Commissioner Tootie Smith, Chair
Commissioner Sonya Fischer
Commissioner Mark Shull
Commissioner Paul Savas
Commissioner Martha Schrader
Resident Commissioner Ann Leenstra

Signing on Behalf of the Housing Authority of
Clackamas County Board

**CLACKAMAS COUNTY BOARD OF
OF COUNTY COMMISSIONERS**

Commissioner Tootie Smith, Chair
Commissioner Sonya Fischer
Commissioner Mark Shull
Commissioner Paul Savas
Commissioner Martha Schrader

Signing on behalf of Clackamas County
Board of County Commissioners

Commissioner Tootie Smith, Chair Date

Commissioner Tootie Smith, Chair Date

Approved as to Form

County Counsel Date

December 9, 2021

Housing Authority Board of Commissioners
Clackamas County

Members of the Board:

Approval to execute a construction contract between the Housing Authority of Clackamas County (HACC) and A-1 Quality Construction for the HACC Wide Flooring 2022-2024 Project #22001.

Funded through HUD Federal Capitol Grant Funds.

No County General Funds involved.

Purpose/Outcomes	Approval to execute a Construction contract between the HACC and A-1 Quality Construction to replace flooring throughout HACC Public Housing units on an as needed basis due to unit turn over.
Dollar Amount and Fiscal Impact	One-time expense not to exceed \$250,000.00
Funding Source(s)	HUD Federal Capital Grant Funds - No County General Funds are involved
Duration	730 days from date of notice to proceed
Previous Board Action	12/7/21 – Item at Issues
Strategic Plan Alignment	<ol style="list-style-type: none"> 1. This funding is in alignment with the H3S priority that residents experience opportunities for stable, affordable and quality housing by improving the flooring in HACC properties. 2. This funding aligns with the County's strategic priority to ensure safe, healthy and secure communities.
Counsel Review	November 18, 2021 - Andrew Naylor
Procurement Review	Per Resolution No. 1936, HACC adopted the Local Contract Review Board rules for HACC Procurements. HACC conducts its own procurements following its procurement handbook
Contact Person	Toni Karter, HACC Interim Executive Director (503) 650-3139
Contract Number	Contract No. c001-22

BACKGROUND:

The Housing Authority of Clackamas County (HACC), a Division of the Health, Housing and Human Services Department (H3S), issues an on demand contract every two years to remove and replace flooring in Public Housing units, as needed. Replacing flooring in a timely manner allows HACC to maintain its High Performer status and prevent safety hazards.

A-1 Quality Construction was selected through a competitive Request for Proposal process. The scope of work includes full and partial repair and replacement of flooring in Public Housing units. The last 2-year contract resulted in work to 44 different units. Procurement for this project followed

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www.clackamas.us

LCRB Rules and HACC procurement procedures which are in alignment with county procurement procedures.

RECOMMENDATION:

Staff recommends the Board approve the construction contract between HACC and A-1 Construction for HACC Wide Flooring 2022-2024 Project #22001. Staff also recommends the Board authorize Commissioner Tootie Smith, Chair to sign the contract on behalf of the Housing Authority Board of Commissioners.

Respectfully submitted,

A handwritten signature in cursive script that reads "Rodney Cook".

Rodney A. Cook, Director
Health, Housing and Human Services

**FORM OF CONTRACT
PROJECT #22001
Contract # c001-22**

THIS CONTRACT, effective upon signature of both parties, is made by and between **A-1 Quality Construction (Contractor)**, a business entity authorized to do business in the State of Oregon, hereinafter called the "Contractor," and **the Housing Authority of Clackamas County** hereinafter call the "PHA."

WITNESSETH, that the Contractor and the PHA for the consideration stated herein mutually agreed as follows:

ARTICLE 1. Statement of Work. The Contractor shall furnish all labor, material, equipment and services, and perform and complete all work ("Work") described in the Contract Documents, defined below, or reasonably inferred therefrom, as required for completion of the **HACC WIDE FLOORING 2022-2024**, a prevailing wage project, **#22001**. Work shall be performed in strict accordance with this Contract and all Contract Documents, defined below, including the Scope of Work, HUD General Conditions, and any Addenda.

This Contract is on an "on-call" or "as-needed basis" for Work.

When the PHA wishes Contractor to perform the Work, PHA will submit a written task order detailing the particular scope of Work and the total compensation, pursuant to the rates set forth in this Contract. Contractor may not perform Work until PHA has issued the written task order.

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

ARTICLE 2. The Contract Price. The PHA shall pay the Contractor for the performance of the Contract, in current funds, subject to additions and deductions as provided in the Scope of Work, a sum not to exceed two hundred fifty thousand dollars and zero cents. **(\$250,000.00)**.

ARTICLE 3. Contract Dates. The following critical dates are hereby set for the HACC WIDE FLOORING 2022-2024. Time is of the essence.

- A. START DATE: January 03, 2022
- B. SUBSTANTIAL COMPLETION DATE: N/A
- C. FINAL COMPLETION DATE: January 03, 2024

ARTICLE 4. Contract Documents. The Contract shall consist of the following component parts:

- a. This Agreement
- b. Bid Documents
- c. HUD General Conditions
- d. Addendum(s), if any
- e. Special Conditions
- f. Scope of Work

This instrument, together with the other documents enumerated in this Article 4, which said other documents are as fully a part of the Contract as if hereto attached or herein repeated, form the Contract. In the event that any provision in any component part of this Contract conflicts with any provision of any other component part, the provision of the component part first enumerated in this Article 4 shall govern, except as otherwise specifically stated. The

various provisions in Addenda shall be construed in the order of preference of the component part of the Contract which each modifies.

ARTICLE 5. Responsibility for Damages/Indemnity. Contractor shall be responsible for all damage to property, injury to persons, and loss, expense, inconvenience, and delay that may be caused by, or result from, the carrying out of the Work to be done under the Contract, or from any act, omission or neglect of the Contractor, its subcontractors, employees, guests, visitors, invitees and agents.

To the fullest extent permitted by law, Contractor shall indemnify, defend (with counsel approved by PHA) and hold harmless the PHA and its elected officials, officers, directors, agents, and employees (collectively "Indemnitees") from and against all liabilities, damages, losses, claims, expenses, demands and actions of any nature whatsoever which arise out of, result from or are related to: (a) any damage, injury, loss, expense, inconvenience or delay described in this Article 5; (b) any accident or occurrence which happens or is alleged to have happened in or about the project site or any place where the Work is being performed, or in the vicinity of either, at any time prior to the time the Work is fully completed in all respects; (c) any failure of the Contractor to observe or perform any duty or obligation under the Contract Documents which is to be observed or performed by the Contractor, or any breach of any agreement, representation or warranty of the Contractor contained in the Contract Documents or in any subcontract; (d) the negligent acts or omissions of the Contractor, a subcontractor or anyone directly or indirectly employed by them or any one of them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder (except to the extent otherwise void under ORS 30.140); and (e) any lien filed upon the project or bond claim in connection with the Work. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Article 5.

In claims against any person or entity indemnified under this Article 5 by an employee of the Contractor, a subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this Article 5 shall not be limited on amount or type of damages, compensation or benefits payable by or for the Contractor or a subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

ARTICLE 6. No person shall be employed for more than 10 hours in any one day, or 40 hours in any one week, except in cases of necessity, emergency, or where the public policy absolutely requires it, and in such cases, except in cases of contracts for personal services as described in ORS 279C.100, the employee shall be paid at least time and a half pay for (1) all overtime in excess of eight hours in any one day or 40 hours in any one week if the work week is five consecutive days, Monday through Friday or (2) all overtime in excess of 10 hours in any one day or 40 hours in any one week if the work week is four consecutive days, Monday through Friday; and all work the employee performs on Saturday and on any legal holiday specified in ORS 279C.540. All subject employers working under this contract are either employers that will comply with ORS 656.017 or employers that are exempt under ORS 656.126. Contractor shall comply with the prohibition set forth in ORS 652.220, compliance of which is a material element of the Contract and a failure to comply is a breach entitling PHA to terminate the Contract for cause.

ARTICLE 7. Under the provisions of ORS 279C.515, if the Contractor fails, neglects, or refuses to make prompt payment of any claim for labor or services furnished to the Contractor or a subcontractor by any person in connection with this contract as the claim becomes due, the

proper officer representing the PHA may pay such claim to the person furnishing the labor or services and charge the amount of the payment against the funds due or to become due the Contractor by reason of the contract.

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

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

ARTICLE 8. The Contractor agrees to pay daily, weekly, weekend and holiday overtime as required by ORS 279C.520.

ARTICLE 9. The Contractor agrees that all employees/workers working on this project, whether employed by the Contractor or any subcontractor, shall be given written notice of the number of hours per day and days per week they may be required to work.

ARTICLE 10. The Contractor shall promptly, as due, make payment to any person, co-partnership, association or corporation furnishing medical, surgical and hospital care services or other needed care and attention, incident to sickness or injury, to the employees of the contractor, of all sums that the contractor agrees to pay for the services and all moneys and sums that the contractor collected or deducted from the wages of employees under any law, contract or agreement for the purpose of providing or paying for the services.

ARTICLE 11. The Contractors agrees to pay no less than the applicable state or federal prevailing wage rate, whichever is higher per ORS 279C.830(1)(b).

ARTICLE 12. The Contractor agrees to have a performance bond and payment bond in place before starting any work on the project per ORS 279C.380. The Contractor agrees to have filed a public works bond with the Construction Contractors Board before starting any work on the project.

ARTICLE 13. The Contractor agrees that every subcontract shall include a provision requiring all subcontractors to have a public works bond filed with the Construction Contractors Board before starting any work on the project per ORS 279C.830.

ARTICLE 14. Contractor certifies that both it and any of its subcontractors are (1) Registered to conduct business in the state of Oregon; (2) are actively licensed with the Oregon Construction Contractors Board; (3) are bonded and insured in amounts that meet or exceed the county's minimal requirements.

ARTICLE 15. CONTRACTOR shall:

- (1) Make payment promptly, as due, to all persons supplying to such contractor labor or material for the prosecution of the work provided for in such contract.
- (2) Pay all contributions or amounts due the State Industrial Accident Fund from such contractor or subcontractor incurred in the performance of the contract.
- (3) Not permit any lien or claim to be filed or prosecuted against the state, county, school district, municipality, municipal corporation or subdivision thereof, on account of any labor or material furnished.
- (4) Pay to the Revenue Department all sums withheld from the employees pursuant to ORS 316.167.
- (5) Demonstrate that an employee drug testing program is in place.

ARTICLE 16. The Contractor shall include in each subcontract those provisions required under ORS 279C.580.

ARTICLE 17. For demolition tasks, if any, the Contractor shall salvage or recycle construction and demolition debris, if feasible and cost-effective.

ARTICLE 18. Tax Laws.

18.1 The Contractor represents and warrants that, for a period of no fewer than six calendar years preceding the effective date of this Agreement, has faithfully complied with:

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

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

- a. Termination of this agreement, in whole or in part;

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

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

ARTICLE 19. Reserved.

ARTICLE 20. Additional Terms

- (1) **Execution and Counterparts.** This Contract may be executed in several counterparts, each of which shall be an original, all of which shall constitute one and the same instrument.
- (2) **Integration.** The Contract Documents constitute the entire agreement between the Parties. There are no other understandings, agreements or representations, oral or written, not specified herein regarding this Contract. Contractor, by the signature below of its authorized representative, hereby acknowledges that it has read this Contract, understands it, and agrees to be bound by its terms and conditions.
- (3) **Governing Law.** This Contract shall be governed and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, or suit between County and Contractor that arises out of or relates to the performance of this Contract shall be brought and conducted solely and exclusively within the Circuit Court for Clackamas County, for the State of Oregon. Provided, however, that if any such claim, action, or suit may be brought in a federal forum, it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon.
- (4) **Compliance with Applicable Law.** Contractor shall comply with all federal, state, county, and local laws, ordinances, and regulations applicable to the Work to be done under this Contract including, but not limited to, compliance with the prohibitions set forth in ORS 652.220, compliance of which is a material element of this Contract and failure to comply is a material breach that entitles County to exercise any rights and remedies available under this Contract including, but not limited to, termination for default.
- (5) **Reserved.**
- (6) **Compliance with Applicable Funding Source Requirements.** Contractor shall further comply with any and all terms, conditions, and other obligations as may be required by the applicable State or Federal agencies providing funding for performance under this Contract, whether or not specifically referenced herein. Contractor agrees to take all necessary steps, and execute and deliver any and all necessary written instruments, to

perform under this Contract including, but not limited to, executing all additional documentation necessary for PHA to comply with applicable State or Federal funding requirements.

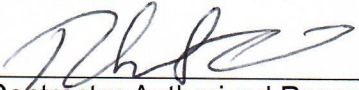
- (7) **Debt Limitation.** This Contract is expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10, of the Oregon Constitution, and is contingent upon funds being appropriated therefore. Any provisions herein which would conflict with law are deemed inoperative to that extent.
- (8) **No attorney fees.** No attorney fees shall be paid for or awarded to either party in the course of any dispute, indemnification, or other recovery. It is the intent of the parties that each shall bear the costs of its own legal counsel.
- (9) **Severability.** If any term or provision of this Contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Contract did not contain the particular term or provision held to be invalid.
- (10) **No Third Party Beneficiaries.** PHA and Contractor are the only parties to this Contract and are the only parties entitled to enforce its terms. Nothing in this Contract gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Contract.
- (11) **Waiver.** The failure of PHA to enforce any provision of this Contract shall not constitute a waiver by PHA of that or any other provision.
- (12) **Merger.** This Contract constitutes the entire agreement between the parties with respect to the subject matter referenced therein. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Contract. No amendment, consent, or waiver of terms of this Contract shall bind either party unless in writing and signed by all parties. Any such amendment, consent, or waiver shall be effective only in the specific instance and for the specific purpose given. Contractor, by the signature hereto of its authorized representative, is an independent contractor, acknowledges having read and understood this contract, and contractor agrees to be bound by its terms and conditions.
- (13) **Responsibility for Taxes.** Contractor is solely responsible for payment of any federal, state, or local taxes required as a result of the Agreement or the Work including, but not limited, to payment of the corporate activity tax imposed under enrolled HB 3427 (2019 Oregon regular legislative session).

HACC WIDE FLOORING 2022-2024 – PROJECT #22001
HOUSING AUTHORITY OF CLACKAMAS COUNTY
P.O BOX 1510, 13900 S. GAIN STREET, OREGON CITY, OR 97045

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

A-1 Quality Construction

Contractor

 11-18-2021
Contractor Authorized Representative's
Signature / Date

Phil Coates, Owner

Contractor Authorized Representative's
Name / Title - Print or Type

542-23-1285

Federal I.D. Number

**14100 S. Carus Road, Oregon City, OR
97045**

Business Address - Street, City, State, Zip

143970

State of Oregon CCB License Number

**HOUSING AUTHORITY OF
CLACKAMAS COUNTY BOARD**

Chair, Tootie Smith
Commissioner, Sonya Fischer
Commissioner, Paul Savas
Commissioner, Martha Schrader
Commissioner, Mark Shull
Resident Commissioner, Ann Leenstra


**Signing on Behalf of the
Housing Authority Board**

Dated this ____ day of December, 2021.

Chair, Tootie Smith

Recording Secretary


Approved as to form

 11/19/2021

County Counsel

CERTIFICATION

I Phil Coates
certify that I am the Owner
at the corporation named as Contractor herein, that Phil Coates
who signed this Contract on behalf of the Contractor, was then Owner
of said corporation; that said Contract was duly signed for and in behalf of said
corporation by authority of its governing body, and is within the scope of its corporate
powers.

 11-18-2021
Authorized Representative's Signature / Date

Phil Coates, Owner
Authorized Representative's Name / Title - Print or Type



Daniel Nibouar
Interim Director

Disaster Management
1710 Red Soils Ct., Ste. 225
Oregon City, OR 97045

T 503-655-8378

clackamas.us

December 9, 2021

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of Addendum #2 to Board order #2020-71 Extending the Emergency Declaration of Wildfire Debris.
No County General Funds Needed

Purpose/Outcome	Extend the current wildfire debris declaration until August 1, 2022
Dollar Amount and Fiscal Impact	Declaration does not have associated dollar amounts
Funding Source	No funding source required, No County General Funds needed.
Duration	The declaration will last until August 1, 2022, unless otherwise extended or the conditions requiring the condition no longer exist.
Previous Board Action/Review	Initial Declaration on October 8, 2020 First Addendum on January 7, 2021
Strategic Plan Alignment	1) How does this item align with your Department's Strategic Business Plan goals? Work to support recovery by removing wildfire debris aligns with both the mission of the Disaster Management Department including disaster recovery, and Department of Transportation and Development's mission to support disaster debris management and transportation safety. 2) How does this item align with the County's Performance Clackamas goals? Work to support recovery by removing wildfire debris helps to ensure safe, healthy and secure communities by removing hazards to public health, the environment, and the travelling public.
Counsel Review	The Addendum was drafted and cleared by County Counsel. 11/30/21 SM
Procurement Review	No. Procurement review is not applicable. Item is extension of emergency declaration.
Contact Person	Daniel Nibouar 971-219-6932

BACKGROUND:

The county is still actively working with the Oregon Department of Transportation (ODOT) to clean up debris from the 2020 Wildfires. ODOT has completed the private property debris removal in the county but is just starting on removing hazardous trees from the right-of-way. The emergency declaration allows the county to maintain flexibility in support ODOT's operations. The extension will also give the county the possibility of utilizing the county's debris removal contract, if ODOT is unable to perform the work.

RECOMMENDATION:

Staff respectfully recommends approval of Addendum #2 to Board Order #2020-71, extending the declaration until August 1st, 2022

Sincerely,

Daniel Nibouar
Interim Director of Disaster Management

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

In the Matter of Declaring a Local
State of Emergency and Declaring
Emergency Measures in
Abatement of Hazardous Waste
and Debris Removal



**ADDENDUM No.2 to BOARD
ORDER No. 2020-71**
Page 1 of 1

1. By way of Board Order 2020-71, the Clackamas County Board of Commissioners formally declared a state of emergency for Clackamas County, effective on the 8th day of October 2020, for the entire County. That declaration of emergency was to expire on January 8, 2021.
2. On January 7, 2021, by way of a First Addendum, the Clackamas County Board of Commissioners found that the conditions giving rise to the declaration of emergency remained in existence and extended the duration of the declaration of emergency and all previously imposed emergency measures until December 31, 2021.
3. By way of the Second Addendum, the Clackamas County Board of Commissioners finds that the conditions giving rise to the declaration of emergency continue to exist and it is therefore necessary to extend the duration of emergency and all previously imposed conditions continue until August 1, 2022.

IT IS FURTHER ORDERED that:

All previously declared emergency measures (see attached) shall remain in effect for the duration of the declaration of emergency.

DATED this 9th day of December 2021.

CLACKAMAS COUNTY BOARD OF COMMISSIONERS

Chair

Recording Secretary

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

In the Matter of Declaring a Local
State of Emergency and Declaring
Emergency Measures in
Abatement of Hazardous Waste
and Debris Removal

ADDENDUM No.1 to BOARD
ORDER No. 2020-71
Page 1 of 1

1. By way of Board Order 2020-71, the Clackamas County Board of Commissioners formally declared a state of emergency for Clackamas County, effective on the 8th day of October 2020, for the entire County. That declaration of emergency was to expire on January 8, 2021.

2. By way of this First Addendum, the Clackamas County Board of Commissioners finds that the conditions giving rise to the declaration of emergency remain in existence and it is therefore necessary to extend the duration of the declaration of emergency and all previously imposed emergency measures until December 31, 2021.

IT IS FURTHER ORDERED that:

All previously declared emergency measures (see attached) shall remain in effect for the duration of the declaration of emergency.

DATED this 7th day of January 2021.

CLACKAMAS COUNTY BOARD OF COMMISSIONERS



Chair



Recording Secretary

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

In the Matter of Declaring a State of
Emergency and Declaring Emergency
Measures for Abatement of
Hazardous Waste and Debris
Removal

Board Order No. 2020-71
Page 1 of 4

WHEREAS, ORS 401.309 authorizes the governing body of a county to declare, by ordinance or resolution, that a state of emergency exists within the county. The ordinance or resolution must limit the duration of the state of emergency to the period of time during which the conditions giving rise to the declaration exist or are likely to remain in existence. And the county in this state may, by ordinance or resolution, establish procedures to prepare for and carry out any activity to prevent, minimize, respond to or recovery from an emergency. The ordinance or resolution shall describe the conditions required for the declaration of a state of emergency; and,

WHEREAS, ORS 401.305 provides authority for Clackamas County to act as an emergency management agency, including authority to establish policies and protocols for defining and directing responsibilities during time of emergency; and

WHEREAS, Clackamas County has enacted a local ordinance (County Code Chapter 6.03) pursuant to the authority granted by ORS Chapter 401, that provides for executive responsibility in times of emergency and specifically delegates authority to declare a state of emergency to the County Chair, Vice-Chair (if Chair is unavailable), Remaining Board Member(s) (if Vice-Chair is unavailable) and County Administrator or designee (if Remaining Board Member(s) is unavailable); and

WHEREAS, on September 8, 2020 Governor Kate Brown approved an emergency conflagration declaration EO-20-41 for the Beachie Creek, Lionshead, and Holiday Farm Fire and determined that a threat to a life, safety, and property exists due to fire, and the threat exceeds the firefighting capabilities of local firefighting personnel and equipment. The declaration authorizes the Oregon Office of State Fire Marshal to mobilize resources to assist local resources battling the fire; and

WHEREAS, ORS 433.441(4) provides that if a state of emergency is declared as authorized under ORS 401.165, the Governor may implement any action authorized by ORS 433.441 to 433.452, which include actions relating to public health emergencies; and

WHEREAS, a federal emergency declaration was granted on September 10, 2020;

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

In the Matter of Declaring a State of
Emergency and Declaring Emergency
Measures for Abatement of
Hazardous Waste and Debris
Removal



Board Order No. 2020-71
Page 2 of 4

WHEREAS, on September 14, 2020 Governor Kate Brown requested a Presidential Disaster Declaration for the ongoing wildfires in Oregon. The request included operational response support, such as additional communications resources, damage assessment teams, search and rescue (SAR) support, debris management, as well as shelter and medical assistance. Individual assistance for the counties and tribes was also included in the request.

WHEREAS, on September 16, 2020 the President approved the Disaster Declaration and made federal emergency aid available to the state to supplement state, tribal and local recovery efforts in the areas affected by wildfires and straight-line winds beginning on Sept. 7, 2020 and continuing.

WHEREAS, the Presidential Disaster Declaration makes federal funding available to affected individuals in Clackamas, Douglas, Jackson, Klamath, Lane, Lincoln, Linn and Marion counties and federal assistance through FEMA's Public Assistance program available to Benton, Clackamas, Columbia, Coos, Deschutes, Douglas, Jackson, Jefferson, Josephine, Klamath, Lake, Lane, Lincoln, Linn, Marion, Multnomah, Tillamook, Wasco, Washington and Yamhill counties.

WHEREAS, the Clackamas County Board of County Commissioners hereby finds as follows:

1. Debris and ash from structure fires can contain hazardous substances. For example, building materials such as siding, roofing tiles, insulation, or household items such as paint, gasoline, cleaning products, pesticides, compressed gas cylinders, and chemicals can result in dangerous ash that contains asbestos, heavy metals, and other hazardous materials; and,

2. Such waste is a threat to achieving a beneficial recovery from these fires for the community and to public health because it is hazardous and can cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness; or pose a substantial present or potential hazard to human health or environment when improperly treated, stored, transported, disposed of, or otherwise managed; and,

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

In the Matter of Declaring a State of
Emergency and Declaring Emergency
Measures for Abatement of
Hazardous Waste and Debris
Removal



Board Order No. 2020-71
Page 3 of 4

3. Hazardous debris that remains after a wildfire can expose residents to toxic materials, improper transport and disposal of fire debris can create dangerous health impacts to workers removing the debris, such debris can threaten water supplies, and such harmful material can spread throughout the community at large impacting health and the ability for our communities to recover from the fires; and,

4. A person with heart or lung disease, an older adult, children (including teenagers), a person with diabetes, and pregnant women are particularly vulnerable to the presence of such hazardous waste; and,

5. The threat to public health creates the immediate need to facilitate assistance and undertake preventive measures to protect the health of people and the environment and to inform the affected public of any potential health issues associated with the hazardous waste created by the wildfires, thereby warranting the declaration of the existence of a local health emergency; and,

6. Regardless of cause, any commercial or domestic structure fires which have or will occur in Clackamas County from the time the Beachie Creek, Dowty, Graves Creek, Riverside, Unger, and Wilhoit Fires began until the conclusion of the local health emergency will significantly contribute to the hazardous waste load; and,

7. Assistance to private property owners and to others within Clackamas County is needed for timely implementation of necessary preventative measures to protect public health and the environment; and,

8. The scope and breadth of the Beachie Creek, Dowty, Graves Creek, Riverside, Unger, and Wilhoit Fires hazardous waste cleanup requires a rapid response due to the large area affected, the location of the fire, the number of structures damaged or destroyed and the imminent threat to public health; and,

9. The potential beginning of the rainy season offers little time to mitigate further environmental contamination, including contamination of the watershed, and, therefore, time is of the essence in removing hazardous waste from property sites; and,

10. That the protection of the County's natural resources and watershed from fire related debris runoff needs to be addressed; and,

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

In the Matter of Declaring a State of
Emergency and Declaring Emergency
Measures for Abatement of
Hazardous Waste and Debris
Removal

Board Order No. 2020-71

Page 4 of 4

11. Immediate action is necessary to ensure the most complete recovery from the recent fires and mitigate the harm that could be caused to the public health and safety and to the environment from improper disturbance, removal, and/or disposal of hazardous waste, including but not limited to toxic, flammable, corrosive, and reactive materials from property sites located within the Beachie Creek, Dowty, Graves Creek, Riverside, Unger, and Wilhoit Fires area because such debris can create dangerous health impacts.

NOW, THEREFORE, IT IS HEREBY ORDERED that:

1. A state of emergency exists in Clackamas County due to the hazardous waste and materials created by the Beachie Creek, Dowty, Graves Creek, Riverside, Unger, and Wilhoit Fires, and that such condition may be exacerbated by the ongoing fires and upcoming rainy season and will continue until the conclusion of this emergency.

2. In connection with the foregoing declaration of emergency, Board of County Commissioners orders that immediate action be taken to remove the hazardous waste from property sites within the Beachie Creek, Dowty, Graves Creek, Riverside, Unger, and Wilhoit Fires area that are toxic, flammable, corrosive, or reactive and create an imminent threat to public health and safety and to the ability for Clackamas County to recover from the fires.

3. A state of emergency is declared in Clackamas County commencing on or about 10 am on the 8th day of October 2020.


4. This declaration of emergency shall expire on January 8, 2021.

DATED this 8th day of October, 2020.

BOARD OF COUNTY COMMISSIONERS



Jim Bernard, Chair



Recording Secretary

RECORDING MEMO

- New Agreement/Contract
- Amendment/Change/Extension
- Other _____

Originating County Department: Disaster Management

Title from Business Meeting Agenda:

Approval of Addendum #2 to Board Order #2020-71 Extending the
Emergency Declaration of Wildfire Debris. No County General Funds
Needed.

After recording please return to: Aryka Hanto

Clerk to the Board please complete below this line after Board approval _____

Board Agenda Date: _____

Agenda Item Number: _____

Draft

Approval of Previous Business Meeting
Minutes:
December 2, 2021

BOARD OF COUNTY COMMISSIONERS BUSINESS MEETING MINUTES

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

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

Thursday, December 2, 2021 – 10:00 AM

Virtual Meeting via Zoom and in Person

PRESENT: Chair Tootie Smith
Commissioner Martha Schrader
Commissioner Mark Shull
Commissioner Paul Savas

EXCUSED: Commissioner Sonya Fischer

CALL TO ORDER

- Roll Call
- Pledge of Allegiance

*****COVID-19 Updates**

~Board Discussion~

Recess as the Board of County Commissioners and convene as the Housing Authority

I. HOUSING AUTHORITY CONSENT AGENDA <https://www.clackamas.us/meetings/bcc/business>

- A. Approval of a HACC Resolution No. 1958 delegating an authorized representative(s) to act on behalf of the Housing Authority of Clackamas County to finalize the Regional Affordable Housing Bond and the Project-Based Voucher Contract for the Good Shepherd Village development in Happy Valley. Funding sources for this development include Regional Affordable Housing Bond funds and Section 8 Project Based Vouchers. No County General Funds are Involved.
- B. Approval of HACC Resolution No. 1959 delegating an authorized representative(s) to act on behalf of the Housing Authority of Clackamas County to finalize the Regional Affordable Housing Bond Loan and the Section 8 Project-Based Voucher Contract for the Maple Apartments development in Oregon City. Funding sources for this development include Regional Affordable Housing Bond funds and Section 8 Project Based Vouchers. No County General Funds are Involved.

Commissioner Savas: I move for approval of the consent agenda

Commissioner Shull: Second

Clerk called the Poll

Commissioner Shull: Aye

Commissioner Schrader: Aye

Commissioner Savas: Aye

Chair Smith: Aye.–the motion carries 4-0

Adjourn as the Housing Authority Board and reconvene as the Board of County Commissioners

II. PREVIOUSLY APPROVED LAND USE ISSUE <https://www.clackamas.us/meetings/bcc/business>

- A. Adoption of Previously Approved Comprehensive Plan and Zoning and Development Ordinance Amendments ZDO-277 – Phase 1: Land Use Housing Strategies Project, Comprehensive Plan and Zoning and Development Ordinance Amendments. (Nate Boderman, County Counsel)

~Board Discussion~

Commissioner Shull: I move to have the Clerk read the ordinance by title only.
Commissioner Schrader: Second
Clerk called the Poll
Commissioner Shull: Aye
Commissioner Schrader: Aye
Commissioner Savas: Aye
Chair Smith: Aye.–the motion carries 4-0

Chair Smith read by title only

Commissioner Shull: I move to approve the ordinance.
Commissioner Schrader: Second
Clerk called the Poll
Commissioner Shull: Aye
Commissioner Schrader: Aye
Commissioner Savas: Ney
Chair Smith: Aye.–the motion carries 3-1

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

A. ELECTED OFFICIALS

- i. Approval of Previous Business Meeting Minutes.

B. HEALTH, HOUSING, & HUMAN SERVICES

- i. Approval of an International Agreement with Multnomah County for Psychiatric Consultation Service. Maximum agreement value shall not exceed \$14,700. Funding through Community Mental Health Program (CMHP) and Oregon Health Plan (OHP) funds. No County General Funds are Involved. – Behavioral Health
- ii. Approval of a Contract with Lines for Life for Crisis and Support Line Services. Maximum Contract value of \$389,967 provided through the State of Oregon, Oregon Health Plan funds. No County General Funds are Involved. – Behavioral Health
- iii. Approval of a Local Subrecipient Grant Agreement for Todos Juntos to provide Family Resource Coordinators in Clackamas County Agreement is \$149,119 funded through Oregon Early Learning Division and Clackamas County General Fund. – Children, Family & Community Connections
- iv. Approval of an Intergovernmental Agreement with the City of Gladstone Grant funds of \$90,000 through Community Development Block Grant. No County General Funds are Involved. - Community Development
- v. Approval of a Revenue Grant Agreement from the Oregon Department of Education Youth Development Division to fund PreventNet Community School Sites in Rural Clackamas County Grant Agreement has a value of \$200,000. No County General funds are Involved. - Children, Family & Community Connections
- vi. Approval to Apply to the Fiscal Year 2022 Health Center Program Budget Period Progress Report (BPR) Non-Competing Continuation (NCC) with Health Resources and Services Administration (HRSA) for Health Center Program (H80) awardees. Award amount will be up to \$2,521,317. Funding is through HRSA. No General County Funds are Involved. – Health Centers

C. JUVENILE

- i. Approval of Amendment No. 1 to the Intergovernmental Agreement No. 167781 with Oregon Health Authority for Behavioral Rehabilitation Services Reimbursements. Maximum contract value is \$44,935, funded through the Oregon Health Authority. No County General Funds are Involved.

- ii. Approval of Intergovernmental Agreement #14719 with the State of Oregon acting by and through its Oregon Youth Authority to Provide Funding for Individualized Services. Maximum contract value is \$76,163 funded through the State of Oregon. No County General Funds are Involved.

D. DISASTER MANAGEMENT

- i. Approval of Amendment #3 to the Personal Services Agreement with Advantage Nurse Staffing of Oregon, Inc. to Provide On-Call Temporary Medical Staffing Services to Respond to the COVID-19 Pandemic. The amendment would increase the contract by \$5,100,000 bringing the maximum value to \$7,100,000. Reimbursement for these expenses are covered by Public Health ARPA and FEMA funds.
- ii. Approval to Apply for FEMA Flood Mitigation Assistance Program Funds to Acquire and Demolish a Severe Repetitive Loss Residential Property. Project cost is estimated at \$543,391. General Funds will initially be used with 100% reimbursement submitted monthly.

E. HUMAN RESOURCES

- i. Approval of Amendment #6 to the Administrative Services Agreement with Providence Health Plan for the County's Self-Funded Medical Benefits. Total estimated cost for the 2021 plan year is \$25,103,497.44. Funded through department, employee, and retiree contributions.

F. ASSESSMENT AND TAXATION

- i. Approval of Amendment #3 with Pictometry International Corporation for Oblique and Orthogonal Aerial Imagery to support integration of Geographical Information Systems data into the Computer Mass Appraisal System. This Amendment adds \$1,327,729 for a new total contract value of \$2,070,497.50. Funded through budgeted County General Funds.

G. COUNTY ADMINISTRATION

- i. Approval of a Funding Agreement between Clackamas County and Clackamas County Historical Society – Museum of the Oregon Territory. Total cost is \$100,000 funded through County General Funds.

H. COMMUNITY CORRECTIONS

- i. Approval of an Intergovernmental Agreement between Clackamas County Community Corrections and Portland State University for the development of an assessment report that summarizes key priorities for an equity plan. Total cost is \$18,000 funded by the State of Oregon Criminal Justice Commission. No County General Funds are Involved.

I. PUBLIC AND GOVERNMENT AFFAIRS

- i. A Board Order Terminating the Cable Television Franchise Agreements for the use of the County Rights-of-Way with Reliance Connects (Cascade Access, LLC), DirectLink (Canby Telecom), Colton Tel (Colton Telephone Company), Clear Creek Communications (Clear Creek Mutual Telephone Company) and Government Camp Cable Inc. This will result in a total loss revenue of \$43,472. No County General Funds are Involved.

Commissioner Schrader: I move to approve the consent agenda.

Commissioner Savas: Second

Clerk called the Poll

Commissioner Shull: Aye

Commissioner Schrader: Aye

Commissioner Savas: Aye
Chair Smith: Aye.–the motion carries 4-0

Adjourn as the Board of County Commissioners and convene as the Water Environment Services.

IV. WATER ENVIRONMENT SERVICES CONSENT AGENDA

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

- A. Approval of an Agreement between Water Environment Services and Portland General Electric for the First Supplement to the Agreement for Primary Voltage Alternate Electric Services under Schedule 83. Total cost is \$77,280 funded through WES Capital Improvement Funds. No County General Funds are Involved.

~Board Discussion~

Commissioner Schrader: I move to approve the consent agenda.

Commissioner Shull: Second

Clerk called the Poll

Commissioner Shull: Aye

Commissioner Schrader: Aye

Commissioner Savas: Aye

Chair Smith: Aye.–the motion carries 4-0

Recess as the Water Environment Services and reconvene as the Board of County Commissioners.

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

Opened Public Comment

General Public Comment in Person:

1. Les Poole – Gladstone
2. Thelma Haggemiller – Oak Grove
3. Jerry Herman – Gladstone
4. Mark Elliott – Oak Grove

General Public Comment Zoom:

1. Elisabeth Goebel – Milwaukie
2. Angela Nyland – Boring
3. Cris Waller – Milwaukie
4. Ron Campbell – Milwaukie

Meeting ended at 11:07 AM and room was evacuated

5. Christine Kennedy – Lake Oswego (did not get to speak)

December 9, 2021

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of Amendment #02 to a Revenue Contract with Trillium Community Health Plan, Inc. for Certain Behavioral Health Services. Amendment adds \$192,000.00 to value of the Contract. Funding through State of Oregon, Oregon Health Plan funds.

No County General Funds Involved.

Purpose/Outcomes	The contract provides the funding for certain behavioral health services.
Dollar Amount and Fiscal Impact	Amendment adds \$192,000.00 to the value of the Contract. Increases the maximum contract value to \$942,000.00.
Funding Source	No County General Funds are involved. State of Oregon, Oregon Health Plan (OHP) provided through Trillium Community Health Plan.
Duration	Effective January 1, 2022 and terminates on December 31, 2022.
Previous Board Action	Contract reviewed and approved June 11, 2020, Agenda Item 061120-A5. Amendment #01 reviewed and approved January 7, 2021, Agenda Item 010721-A16.
Counsel Review	Amendment reviewed and approved November 2, 2021, Kathleen Rastetter
Procurement Review	Was this item reviewed by Procurement? No. This is a revenue contract.
Strategic Plan Alignment	Ensuring safe, healthy and secure communities through the provision of mental health and substance use services.
Contact Person	Mary Rumbaugh, Director – Behavioral Health Division 503-742-5305
Contract No.	9693

BACKGROUND:

The Behavioral Health Division of the Health, Housing & Human Services Department requests the approval of Amendment #02 to a revenue contract with Trillium Community Health Plan, Inc. for the funding for certain behavioral health services. Trillium is a Coordinated Care Organization contracted with the Oregon Health Authority to arrange for the provision of managed care services under the Oregon Health Plan (OHP) for OHP enrollees. This Contract provides funds for Behavioral Health Crisis, Behavioral Health Intensive Care Coordination, Wraparound Care Coordination, Choice Care Coordination and Peer & Community-based Services.

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This Amendment is effective January 1, 2022 and continues through December 31, 2022. Amendment value of \$192,000 increases the maximum contract value to \$942,000.00.

RECOMMENDATION:

Staff recommends Board approval of this Amendment.

Respectfully submitted,

Rodney Cook

Rodney A. Cook, Director
Health, Housing & Human Services Department

**AMENDMENT NO. 2 TO
ADMINISTRATIVE SERVICES AGREEMENT**

This Amendment No. 2 to ADMINISTRATIVE SERVICES AGREEMENT (the “**Amendment**”) is made as of this January 1st, 2022 (the “**Amendment Effective Date**”) by and between Trillium Community Health Plan, Inc. (“**Trillium**” or “**Health Plan**”) and Clackamas County, Oregon, a municipal corporation (“**County**” or “**Vendor**”), (collectively, the “**Parties**”), with reference to the following facts:

A. The Parties have previously entered into an Administrative Services Agreement with the Effective Date of September 1, 2020 (the “**Agreement**”), which may have been amended in accordance with its terms;

B. The Parties desire to modify certain terms and conditions contained in the Agreement as provided in this Amendment;

NOW, THEREFORE, in consideration of the mutual promises, covenants, agreements and other undertakings set forth herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

1. Definitions: Defined terms used in this Amendment shall have the same meaning as in the Agreement unless otherwise specifically defined herein.
2. Section 7.1 Term is hereby deleted in its entirety and replaced with the following:

“Section 7.1 Term.

The Term of this Agreement shall commence on the Effective Date and terminate December 31, 2022.

3. Exhibit D “**Oregon Health Plan Product Attachment**” is hereby deleted in its entirety and replaced with the attached Exhibit D, which is incorporated into the Agreement by reference.
4. To the extent that there is a conflict between this Amendment and the Agreement, this Amendment will prevail. Except as amended and modified by this Amendment, all of the terms and conditions of the Agreement shall remain in full force and effect. This Amendment may not be modified except in writing signed by both parties hereto. This Amendment, the Agreement and exhibits and schedules thereto constitute the entire agreement of the parties with respect to the subject matter contained therein and supersede any and all prior or contemporaneous agreements between the parties, whether oral or written, concerning the subject matter contained herein.

IN WITNESS WHEREOF, the parties hereto by their duly authorized representatives executed this Amendment to be effective as of the Amendment Effective Date.

For: Clackamas County, Oregon

For: Trillium Community Health Plan

Signature

Signature

Name

Christopher Hummer

Name

Title

CEO

Title

Date

Date



Approved as to Form: ___

Date: 11/3/2021

EXHIBIT D

OREGON HEALTH PLAN PRODUCT ATTACHMENT

TRILLIUM COMMUNITY HEALTH PLAN, Inc. (“**Contractor**”) has entered into a Health Plan Services Contract, Coordinated Care Organization Contract with the State of Oregon, acting by and through its Oregon Health Authority (“**OHA**”), to provide and pay for Coordinated Care Services (the “**OHP Contract**”). The OHP Contract requires that certain provisions in this Exhibit be included in any subcontracts and contracts with Vendors. This Exhibit is incorporated by reference into and made part of the Administrative Services Agreement (the “**Agreement**”) with respect to goods and services rendered under the Agreement by Vendor (“**Subcontractor**”) to enrollees of Contractor who are enrolled in the Oregon Health Plan managed care program (“**Members**”).

In the event of a conflict or inconsistency with any term or condition in the Agreement relating to goods and services rendered to Members who are enrolled in the Oregon Health Plan managed care program, this Exhibit shall control. Any additional regulatory requirements that may apply with respect to a Member Contract or Members covered by this Exhibit are or will be set forth in the Provider Manual or another Exhibit. To the extent that a Member Contract or a Member is subject to the law cited in the parenthetical at the end of a provision on this Exhibit 1, such provision will apply to the rendering of Covered Services to a Member with such Member Contract, or to such Member, as applicable.

Subcontractor shall comply with the provisions in this Exhibit to the extent that they are applicable to the goods and services provided by Subcontractor under the Agreement; provided, however, that the Agreement shall not terminate or limit Contractor’s legal responsibilities to OHA for the timely and effective performance of Contractor’s duties and responsibilities under the OHP Contract. Capitalized terms used in this Exhibit, but not otherwise defined herein or in the Agreement shall have the same meaning as those terms in the OHP Contract, including definitions incorporated therein by reference. The current version of the OHP Contract, including the definitions, is publicly available at <https://www.oregon.gov/oha/OHPB/Pages/CCO-2-0-Contract-Selection.aspx>, or the OHP Contract definitions may be requested from Contractor.

1. **OHA.** To the extent any provision in the OHP Contract applies to Contractor or Subcontractor with respect to the Work that Contractor is providing to OHA or Subcontractor is providing to Contractor through the Agreement and is not set forth in this Exhibit, that provision shall be incorporated by reference into this Exhibit and shall apply equally to Subcontractor. Subcontractor shall perform any services or obligations subcontracted by the Contractor and meet the obligations and terms and conditions of the OHP Contract as if the Subcontractor is the Contractor. Subcontractor acknowledges and agrees that the Agreement: (i) is in writing, (ii) specifies the subcontracted Work and reporting responsibilities, (iii) is in compliance with the requirements described in the OHP Contract, and (iv) hereby incorporates the applicable provisions of the OHP Contract, based on the scope of Work subcontracted such that the provisions of the Agreement are the same as or substantively similar to the applicable provisions of the OHP Contract. To the extent that Contractor is held liable for a breach of the OHP Contract by Subcontractor, Subcontractor will be liable for Contractor to the same extent, including reimbursement of all penalties, fines and sanctions applied to Contractor due to Subcontractor’s breach of the OHP Contract. (*OHP Contract Exhibit B, Part 4, Sections 11, 11.a(1) and 11.a(2)*).

2. **Termination for Cause.** In addition to pursuing any other remedies allowed at law or in equity or by the Agreement, the Agreement may be terminated by Contractor, or Contractor may take remedial actions and impose other sanctions against Subcontractor, if the Subcontractor's performance is inadequate to meet the requirements of the OHP Contract. In addition, Contractor may terminate the Agreement, or require Subcontractor (if it contracts with Participating Providers) to terminate the Subcontractor's agreement with a Participating Provider, immediately upon receipt of Legal Notice from the State that Participating Provider is precluded from being enrolled as a Medicaid Provider. *(OHP Contract Exhibit B, Part 4, Section 4.a(6) and 111.b(1)(a))*

3. **Monitoring.**

3.1 **By Contractor.** Subcontractor acknowledges and agrees Contractor has the right to monitor the Subcontractor's performance on an ongoing basis, including performing an annual formal review of compliance with delegated responsibilities, and Subcontractor's performance, deficiencies or areas for improvement, in accordance with 42 CFR § 438.230. Upon identification of deficiencies or areas for improvement, Subcontractor shall take the corrective actions identified by Contractor in a Corrective Action Plan. If deficiencies are identified in Subcontractor's performance for any functions outlined in the OHP Contract, whether those are identified by Contractor, by OHA or their respective designees, Subcontractor will respond and remedy those deficiencies within the timeframe determined by OHA. Contractor may revoke the delegation of activities or obligations or pursue other remedies in accordance with the Agreement in instances where OHA or the Contractor determines the Subcontractor has breached the terms of the Agreement. *(OHP Contract Exhibit B, Part 4, Sections 11.a(16) and 11.b(1)(b))*

3.2 **By OHA.** Subcontractor agrees that OHA is authorized to monitor compliance with the requirements in the Statement of Work under the OHP Contract and that methods of monitoring compliance may include review of documents submitted by Subcontractor, OHP Contract performance review, Grievances, on-site review of documentation or any other source of relevant information. *(OHP Contract Exhibit B, Part 9, Section 1.a)*

4. **Required Subcontractor Provisions.**

4.1 Subcontractor will comply with the payment, withholding, incentive and other requirements of 42 CFR §438.6 that are applicable to the Work required under the Agreement. *(OHP Contract Exhibit B, Part 4, Section 11.b(1)(c))*

4.2 Subcontractor will submit to Contractor Valid Claims for services including all the fields and information needed to allow the claim to be processed without further information from the Provider within timeframes for valid, accurate, Encounter Data submission as required under the OHP Contract. Subcontractor will document, maintain and provide to Contractor all Encounter Data records that document Subcontractor's reimbursement to FQHCs, Rural Health Centers and Indian Health Care Providers. Subcontractor will provide all such documents to Contractor upon request of Contractor. *(OHP Contract Exhibit B, Part 4, Sections 11.b(1)(d) and 11.c)*

4.3 Subcontractor agrees to comply with all Applicable Laws, including, without limitation, all Medicaid laws, rules, regulations, as well as all applicable sub-regulatory guidance and contract provisions. *(OHP Contract Exhibit B, Part 4, Section 11.b(1)(e))*

4.4 Subcontractor agrees that OHA, the Oregon Secretary of State, CMS, HHS, the Office of the Inspector General, the Comptroller General of the United States, or their duly authorized representatives and designees, or all of them or any combination of them, have the right to audit, evaluate, and inspect any books, records, contracts, computers or other electronic systems of the Subcontractor, or of the Subcontractor's contractor, that pertain to any aspect of services and activities performed, or determination of amounts payable under the OHP Contract. (*OHP Contract Exhibit B, Part 4, Section 11.b(1)(f)*)

4.5 Subcontractor will make available, for purposes of audit, evaluation, or inspection its premises, physical facilities, equipment, books, records, contracts, computer, or other electronic systems relating to its Medicaid Members. (*OHP Contract Exhibit B, Part 4, Section 11.b(1)(g)*)

4.6 Subcontractor must respond and comply in a timely manner to any and all requests from OHA or its designee for information or documentation pertaining to Work outlined in the OHP Contract. (*OHP Contract Exhibit B, Part 4, Section 11.b(1)(h)*)

4.7 Subcontractor agrees that the right to audit by OHA, CMS, the DHHS Inspector General, the Comptroller General or their designees, will exist for a period of ten (10) years from the Expiration Date of the OHP Contract or from the date of completion of any audit, whichever is later. (*OHP Contract Exhibit B, Part 4, Section 11.b(1)(i)*)

4.8 If OHA, CMS, or the DHHS Inspector General determine that there is a reasonable possibility of fraud or similar risk, OHA, CMS, or the DHHS Inspector General may inspect, evaluate, and audit the Subcontractor at any time. (*OHP Contract Exhibit B, Part 4, Section 11.b(1)(j)*)

4.9 Subcontractor will adopt and comply with all of Contractor's Fraud, Waste, and Abuse policies, procedures, reporting obligations, and annual Fraud, Waste, and Abuse Prevention Plan. Subcontractor will comply with and perform all of the same obligations, terms and conditions of Contractor as set forth in Exhibit B, Part 9 of the OHP Contract, including Section 11.b(8) of such Part. Unless expressly provided otherwise in the applicable provision, Subcontractor must report any Provider and Member Fraud, Waste, or Abuse to Contractor, and Contractor will be responsible for reporting to OHA or the applicable agency, division, or entity. Accordingly, the timing for reporting obligations of Subcontractor are shorter than those of Contractor's time for reporting to OHA so that Contractor may timely report such incidents to OHA in accordance with the OHA Contract. (*OHP Contract Exhibit B, Part 4, Section 11.b(1)(k)*)

4.10 Subcontractor will allow Contractor to perform Monitoring, audit, and other review processes for the purpose of determining and reporting on compliance with the terms and conditions of the Agreement, including, without limitation, compliance with Medical and other records security and retention policies and procedures. (*OHP Contract Exhibit B, Part 4, Section 11.b(1)(l)*)

4.11 Subcontractor will report any Other Primary, third-party Insurance to which a Member may be entitled. Subcontractor must report such information to Contractor within a timeframe that enables Contractor to report such information to OHA within thirty (30) days of the Subcontractor becoming aware that the applicable Member has such coverage, as required under Section 16, Exhibit B, Part 8 of the OHP Contract. (*OHP Contract Exhibit B, Part 4, Section 11.b(1)(n)*)

4.12 Subcontractors will provide, in a timely manner upon request, as requested by Contractor in accordance with the request made by OHA, or as may be requested directly by OHA, all Third-Party

Liability eligibility information and any other information requested by OHA or Contractor, as applicable, in order to assist in the pursuit of financial recovery. (*OHP Contract Exhibit B, Part 4, Section 11.b(1)(o)*)

5. **Hold Harmless.** Subcontractor understands and agrees that neither OHA nor a Member receiving services are liable for any costs or charges related to Contractor-authorized Covered Services rendered to a Member whether in an emergency or otherwise, including Holistic Care. Furthermore, Subcontractor shall not hold a Member liable for any payments for any of the following: (a) Contractor's or Subcontractor's debt due to Contractor's or Subcontractor's insolvency; (b) Covered Services authorized or required to be provided under the OHP Contract to a Member, for which (i) the State does not pay Contractor; or (ii) Contractor does not pay Subcontractor that furnishes the services under a contractual, referral or other arrangement; or (iii) Covered Services furnished pursuant to the Agreement to the extent that those payments are in excess of the amount that the Member would owe if Contractor provided the services directly. Subcontractor may not initiate or maintain a civil action against a Member to collect any amounts owed by the Contractor for which the Member is not liable to the Subcontractor under the Agreement. Nothing in this paragraph 5 shall impair the right of the Subcontractor to charge, collect from, attempt to collect from or maintain a civil action against a Member for any of the following: (a) deductible, copayment, or coinsurance amounts, (b) health services not covered by the Contractor or the OHP Contract, and (c) health services rendered after the termination of the Agreement, unless the health services were rendered during the confinement in an inpatient facility and the confinement began prior to the date of termination of the Agreement or unless the Subcontractor has assumed post-termination treatment obligations under the Agreement. (*OHP Contract Exhibit B Part 8, Section 4.b; Exhibit L, Section 5.a(5)*)

6. **Continuation.** Subcontractor shall continue to provide Covered Services during periods of Contractor insolvency or cessation of operations through the period for which CCO Payments were made to Contractor.

7. **Billing and Payment.**

7.1 **Non-Covered Services.** Subcontractor shall not, and will ensure that its subcontractors including any Providers do not, bill Members for services that are not Covered Services under the OHP Contract unless: (a) there is a full written disclosure or waiver on file signed by the Member, in advance of the service being provided, in accordance with OAR 410-141-3565, and (b) the Provider has complied with the requirements set forth in OAR 410-120-1280(3)(h). (*OHP Contract Exhibit B, Part 4, Section 11.a.11; Part 8, Section 4.g*)

7.2 **Claims Submission.** Pursuant to OAR 410-141-3565, Subcontractor must submit all billings for Members to Contractor within four months of the Date of Service. However, Subcontractor may, if necessary, submit their claims to Contractor within twelve (12) months from the date of Service under the following circumstances: (a) billing is delayed due to retroactive deletions or enrollments; (b) pregnancy of the Member; (c) Medicare is the primary payer, unless Contractor is responsible for Medicare reimbursement; (d) cases involving Third-Party Resources; or (e) other cases that delay the initial billing to Contractor, unless the delay was due to the Subcontractor's failure to verify a Member's eligibility. (*OHP Contract Exhibit B, Part 8, Section 5.b*)

7.3 **Provider-Preventable Conditions.** No payment under the Agreement will be made for any Provider-Preventable Conditions or Health Care-Acquired Conditions, as specified in the OHP Contract. Subcontractor will comply with the reporting requirements regarding Provider-Preventable Conditions or Health Care-Acquired Conditions specified by Contractor or OHA as a condition of payment from Contractor. Subcontractor will identify Provider-Preventable Conditions that are associated with claims for CCO Payment or with courses of treatment furnished to Members for which CCO Payment would otherwise be available. *(OHP Contract Exhibit B, Part 8, Section 5.i)*

7.4 **Eligibility Verification.** Subcontractor will verify current Member eligibility using the Automated Voice Response system, 270/271 Health Care Eligibility Benefit Inquiry and Response transactions, or the MMIS Web Portal. *(OHP Contract Exhibit B, Part 8, Section 7.b)*

7.5 **Payment Eligibility.** Subcontractor understands and agrees that if Contractor is not paid or not eligible for payment by OHA for services provided, neither will Subcontractor be paid or be eligible for payment. *(OHP Contract Exhibit B, Part 4, Section 11.d)*

8. **Record Keeping.** Subcontractor shall provide OHA, its external quality review organization, or any of its other designees, agent or subcontractors (or a combination, or all, of them) with timely access to records and facilities and cooperate with such parties in the collection of information for the purposes of Monitoring compliance with the OHP Contract, including but not limited to verification of services actually provided, and for developing, Monitoring and analyzing performance and outcomes. Collection methods with which Subcontractor must cooperate may include, without limitation: consumer surveys, on-site reviews, medical chart reviews, financial reporting and financial record reviews, interviews with staff, and other means determined by OHA. *(OHP Contract Exhibit B Part 8, Section 1.b)*

9. **Quality Review.** In conformance with 42 CFR § 438.350 and § 438.358, and 42 CFR §457.1250, Subcontractor shall permit OHA and its designees to have access to, or provide OHA with, Subcontractor's records and facilities, and information requested by OHA and its designees, for the purpose of an annual External Quality Review of compliance with all Applicable Laws and the OHP Contract as well as the quality outcomes and timeliness of, and access to, services provided under the OHP Contract. *(OHP Contract Exhibit B Part 10, Section 8.a)*

10. **Access to Records.** Subcontractor shall maintain all financial records related to the OHP Contract in accordance with best practices or National Association of Insurance Commissioners accounting standards. In addition, Subcontractor shall maintain any other records in such a manner as to clearly document Subcontractor's performance. Subcontractor shall ensure timely access to its Records to OHA, the Secretary of State's Office, CMS, the Comptroller General of the United States, DHHS; the Office of the Inspector General, the Comptroller General of the United States, the Oregon Department of Justice Oregon Health Plan Fraud Control Unit; and their duly authorized representatives for the purpose of performing examinations and audits and making excerpts and transcripts, evaluating compliance with the OHP Contract, and evaluating the quality, appropriateness and timeliness of services. Subcontractor further acknowledges and agrees that the foregoing entities may, at any time, inspect the premises, physical facilities, computer systems and any other equipment and facilities where Medicaid-related activities or Work is conducted or equipment is used (or both conducted and used). The right to audit under this Section exists for 10 years from, as applicable, the Expiration Date or the date of termination, or from the date of completion of any audit, whichever is later. Subcontractor shall, upon request and without charge, provide a suitable work area and copying capabilities to facilitate such a review or audit. Subcontractor shall retain and keep accessible all

Records for the longer of ten (10) years: (a) the retention period specified in the OHP Contract for certain kinds of records; (b) the period as may be required by applicable law, including the records retention schedules set forth in OAR Chapters 410 and 166; or (c) until the conclusion of any audit, controversy or litigation arising out of or related to the OHP Contract. The rights of access in this paragraph 10 are not limited to the required retention period, but shall last as long as the Records are retained. (*OHP Contract Exhibit D, Section 15*)

11. **Clinical Records and Confidentiality of Member Records.** Subcontractor shall comply with Contractor's policies and procedures that ensure maintenance of a record keeping system that includes maintaining the security of records as required by the Health Insurance Portability and Accountability Act, 42 USC 1320d *et. seq.*, and the federal regulations implementing the Act (collectively, "**HIPAA**"), and complete Clinical Records that document the Covered Services provided to Members. Subcontractor shall be subject to and take the corrective actions identified by Contractor in a Corrective Action Plan. (*OHP Contract Exhibit B Part 8, Section 2.a*)

12. **Reporting of Abuse.** Subcontractor shall comply with all patient abuse reporting requirements and fully cooperate with the State for purposes of ORS 124.050 *et. seq.*, ORS 419B.010 *et. seq.*, ORS 430.735 *et. seq.*, ORS 433.705 *et. seq.*, ORS 441.630 *et. seq.*, and all applicable Administrative Rules. In addition, Subcontractor shall comply with all protective services, investigation and reporting requirements described in (a) OAR 407-045-0000 through 407-045-0370 (abuse investigations by the Office of Investigations and Training); (b) ORS 430.735 through 430.765 (persons with mental illness or developmental disabilities); (c) ORS 124.005 to 124.040 (elderly persons and persons with disabilities abuse); and (d) ORS 441.650 to 441.680 (residents of long term care facilities). (*OHP Contract Exhibit D, Section 33.b*)

13. **Fraud and Abuse.** Subcontractor shall comply with Contractor's fraud and Abuse policies to prevent and detect fraud and Abuse activities as such activities relate to the OHP Contract, and shall promptly refer all suspected cases of fraud and Abuse to the Contractor and the Oregon Department of Justice Medicaid Fraud Control Unit ("**MFCU**"). Subcontractor shall permit the MFCU or OHA or both to inspect, evaluate, or audit books, records, documents, files, accounts, and facilities maintained by or on behalf of Subcontractor, as required to investigate an incident of fraud and Abuse. Subcontractor shall cooperate with the MFCU and OHA investigator during any investigation of fraud and Abuse. Subcontractor shall provide copies of reports or other documentation regarding any suspected fraud at no cost to MFCU or OHA during an investigation. (*OHP Contract Exhibit B Part 9, Sections 17.d and 17.f*)

14. **Certification.** Subcontractor represents and warrants that all claims data, either directly or through a third party submitter, is and will be accurate, truthful and complete in accordance with OARs 410-141-3565, 410-141-3570 and OAR 410-120-1280. (*OHP Contract Exhibit J, Section 1.b*)

15. **Mental Health Services and Substance Use Disorder Services.**

15.1 Community Services. If Subcontractor arranges for the provision of substance use disorder services, Subcontractor shall provide to Members, to the extent of available community resources and as Medically Appropriate, information and Referral to Community services which may include, but are not limited to: child care; elder care; housing; Transportation; employment; vocational training; educational services; mental health services; financial services; and legal services. (*OHP Contract Exhibit M, Section 7.g*)

15.2 Training. Where Subcontractor provides Substance Use Disorder services and evaluates Members for access to and length of stay in Substance Use Disorder programs and services, Subcontractor represents and warrants that it will use the most current American Society of Addiction Medicine (ASAM) Patient Placement Criteria for the Treatment of Substance-Related Disorders for level of care placement decisions, and that Subcontractor has the training and background to evaluate medical necessity for Substance Use Disorder services using the ASAM. (*OHP Contract Exhibit M, Section 22.e*)

16. **Compliance with Applicable Law.**

16.1 Subcontractor shall comply with all State and local laws, rules, regulations, executive orders and ordinances applicable to the OHP Contract or to the performance of Work under the Agreement, as they may be adopted, amended or repealed from time to time, including but not limited to the following: (a) ORS Chapter 659A.142; (b) OHA rules pertaining to the provision of integrated and coordinated care and services, OAR Chapter 410, Division 141; (c) all other OHA Rules in OAR Chapter 410; (d) rules in OAR Chapter 309, Divisions 012, 014, 015, 018, 019, 022, 032 and 040, pertaining to the provisions of mental health services; (e) rules in OAR Chapter 415 pertaining to the provision of Substance Use Disorders services; (f) state law establishing requirements for Declaration for Mental Health Treatment in ORS 127.700 through 127.737; and (g) all other applicable requirements of State civil rights and rehabilitation statutes, rules and regulations. These laws, regulations, executive orders and ordinances are incorporated by reference herein to the extent that they are applicable to the OHP Contract and required by law to be so incorporated. OHA's performance under this Contract is conditioned upon compliance with the provisions of ORS 279B.220, ORS 279B.225, 279B.230, 279B.235 and 279B.270, which are incorporated by reference herein. Subcontractor shall, to the maximum extent economically feasible in its performance related to the OHP Contract, use recycled paper (as defined in ORS 279A.010(1)(gg)), recycled PETE products (as defined in ORS 279A.010(1)(hh)), and other recycled products (as "recycled product" is defined in ORS 279A.010(1)(ii)). (*OHP Contract Exhibit D, Sections 2.a*)

16.2 Subcontractor shall comply with the federal laws as set forth or incorporated, or both, in the OHP Contract and all other federal laws applicable to Subcontractor's performance in connection with the OHP Contract as they may be adopted, amended or repealed from time to time. (*OHP Contract Exhibit D, Sections 2.c*)

17. **Americans with Disabilities Act.** In compliance with the Americans with Disabilities Act of 1990, any written material that is generated and provided by Subcontractor under the OHP Contract to Clients or Members, including Medicaid-Eligible Individuals, shall, at the request of such Clients or Members, be reproduced in alternate formats of communication, to include Braille, large print, audiotape, oral presentation, and electronic format. Subcontractor shall not be reimbursed for costs incurred in complying with this provision. (*OHP Contract Exhibit D, Sections 2.b*)

18. **Information/Privacy/Security/Access.** If the Work performed in connection with the OHP Contract permits Subcontractor to have access to have access or otherwise use of any OHA Information Asset or Network and Information System to which security and privacy requirements apply, and Subcontractor is granted access to such OHA Information Assets or Network and Information Systems, Subcontractor shall comply with the terms and conditions applicable to such access or use, including OAR 943-014-0300 through OAR 943-014-0320, as such rules may be revised from time to time. For purposes of this Section, “Information Asset” and “Network and Information System” have the meaning set forth in OAR 943-014-0305, as such rule may be revised from time to time. *(OHP Contract Exhibit D, Sections 16)*

19. **Governing Law, Consent to Jurisdiction.** The Agreement and the OHP Contract are governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively, the “**Claim**”) between OHA or any other agency or department of the State of Oregon, or both, and Contractor or Subcontractor that arises from or relates to the OHP Contract shall be brought and conducted solely and exclusively within the Circuit Court of Marion County or of Multnomah County for the State of Oregon; provided, however, (a) if federal jurisdiction exists then OHA may remove the Claim to federal court, and (b) if a Claim must be brought in or is removed to a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this section be construed as a waiver by the State of Oregon of the jurisdiction of any court or of any form of defense to or immunity from any Claim whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise. **SUBCONTRACTOR, BY EXECUTION OF THE AGREEMENT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS.** *(OHP Contract Exhibit D, Sections 1)*

20. **Independent Contractor.**

20.1. Not an Employee of the State. Subcontractor represents and warrants that it is not an officer, employee, or agent of the State of Oregon as those terms are used in ORS 30.265 or otherwise. *(OHP Contract Exhibit D, Sections 3.a)*

20.2. Current Work for State or Federal Government. If Subcontractor is currently performing work for the State of Oregon or the federal government, Subcontractor by signature to the Agreement represents and warrants that Subcontractor’s Work to be performed under the Agreement creates no potential or actual conflict of interest as defined by ORS Chapter 244 and that no statutes, rules or regulations of the State of Oregon or federal agency for which Subcontractor currently performs work would prohibit Subcontractor’s work under the Agreement or the OHP Contract. If compensation under the Agreement is to be charged against federal funds, Subcontractor certifies that it is not currently employed by the federal government. *(OHP Contract Exhibit D, Sections 3.b)*

20.3. Taxes. Subcontractor is responsible for all federal and State taxes applicable to compensation paid to Subcontractor under the Agreement, and unless Subcontractor is subject to backup withholding, OHA and Contractor will not withhold from such compensation any amount to cover Subcontractor’s federal or State tax obligations. Subcontractor is not eligible for any social security, unemployment insurance or workers’ compensation benefits from compensation paid to Subcontractor under the Agreement or the OHP Contract, except as a self-employed individual. *(OHP Contract Exhibit D, Sections 3.c)*

20.4. **Control.** Subcontractor shall perform all Work as an independent contractor. Subcontractor agrees that OHA reserves the right (i) to determine and modify the delivery schedule for the Work, and (ii) to evaluate the quality of the Work Product; however, neither OHA nor Contractor will control the means or manner of Subcontractor's performance. Subcontractor is responsible for determining the appropriate means and manner of performing the Work delegated under the Agreement. (*OHP Contract Exhibit D, Sections 3.d*)

21. **Representations and Warranties.** Subcontractor represents and warrants to Contractor and OHA that: (a) Subcontractor has the power and authority to enter into and perform the Agreement; (b) the Agreement, when executed and delivered, shall be a valid and binding obligation of Subcontractor enforceable in accordance with its terms, (c) Subcontractor has the skill and knowledge possessed by well-informed members of its industry, trade or profession and Subcontractor will apply that skill and knowledge with care and diligence to perform the Work in a professional manner and in accordance with standards prevalent in Subcontractor's industry, trade or profession; (d) Subcontractor shall, at all times during the term of the Agreement, be qualified, professionally competent, and duly licensed to perform the Work; and (e) Subcontractor prepared its application related to the Agreement or OHP Contract, if any, independently from all other Contractors and subcontractors, and without collusion, Fraud or other dishonesty. The warranties set forth in this paragraph are in addition to, and not in lieu of, any other warranties provided. (*OHP Contract Exhibit D, Sections 4*)

22. **Assignment, Successor in Interest.** Subcontractor shall not assign or transfer its interest in the Agreement or the OHP Contract (if any), voluntarily or involuntarily, whether by merger, consolidation, dissolution, operation of law, or in any other matter, without prior written consent of Contractor and/or OHA. Any such assignment or transfer, if approved, is subject to such conditions and provisions as Contractor or OHA may deem necessary, including but not limited to Exhibit B, Part 8, Section 14 of the OHP Contract. No approval by Contractor or OHA of any assignment or transfer of interest shall be deemed to create any obligation of Contractor or OHA in addition to those set forth in the Agreement or the OHP Contract, respectively. The provisions of the Agreement shall be binding upon and inure to the benefit of the parties, their respective successors and permitted assigns. (*OHP Contract Exhibit D, Sections 19*)

23. **Subcontracts of Subcontractor.** Where Subcontractor is permitted to subcontract certain functions of the Agreement, Subcontractor shall notify Contractor, in writing, of any subcontract(s) for any of the Work required under the Agreement and the OHP Contract other than information submitted in Exhibit G of the OHP Contract. In addition, Subcontractor shall ensure that any subcontracts, including any subcontracts with Participating Providers, are in writing and include all the requirements set forth in this Exhibit that are applicable to the service or activity delegated under the subcontract.

23.1 **Certified Minority-owned, Woman-owned, or Emerging Small Business (MWESB).** Contractor shall maintain an active identification, verification and recruiting process with the goal of expanding MWESB-certified Subcontractors. Contractor shall provide guidance and direction to Subcontractors seeking certification to include identifying resources needed for such Subcontractors to achieve certification. Contractor shall take reasonable steps, such as through a quote, bid, proposal, or similar process, to ensure that Oregon's MWESB-certified firms are provided an equal opportunity to compete for and participate in the performance of any subcontracts under this Agreement. If there may be opportunities for subcontractors of Subcontractors to work on the Agreement, it is the

expectation of Contractor that the Subcontractor will take reasonable steps to ensure inclusion, participation, and selection of MWESB-certified firms. (*OHP Contract Exhibit B, Part 4, Section 12*)

24. **Severability.** If any term or provision of the OHP Contract, the Agreement or this Exhibit is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provision shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the OHP Contract, the Agreement or this Exhibit did not contain the particular term or provision held to be unlawful. (*OHP Contract Exhibit D, Section 24*)

25. **Limitations of Liabilities.** Subcontractor agrees that neither OHA, Contractor nor a Member will be held liable for any of Subcontractor's debts or liabilities in the event of insolvency. (*OHP Contract Exhibit D, Section 8.d; Exhibit L, Section 5.a(5)(a)*)

26. **Compliance with Federal Laws.** Subcontractor shall comply with federal laws as set forth or incorporated, or both, in the OHP Contract and all other federal laws applicable to Subcontractor's performance relating to the OHP Contract or the Agreement. For purposes of the OHP Contract and the Agreement, all references to federal laws are references to federal laws as they may be amended from time to time. In addition, unless exempt under 45 CFR Part 87 for Faith-Based Organizations, or other federal provisions, Subcontractor shall comply with the following federal requirements to the extent that they are applicable to the OHP Contract and the Agreement:

26.1. **Federal Provisions.** Subcontractor shall comply with all federal laws, regulations, and executive orders applicable to the OHP Contract or to the delivery of Work under the Agreement. Without limiting the generality of the foregoing, Subcontractor expressly agrees to comply with the following laws, regulations and executive orders to the extent they are applicable to the OHP Contract and the Agreement: (a) Title VI and VII of the Civil Rights Act of 1964, as amended, (b) 45 CFR Part 84 which implements Title V, Sections 503 and 504 of the Rehabilitation Act of 1973, as amended, (c) the Americans with Disabilities Act of 1990, as amended, (d) Section 1557 of the Patient Protection and Affordable Care Act (PPACA), (e) Executive Order 11246, as amended, (f) the Health Insurance Portability and Accountability Act of 1996, as amended, (g) the Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended, (h) the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, (i) the Mental Health Parity and Addiction Equity Act of 2008, as amended; (j) CMS regulations (including 42 CFR Part 438, subpart K) and guidance regarding mental health parity, including 42 CFR 438.900 *et. seq.*; (k) all regulations and administrative rules established pursuant to the foregoing laws, (l) all other applicable requirements of federal civil rights and rehabilitation statutes, rules and regulations, and (m) all federal law governing operation of community mental health programs, including without limitation, all federal laws requiring reporting of Member abuse. These laws, regulations and executive orders are incorporated by reference herein to the extent that they are applicable to the OHP Contract and the Agreement and required by law to be so incorporated. No federal funds may be used to provide Work in violation of 42 USC 14402. (*OHP Contract Exhibit E, Section 1*)

26.2. **Equal Employment Opportunity.** If the Agreement, including amendments, is for more than \$10,000, then Subcontractor shall comply with Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR Part 60). (*OHP Contract Exhibit E, Section 2*)

26.3. **Clean Air, Clean Water, EPA Regulations.** If the Agreement, including amendments, exceeds \$100,000 then Subcontractor shall comply with all applicable standards, orders, or requirements

issued under Section 306 of the Clean Air Act (42 USC 7606), the Federal Water Pollution Control Act as amended (commonly known as the Clean Water Act) (33 USC 1251 to 1387), specifically including, but not limited to Section 508 (33 USC 1368), Executive Order 11738, and Environmental Protection Agency regulations (2 CFR Part 1532), which prohibit the use under nonexempt federal contracts, grants or loans of facilities included on the EPA List of Violating Facilities. Violations shall be reported in writing to OHA, the U.S. Department of Health and Human Services and the appropriate Regional Office of the Environmental Protection Agency. Subcontractor shall include in all contracts with subcontractors receiving more than \$100,000, language requiring the subcontractor to comply with the federal laws identified in this subparagraph. (*OHP Contract Exhibit E, Section 3*)

26.4. Energy Efficiency. Subcontractor shall comply with applicable mandatory standards and policies relating to energy efficiency that are contained in the Oregon energy conservation plan issued in compliance with the Energy Policy and Conservation Act, 42 USC 6201 et seq. (Pub. L. 94-163). (*OHP Contract Exhibit E, Section 4*)

26.5. Truth in Lobbying. By signing the Agreement, Subcontractor certifies, to the best of the Subcontractor's knowledge and belief each of the following.

a. No federal appropriated funds have been paid or will be paid, by or on behalf of Subcontractor, 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. (*OHP Contract Exhibit E, Section 5.a*)

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 Subcontractor shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying" in accordance with its instructions. (*OHP Contract Exhibit E, Section 5.b*)

c. Subcontractor 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. (*OHP Contract Exhibit E, Section 5.c*)

d. The certification made under this Section is a material representation of fact upon which reliance was placed when the Agreement was made or entered into. (*OHP Contract Exhibit E, Section 5.d*)

e. No part of any federal funds paid to Subcontractor under the Agreement may 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. (*OHP Contract Exhibit E, Section 5.e*)

f. No part of any federal funds paid to Subcontractor under the Agreement may 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. (*OHP Contract Exhibit E, Section 5.f*)

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. (*OHP Contract Exhibit E, Section 5.g*)

h. No part of any federal funds paid to Subcontractor under the 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. (*OHP Contract Exhibit E, Section 5.h*)

26.6. HIPAA Compliance. Subcontractor acknowledges and agrees that Contractor is a “covered entity” for purpose of the privacy and security provisions of HIPAA. Accordingly, Subcontractor shall comply with HIPAA and the following:

a. Privacy and Security of Individually Identifiable Health Information. Individually Identifiable Health Information (“**IIHI**”) about specific individuals is protected from unauthorized use or disclosure consistent with the requirement of HIPAA. IIHI relating to specific individuals may be exchanged between Subcontractor and Contractor and between Subcontractor and OHA for purposes directly related to the provision of services to Members which are funded in whole or in part under the OHP Contract. However, Subcontractor shall not use or disclose any IIHI about specific individuals in a manner that would violate (i) the HIPAA Privacy Rules in CFR Parts 160 and 164; (ii) the OHA Privacy Rules, OAR 407-014-0000 *et. seq.*, or (iii) the OHA Notice of Privacy Practices, if done by OHA. A copy of the most recent OHA Notice of Privacy Practices is posted on the OHA web site at: <https://sharedsystems.dhsoha.state.or.us/forms/>, Form number ME2090 Notice of Privacy Practices, or may be obtained from OHA. (*OHP Contract Exhibit E, Section 6.a*)

b. HIPAA Information Security. Subcontractor shall adopt and employ reasonable administrative and physical safeguards consistent with the Security Rule in 45 CFR Part 164 to ensure that Member Information is used by or disclosed only to the extent necessary for the permitted use or disclosure and consistent with applicable State and federal laws and the terms and conditions of the OHP Contract and the Agreement. Security incidents involving Member Information must be immediately reported to the Contractor’s privacy officer and to the Oregon Department of Human Services’ (“**DHS**”) Privacy Officer. (*OHP Contract Exhibit E, Section 6.b*)

c. Data Transactions Systems. Subcontractor shall comply with the HIPAA standards for electronic transactions published in 45 CFR Part 162 and the OHA Electronic Data Transmission Rules, OAR 943-120-0100 through 943-120-0200. If Contractor intends to exchange electronic data transactions with OHA in connection with Claims or encounter data, eligibility or enrollment information, authorizations or other electronic transactions, Subcontractor shall comply with OHA Electronic Data Transmission Rules. (*OHP Contract Exhibit E, Section 6.c*)

d. Consultation and Testing. If Subcontractor reasonably believes that the Contractor's or OHA's data transactions system or other application of HIPAA privacy or security compliance policy may result in a violation of HIPAA requirements, Subcontractor shall promptly consult Contractor. Subcontractor agrees that Contractor or OHA may initiate a request for testing of HIPAA transaction requirements, subject to available resources and OHA testing schedule. (*OHP Contract Exhibit E, Section 6.d*)

26.7. Resource Conservation and Recovery. Subcontractor shall comply with all mandatory standards and policies that relate to resource conservation and recovery pursuant to the Resource Conservation and Recovery Act (codified at 42 USC 6901 *et. seq.*). Section 6002 of that Act (codified at 42 USC 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. (*OHP Contract Exhibit E, Section 7*)

26.8. Audits. Subcontractor shall comply with the applicable audit requirements and responsibilities set forth in the OHP Contract and applicable state or federal law and Office of Management and Budget Circular A-133 entitled "Audits of States, Local Governments and Non-Profit Organizations", as amended and supplemented, including by the December 2013 Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards. (*OHP Contract Exhibit E, Section 8.a*)

26.9. Debarment and Suspension.

a. Subcontractor represents and warrants that it is not excluded by the U.S. Department of Health and Human Services Office of the Inspector General or listed on the non-procurement portion of the General Service Administration's "List of Parties Excluded from Federal Procurement or Nonprocurement Programs" in accordance with Executive Orders No. 12549 and No. 12689, "Debarment and Suspension." (See 2 CFR Part 180) If Subcontractor has awards that exceed the simplified acquisition threshold, Subcontractor shall provide the required certification regarding their exclusion status and that of their principals prior to award. (*OHP Contract Exhibit E, Section 9*)

b. Subcontractor acknowledges and agrees and shall ensure that no amounts are paid to a Provider that could be excluded from participation in Medicare or Medicaid for any of the following reasons: (i) the Provider is Controlled by a Sanctioned individual, (ii) the Provider has a contractual relationship that provides for the administration, management or provision of Medical Services, or the establishment of policies, or the provision of operational support for the administration, management or provision of Medical Services, either directly or indirectly, with an individual convicted of certain crimes as described in section 1128(b)(8)(B) of the Social Security Act, (iii) the Provider employs or contracts, directly or indirectly, for the furnishing of health care, Utilization Review, medical social work, or administrative services, with one of the following: (A) any individual or entity excluded from participation in federal health care programs or (B) any entity that

would provide those services through an excluded individual or entity. Subcontractor is prohibited from knowingly having a person with ownership of 5% or more of the Subcontractor's equity if such person is (or is affiliated with a person or entity that is) debarred, suspended, or excluded from participation in federal healthcare programs. (*OHP Contract Exhibit E, Section 9*)

c. Subcontractor shall not refer Members to or use Providers who have been terminated from OHA or excluded as Medicare, CHIP, or Medicaid Providers by CMS or who are subject to exclusion for any lawful conviction by a court for which the Provider could be excluded under 42 CFR §1001.101 and 42 CFR §455.3(b), and Subcontractor shall not employ or contract with Providers excluded from participation in Federal health care programs under 42 CFR §438.214(d). (*OHP Contract Exhibit B, Part 4, Section 6.g*)

26.10. Criminal Background Checks. Subcontractor will require its employees to undergo and pass a criminal background check prior to starting any work or services identified in the Agreement; (*OHP Contract Exhibit B, Part 4, Section 12.a(6)*)

26.11. Pro-Children Act. Subcontractor shall comply with the Pro-Children Act of 1994 (codified at 20 USC Section 6081 *et. seq.*) (*OHP Contract Exhibit E, Section 10*)

26.12. Clinical Laboratory Improvements. If Subcontractor is a laboratory, or contracts or uses any laboratories, Subcontractor shall comply and ensure compliance with the Clinical Laboratory Improvement Amendments (CLIA 1988), 42 CFR Part 493 Laboratory Requirements and ORS 438, which require that all laboratory testing sites providing services under the OHP Contract shall have either a Clinical Laboratory Improvement Amendments ("CLIA") certificate of waiver or a certificate of registration along with a CLIA identification number. Laboratories with certificates of waiver will provide only the eight types of tests permitted under the terms of the waiver. Laboratories with certificates of registration may perform a full range of laboratory tests. (*OHP Contract Exhibit E, Section 13*)

26.13. OASIS. To the extent applicable, Subcontractor shall comply with the Outcome and Assessment Information Set ("OASIS") reporting requirements and notice requirements for skilled services provided by Home Health Agencies, pursuant to the CMS requirements published in 42 CFR 484.20, and such subsequent regulations as CMS may issue in relation to the OASIS program. (*OHP Contract Exhibit E, Section 19*)

26.14. Patient Rights Condition of Participation. To the extent applicable, Subcontractor shall comply with the Patient Rights Condition of Participation that hospitals must meet to continue participation in the Oregon Health Plan program, pursuant to 42 CFR Part 482. For purposes of this Exhibit, hospitals include short-term, psychiatric, rehabilitation, long-term, and children's hospitals. (*OHP Contract Exhibit E, Section 20*)

26.15. Federal Grant Requirements. To the extent applicable to Subcontractor or to the extent OHA requires Contractor and its Subcontractors to supply information or comply with procedures to permit OHA to satisfy its obligations federal grant obligations or both, Subcontractor must comply with the following parts of 45 CFR: (a) Part 74, including Appendix A (uniform federal grant administration requirements); (b) Part 92 (uniform administrative requirements for grants to state, local and tribal governments); (c) Part 80 (nondiscrimination under Title VI of the Civil Rights Act); (d) Part 84 (nondiscrimination on the basis of handicap); (e) Part 91 (nondiscrimination on the basis of age); and (f) Part 95 (and CHIP federal grant administration requirements). Subcontractor shall

not expend any of the funds paid under the Agreement for roads, bridges, stadiums, or any other item or service not covered under the Oregon Health Plan (“OHP”). (*OHP Contract Exhibit E, Section 21*)

26.16. Title II of the Americans with Disabilities Act. Subcontractor shall comply with the integration mandate in 28 CFR 35.130(d), Title II of the Americans with Disabilities Act and its implementing regulations published in the Code of Federal Regulations.

27. **Marketing.** Subcontractor shall not initiate contact nor Market independently to potential Clients, directly or through any agent or independent contractor, in an attempt to influence an OHP Client’s Enrollment with Contractor, without the express written consent of OHA. Subcontractor shall not conduct, directly, door-to-door, telephonic, mail, electronic, or other Cold Call Marketing practices to entice a Client to enroll with Contractor, or to not enroll with another OHP contractor. Subcontractor shall not seek to influence a Client’s Enrollment with the Contractor in conjunction with the sale of any other insurance. Furthermore, Subcontractor understands that OHA must approve, prior to distribution, any written communication by Subcontractor that (a) is intended solely for Members, and (b) pertains to provider requirements for obtaining coordinated care services, care at service site or benefits. Notwithstanding anything to the contrary in this paragraph 27, Subcontractor may post a sign listing all OHP Coordinated Care Organizations to which Subcontractor belongs and display Coordinated Care Organization-sponsored health promotional materials. (*OHP Contract Exhibit B, Part 3, Section 13.a*)

28. **Workers’ Compensation Coverage.** If Subcontractor employs subject workers, as defined in ORS 656.027, then Subcontractor shall comply with ORS 656.017 and shall provide workers’ compensation insurance coverage for those workers, unless they meet the requirements for an exemption under ORS 656.126(2). (*OHP Contract Exhibit F, Section 1*)

29. **Third Party Resources.**

29.1. Provision of Covered Services. Subcontractor will ensure that the provision of Covered Services is not refused to a Member because of a potential Third Party Liability for payment for the Covered Services. (*OHP Contract Exhibit B, Part 8, Section 17.k*)

29.2. Reimbursement. Subcontractor agrees that where Medicare and Contractor have paid for services, and the amount available from the Third Party Payer is not sufficient to fully reimburse both programs for their respective claims, the Third Party Payer must first reimburse Medicare the full amount of its Claim before any other entity, including Subcontractor, may be paid. In addition, if a Third Party Payer has reimbursed Subcontractor, or if a Member, after receiving payment from a Third Party Payer, has reimbursed Subcontractor, then the parties who received such reimbursements must reimburse Medicare up to the full amount received from the Third Party Payer, if Medicare is unable to recover its payment from any remaining amounts payable by the Third Party Payer. (*OHP Contract Exhibit B, Part 8, Sections 17.r and 17.s*)

29.3. Confidentiality in Recovery Actions. When engaging in Third Party Liability recovery actions, Subcontractor shall comply with, and require agents to comply with, federal and State confidentiality requirements described in Exhibit E of the OHP Contract, and any other applicable additional confidentiality obligations required under the OHP Contract and state law. (*OHP Contract Exhibit B, Part 8, Section 17.v*)

29.4. **No Compensation.** Except as permitted by the OHP Contract including Third Party Resources recovery, Subcontractor will not be compensated for Work performed under the OHP Contract from any other department of the State, nor from any other source including the federal government. (*OHP Contract Exhibit B Part 8, Section 4.c*)

29.5. **Third Party Liability.** Subcontractor shall maintain records of Subcontractor's actions related to Third Party Liability recovery, and make those records available for Contractor and OHA review.

29.6. **Right of Recovery.** Subcontractor shall comply with 42 USC 1395y(b) and 42 CFR Part 411, Subparts C-E, which gives Medicare the right to recover its benefits from employers and workers' compensation carriers, liability insurers, automobile or no fault insurers, and employer group health plans before any other entity including Contractor or Subcontractor. (*OHP Contract Exhibit B, Part 8, Section 17.q*)

29.7. **Disenrolled Members.** If OHA retroactively Disenrolls a Member at the time the Member acquired the Other Primary Insurance, pursuant to OAR 410-141-3080(3)(e)(A) or 410-141-3080(9)(a), Subcontractor may not, and will ensure that any of its subcontractors do not, seek to collect from a Member (or any financially responsible Member Representative) or any Third Party Payer, any amounts paid for any Covered Services provided on or after the date of Disenrollment. (*OHP Contract Exhibit B, Part 8, Section 17.p*)

29.8 **Other Insurance.** Subcontractor shall: (1) report to both Contractor and OHA any Other Insurance to which a Member may be entitled. Subcontractor must report such information to OHA and Contractor within thirty (30) days of becoming aware Member of such coverage. Reporting must be made online at the following URL: <https://www.oregon.gov/DHS/BUSINESS-SERVICES/OPAR/Pages/tpl-hig.aspx>; and (2) provide, in a timely manner upon request, OHA with all Third Party Liability eligibility information and any other information requested by OHA, in order to assist in the pursuit of financial recovery. (*OHP Contract Exhibit B, Part 8, Section 16.m*)

30. **Preventive Care.** Where Preventive Care Services are provided by or through Subcontractor (including, but not limited to, FQHCs, Rural Health Clinics and County Health Departments), all Preventive Care Services provided to Members will be reported to Contractor and are subject to Contractor's Medical Case Management and Record Keeping responsibilities. (*OHP Contract Exhibit B, Part 2, Section 6.a(3)*)

31. **Accessibility.**

31.1. **Timely Access, Hours.** Subcontractor shall meet OHP standards for timely access to care and services, taking into account the urgency of the need for services as specified in OAR 410-141-3515 and 410-141-3860. Covered Services will be made available twenty-four (24) hours a day, seven (7) days a week, when medically appropriate. This requirement includes the offering of hours of operation to Members that are not less than the hours of operation offered to commercial members (as applicable) and non-Members as provided in OAR 410-141-3515. (*OHP Contract Exhibit B, Part 4, Sections 2.a, 2.c and 11.b(1)(m)*)

31.2. **Special Needs.** Subcontractor and Subcontractor's facilities shall meet the special needs of Members who require accommodations because of a disability or limited English proficiency. (*OHP Contract Exhibit B, Part 4, Section 2.j*)

31.3 **Facilities.** Subcontractor and Subcontractor's facilities shall be culturally responsive and linguistically appropriate to satisfy the diverse needs of Members, including, without limitation, adolescents, parents with dependent children, pregnant women, IV drug users and those with medication assisted therapy needs. *(OHP Contract Exhibit B, Part 4, Section 3.a(7))*

32. Member Rights.

32.1. **Treating Members with Respect and Equality.** Subcontractor shall treat each Member with respect and with due consideration for his or her dignity and privacy. In addition, Subcontractor shall treat each Member the same as non-Members or other patients who receive services equivalent to Covered Services. *(OHP Contract Exhibit B, Part 3, Section 2.n)*

32.2. **Information on Treatment Options.** Subcontractor shall ensure that each Member receives information on available treatment options and alternatives in a manner appropriate to the Member's condition and ability to understand. *(OHP Contract Exhibit B, Part 3, Section 2.h)*

32.3. **Participation Decisions.** Subcontractor shall allow each Member to: (a) be actively involved in the development of Treatment Plans if Covered Services are to be provided, (b) participate in decisions regarding his or her own health care, including the right to refuse treatment, (c) accept or refuse medical, surgical, or Behavioral Health treatment, (d) execute directives and powers of attorney for health care established under ORS 127.505 to 127.660 and the Omnibus Budget Reconciliation Act of 1990 -- Patient Self-Determination Act, and (e) have Family involved in such treatment planning. *(OHP Contract Exhibit B, Part 3, Section 2.i)*

32.4. **Copy of Medical Records.** Subcontractor shall ensure that each Member may request and receive a copy of his or her own Health Record (unless access is restricted in accordance with ORS 19.505 or other applicable law) and to request that the records be amended or corrected as specified in 45 CFR Part 164. *(OHP Contract Exhibit B Part 3, Section 2.j)*

32.5. **Exercise of Rights.** Subcontractor shall ensure that each Member is free to exercise his or her rights, and that the exercise of those rights does not adversely affect the way the Contractor, its staff, Subcontractor, Participating Providers, or OHA treat the Member. *(OHP Contract Exhibit B, Part 3, Section 2.o)*

33. **Grievance System.** Subcontractor shall comply with the Grievance and Appeal System requirements set forth in Exhibit I, and any other applicable provisions, of the OHP Contract. Subcontractor shall promptly cooperate with the investigations and resolution of a Grievance by either or both DHS' Client Services Unit and OHA's Ombudsperson as expeditiously as the Member's health condition requires, and within timeframes set forth in or required by the OHP Contract. Subcontractor shall cooperate with DHS's Governor's Advocacy Office, the OHA Ombudsman and hearing representatives in all of the OHA's activities related to Members' grievances, appeals and hearings including providing all requested written materials. *(OHP Contract Exhibit I, Sections 1.b(1), 2.d)*

34. **Authorization of Service.** Subcontractor shall follow Contractor's policies and procedures, including those in its Service Authorization Handbook, in order to obtain initial and continuing Service Authorizations. In addition, Subcontractor must adhere to the policies and procedures set forth in the Service Authorization Handbook. *(OHP Contract Exhibit B Part 2, Section 3.a)*

35. **Non-Discrimination.**

35.1 Subcontractor shall not discriminate between Members and non-OHP persons as it relates to benefits and services to which they are both entitled. (*OHP Contract Exhibit B, Part 4, Section 2.d*)

35.2 Subcontractor shall comply with all federal and State laws and regulations including Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972 (regarding education programs and activities) the Age Discrimination Act of 1975, the Rehabilitation Act of 1973, the Americans with Disabilities Act (ADA) of 1990, and all amendments to those acts and all regulations promulgated thereunder. (*OHP Contract Exhibit E, Section 18*)

36. **Record Keeping System.** Subcontractor shall develop and maintain a record keeping system that: (a) includes sufficient detail and clarity to permit internal and external review to validate Encounter Data submissions and to assure Members have been, and are being, provided with Medically Appropriate services consistent with the documented needs of the Member; (b) conforms to accepted professional practice and any and all Applicable Laws related thereto; and (c) is supported by written policies and procedures; and (d) allows the Subcontractor to ensure that data submitted to it or Contractor is accurate and complete by: (i) verifying the accuracy and timeliness of reported data; (ii) screening the data for completeness, logic, and consistency; and (iii) collecting service information in standardized formats. (*OHP Contract Exhibit B Part 8, Section 1.e*)

37. **Enrollment; Unique Provider Identification Number.** Subcontractor shall have, or shall confirm that each Physician or other qualified Provider is enrolled with CMS and OHA and has, a unique Provider identification number that complies with 42 USC 1320d-2(b). (*OHP Contract Exhibit B, Part 4, Section 5.j*)

38. **Accreditation.** If Subcontractor is not, or contracts with a Provider that is not, required to be licensed or certificated by the State of Oregon board or licensing agency, the Subcontractor or Provider, as applicable, must either (a) meet the definitions for Qualified Mental Health Associate (QMHA) or Qualified Mental Health Professional (QMHP) and must not be permitted to provide services without the supervision of a Licensed Medical Practitioner; or (b) if not meeting either the definitions of a QMHP or QMHA have the education, experience and competence necessary to perform the specified assigned duties and provide such information to Contractor, so that Contractor may document and report to OHA in its DSN Provider Report: (i) the education, experience and competence of such Participating Provider, and (ii) that such Participating Provider will not be permitted to perform the specific assigned duties without the supervision of a Licensed Medical Practitioner. If programs or facilities of Subcontractor are not required to be licensed or certified by the State of Oregon board or licensing agency, Subcontractor will provide documentation that demonstrates accreditation by nationally recognized organizations recognized by OHA for the services provided (e.g., Council on Accredited Rehabilitation Facilities, The Joint Commission). (*OHP Contract Exhibit B Part 4, Section 5.d*)

39. **Advocacy.** Except as provided in the OHP Contract, Subcontractor shall not prohibit or otherwise limit or restrict Health Care Professionals or subcontractors acting within the lawful scope of practice, from undertaking any of the following activities set forth in this Section on behalf of a Member: (a) advising or otherwise advocating for the Member's health status, medical care, or treatment options, including any alternative treatment that may be self-administered, that is Medically Appropriate even if such care or treatment is not covered under the OHP Contract or is subject to Copayment; (b) providing any and all information the Member needs in order to decide

among relevant treatment options; (c) advising a Member of the risks, benefits, and consequences of treatment or non-treatment; and (d) advising and advocating for the Member's right to participate in decisions regarding his or her health care, including the right to refuse treatment, and to express preferences about future treatment decisions. (*OHP Contract Exhibit B Part 2, Section 3.b(16)*)

40. **No Actions.** Subcontractor represents and warrants that neither the state nor federal government has brought any past or pending investigations, legal actions, administrative actions, or matters subject to arbitration involving the Subcontractor, including key management or executive staff, over the past three years on matters relating to payments from governmental entities, both federal and state, for healthcare or prescription drug services.

41. **Notice of Termination.** Subcontractor acknowledges and agrees that, if required under the OHP Contract, Contractor will be the party responsible for providing written notice of the termination of the Agreement to each Member who received primary care from, or was seen on a regular basis by, the Subcontractor. (*OHP Contract Exhibit B, Part 4, Section 11.b(2)*)

42. **Patient-centered Primary Care Homes.** Subcontractor shall ensure communication and coordination of care with the patient-centered primary care homes ("**PCPCH**") in a timely manner using electronic health information technology to the maximum extent feasible. (*OHP Contract Exhibit B, Part 4, Section 6.c*)

43. **Care Integration.** If Subcontractor contracts with Participating Providers that are specialty or Hospital Providers, Subcontractor will ensure that its agreement with each such Participating Provider: (i) addresses the coordinating role of patient-centered primary care; (ii) specifies processes for requesting Hospital admission or specialty services; and (iii) establishes performance expectations for communication and medical records sharing for specialty treatments: (x) at the time of Hospital admission or (y) at the time of Hospital discharge for the purpose of facilitating after-Hospital follow up appointments and care. (*OHP Contract Exhibit B, Part 4, Section 8.a(3)*)

44. **Oregon House Bill 2398.** Consistent with 42 CFR § 438.106 and 42 CFR § 438.230, Subcontractor is prohibited, and will prohibit its Providers, from billing Members for Covered Services in any amount greater than would be owed if Contractor provided the services directly. Subcontractors shall comply with Oregon House Bill 2398 (Engrossed) 2017 which requires Providers to: (1) wait ninety (90) days after submitting the claim before assigning a claim to a collection agency or other similar entity for the purpose of recovering fees from the patient; (2) query OHA's database to confirm eligibility for medical assistance; (3) assign any outstanding claims to a collection agency or other similar entity for the purpose of recovering fees from a patient **only if**, at the time of service, the patient was not eligible for medical assistance. (*OHP Contract Exhibit B, Part 8, Section 4.f*)

45. **Survival.** All rights and obligations cease upon termination or expiration of the Agreement or OHP Contract, except for the rights and obligations, and declarations which expressly or by their nature survive termination of the Agreement or OHP Contract. Without limiting the foregoing or anything else in the OHP Contract, in no event shall contract expiration or termination extinguish or prejudice OHA's or Contractor's right to enforce the OHP Contract or the Agreement with respect to any default by Subcontractor that has not been cured. In addition to any other provisions of the OHP Contract or the Agreement that by their context are meant to survive contract expiration or termination, the special terms and conditions specified in Section 25.f of Exhibit D of the OHP Contract

survive OHP Contract expiration or termination for a period of two (2) years unless a longer period is set forth in the OHP Contract. (*OHP Contract Exhibit D Section 25*)

46. **Equal Access.** Subcontractor shall provide equal access to Covered Services is provided for both male and female Members under 18 years of age, including access to appropriate facilities, services and treatment, to achieve the policy in ORS 417.270. (*OHP Contract Exhibit D, Section 31*)

47. **Media Disclosure.** Subcontractor shall not provide information to the media regarding a recipient of services under the OHP Contract without first consulting with and receiving approval from the OHA and Contractor. Subcontractor shall make immediate contact with Contractor, and Contractor will manage contacts with the OHA office when media contact occurs. The OHA office will assist the Contractor with an appropriate follow-up response for the media. (*OHP Contract Exhibit D, Section 32*)

48. **Mandatory Reporting of Abuse.** Subcontractor shall immediately report any evidence of child abuse, neglect or threat of harm to DHS Child Protective Services or law enforcement officials in full accordance with the mandatory Child Abuse Reporting law (ORS 419B.005 to 419B.045). If law enforcement is notified, Subcontractor shall notify the referring caseworker within 24 hours. Subcontractor shall immediately contact the local DHS Child Protective Services office if questions arise whether an incident meets the definition of child abuse or neglect. Subcontractor shall comply with all protective services, investigation and reporting requirements described in any of the following laws: (1) OAR 407-045-0000 through 407-045-0370 (abuse investigations by the Office of Investigations and Training); (2) ORS 430.735 through 430.765 (persons with mental illness or developmental disabilities); (3) ORS 124.005 to 124.040 (elderly persons and persons with disabilities abuse); and (4) ORS 441.650 to 441.680 (residents of long term care facilities). (*OHP Contract Exhibit D, Section 33*)

49. **Behavioral Health Screening; Reporting.** Subcontractor will: (a) screen Members for adequacy of supports for the Family in the home (e.g., housing adequacy, nutrition/food, diaper needs, Transportation needs, safety needs and home visiting); (b) screen Members for, and provide, Medically Appropriate and Evidence-Based treatments for Members who have both mental illness and Substance Use Disorders; (c) assess for opioid use disorders for populations at high risk for severe health outcomes, including overdose and death, including pregnant Members and Members being discharged from residential, acute care, and other institutional settings; and (d) screen Members and provide prevention, early detection, brief intervention and Referral to Behavioral Health services in any of the following circumstances: (i) at an initial contact or during a routine physical exam; (ii) at an initial prenatal exam; (iii) when the Member shows evidence of Substance Use Disorders or abuse; (iv) when the Member over-utilizes Covered Services; and (v) when a Member exhibits a reassessment trigger for Intensive Care Coordination needs. Subcontractor will supply all required information to support the Behavioral Health reporting process described in Exhibit M of the OHP Contract. In developing Individual Service and Support Plans for Members, Subcontractor will assess for Adverse Childhood Experiences (ACE), trauma and resiliency in a Culturally and Linguistically Appropriate manner, using a Trauma Informed framework. (*OHP Contract Exhibit M, Sections 6, 21.g and 22.c*)

50. **Provider Directories.** Subcontractor will adhere to Contractor's established policies for Provider Directories and the applicable timeframes for updating the information therein. (*OHP Contract Exhibit B Part 3, Section 6.i*)

51. **Culturally and Linguistically Appropriate Services (CLAS).** Culturally and Linguistically Appropriate and CLAS each means the provision of effective, equitable, understandable, and respectful quality care and services that are responsive to diverse cultural health beliefs and practices, preferred languages, health literacy, and other communication needs. (*OHP Contract Exhibit A and Exhibit B Part 4, Section 2*)

51.1 Subcontractor will confirm completion by its Providers, Provider Network, and Provider Network staff of ongoing cultural competency training in accordance with the definition of Cultural Competence (OAR 943-090-0010 and 0020) and the requirements of Cultural Responsiveness and Implicit Bias training per OHP Contract Exhibit K, Section 10.d. Subcontractor shall report on its Cultural Responsiveness and Implicit Bias Training activities to Contractor who, in turn, will incorporate it in its Provider Network reporting. (*OHP Contract Exhibit K, Section 10.d*)

51.2 Interpretation services will be provided by certified or qualified linguistically appropriate interpreters and protect the privacy and independence of members with limited English proficiency (OAR 410-141-3515 (12), *OHP Contract Exhibit B, Part 4 Section 2.h*).

51.3 Per Section 1557 of the Patient Protection and Affordable Care Act requirements, all interpretation and translation services will be free of charge to members and made available at all key points of contact with the Member. Subcontractor is responsible for paying for such services unless otherwise agreed to in the Agreement. Subcontractor shall notify its Providers of the availability of no-cost interpreter services and translation services, including the types of interpreter services available at no cost to the Member, information on how to arrange for interpreter services, and limitations on the use of bilingual staff, minors or accompanying adults as interpreters. (*OHP Contract Exhibit B, Part 3 Section 2.e*)

51.4 Subcontractor shall comply with the requirements of Title II of the Americans with Disabilities Act and Title VI of the Civil Rights Act by assuring communication and delivery of Covered Services to members with diverse cultural and ethnic backgrounds. Such communication and delivery of Covered Services in compliance with such Acts may also require, without limitation, Certified or Qualified Health Care Interpreter services for those members who have difficulty communicating due to a medical condition, disability, or limited English proficiency, or where no adult is available to communicate in English, or there is no telephone and providing access to auxiliary aids and services. Subcontractor must maintain written policies, procedures and plans in accordance with the requirements of OAR 410-141-3515 Network Adequacy. (*OHP Contract Exhibits B, Part 4 Section 2.h*)

51.5 Translated Member materials in non-English threshold languages and alternate formats, including mailed materials and materials available electronically, shall be provided and submitted to the health plan for review and approval. Website and content posted to websites shall meet the accessibility guidelines published by the Web Accessibility Initiative and outlined in Section 508 of the Rehabilitation Act of 1973. All Member materials must submitted to the Health Plan for review and approval. (*OHP Contract Exhibit B, Part 3 Section 4.d*)

51.6 If applicable, in accordance with OAR 410-141-3875 (11), in those physical, behavioral, and oral health offices where Contractor has delegated responsibilities to Subcontractor for grievance involvement, the Subcontractor shall inform Members of right to file grievance and ensure members receive information regarding a Member's right to file a grievance and seek an independent medical review in threshold, concentration standard languages, and in alternative formats and other languages, upon request. (*OHP Contract Exhibits B, Part 4 Section 2.h, Exhibit K Section 10.d.(6)*)

Financial Assistance Application Lifecycle Form

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

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

**** CONCEPTION ****

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

Award type: Direct Appropriation (no application)
 Subrecipient Award Direct Award
Award Renewal? Yes No

Lead Department & Fund: H3S - Behavioral Health and Public Health Divisions

If renewal, complete sections 1, 2, & 4 only. If Direct Appropriation, complete page 1 and Dept/Finance signatures only.

If Disaster or Emergency Relief Funding, EOC will need to approve prior to being sent to the BCC

Name of Funding Opportunity: Oregon Health Plan (OHP) Administrative and Delegated Services

Funding Source: Federal State Local

Requestor Information (Name of staff person initiating form): Mary Rumbaugh and Philip Mason-Joyner

Requestor Contact Information: maryrum@clackamas.us; 503-742-5305 and PMason@clackamas.us; 503-742-5956

Department Fiscal Representative: Angela Brink, ABrink@clackamas.us; 503-742-5318

Program Name and prior project # (please specify): _____

Brief Description of Project:

Trillium Community Health Plan, Inc. is a Coordinated Care Organization (CCO) contractually obligated to arrange for the provision of managed care services to enrollees in the Oregon Health Plan (OHP) that have either selected or been assigned Trillium as their CCO. Trillium contracts with Clackamas County to provide the following services: Delegated Services, to include, Behavioral Health Crisis Services, Behavioral Health Intensive Care Coordination Services, Wraparound Care Coordination Services, and Choice Care Coordination Services; Peer and Community-Based Services; Community Health Assessment and Community Health Improvement Plan; Regional Perinatal Continuum of Care, and Tobacco Cessation.

Name of Funding Agency: _____

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

Trillium Community Health Plan, Inc., PO Box 11740, Eugene, OR 97440-3940; Phone 1-877-600-5472

OR

Application Packet Attached: Yes No

Completed By: _____

Date

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

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

Competitive Application

Non-Competing Application

Other

CFDA(s), if applicable:	<u>N/A</u>	Funding Agency Award Notification Date:	<u>October 11, 2021</u>
Announcement Date:	<u>N/A</u>	Announcement/Opportunity #:	<u>N/A</u>
Grant Category/Title:	<u>N/A</u>	Max Award Value:	<u>Amendment #02 - \$192,000.00</u>
Allows Indirect/Rate:	<u>N/A</u>	Match Requirement:	<u>No</u>
Application Deadline:	<u>N/A</u>	Other Deadlines:	<u>N/A</u>
Award Start Date:	<u>January 1, 2022</u>	Other Deadline Description:	<u>N/A</u>
Award End Date:	<u>December 31, 2022</u>		
Completed By:	<u>Angela Brink</u>	Program Income Requirement:	_____
Pre-Application Meeting Schedule:	<u>N/A</u>		

Additional funding sources available to fund this program? Please describe: We have a funding agreement with CareOregon to fund similar Behavioral Health Services to Medicaid Members assigned to Healthshare.

How much General Fund will be used to cover costs in this program, including indirect expenses? No General Fund will be used for this program

No fund balance will be used to cover costs of this program

How much Fund Balance will be used to cover costs in this program, including indirect expenses? _____

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

Mission/Purpose:

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

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

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

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

Organizational Capacity:

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

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

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

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

Collaboration

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

Reporting Requirements

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

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

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

Fiscal

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

2. Are other revenue sources required, available or will be used to fund the program? Have they already been secured? Please name other sources, including General Fund or Fund Balance and amounts.

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

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

Program Approval:

Name (Typed/Printed)	Date	Signature
** NOW READY FOR PROGRAM MANAGER SUBMISSION TO DIVISION DIRECTOR **		
ATTACH ANY CERTIFICATIONS REQUIRED BY THE FUNDING AGENCY. COUNTY FINANCE OR ADMIN WILL SIGN.		

Section IV: Approvals

DIVISION DIRECTOR (or designee, if applicable)		
Digitally signed by Mary Rumbaugh Date: 2021.11.22 11:33:49 -08'00' Mary Rumbaugh		
Name (Typed/Printed)	Date	Signature

DEPARTMENT DIRECTOR (or designee, if applicable)		
Name (Typed/Printed)	Date	Signature

FINANCE ADMINISTRATION		
Name (Typed/Printed)	Date	Signature

EOC COMMAND APPROVAL (DISASTER OR EMERGENCY RELIEF APPLICATIONS ONLY)		
Name (Typed/Printed)	Date	Signature

Section V: Board of County Commissioners/County Administration

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

For applications less than \$150,000:

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

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

BCC Agenda item #:

Date:

OR

Policy Session Date:

County Administration Attestation

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

December 9, 2021

Board of County Commissioner
Clackamas County

Members of the Board:

Approval of a Contract with Cambridge Consultants for EMS System Planning Services
Maximum contract value is \$152,200. EMS System Enhancement funds are utilized.
No County General Funds are involved

Purpose/Outcomes	Provide EMS System Planning Services to achieve the goal of reviewing, modernizing and updating the Ambulance Service Plan.
Dollar Amount and Fiscal Impact	Maximum contract value is \$152,200.
Funding Source	No County General Funds are involved. EMS System Enhancement funds are utilized.
Duration	Effective upon signature through December 30, 2023
Previous Board Action	None
Strategic Plan Alignment	Ensuring safe, healthy and secure communities through the provision of Emergency Medical Transport Services.
Counsel Review	County counsel has reviewed and approved this document on November 11, 2021 - AN
Procurement Review	1. Was the item processed through Procurement? yes <input checked="" type="checkbox"/> no <input type="checkbox"/>
Contact Person	Philip Mason-Joyner, Public Health Director – (503)742-5956
Contract No.	Cobblestone Contract #4688 – H3S Contract #9650

BACKGROUND:

The Public Health Division of the Health, Housing & Human Services Department requests the approval of a contract with Cambridge Consultants to provide EMS System Planning Services to achieve the goal of reviewing, modernizing and updating the Ambulance Service Plan, County Code Title 10, Chapter 10.01.

PROCUREMENT PROCESS:

This project was advertised in accordance with ORS and LCRB Rules on July 1, 2021, Through RFP 2021-43. Proposals were publicly opened on August 3, 2021. The County received two (2) Proposals in response to the RFP. After review of the Proposals, contracting with Cambridge Consulting Group, LLC was determined to be in the best interest of the county based upon the scoring criteria outlined in RFP 2021-43.

Page 2 Staff Report – Cambridge Consultants
December 9 2021
Cobblestone Contract #4688 – H3S Contract #9650

RECOMMENDATION:

Staff recommends approval of this Contract.

Respectfully submitted,

A handwritten signature in cursive script that reads "Rodney Cook".

Rodney A. Cook, Director
Health, Housing, and Human Services



CLACKAMAS COUNTY
PERSONAL SERVICES CONTRACT
Contract #4688 – H3S Contract #9650

This Personal Services Contract (this “Contract”) is entered into between **Cambridge Consulting Group, LLC** (“Contractor”), and Clackamas County, a political subdivision of the State of Oregon (“County”), on behalf of its Department of Health and Human Services (“H3S”), Public Health division.

ARTICLE I.

1. Effective Date and Duration. This Contract shall become effective upon signature of both parties. Unless earlier terminated or extended, this Contract shall expire on **December 30, 2022**, with an option to extend for one additional year upon mutual agreement of the parties.

2. Scope of Work. Contractor shall provide the following personal services: **EMS System Planning Services (Work)**”, as described Clackamas County RFP 2021-43, Exhibit A, attached and incorporated by reference herein, and Exhibit B, the negotiated scope of work, attached and incorporated by reference herein.

3. Consideration. The County agrees to pay Contractor, from available and authorized funds, a sum not to exceed **One Hundred Fifty-Two Thousand Two Hundred Dollars (\$152,200)**, for accomplishing the Work required by this Contract. Consideration rates are on a time and materials basis in accordance with the rates and costs specified in **Exhibit B**. If any interim payments to Contractor are made, such payments shall be made only in accordance with the schedule and requirements in Exhibit B.

4. Invoices and Payments. Unless otherwise specified, Contractor shall submit milestone invoices for Work performed according to the schedule specified below. Invoices shall describe all Work performed with particularity, by whom it was performed, and shall itemize and explain all expenses for which reimbursement is claimed. The invoices shall include the total amount billed to date by Contractor prior to the current invoice. If Contractor fails to present invoices in proper form within sixty (60) calendar days after the scheduled milestone date at which the services were rendered, Contractor waives any rights to present such invoice thereafter and to receive payment therefor. Payments shall be made in accordance with ORS 293.462 to Contractor following the County’s review and approval of invoices submitted by Contractor. Contractor shall not submit invoices for, and the County will not be obligated to pay, any amount in excess of the maximum compensation amount set forth above. If this maximum compensation amount is increased by amendment of this Contract, the amendment must be fully effective before Contractor performs Work subject to the amendment.

Milestone Schedule:

- a. Project down payment initially (25%)
- b. Milestone payment end of week 16 (10%)
- c. Milestone payment end of week 18 (10%)
- d. Milestone payment end of week 24 (10%)
- e. Milestone payment end of week 32 (10%)
- f. Milestone payment end of week 40 (10%)
- g. Milestone payment end of week 42 (10%)
- h. Milestone payment end of week 44 (10%)
- i. Final hold-back payment end of week 48 (5%)

Milestone percentages are calculated from the total found in sections 3.

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

5. Travel and Other Expense. Authorized: Yes No

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

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

7. Contractor and County Contacts.

Contractor Administrator: Vincent Robbins Phone: 202-505-2256 Email: vrobins@cambridgecg.net	County Administrator: Bill Conway Phone: 503-313-9170 Email: WConway@clackamas.us
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Payment information will be reported to the Internal Revenue Service (“IRS”) under the name and taxpayer ID number submitted. (See I.R.S. 1099 for additional instructions regarding taxpayer ID numbers.) Information not matching IRS records will subject Contractor payments to backup withholding.

ARTICLE II.

- 1. ACCESS TO RECORDS.** Contractor shall maintain books, records, documents, and other evidence, in accordance with generally accepted accounting procedures and practices, sufficient to reflect properly all costs of whatever nature claimed to have been incurred and anticipated to be incurred in the performance of this Contract. County and their duly authorized representatives shall have access to the books, documents, papers, and records of Contractor, which are directly pertinent to this Contract for the purpose of making audit, examination, excerpts, and transcripts. Contractor shall maintain such books and records for a minimum of six (6) years, or such longer period as may be required by applicable law, following final payment and termination of this Contract, or until the conclusion of any audit, controversy or litigation arising out of or related to this Contract, whichever date is later.
- 2. AVAILABILITY OF FUTURE FUNDS.** Any continuation or extension of this Contract after the end of the fiscal period in which it is written is contingent on a new appropriation for each succeeding fiscal period sufficient to continue to make payments under this Contract, as determined by the County in its sole administrative discretion.
- 3. CAPTIONS.** The captions or headings in this Contract are for convenience only and in no way define, limit, or describe the scope or intent of any provisions of this Contract.
- 4. COMPLIANCE WITH APPLICABLE LAW.** Contractor shall comply with all applicable federal, state and local laws, regulations, executive orders, and ordinances, as such may be amended from time to time.
- 5. COUNTERPARTS.** This Contract may be executed in several counterparts (electronic or otherwise), each of which shall be an original, all of which shall constitute the same instrument.

- 6. GOVERNING LAW.** This Contract, and all rights, obligations, and disputes arising out of it, shall be governed and construed in accordance with the laws of the State of Oregon and the ordinances of Clackamas County without regard to principles of conflicts of law. Any claim, action, or suit between County and Contractor that arises out of or relates to the performance of this Contract shall be brought and conducted solely and exclusively within the Circuit Court for Clackamas County, for the State of Oregon. Provided, however, that if any such claim, action, or suit may be brought in a federal forum, it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this section be construed as a waiver by the County of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court. Contractor, by execution of this Contract, hereby consents to the personal jurisdiction of the courts referenced in this section.
- 7. RESPONSIBILITY FOR DAMAGES; INDEMNITY.** Contractor shall be responsible for all damage to property, injury to persons, and loss, expense, inconvenience, and delay which may be caused by, or result from, the conduct of Work, or from any act, omission, or neglect of Contractor, its subcontractors, agents, or employees. The Contractor agrees to indemnify, hold harmless and defend the County, and its officers, elected officials, agents and employees from and against all claims and actions, and all expenses incidental to the investigation and defense thereof, arising out of or based upon damage or injuries to persons or property caused by the errors, omissions, fault or negligence of the Contractor or the Contractor's employees, subcontractors, or agents. However, neither Contractor nor any attorney engaged by Contractor shall defend the claim in the name of County or any department of County, nor purport to act as legal representative of County or any of its departments, without first receiving from the Clackamas County Counsel's Office authority to act as legal counsel for County, nor shall Contractor settle any claim on behalf of County without the approval of the Clackamas County Counsel's Office. County may, at its election and expense, assume its own defense and settlement.
- 8. INDEPENDENT CONTRACTOR STATUS.** The service(s) to be rendered under this Contract are those of an independent contractor. Although the County reserves the right to determine (and modify) the delivery schedule for the Work to be performed and to evaluate the quality of the completed performance, County cannot and will not control the means or manner of Contractor's performance. Contractor is responsible for determining the appropriate means and manner of performing the Work. Contractor is not to be considered an agent or employee of County for any purpose, including, but not limited to: (A) The Contractor will be solely responsible for payment of any Federal or State taxes required as a result of this Contract; and (B) This Contract is not intended to entitle the Contractor to any benefits generally granted to County employees, including, but not limited to, vacation, holiday and sick leave, other leaves with pay, tenure, medical and dental coverage, life and disability insurance, overtime, Social Security, Workers' Compensation, unemployment compensation, or retirement benefits.
- 9. INSURANCE.** Contractor shall secure at its own expense and keep in effect during the term of the performance under this Contract the insurance required and minimum coverage indicated below. The insurance requirement outlined below do not in any way limit the amount of scope of liability of Contractor under this Contract. Contractor shall provide proof of said insurance and name the County as an additional insured on all required liability policies. Proof of insurance and notice of any material change should be submitted to the following address: Clackamas County Procurement Division, 2051 Kaen Road, Oregon City, OR 97045 or procurement@clackamas.us.

Required - Workers Compensation: Contractor shall comply with the statutory workers' compensation requirements in ORS 656.017, unless exempt under ORS 656.027 or 656.126.
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<input checked="" type="checkbox"/> Required – Commercial General Liability: combined single limit, or the equivalent, of not less than \$1,000,000 per occurrence, with an annual aggregate limit of \$2,000,000 for Bodily Injury and Property Damage.
<input checked="" type="checkbox"/> Required – Professional Liability: combined single limit, or the equivalent, of not less than \$1,000,000 per claim, with an annual aggregate limit of \$2,000,000 for damages caused by error, omission or negligent acts.
<input type="checkbox"/> Required – Automobile Liability: combined single limit, or the equivalent, of not less than \$1,000,000 per accident for Bodily Injury and Property Damage.

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

- 10. LIMITATION OF LIABILITIES.** This Contract is expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10, of the Oregon Constitution, and is contingent upon funds being appropriated therefore. Any provisions herein which would conflict with law are deemed inoperative to that extent. Except for liability arising under or related to Article II, Section 13 or Section 20 neither party shall be liable for (i) any indirect, incidental, consequential or special damages under this Contract or (ii) any damages of any sort arising solely from the termination of this Contract in accordance with its terms.
- 11. NOTICES.** Except as otherwise provided in this Contract, any required notices between the parties shall be given in writing by personal delivery, email, or mailing the same, to the Contract Administrators identified in Article 1, Section 6. If notice is sent to County, a copy shall also be sent to: Clackamas County Procurement, 2051 Kaen Road, Oregon City, OR 97045, or procurement@clackamas.us. Any communication or notice so addressed and mailed shall be deemed to be given five (5) days after mailing, and immediately upon personal delivery, or within 2 hours after the email is sent during County’s normal business hours (Monday – Thursday, 7:00 a.m. to 6:00 p.m.) (as recorded on the device from which the sender sent the email), unless the sender receives an automated message or other indication that the email has not been delivered.
- 12. OWNERSHIP OF WORK PRODUCT.** All work product of Contractor that results from this Contract (the “Work Product”) is the exclusive property of County. County and Contractor intend that such Work Product be deemed “work made for hire” of which County shall be deemed the author. If for any reason the Work Product is not deemed “work made for hire,” Contractor hereby irrevocably assigns to County all of its right, title, and interest in and to any and all of the Work Product, whether arising from copyright, patent, trademark or trade secret, or any other state or federal intellectual property law or doctrine. Contractor shall execute such further documents and instruments as County may reasonably request in order to fully vest such rights in County. Contractor forever waives any and all rights relating to the Work Product, including without limitation, any and all rights arising under 17 USC § 106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use or subsequent modifications. Notwithstanding the above, County shall have no rights in any pre-existing Contractor intellectual property provided to County by Contractor in the performance of this Contract except to copy, use and re-use any such Contractor intellectual property for County use only.
- 13. REPRESENTATIONS AND WARRANTIES.** Contractor represents and warrants to County that (A) Contractor has the power and authority to enter into and perform this Contract; (B) this Contract, when executed and delivered, shall be a valid and binding obligation of Contractor enforceable in accordance with its terms; (C) Contractor shall at all times during the term of this Contract, be qualified, professionally competent, and duly licensed to perform the Work; (D) Contractor is an independent contractor as defined in ORS 670.600; and (E) the Work under this Contract shall be performed in a good and workmanlike manner and in accordance with the highest professional

standards. The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.

- 14. SURVIVAL.** All rights and obligations shall cease upon termination or expiration of this Contract, except for the rights and obligations set forth in Article II, Sections 1, 6, 7, 10, 12, 13, 14, 15, 17, 20, 21, 25, 27, and 29 and all other rights and obligations which by their context are intended to survive. However, such expiration shall not extinguish or prejudice the County's right to enforce this Contract with respect to: (a) any breach of a Contractor warranty; or (b) any default or defect in Contractor performance that has not been cured.
- 15. SEVERABILITY.** If any term or provision of this Contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Contract did not contain the particular term or provision held to be invalid.
- 16. SUBCONTRACTS AND ASSIGNMENTS.** Contractor shall not enter into any subcontracts for any of the Work required by this Contract, or assign or transfer any of its interest in this Contract by operation of law or otherwise, without obtaining prior written approval from the County, which shall be granted or denied in the County's sole discretion. In addition to any provisions the County may require, Contractor shall include in any permitted subcontract under this Contract a requirement that the subcontractor be bound by this Article II, Sections 1, 7, 8, 13, 16 and 27 as if the subcontractor were the Contractor. County's consent to any subcontract shall not relieve Contractor of any of its duties or obligations under this Contract.
- 17. SUCCESSORS IN INTEREST.** The provisions of this Contract shall be binding upon and shall inure to the benefit of the parties hereto, and their respective authorized successors and assigns.
- 18. TAX COMPLIANCE CERTIFICATION.** The Contractor shall comply with all federal, state and local laws, regulation, executive orders and ordinances applicable to this Contract. Contractor represents and warrants that it has complied, and will continue to comply throughout the duration of this Contract and any extensions, with all tax laws of this state or any political subdivision of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318. Any violation of this section shall constitute a material breach of this Contract and shall entitle County to terminate this Contract, to pursue and recover any and all damages that arise from the breach and the termination of this Contract, and to pursue any or all of the remedies available under this Contract or applicable law.
- 19. TERMINATIONS.** This Contract may be terminated for the following reasons: (A) by mutual agreement of the parties or by the County (i) for convenience upon thirty (30) days written notice to Contractor, or (ii) at any time the County fails to receive funding, appropriations, or other expenditure authority as solely determined by the County; or (B) if contractor breaches any Contract provision or is declared insolvent, County may terminate after thirty (30) days written notice with an opportunity to cure.

Upon receipt of written notice of termination from the County, Contractor shall immediately stop performance of the Work. Upon termination of this Contract, Contractor shall deliver to County all documents, Work Product, information, works-in-progress and other property that are or would be deliverables had the Contract Work been completed. Upon County's request, Contractor shall surrender to anyone County designates, all documents, research, objects or other tangible things needed to complete the Work.

- 20. REMEDIES.** If terminated by the County due to a breach by the Contractor, then the County shall have any remedy available to it in law or equity. If this Contract is terminated for any other reason,

Contractor's sole remedy is payment for the goods and services delivered and accepted by the County, less any setoff to which the County is entitled.

- 21. NO THIRD PARTY BENEFICIARIES.** County and Contractor are the only parties to this Contract and are the only parties entitled to enforce its terms. Nothing in this Contract gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Contract.
- 22. TIME IS OF THE ESSENCE.** Contractor agrees that time is of the essence in the performance this Contract.
- 23. FOREIGN CONTRACTOR.** If the Contractor is not domiciled in or registered to do business in the State of Oregon, Contractor shall promptly provide to the Oregon Department of Revenue and the Secretary of State, Corporate Division, all information required by those agencies relative to this Contract. The Contractor shall demonstrate its legal capacity to perform these services in the State of Oregon prior to entering into this Contract.
- 24. FORCE MAJEURE.** Neither County nor Contractor shall be held responsible for delay or default caused by events outside the County or Contractor's reasonable control including, but not limited to, fire, terrorism, riot, acts of God, or war. However, Contractor shall make all reasonable efforts to remove or eliminate such a cause of delay or default and shall upon the cessation of the cause, diligently pursue performance of its obligations under this Contract.
- 25. WAIVER.** The failure of County to enforce any provision of this Contract shall not constitute a waiver by County of that or any other provision.
- 26. PUBLIC CONTRACTING REQUIREMENTS.** Pursuant to the public contracting requirements contained in Oregon Revised Statutes ("ORS") Chapter 279B.220 through 279B.235, Contractor shall:
 - a. Make payments promptly, as due, to all persons supplying to Contractor labor or materials for the prosecution of the work provided for in the Contract.
 - b. Pay all contributions or amounts due the Industrial Accident Fund from such Contractor or subcontractor incurred in the performance of the Contract.
 - c. Not permit any lien or claim to be filed or prosecuted against County on account of any labor or material furnished.
 - d. Pay the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.
 - e. As applicable, the Contractor shall pay employees for work in accordance with ORS 279B.235, which is incorporated herein by this reference. The Contractor shall comply with the prohibitions set forth in ORS 652.220, compliance of which is a material element of this Contract, and failure to comply is a breach entitling County to terminate this Contract for cause.
 - f. If the Work involves lawn and landscape maintenance, Contractor shall salvage, recycle, compost, or mulch yard waste material at an approved site, if feasible and cost effective.
- 27. NO ATTORNEY FEES.** In the event any arbitration, action or proceeding, including any bankruptcy proceeding, is instituted to enforce any term of this Contract, each party shall be responsible for its own attorneys' fees and expenses.
- 28. KEY PERSONS.** Contractor acknowledges and agrees that a significant reason the County is entering into this Contract is because of the special qualifications of certain Key Persons set forth in

**EXHIBIT A
PERSONAL SERVICES CONTRACT
RFP 2021-43**



REQUEST FOR PROPOSALS #2021-43

FOR

EMS System Planning Consultant Services

BOARD OF COUNTY COMMISSIONERS

TOOTIE SMITH, Chair
SONYA FISCHER, Commissioner
PAUL SAVAS, Commissioner
MARK SHULL, Commissioner
MARTHA SCHRADER, Commissioner

Gary Schmidt
County Administrator

Thomas Candelario
Contract Analyst

PROPOSAL CLOSING DATE, TIME AND LOCATION

DATE: August 3, 2021

TIME: 2:00 PM, Pacific Time

PLACE: Procurement@clackamas.us

SCHEDULE

Request for Proposals Issued.....	July 1, 2021
Protest of Specifications Deadline.....	July 8, 2021, 5:00 PM, Pacific Time
Deadline to Submit Clarifying Questions.....	July 15, 2021, 5:00 PM, Pacific Time
Request for Proposals Closing Date and Time.....	August 3, 2021, 2:00 PM, Pacific Time
Deadline to Submit Protest of Award.....	Seven (7) days from the Intent to Award
Anticipated Contract Start Date.....	September 2021

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SECTION 1
NOTICE OF REQUEST FOR PROPOSALS

Notice is hereby given that Clackamas County through its Board of County Commissioners will receive sealed Proposals per specifications until **2:00 PM, August 3, 2021** (“Closing”), to provide EMS System Planning Consultant Services. No Proposals will be received or considered after that time.

The resulting contract from this RFP require the consultant to begin work in September 2021. RFP Documents can be downloaded from the Oregon Buys website at the following address: www.oregonbuys.gov , Document No. S-C01010-00000085.

Prospective Proposers will need to sign in to download the information and that information will be accumulated for a Plan Holder's List. Prospective Proposers are responsible for obtaining any Addenda, clarifying questions, and Notices of Award from OREGONBUYS. Sealed Proposals are to be emailed to Clackamas County Procurement Services at procurement@clackamas.us.

Contact Information

Procurement Process and Technical Questions: Thomas Candelario, tcandelario@clackamas.us

The Board of County Commissioners reserves the right to reject any and all Proposals not in compliance with all prescribed public bidding procedures and requirements, and may reject for good cause any and all Proposals upon the finding that it is in the public interest to do so and to waive any and all informalities in the public interest. In the award of the contract, the Board of County Commissioners will consider the element of time, will accept the Proposal or Proposals which in their estimation will best serve the interests of Clackamas County and will reserve the right to award the contract to the contractor whose Proposal shall be best for the public good.

Clackamas County encourages proposals from Minority, Women, Veteran and Emerging Small Businesses.

SECTION 2 INSTRUCTIONS TO PROPOSERS

Clackamas County (“County”) reserves the right to reject any and all Proposals received as a result of this RFP. County Local Contract Review Board Rules (“LCRB”) govern the procurement process for the County.

2.1 Modification or Withdrawal of Proposal: Any Proposal may be modified or withdrawn at any time prior to the Closing deadline, provided that a written request is received by the County Procurement Division Director, prior to the Closing. The withdrawal of a Proposal will not prejudice the right of a Proposer to submit a new Proposal.

2.2 Requests for Clarification and Requests for Change: Proposers may submit questions regarding the specifications of the RFP. Questions must be received in writing on or before 5:00 p.m. (Pacific Time), on the date indicated in the Schedule, at the Procurement Division address as listed in Section 1 of this RFP. Requests for changes must include the reason for the change and any proposed changes to the requirements. The purpose of this requirement is to permit County to correct, prior to the opening of Proposals, RFP terms or technical requirements that may be unlawful, improvident or which unjustifiably restrict competition. County will consider all requested changes and, if appropriate, amend the RFP. No oral or written instructions or information concerning this RFP from County managers, employees or agents to prospective Proposers shall bind County unless included in an Addendum to the RFP.

2.3 Protests of the RFP/Specifications: Protests must be in accordance with LCRB C-047-0730. Protests of Specifications must be received in writing on or before 5:00 p.m. (Pacific Time), on the date indicated in the Schedule, or within three (3) business days of issuance of any addendum, at the Procurement Division address listed in Section 1 of this RFP. Protests may not be faxed. Protests of the RFP specifications must include the reason for the protest and any proposed changes to the requirements.

2.4 Addenda: If any part of this RFP is changed, an addendum will be provided to Proposers that have provided an address to the Procurement Division for this procurement. It shall be Proposers responsibility to regularly check OREGONBUYS for any notices, published addenda, or response to clarifying questions.

2.5 Submission of Proposals: Proposals must be submitted in accordance with Section 5. All Proposals shall be legibly written in ink or typed and comply in all regards with the requirements of this RFP. Proposals that include orders or qualifications may be rejected as irregular. All Proposals must include a signature that affirms the Proposer’s intent to be bound by the Proposal (may be on cover letter, on the Proposal, or the Proposal Certification Form) shall be signed. If a Proposal is submitted by a firm or partnership, the name and address of the firm or partnership shall be shown, together with the names and addresses of the members. If the Proposal is submitted by a corporation, it shall be signed in the name of such corporation by an official who is authorized to bind the contractor. The Proposals will be considered by the County to be submitted in confidence and are not subject to public disclosure until the notice of intent to award has been issued.

No late Proposals will be accepted. Proposals submitted after the Closing will be considered late and will be returned unopened. Proposals may not be submitted by telephone or fax.

2.6 Post-Selection Review and Protest of Award: County will name the apparent successful Proposer in a Notice of Intent to Award published on OREGONBUYS. Identification of the apparent successful Proposer is procedural only and creates no right of the named Proposer to award of the contract. Competing Proposers shall be given seven (7) calendar days from the date on the Notice of Intent to Award to review the file at the Procurement Division office and file a written protest of award, pursuant to LCRB C-047-0740. Any award protest must be in writing and must be delivered by hand-delivery or mail to the address for the Procurement Division as listed in Section 1 of this RFP.

Only actual Proposers may protest if they believe they have been adversely affected because the Proposer would be eligible to be awarded the contract in the event the protest is successful. The basis of the written protest must

be in accordance with ORS 279B.410 and shall specify the grounds upon which the protest is based. In order to be an adversely affected Proposer with a right to submit a written protest, a Proposer must be next in line for award, i.e. the protester must claim that all higher rated Proposers are ineligible for award because they are non-responsive or non-responsible.

County will consider any protests received and:

- a. reject all protests and proceed with final evaluation of, and any allowed contract language negotiation with, the apparent successful Proposer and, pending the satisfactory outcome of this final evaluation and negotiation, enter into a contract with the named Proposer; OR
- b. sustain a meritorious protest(s) and reject the apparent successful Proposer as nonresponsive, if such Proposer is unable to demonstrate that its Proposal complied with all material requirements of the solicitation and Oregon public procurement law; thereafter, County may name a new apparent successful Proposer; OR
- c. reject all Proposals and cancel the procurement.

2.7 Acceptance of Contractual Requirements: Failure of the selected Proposer to execute a contract and deliver required insurance certificates within ten (10) calendar days after notification of an award may result in cancellation of the award. This time period may be extended at the option of County.

2.8 Public Records: Proposals are deemed confidential until the “Notice of Intent to Award” letter is issued. This RFP and one copy of each original Proposal received in response to it, together with copies of all documents pertaining to the award of a contract, will be kept and made a part of a file or record which will be open to public inspection. If a Proposal contains any information that is considered a **TRADE SECRET** under ORS 192.345(2), **SUCH INFORMATION MUST BE LISTED ON A SEPARATE SHEET CAPABLE OF SEPARATION FROM THE REMAINING PROPOSAL AND MUST BE CLEARLY MARKED WITH THE FOLLOWING LEGEND:**

“This information constitutes a trade secret under ORS 192.345(2), and shall not be disclosed except in accordance with the Oregon Public Records Law, ORS Chapter 192.”

The Oregon Public Records Law exempts from disclosure only bona fide trade secrets, and the exemption from disclosure applies only “unless the public interest requires disclosure in the particular instance” (ORS 192.345). Therefore, non-disclosure of documents, or any portion of a document submitted as part of a Proposal, may depend upon official or judicial determinations made pursuant to the Public Records Law.

2.9 Investigation of References: County reserves the right to investigate all references in addition to those supplied references and investigate past performance of any Proposer with respect to its successful performance of similar services, its compliance with specifications and contractual obligations, its completion or delivery of a project on schedule, its lawful payment of subcontractors and workers, and any other factor relevant to this RFP. County may postpone the award or the execution of the contract after the announcement of the apparent successful Proposer in order to complete its investigation.

2.10 RFP Proposal Preparation Costs and Other Costs: Proposer costs of developing the Proposal, cost of attendance at an interview (if requested by County), or any other costs are entirely the responsibility of the Proposer, and will not be reimbursed in any manner by County.

2.11 Clarification and Clarity: County reserves the right to seek clarification of each Proposal, or to make an award without further discussion of Proposals received. Therefore, it is important that each Proposal be submitted initially in the most complete, clear, and favorable manner possible.

2.12 Right to Reject Proposals: County reserves the right to reject any or all Proposals or to withdraw any item from the award, if such rejection or withdrawal would be in the public interest, as determined by County.

2.13 Cancellation: County reserves the right to cancel or postpone this RFP at any time or to award no contract.

2.14 Proposal Terms: All Proposals, including any price quotations, will be valid and firm through a period of one hundred and eighty (180) calendar days following the Closing date. County may require an extension of this firm offer period. Proposers will be required to agree to the longer time frame in order to be further considered in the procurement process.

2.15 Oral Presentations: At County's sole option, Proposers may be required to give an oral presentation of their Proposals to County, a process which would provide an opportunity for the Proposer to clarify or elaborate on the Proposal but will in no material way change Proposer's original Proposal. If the evaluating committee requests presentations, the Procurement Division will schedule the time and location for said presentation. Any costs of participating in such presentations will be borne solely by Proposer and will not be reimbursed by County. **Note:** Oral presentations are at the discretion of the evaluating committee and may not be conducted; therefore, **written Proposals should be complete.**

2.16 Usage: It is the intention of County to utilize the services of the successful Proposer(s) to provide services as outlined in the below Scope of Work.

2.17 Review for Responsiveness: Upon receipt of all Proposals, the Procurement Division or designee will determine the responsiveness of all Proposals before submitting them to the evaluation committee. If a Proposal is incomplete or non-responsive in significant part or in whole, it will be rejected and will not be submitted to the evaluation committee. County reserves the right to determine if an inadvertent error is solely clerical or is a minor informality which may be waived, and then to determine if an error is grounds for disqualifying a Proposal. The Proposer's contact person identified on the Proposal will be notified, identifying the reason(s) the Proposal is non-responsive. One copy of the Proposal will be archived and all others discarded.

2.18 RFP Incorporated into Contract: This RFP will become part of the Contract between County and the selected contractor(s). The contractor(s) will be bound to perform according to the terms of this RFP, their Proposal(s), and the terms of the Sample Contract.

2.19 Communication Blackout Period: Except as called for in this RFP, Proposers may not communicate with members of the Evaluation Committee or other County employees or representatives about the RFP during the procurement process until the apparent successful Proposer is selected, and all protests, if any, have been resolved. Communication in violation of this restriction may result in rejection of a Proposer.

2.20 Prohibition on Commissions and Subcontractors: County will contract directly with persons/entities capable of performing the requirements of this RFP. Contractors must be represented directly. Participation by brokers or commissioned agents will not be allowed during the Proposal process. Contractor shall not use subcontractors to perform the Work unless specifically pre-authorized in writing to do so by the County. Contractor represents that any employees assigned to perform the Work, and any authorized subcontractors performing the Work, are fully qualified to perform the tasks assigned to them, and shall perform the Work in a competent and professional manner. Contractor shall not be permitted to add on any fee or charge for subcontractor Work. Contractor shall provide, if requested, any documents relating to subcontractor's qualifications to perform required Work.

2.21 Ownership of Proposals: All Proposals in response to this RFP are the sole property of County, and subject to the provisions of ORS 192.410-192.505 (Public Records Act).

2.22 Clerical Errors in Awards: County reserves the right to correct inaccurate awards resulting from its clerical errors.

2.23 Rejection of Qualified Proposals: Proposals may be rejected in whole or in part if they attempt to limit or modify any of the terms, conditions, or specifications of the RFP or the Sample Contract.

2.24 Collusion: By responding, the Proposer states that the Proposal is not made in connection with any competing Proposer submitting a separate response to the RFP, and is in all aspects fair and without collusion or fraud. Proposer also certifies that no officer, agent, elected official, or employee of County has a pecuniary interest in this Proposal.

2.25 Evaluation Committee: Proposals will be evaluated by a committee consisting of representatives from County and potentially external representatives. County reserves the right to modify the Evaluation Committee make-up in its sole discretion.

2.26 Commencement of Work: The contractor shall commence no work until all insurance requirements have been met, the Protest of Awards deadline has been passed, any protest have been decided, a contract has been fully executed, and a Notice to Proceed has been issued by County.

2.27 Nondiscrimination: The successful Proposer agrees that, in performing the work called for by this RFP and in securing and supplying materials, contractor will not discriminate against any person on the basis of race, color, religious creed, political ideas, sex, age, marital status, sexual orientation, gender identity, veteran status, physical or mental handicap, national origin or ancestry, or any other class protected by applicable law.

SECTION 3 SCOPE OF WORK

3.1. INTRODUCTION

Clackamas County, on behalf of its Health and Human Services department is seeking Proposals from vendors to provide EMS System Planning Consultant Services.

Clackamas County Public Health Division's Emergency Medical Services (EMS) Program is seeking proposals from qualified contractors to provide project management support and expertise in the development of an EMS System Plan, Ambulance Services Plan (last updated in 2012), and associated contracts, IGAs, and agreements.

Please direct all Technical/Specifications or Procurement Process Questions to the indicated representative referenced in the Notice of Request for Proposals and note the communication restriction outlined in Section 2.19.

3.2 BACKGROUND

Clackamas County's EMS system currently includes a private ambulance company, fire agencies, dispatch centers, hospitals, public health, behavioral health, and law enforcement.

Through this project, Clackamas County will have an Emergency Medical Services (EMS) System that effectively uses available resources to provide focus, advancement and improvement of patient outcomes, community health, and service delivery.

The County's goal with this project is to create a modernized, integrated medical service delivery plan that facilitates the ability to capitalize on the advancements in the greater healthcare system.

3.3. SCOPE OF WORK

3.3.1. Scope:

Clackamas County's Emergency Medical Services Council has recently adopted a system-wide strategic plan that was approved by the Board of County Commissioners in April 2019. A taskforce has been developed to oversee the implementation of the priority areas identified within the plan, which includes the following:

- Ambulance Service Area Plan Review (updated to be a modernized EMS system plan)
- Medical Priority Dispatch System Integration (focus on achieving accreditation)
- Quality Assurance & Quality Improvement Integration (use of data through technology)
- Community Paramedic Program & Response (system-wide)
- Combined Resources (closest forces model)
- Single Resource Response (first paramedic 'stops the clock' for agency's response time compliance)
- Education & Training (further development of multi-agency trainings & leadership development)
- Public Education (e.g. stop the bleed, hands only CPR)
- Equipment Standardization
- Water Rescue and Reach & Treat Teams Integration
- Compliance Transparency & Improvement
- Supply Reimbursement for medical supplies

The successful proposer will be required to provide guidance and recommendations for optimization of identified innovations, and to facilitate updating the EMS System Plan and associated plans and agreements that include further integration with behavioral health and law enforcement partners, health outcome-based performance measures, and equity of care. The successful proposer will bring further innovative ideas for review and consideration in the development of the EMS System Plan for Clackamas County with input from a variety of stakeholders.

The following responsibilities represent expectations but not limitations of the successful proposer:

1. The contractor shall convene and work closely with local EMS partner agencies in the assessment and development of recommendations for revisions to the EMS System Plan and associated plans /agreements.
2. The contractor shall examine the system-level ideas presented and determine their feasibility and costs, with recommendations for how to operationalize across ambulance service areas.
3. The contractor shall draft and produce an EMS System Plan that must be presented to and accepted by the Clackamas County EMS Council with a 2 year, 5 year, and 10 year phased approach that aligns with the Ambulance Service Area Plan.
4. The contractors shall assure that the updated EMS System Plan and associated plans / agreements will meet relevant local, state, and federal requirements associated with this work.
5. The contractor must clearly explain their proposal for addressing this scope of work based on established timelines.
6. The contractor shall provide a budget that is realistic based on the proposed timeline and scope of work.

3.3.2 Term of Contract:

The term of the contract shall be from the effective date through **June 30, 2022**, with the option to renew for one additional year.

3.3.3 Sample Contract: Submission of a Proposal in response to this RFP indicates Proposer's willingness to enter into a contract containing substantially the same terms (including insurance requirements) of the sample contract identified below. No action or response to the sample contract is required under this RFP. Any objections to the sample contract terms should be raised in accordance with Paragraphs 2.2 or 2.3 of this RFP, pertaining to requests for clarification or change or protest of the RFP/specifications, and as otherwise provided for in this RFP. This RFP and all supplemental information in response to this RFP will be a binding part of the final contract.

The applicable Sample Personal Services Contract, for this RFP can be found at <https://www.clackamas.us/finance/terms.html>.

Personal Services Contract (unless checked, item does not apply)

The following paragraphs of the Professional Services Contract will be applicable:

- Article I, Paragraph 5 – Travel and Other Expense is Authorized
- Article II, Paragraph 28 – Confidentiality
- Article II, Paragraph 29 – Criminal Background Check Requirements
- Article II, Paragraph 30 – Key Persons
- Article II, Paragraph 31 – Cooperative Contracting
- Article II, Paragraph 32 – Federal Contracting Requirements

Exhibit A – On-Call Provision

The following insurance requirements will be applicable:

- Commercial General Liability: combined single limit, or the equivalent, of not less than \$1,000,000 per occurrence, with an annual aggregate limit of \$2,000,000 for Bodily Injury and Property Damage.
- Professional Liability: combined single limit, or the equivalent, of not less than \$1,000,000 per occurrence, with an annual aggregate limit of \$2,000,000 for damages caused by error, omission or negligent acts.
- Automobile Liability: combined single limit, or the equivalent, of not less than \$1,000,000 per occurrence for Bodily Injury and Property Damage.
- Cyber Liability: combined single limit, or the equivalent, of not less than \$1,000,000 per occurrence for network security (including data breach), privacy, interruption of business, media liability, and errors and omissions

**SECTION 4
EVALUATION PROCEDURE**

4.1 An evaluation committee will review all Proposals that are initially deemed responsive and they shall rank the Proposals in accordance with the below criteria. The evaluation committee may recommend an award based solely on the written responses or may request Proposal interviews/presentations. Interviews/presentations, if deemed beneficial by the evaluation committee, will consist of the highest scoring Proposers. The invited Proposers will be notified of the time, place, and format of the interview/presentation. Based on the interview/presentation, the evaluation committee may revise their scoring.

Written Proposals must be complete and no additions, deletions, or substitutions will be permitted during the interview/presentation (if any). The evaluation committee will recommend award of a contract to the final County decision maker based on the highest scoring Proposal. The County decision maker reserves the right to accept the recommendation, award to a different Proposer, or reject all Proposals and cancel the RFP.

Proposers are not permitted to directly communicate with any member of the evaluation committee during the evaluation process. All communication will be facilitated through the Procurement representative.

4.2 Evaluation Criteria

<u>Category</u>	<u>Points available:</u>
Proposer’s General Background and Qualifications	0-30
Answers to project Specific Questions	0-45
Fees	0-25
Available points	0-100

4.3 Once a selection has been made, the County will enter into contract negotiations. During negotiation, the County may require any additional information it deems necessary to clarify the approach and understanding of the requested services. Any changes agreed upon during contract negotiations will become part of the final contract. The negotiations will identify a level of work and associated fee that best represents the efforts required. If the County is unable to come to terms with the highest scoring Proposer, discussions shall be terminated and negotiations will begin with the next highest scoring Proposer. If the resulting contract contemplates multiple phases and the County deems it is in its interest to not authorize any particular phase, it reserves the right to return to this solicitation and commence negotiations with the next highest ranked Proposer to complete the remaining phases.

SECTION 5 PROPOSAL CONTENTS

5.1. Vendors must observe submission instructions and be advised as follows:

5.1.1. Complete Proposals must be emailed to Procurement@clackamas.us. The subject line of the email must identify the RFP title. Proposers are encouraged to contact Procurement to confirm receipt of the Proposal if an auto reply is not received.

5.1.3. County reserves the right to solicit additional information or Proposal clarification from the vendors, or any one vendor, should the County deem such information necessary.

5.1.4. Proposal may not exceed a total of **25 pages** (single-sided), inclusive of all exhibits, attachments or other information.

Provide the following information in the order in which it appears below:

5.2 Cover Letter:

The cover letter should identify the proposing entity, the contact for the procurement and contract negotiation process, and be signed by an authorized representative or official.

5.3 Proposer's General Background and Qualifications:

1. Description of the firm.
2. Credentials/experience of key individuals that would be assigned to this project.
3. Description of providing similar services to public entities of similar size within the past five (5) years.
4. Description of the firm's ability to meet the requirements in Section 3.
5. Description of what distinguishes the firm from other firms performing a similar service.
6. If selected, the contractor must be a registered contractor through the State of Oregon and meet all applicable local, state, and federal laws and regulations.
7. The contractor must demonstrate comprehensive EMS system experience, including system design, implementation, financial analysis, and practical / operational management experience in similar EMS systems to Clackamas County (e.g. includes public / private partnerships).
8. The contractor must demonstrate a successful track record in developing complex plans with input from a variety of stakeholders and gaining consensus from groups.
9. The contractor must provide examples of previous work on emergency medical services systems over the past five years.

5.4 Project Specific Question

1. Describe what methods will be implemented to develop recommendations for revisions to the EMS plan and associated agreements. How will these methods develop collaboration from sometimes vastly different stakeholders to develop a common goal? (Favorable responses will involve utilizing differing tools to develop recommendations from every stakeholder that involve separate and combined meetings)

2. What system-level data and information will be used to develop feasibility and recommendations? How will this data and information be gathered and analyzed for completeness? (Favorable responses will involve data and info from all stakeholders that may involve non-digitized or anecdotal data from every agency and stakeholder)
3. Name and describe items typically found in a phased plan for Ambulance Service Areas and give examples that are unique to the Clackamas County plan.
4. How will you demonstrate that all local, state, and federal requirements are satisfied in the final proposal?
5. What tools will be used to meet the established timelines for completion and presentation for the completed scope of work. What are previous challenges you have experienced and how have you overcome these challenges. Give examples.
6. What measures have you implemented in previous demonstrated projects like this scope of work that demonstrates your work to be competitive in costs?

5.4. Fees

Fees should be on a time and material basis with a not to exceed project total. Fees should be sufficiently descriptive to facilitate acceptance of a Proposal. Fees and fee schedules should outline all estimated expenses, hourly rates for all assigned individuals, anticipated travel, other reimbursable expenses.

5.5. References

Provide at least three (3) references from clients your firm has served similar to the County in the past three (3) years, including one client that has newly engaged the firm in the past thirty-six (36) months and one (1) long-term client. Provide the name, address, email, and phone number of the references. Please note the required three references may not be from County staff, but additional references may be supplied. Points awarded for this criteria are based on both the providing of references as well as information gleaned from the provided contacts. Evaluation Committee members may contact references at their sole discretion.

5.6. Completed Proposal Certification (see the below form)

PROPOSAL CERTIFICATION
RFP #2021-43 EMS System Planning Consultant Services

Submitted by: _____
(Must be entity's full legal name, and State of Formation)

Each Proposer must read, complete and submit a copy of this Proposal Certification with their Proposal. Failure to do so may result in rejection of the Proposal. By signature on this Proposal Certification, the undersigned certifies that they are authorized to act on behalf of the Proposer and that under penalty of perjury, the undersigned will comply with the following:

SECTION I. OREGON TAX LAWS: As required in ORS 279B.110(2)(e), the undersigned hereby certifies that, to the best of the undersigned's knowledge, the Proposer is not in violation of any Oregon Tax Laws. For purposes of this certification, "Oregon Tax Laws" means the tax laws of the state or a political subdivision of the state, including ORS 305.620 and ORS chapters 316, 317 and 318. If a contract is executed, this information will be reported to the Internal Revenue Service. Information not matching IRS records could subject Proposer to 24% backup withholding.

SECTION II. NON-DISCRIMINATION: That the Proposer has not and will not discriminate in its employment practices with regard to race, creed, age, religious affiliation, sex, disability, sexual orientation, gender identity, national origin, or any other protected class. Nor has Proposer or will Proposer discriminate against a subcontractor in the awarding of a subcontract because the subcontractor is a disadvantaged business enterprise, a minority-owned business, a woman-owned business, a business that a service-disabled veteran owns or an emerging small business that is certified under ORS 200.055.

SECTION III. CONFLICT OF INTEREST: The undersigned hereby certifies that no elected official, officer, agent or employee of Clackamas County is personally interested, directly or indirectly, in any resulting contract from this RFP, or the compensation to be paid under such contract, and that no representation, statements (oral or in writing), of the County, its elected officials, officers, agents, or employees had induced Proposer to submit this Proposal. In addition, the undersigned hereby certifies that this proposal is made without connection with any person, firm, or corporation submitting a proposal for the same material, and is in all respects fair and without collusion or fraud.

SECTION IV. COMPLIANCE WITH SOLICITATION: The undersigned further agrees and certifies that they:

1. Have read, understand and agree to be bound by and comply with all requirements, instructions, specifications, terms and conditions of the RFP (including any attachments); and
2. Are an authorized representative of the Proposer, that the information provided is true and accurate, and that providing incorrect or incomplete information may be cause for rejection of the Proposal or contract termination; and
3. Will furnish the designated item(s) and/or service(s) in accordance with the RFP and Proposal; and
4. Will use recyclable products to the maximum extent economically feasible in the performance of the contract work set forth in this RFP.

Name: _____ Date: _____

Signature: _____ Title: _____

Email: _____ Telephone: _____

Oregon Business Registry Number: _____ OR CCB # (if applicable): _____

Business Designation (check one):

Corporation Partnership Sole Proprietorship Non-Profit Limited Liability Company

Resident Quoter, as defined in ORS 279A.120

Non-Resident Quote. Resident State: _____

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

This Scope of Work, which includes deliverables needed for each element, and the Project Timetable. The timetable includes generalized responsible parties and is meant to help guide activity with the project. Green sections indicate priority areas to all be accomplished by August of 2022

Week(s)	Scope of Work Element	Deliverable
	Project Down payment	25% = \$38,050
1-8 Robbins LaCroix Montera Davis Satterlee Gienapp	Stakeholder Engagement Part 1; Current System Structure & Operation	The consultation process will begin with multiple stakeholder engagement sessions, to include: <ol style="list-style-type: none"> At least one combined on-site visit to physically examine the whole current system and include videoconference meetings with representatives or designees from the following organizations. <ul style="list-style-type: none"> American Medical Response Canby Fire Department Clackamas Fire District #1 Colton Fire District Estacada Fire Department Gladstone Fire Department Hoodland Fire District Lake Oswego Communications Lake Oswego Fire Department Molalla Fire District Tualatin Valley Fire & Rescue Clackamas County C-COM Clackamas County Disaster Management Clackamas County Public Health Clackamas County Fire Chiefs

Week(s)	Scope of Work Element	Deliverable
		<ul style="list-style-type: none"> • Clackamas County Behavioral Health • Community Paramedic Stakeholders • Amy Jo Cook, CFD1 • State DHS Caseworker ○ Apryl Herron, CCPHD • Vale Muggia, OCPD BHS • Care Oregon <ol style="list-style-type: none"> 2. An interview (in-person or videoconference at CCG’s discretion) with a representative sample of EMS medical directors from the county’s agencies delivering EMS. 3. An interview (in-person or videoconference at CCG’s discretion) with the county EMS Director. 4. Process is focused on the current design and status of EMS services and interagency collaboration.
8-16 Montera	Community Paramedic Program	<p>Report on concept of community paramedicine program in a county-wide operation</p> <ul style="list-style-type: none"> • Describe community assessment process • Explain enhancements to community health and the impact of the EMS system • Describe impact on hospitals and patient discharges
	Milestone Payment	10% = \$15,220
9-21 Robbins Davis Gienapp LaCroix O’Neal Satterlee Gunderson	Review of System Resources and Operational Practices pertaining to current ASA	<p>Analysis of current system structure, operational and clinical practices, stakeholder interests, leadership hierarchy, and performance metrics. Recommendations will support a coordinated county-wide system. This analysis will include recommendation of performance standards:</p> <ul style="list-style-type: none"> • Review of fractile response times by geographical density regions • Review of fractile response times by nature of call • Appraisal of current Public/Private assets as related to impact on operational practices and establishment of vehicle and medical equipment functionality and age standards, as well as clinical care delivery standards • EMS station mapping to assess care delivery standards for tiered response criteria

Week(s)	Scope of Work Element	Deliverable
		<ul style="list-style-type: none"> • Analysis of available county-wide resources to accomplish performance standards aims • Analysis of using “first EMS unit on-scene” to “stop the clock” (engines, “chase cars” etc.) for compliance with response time standards requirements • Analysis of First Responder, BLS & ALS level care delivery and recommended performance standard • Modification of existing county EMS delivery contracts to performance-based agreements
22-32 Robbins LaCroix Bloom Gienapp Davis O’Neal	Preliminary Ambulance Service Area Plan Review	<p>Initial revision of ASA Plan expressing a “performance-based” approach to the current EMS system county-wide.</p> <ul style="list-style-type: none"> • Recommended updates to the Ambulance Service Plan • Emphasis on performance-based quality criteria - clinical, operational and financial • Inclusive of performance standards, goals and metrics
	Milestone Payment	10% = \$15,220
33-39 LaCroix Montera & Each Advisor For One On Ones	Stakeholder Engagement Part 2; Alternative Systems’ Structure & Operations	<p>1. The consultation process will continue with multiple stakeholder engagement sessions (in-person or videoconference at CCG’s discretion), to include:</p> <ul style="list-style-type: none"> • American Medical Response • Canby Fire Department • Clackamas Fire District #1 • Colton Fire District • Estacada Fire Department • Gladstone Fire Department • Hoodland Fire District • Lake Oswego Communications • Lake Oswego Fire Department • Molalla Fire District • Tualatin Valley Fire & Rescue • Clackamas County C-COM

Week(s)	Scope of Work Element	Deliverable
		<ul style="list-style-type: none"> • Clackamas County Disaster Management • Clackamas County Public Health • Clackamas County Fire Chiefs • Clackamas County Behavioral Health • Community Paramedic Stakeholders • Amy Jo Cook, CFD1 • State DHS Caseworker ○ Apryl Herron, CCPHD • Vale Muggia, OCPD BHS • Care Oregon <ol style="list-style-type: none"> 2. An interview with a representative sample of EMS medical directors from the county’s agencies delivering EMS. 3. An interview with county EMS Director. 4. Interviews with several hospital representatives knowledgeable of the EMS experience in their facilities. 5. Examining EMS System end state desires. <ul style="list-style-type: none"> • High level SWOT review
33-40 Robbins LaCroix Davis O’Neal Gienapp	Conduct feasibility assessments regarding Alternative System Designs	<p>Analyze system redesign concepts</p> <ul style="list-style-type: none"> • Operational and fiscal perspectives • Assessment of “Best Practice” delivery models as related to implementation in the Clackamas service area • Review of public/private partnerships • Assessment of consolidation of providers • Impact analysis of alternate systems (operational, financial & clinical) • Comparative analysis of alternatives • Stakeholders’ view of alternatives
	Milestone Payment	10% = \$15,220

Week(s)	Scope of Work Element	Deliverable
6-18 Acciavatti	Medical Priority Dispatch System Integration	Review of current telecommunications & dispatch operations <ul style="list-style-type: none"> • Recommendations for improvements and enhancements. • Plan inclusive of a strategy for attaining accreditation as an ACE (Accredited Center of Excellence) from the IAEM (International Academies of Emergency Dispatch)
6-18 Gunderson Satterlee	Quality Assurance & Quality Improvement Integration	Report detailing recommendations for system-wide QI improvements and enhancements. Focus on: <ul style="list-style-type: none"> • Cause and Effect • Failure Modes and Analysis • Run and Control Charts • Plan, Do, Study, Act • Use of data and technology
	Milestone Payment	10% = \$15,220
6-18 Todaro Satterlee	Education & Training	Report of review detailing current status of education & training system-wide <ul style="list-style-type: none"> • Recommendations for improvements, enhancements and expansion of multi-agency, combined training. Plan will be inclusive of a strategy for attaining system (county) wide approach.
6-18 Satterlee	Medical Oversight	Medical treatment protocols review. Recommendations for changes.
6-20 Bloom	Compliance Transparency & Improvement	Report of review detailing current status of public transparency and regulatory compliance for each agency with recommendations for improvements and enhancements <ul style="list-style-type: none"> • Inclusive of local, regional, state and federal level

Week(s)	Scope of Work Element	Deliverable
		<ul style="list-style-type: none"> Recommended strategies for process improvement and change methodology
8-24 Atkinson Satterlee Todaro	Public Education	<p>Report of review detailing current status of public emergency medical intervention education & training system-wide with recommendations for improvements, enhancements and expansion.</p> <ul style="list-style-type: none"> Inclusive of popular public education programs, such as “Stop the Bleed” and CPR. Plan will be inclusive of a strategy for attaining system (county) wide approach Recommendations on using traditional and social media to reach county stakeholders Interactions with hospitals
	Milestone Payment	10% = \$15,220
32-40 TBD	Equipment Standardization	<p>Report will review current equipment type usage at all EMS agencies</p> <ul style="list-style-type: none"> Recommend selected standardization that would enhance patient care delivery Identify methods to enhance group purchasing opportunities
32-40 Robbins	Reimbursement for Medical Supplies	<p>Report of review detailing current status of medical supply reimbursement for each agency</p> <ul style="list-style-type: none"> Recommendations for improvements and enhancements Inclusive of billing strategies and processes needed.
32-40 Gienapp	Water Rescue and Reach & Treat Teams Integration	<p>Report of review detailing current status of water rescue and reach & treat teams</p> <ul style="list-style-type: none"> Recommendations for improvements and enhancements. Plan will be inclusive of a strategy for educational and operational improvements and further integration

Week(s)	Scope of Work Element	Deliverable
33-42 Montera	Community Paramedic Program and Expansion	Report detailing current status of community paramedicine system-wide with recommendations for <ul style="list-style-type: none"> • Community assessment process • Enhancements and expansion to existing programs • Analysis of consolidating services • Analysis of hospital integration • Plan will be inclusive of a strategy for attaining system (county) wide services
	Milestone Payment	10% = \$15,220
32-44 Robbins LaCroix Montera Bloom O'Neal Gienapp	EMS System Strategic Plan (2, 5 & 10 years)	Revised Strategic Plan expressing a “high-performance” approach to an efficient and high-quality EMS system county-wide and recommended model for EMS system <ul style="list-style-type: none"> • The plan will consider all recommendations derived from analyses and reports generated from this overall engagement • This plan will elucidate goals at the 2-, 5- and 10-year horizons • It will further identify strategies and tactics to attain established goals.
	Milestone Payment	10% = \$15,220
48 All Advisors	Final Report Issued & presented	Written report inclusive of entire scope of work will be completed and presented.
	Final Hold-back Payment	5% = \$7,610

December 9, 2021

Board of County Commissioner
Clackamas County

Members of the Board:

Approval of Intergovernmental Agreement with Sandy Fire District for COVID vaccine administration. Contract maximum value is \$150,000. Funding through the ARPA and FEMA funding

No County General Funds are Involved

Purpose/Outcomes	Provide distribution of COVID vaccine via community clinics.
Dollar Amount and Fiscal Impact	Contract maximum value is \$150,000.
Funding Source	Funding through the ARPA and FEMA funding. No County General Funds are involved.
Duration	January 1, 2022 and terminates on December 31, 2022
Previous Board Action	Item approved at issues 12/7/21
Strategic Plan Alignment	1. Improved Community Safety and Health 2. Ensure safe, healthy and secure communities
Counsel Review	County counsel has reviewed and approved this document on November 15, 2021 - KR
Procurement Review	1. Was the item processed through Procurement? yes <input type="checkbox"/> no <input checked="" type="checkbox"/> 2. The documents are IGA's.
Contact Person	Philip Mason-Joyner, EOC Command – (503) 742-5956
Contract No.	10442

BACKGROUND:

The Clackamas County Public Health Division (CCPHD) of the Health, Housing & Human Services Department requests the approval of Intergovernmental Agreement with Sandy Fire District for COVID vaccine administration.

Clackamas County desires to partner with local fire agencies to conduct COVID-19 testing and distribution of COVID vaccine via community clinics based on guidelines established by the Oregon Health Authority.

Contract maximum value is \$150,000.

This contract is effective January 1, 2022 and continues through December 31, 2022.

RECOMMENDATION:

Staff recommends the Board of County Commissioners approve the attached Intergovernmental Agreement with Sandy Fire District for COVID vaccine administration.

Respectfully submitted,

Rodney A. Cook, Director
Health, Housing, and Human Services

**INTERGOVERNMENTAL AGREEMENT
BETWEEN CLACKAMAS COUNTY
AND SANDY FIRE DISTRICT
Contract #10442**

THIS AGREEMENT (this "Agreement") is entered into and between Clackamas County ("County"), a political subdivision of the State of Oregon, and Sandy Fire District (Agency"), an Oregon municipal corporation, collectively referred to as the "Parties" and each a "Party."

RECITALS

Oregon Revised Statutes Chapter 190.010 confers authority upon local governments to enter into agreements for the performance of any and all functions and activities that a party to the agreement, its officers or agencies have authority to perform.

Clackamas County desires to partner with Sandy Fire District in support of the County's efforts towards Reopening Clackamas as a component of the prerequisites required by the Governor's Office. The County is requesting local fire agencies to support distribution of COVID-19 vaccine via community clinics

In consideration of the mutual promises set forth below and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

TERMS

1. **Term.** This Agreement shall be effective January 1, 2022, and shall expire upon the completion of each and every obligation of the Parties set forth herein, or December 31, 2022, whichever is sooner.
2. **Scope of Work.** The Agency agrees to provide the services further identified in the Scope of Work attached hereto as Exhibit A and incorporated herein ("Work").
3. **Consideration.** The County agrees to pay Agency, from available and authorized funds, a sum not to exceed one hundred fifty thousand dollars (\$150,000.) for accomplishing the Work required by this Agreement.
4. **Payment.** Unless otherwise specified, the Agency shall submit monthly invoices for Work performed and shall include the total amount billed to date by the Agency prior to the current invoice. Invoices shall describe all Work performed with particularity, by whom it was performed, and shall itemize and explain all expenses for which reimbursement is claimed. Payments shall be made to Agency following the County's review and approval of invoices submitted by Agency. Agency shall not submit invoices for, and the County will not pay, any amount in excess of the maximum compensation amount set forth above.
5. **Representations and Warranties.**
 - A. *Agency Representations and Warranties:* Agency represents and warrants to County that Agency has the power and authority to enter into and perform this Agreement, and this Agreement, when executed and delivered, shall be a valid and binding obligation of Agency enforceable in accordance with its terms.
 - B. *County Representations and Warranties:* County represents and warrants to Agency that County has the power and authority to enter into and perform this Agreement, and this Agreement, when executed and delivered, shall be a valid and binding obligation of County enforceable in accordance with its terms.
 - C. The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.

6. Termination.

- A. Either the County or the Agency may terminate this Agreement at any time upon thirty (30) days written notice to the other party.
- B. Either the County or the Agency may terminate this Agreement in the event of a breach of the Agreement by the other. Prior to such termination however, the Party seeking the termination shall give the other Party written notice of the breach and of the Party's intent to terminate. If the breaching Party has not entirely cured the breach within fifteen (15) days of deemed or actual receipt of the notice, then the Party giving notice may terminate the Agreement at any time thereafter by giving written notice of termination stating the effective date of the termination. If the default is of such a nature that it cannot be completely remedied within such fifteen (15) day period, this provision shall be complied with if the breaching Party begins correction of the default within the fifteen (15) day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable. The Party giving notice shall not be required to give more than one (1) notice for a similar default in any twelve (12) month period.
- C. The County or the Agency shall not be deemed to have waived any breach of this Agreement by the other Party except by an express waiver in writing. An express written waiver as to one breach shall not be deemed a waiver of any other breach not expressly identified, even though the other breach is of the same nature as that waived.
- D. Either party may terminate this Agreement in the event that party fails to receive expenditure authority sufficient to allow the party, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement, or if federal or state laws, regulations or guidelines are modified or interpreted in such a way that performance under this Agreement is prohibited or the party is prohibited from paying for such work from the planned funding source.
- E. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.

7. Indemnification.

Subject to the limits of the Oregon Constitution and the Oregon Tort Claims Act or successor statute, the Agency agrees to indemnify, save harmless and defend the County, its officers, elected officials, agents and employees from and against all costs, losses, damages, claims or actions and all expenses incidental to the investigation and defense thereof arising out of or based upon damages or injuries to persons or property caused by the negligent or willful acts of the Agency or its officers, elected officials, owners, employees, agents, or its subcontractors or anyone over which the Agency has a right to control.

- 8. **Insurance.** The Agency agrees to furnish the County with evidence of commercial general liability insurance with a combined single limit of not less than \$1,000,000 for each claim, incident, or occurrence, with an aggregate limit of \$2,000,000 for bodily injury and property damage for the protection of Clackamas County, and their officers, elected officials, agents, and employees against liability for damages because of personal injury, bodily injury, death or damage to property, including loss of use thereof, in any way related to this Agreement. If self-insured, Agency shall provide documentation to the County of Agency's self-insured status by completing the Self-Insurance Certification form provided by the County.
- 9. **Notices; Contacts.** Legal notice provided under this Agreement shall be delivered personally, by email or by certified mail to the individuals identified below. Any communication or notice so

addressed and mailed shall be deemed to be given upon receipt. Any communication or notice sent by electronic mail to an address indicated herein is deemed to be received 2 hours after the time sent (as recorded on the device from which the sender sent the email), unless the sender receives an automated message or other indication that the email has not been delivered. Any communication or notice by personal delivery shall be deemed to be given when actually delivered. Either Party may change the Party contact information, or the invoice or payment addresses by giving prior written notice thereof to the other Party at its then current notice address.

- A. Philip Mason-Joyner, Public Health Director, or their designee will act as liaison for the County.

Contact Information:

503-742-5956 - PMason@clackamas.us

Chief Phil Schneider, Fire Chief, or their designee will act as liaison for the Agency.

Contact Information:

503-668-8093 - p.schneider@sandyfire.org

10. General Provisions.

- A. **Oregon Law and Forum.** This Agreement, and all rights, obligations, and disputes arising out of it will be governed by and construed in accordance with the laws of the State of Oregon and the ordinances of Clackamas County without giving effect to the conflict of law provisions thereof. Any claim between County and Agency that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Clackamas County for the State of Oregon; provided, however, if a claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this section be construed as a waiver by the County of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court. Agency, by execution of this Agreement, hereby consents to the in personam jurisdiction of the courts referenced in this section.
- B. **Compliance with Applicable Law.** Both Parties shall comply with all applicable local, state and federal ordinances, statutes, laws and regulations, including HIPAA and state privacy laws. All provisions of law required to be a part of this Agreement, whether listed or otherwise, are hereby integrated and adopted herein. Failure to comply with such obligations is a material breach of this Agreement.
- C. **Non-Exclusive Rights and Remedies.** Except as otherwise expressly provided herein, the rights and remedies expressly afforded under the provisions of this Agreement shall not be deemed exclusive, and shall be in addition to and cumulative with any and all rights and remedies otherwise available at law or in equity. The exercise by either Party of any one or more of such remedies shall not preclude the exercise by it, at the same or different times, of any other remedies for the same default or breach, or for any other default or breach, by the other Party.

- D. Access to Records.** Agency shall retain, maintain, and keep accessible all records relevant to this Agreement ("Records") for a minimum of six (6) years, following Agreement termination or full performance or any longer period as may be required by applicable law, or until the conclusion of an audit, controversy or litigation arising out of or related to this Agreement, whichever is later. Agency shall maintain all financial records in accordance with generally accepted accounting principles. All other Records shall be maintained to the extent necessary to clearly reflect actions taken. During this record retention period, Agency shall permit the County's authorized representatives' access to the Records at reasonable times and places for purposes of examining and copying.
- E. Hazard Communication.** Contractor shall notify County prior to using products containing hazardous chemicals to which County employees may be exposed, which includes any hazardous, toxic, or dangerous substance, waste, or material that is the subject of environmental protection legal requirements or that becomes regulated under any applicable local, state or federal law, including but not limited to the items listed in the United States Department of Transportation Hazardous Materials Table (49 CFR §172.101) or designated as hazardous substances by Oregon Administrative Rules, Chapter 137, or the United States Environmental Protection Agency (40 CFR Part 302), and any amendments thereto. Upon County's request, Agency shall immediately provide Material Safety Data Sheets for the products subject to this provision.
- F. Debt Limitation.** This Agreement is expressly subject to the limitations of the Oregon Constitution and Oregon Tort Claims Act, and is contingent upon appropriation of funds. Any provisions herein that conflict with the above referenced laws are deemed inoperative to that extent.
- G. Severability.** If any provision of this Agreement is found to be unconstitutional, illegal or unenforceable, this Agreement nevertheless shall remain in full force and effect and the offending provision shall be stricken. The Court or other authorized body finding such provision unconstitutional, illegal or unenforceable shall construe this Agreement without such provision to give effect to the maximum extent possible the intentions of the Parties.
- H. Integration, Amendment and Waiver.** Except as otherwise set forth herein, this Agreement constitutes the entire agreement between the Parties on the matter of the Project. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either Party unless in writing and signed by both Parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of either Party to enforce any provision of this Agreement shall not constitute a waiver by such Party of that or any other provision.
- I. Interpretation.** The titles of the sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.
- J. Independent Contractor.** Each of the Parties hereto shall be deemed an independent contractor for purposes of this Agreement. No representative, agent, employee or contractor of one Party shall be deemed to be a representative, agent, employee or contractor of the other Party for any purpose, except to the extent specifically provided herein. Nothing herein is intended, nor shall it be construed, to create between the Parties any relationship of principal and agent, partnership, joint venture or any similar relationship, and each Party hereby specifically disclaims any such relationship.

- K. **No Third-Party Beneficiary.** Agency and County are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.
- L. **Subcontract and Assignment.** Agency shall not enter into any subcontracts for any of the work required by this Agreement, or assign or transfer any of its interest in this Agreement by operation of law or otherwise, without obtaining prior written approval from the County, which shall be granted or denied in the County's sole discretion. County's consent to any subcontract shall not relieve Agency of any of its duties or obligations under this Agreement.
- M. **Counterparts.** This Agreement may be executed in several counterparts (electronic or otherwise), each of which shall be an original, all of which shall constitute the same instrument.
- N. **Survival.** All provisions in Sections 5, 7, and 10 (A), (C), (D), (G), (H), (I), (J), (L), (Q), (T), and (U) shall survive the termination of this Agreement, together with all other rights and obligations herein which by their context are intended to survive.
- O. **Necessary Acts.** Each Party shall execute and deliver to the others all such further instruments and documents as may be reasonably necessary to carry out this Agreement.
- P. **Time is of the Essence.** Agency agrees that time is of the essence in the performance this Agreement.
- Q. **Successors in Interest.** The provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto, and their respective authorized successors and assigns.
- R. **Force Majeure.** Neither Agency nor County shall be held responsible for delay or default caused by events outside of the Agency or County's reasonable control including, but not limited to, fire, terrorism, riot, acts of God, or war. However, Agency shall make all reasonable efforts to remove or eliminate such a cause of delay or default and shall upon the cessation of the cause, diligently pursue performance of its obligations under this Agreement.
- S. **Confidentiality.** Agency acknowledges that it and its employees or agents may, in the course of performing their responsibilities under this Agreement, be exposed to or acquire confidential information. Any and all information of any form obtained by Agency or its employees or agents in the performance of this Agreement shall be deemed confidential information of the County ("Confidential Information"). Agency agrees to hold Confidential Information in strict confidence, using at least the same degree of care that Agency uses in maintaining the confidentiality of its own confidential information, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties or use Confidential Information for any purpose unless specifically authorized in writing under this Agreement.

Sandy Fire District

Intergovernmental Agreement #10442

Page 6 of 13

- T. **No Attorney Fees.** In the event any arbitration, action or proceeding, including any bankruptcy proceeding, is instituted to enforce any term of this Agreement, each party shall be responsible for its own attorneys' fees and expenses.

- U. **Federal terms.** Agency agrees to comply with the federal terms and conditions, and execute all required certifications, set forth in Exhibit B, attached hereto and incorporated by this reference herein.

IN WITNESS HEREOF, the Parties have executed this Agreement by the date set forth opposite their names below.

Clackamas County

SANDY FIRE DISTRICT

Chair, Board of County Commissioners



Phil Schneider, Fire Chief

Date

11-16-2021

Date

Approved as to form:
Date: 11/15/2021

Kathleen J. Ricketts

**EXHIBIT A
SCOPE OF WORK**

Background and Purpose:

- The Clackamas County Public Health Division is requesting the support of local fire agencies in conducting distribution of COVID-19 vaccine via community clinics, drive-thru events, or other congregate settings (e.g. workplaces, retirement communities, and other congregate settings)

1) Vaccine Administration for COVID-19

Agency will:

- Will provide medical and administrative staff, as staffing allows, to community events to provide vaccine administration for eligible populations, when requested by the County.
- Enter vaccine administration data into the ALERT IIS system within 24 hours of clinic date for COVID vaccine.
- Assist in promoting community events via website, flyers, etc. when requested by the county.

County will:

- Support logistics coordination including event set-up (e.g. tents), paperwork, data entry technology (laptops, hot spots, extension cords), administrative and support staff, interpretation, traffic control, etc., if requested in advance and approved.
- Provide Vaccine.
- Providing culturally and linguistically appropriate staff as appropriate.
-

Compensation

- \$80 per Agency vaccination staff (medical Staff administering vaccines, administrative and support staff), per hour. If services rendered are less than one full hour, Agency will bill CCPHD in one-quarter (¼) hour increments.
- Agency to invoice CCPHD within 30 days of community event.

Method of Payment. To receive payment, Agency shall submit invoices as follows:

Agency shall submit invoices by the tenth day of the month following that in which service was performed. The invoice shall list the contract #10442, dates of service, assignment, number of hours billed, number of tests conducted, and the total amount due for all service provided during the month. Invoices shall be submitted to:

Clackamas County Public Health Division
Attn: Accounts Payable
2051 Kaen Road, # 367
Oregon City, Oregon 97045

Or electronically to:

PublicHealthFiscalAP@clackamas.us

When submitting electronically, designate Agency name and contract #10442 in the subject of the e-mail.

Within thirty (30) days after receipt of the bill, provided County has approved the service specified on the invoice, County shall pay the amount requested to Agency.

EXHIBIT B
ADDITIONAL FEDERAL TERMS AND CONDITIONS

As used herein, "Contractor" means SANDY FIRE DISTRICT, and "County" means Clackamas County, a political subdivision of the State of Oregon.

1. The County intends that all or a portion of the consideration paid to Contractor will be eligible for reimbursement by one or more federal agencies including, but not limited to, the Federal Emergency Management Agency ("FEMA"). This Contract is subject to the additional terms and conditions required by federal law for a federal award. All terms and conditions required under applicable federal law for a federal award including, but not limited to, 2 C.F.R. § 200.326 and 2 C.F.R. § Pt. 200, App. II, are hereby incorporated by this reference herein.
2. Termination. This Contract may be terminated by mutual agreement of the parties or by the County for one of the following reasons: (i) for convenience upon thirty (30) days written notice to Contractor; or (ii) at any time the County fails to receive funding, appropriations, or other expenditure authority as solely determined by the County.
3. By execution of this Contract, Contractor hereby certifies that it and all subcontractors will comply with (i) all Federal statutes relating nondiscrimination, including, but not limited to: Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis race, color or national origin; Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681 et seq.), which prohibits discrimination on the basis of sex; the Age Discrimination Act of 1975, as amended (29 U.S.C. §§6101 et seq.), which prohibits discrimination on the basis of age; the Rehabilitation Act of 1973, as amended (29 U.S.C. §§793 et seq.), which prohibits discrimination against requires affirmative action for qualified individuals with disabilities; the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (42 U.S.C. §§4541 et seq.), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; §§523 and 527 of the Public Health Service Act of 1912 (4s U.S.C. §§290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; Title VII of the Civil Rights Act of 1969 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; any other discrimination provisions in the specific statute(s) under which for Federal assistance is being made; and the requirements of any other nondiscrimination statute(s) which may apply; (ii) will comply with the Byrd Anti-Lobbying Amendment (31 U.S.C. 1352 et. seq.), and shall file the required certification if the award is \$100,000 or more; and (iii) will comply with the provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
4. If this Contract involves a federal award that meets the definition of a "funding agreement" under 37 CFR § 401.2 (a), and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

Sandy Fire District

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5. If this Agreement is in excess of \$150,000, Contractor certifies that it and all subcontractors will comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, 42 U.S.C. 7401 et seq., and the Federal Water Pollution Control Act, as amended 33 U.S.C. 1251 et seq. Violations shall be reported to the awarding Federal Department and the appropriate Regional Office of the Environmental Protection Agency. Contractor shall include these requirements in all contracts with subcontractors receiving more than \$150,000.
6. If this Agreement is in excess of \$100,000 and involves the employment of mechanics or laborers, Contractor and all subcontractors will comply with all applicable standards, orders or regulations issued pursuant to the Contract Work Hours and Safety Standards Act 40 USC §§3701 et seq. as supplemented by Department of Labor regulations at 29 C.F.R. Part 5. See 2 C.F.R. Part 200, Appendix II, ¶ E. Under 40 U.S.C. § 3702, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Further, no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous. Contractor shall include and require all providers 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.
7. Contractor shall comply with 2 CFR 180.220 and 925. These regulations restrict 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. Contractor is responsible for further requiring the inclusion of a similar term or condition in any subsequent lower tier covered transactions. Contractor may access the Excluded Parties List System at <https://www.sam.gov>. The Excluded Parties List System contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than E.O. 12549 and 12689. Awards that exceed the simplified acquisition threshold shall provide the required certification regarding their exclusion status and that of their principals prior to award. Contractor is required to verify that none of the Contractor's principals (defined at 2 C.F.R. 180.995) or its affiliates (defined at 2 C.F.R. 180.905) are excluded (defined at 2 C.F.R. 180.940) or disqualified (defined at 2 C.F.R. 180.935). The Contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction that Contractor enters into. This certification is a material representation of fact relied upon by the County. If it is later determined that the Contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, then in addition to remedies available to the County, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
8. Record Retention. Contractor will retain and keep accessible all such financial records, books, documents, papers, plans, records of shipments and payments and writings that are directly related to this Agreement for a minimum of six (6) years, or such longer period as may be required by the federal agency or applicable state law, following final payment and termination of this Agreement, or until the conclusion of any audit, controversy or litigation arising out of or related to this Agreement, whichever date is later, according to 2 CFR 200.333-337. Contractor agrees to provide to the County, to the FEMA Administrator, to the Comptroller General of the United States, or to any of their authorized representatives, access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and

Sandy Fire District

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transcriptions. Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

The Contractor agrees to provide the FEMA Administrator or the Administrator's authorized representative's access to construction or other work sites pertaining to the Work being completed under the Contract. In compliance with the Disaster Recovery Act of 2018, the County and the Contractor acknowledge and agree that no language in this Contract is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

9. **DHS Seal, Logo, and Flags:** Contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.
10. **Compliance with Federal Law, Regulations, and Executive Orders:** This is an acknowledgement that FEMA financial assistance may be used to fund this Contract only. Contractor will comply with all federal law, regulations, executive orders, FEMA policies, procedures, and directives.
11. **No Obligation by Federal Government:** The Federal Government is not a party to this Contract and is not subject to any obligations or liabilities to the non-Federal entity, Contractor, or any other party pertaining to any matter resulting from the contract.
12. **Program Fraud and False or Fraudulent Statements or Related Acts:** Contractor acknowledges the 31 U.S.C. Chapter 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor's actions pertaining to this Contract.
13. Contractor will comply with all requirements of 2 CFR 200.321.
14. **Procurement of Recovered Materials (Reference 2 CFR 200.322):** Contractor must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. Information about this requirement, along with the list of EPA-designate items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.
15. **Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended).** Contractors who apply or bid for an award of \$100,000 or more shall file the required certification, set forth below. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.

Contractor hereby makes the following certification:

Byrd Anti-Lobbying Amendment Certification
for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

- A. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of 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 undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- C. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. 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.

The Contractor, SANDY FIRE DISTRICT, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.



Signature of Contractor's Authorized Official

Phil Schneider, Fire Chief
Name and Title of Contractor's Authorized Official

11-16-2021
Date

INVOICE
SAMPLE

Date: _____

SANDY FIRE DISTRICT

Program: Immunizations

Address:
City, State, Zip
Code
Phone: (XXX)XXX-XXXX

SASMP

To: Clackamas County Public Health Division
 Attention: Accounts Payable
 2051 Kaen Road, # 367
 Oregon City, Oregon 97045
 Direct Line: (503)742-5302
 Fax: (503)742-5979

Or electronically to: PublicHealthFiscalAP@clackamas.us

When submitting electronically, designate CONTRACTOR name and contract # 9911 in the subject of the e-mail.

Contract # 10442

Month Service Provided
<i>Month-Year</i>

DATES OF SERVICE	SERVICE DESCRIPTION	LINE TOTAL
02/10/21	# of hours per person (2hrsx\$50per hr. x 2 staff)	\$200.
		6
	# of Covid-19 vaccines administered	0
	Grand Total	\$200.

December 9, 2021

Board of County Commissioner
Clackamas County

Members of the Board:

Approval of Intergovernmental Agreement with Molalla Fire District for COVID vaccine administration. Contract maximum value is \$150,000. Funding through the ARPA and FEMA funding

No County General Funds are Involved

Purpose/Outcomes	Provide distribution of COVID vaccine via community clinics.
Dollar Amount and Fiscal Impact	Contract maximum value is \$150,000.
Funding Source	Funding through the ARPA and FEMA funding. No County General Funds are involved.
Duration	January 1, 2022 and terminates on December 31, 2022
Previous Board Action	Item approved at issues 12/7/21
Strategic Plan Alignment	1. Improved Community Safety and Health 2. Ensure safe, healthy and secure communities
Counsel Review	County counsel has reviewed and approved this document on November 15, 2021 - KR
Procurement Review	1. Was the item processed through Procurement? yes <input type="checkbox"/> no <input checked="" type="checkbox"/> 2. The documents are IGA's.
Contact Person	Philip Mason-Joyner, EOC Command – (503) 742-5956
Contract No.	10441

BACKGROUND:

The Clackamas County Public Health Division (CCPHD) of the Health, Housing & Human Services Department requests the approval of Intergovernmental Agreement with Molalla Fire District for COVID vaccine administration.

Clackamas County desires to partner with local fire agencies to conduct COVID-19 testing and distribution of COVID vaccine via community clinics based on guidelines established by the Oregon Health Authority.

Contract maximum value is \$150,000.

This contract is effective January 1, 2022 and continues through December 31, 2022.

RECOMMENDATION:

Staff recommends the Board of County Commissioners approve the attached Intergovernmental Agreement with Molallsa Fire District for COVID vaccine administration.

Respectfully submitted,

Rodney A. Cook, Director
Health, Housing, and Human Services

**INTERGOVERNMENTAL AGREEMENT
BETWEEN CLACKAMAS COUNTY
AND MOLALLA FIRE DISTRICT
Contract #10441**

THIS AGREEMENT (this "Agreement") is entered into and between Clackamas County ("County"), a political subdivision of the State of Oregon, and Molalla Fire District (Agency"), an Oregon municipal corporation, collectively referred to as the "Parties" and each a "Party."

RECITALS

Oregon Revised Statutes Chapter 190.010 confers authority upon local governments to enter into agreements for the performance of any and all functions and activities that a party to the agreement, its officers or agencies have authority to perform.

Clackamas County desires to partner with Molalla Fire District in support of the County's efforts towards Reopening Clackamas as a component of the prerequisites required by the Governor's Office. The County is requesting local fire agencies to support distribution of COVID-19 vaccine via community clinics

In consideration of the mutual promises set forth below and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

TERMS

1. **Term.** This Agreement shall be effective January 1, 2022, and shall expire upon the completion of each and every obligation of the Parties set forth herein, or December 31, 2022, whichever is sooner.
2. **Scope of Work.** The Agency agrees to provide the services further identified in the Scope of Work attached hereto as Exhibit A and incorporated herein ("Work").
3. **Consideration.** The County agrees to pay Agency, from available and authorized funds, a sum not to exceed one hundred fifty thousand dollars (\$150,000.) for accomplishing the Work required by this Agreement.
4. **Payment.** Unless otherwise specified, the Agency shall submit monthly invoices for Work performed and shall include the total amount billed to date by the Agency prior to the current invoice. Invoices shall describe all Work performed with particularity, by whom it was performed, and shall itemize and explain all expenses for which reimbursement is claimed. Payments shall be made to Agency following the County's review and approval of invoices submitted by Agency. Agency shall not submit invoices for, and the County will not pay, any amount in excess of the maximum compensation amount set forth above.
5. **Representations and Warranties.**
 - A. *Agency Representations and Warranties:* Agency represents and warrants to County that Agency has the power and authority to enter into and perform this Agreement, and this Agreement, when executed and delivered, shall be a valid and binding obligation of Agency enforceable in accordance with its terms.
 - B. *County Representations and Warranties:* County represents and warrants to Agency that County has the power and authority to enter into and perform this Agreement, and this Agreement, when executed and delivered, shall be a valid and binding obligation of County enforceable in accordance with its terms.
 - C. The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.

6. Termination.

- A. Either the County or the Agency may terminate this Agreement at any time upon thirty (30) days written notice to the other party.
- B. Either the County or the Agency may terminate this Agreement in the event of a breach of the Agreement by the other. Prior to such termination however, the Party seeking the termination shall give the other Party written notice of the breach and of the Party's intent to terminate. If the breaching Party has not entirely cured the breach within fifteen (15) days of deemed or actual receipt of the notice, then the Party giving notice may terminate the Agreement at any time thereafter by giving written notice of termination stating the effective date of the termination. If the default is of such a nature that it cannot be completely remedied within such fifteen (15) day period, this provision shall be complied with if the breaching Party begins correction of the default within the fifteen (15) day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable. The Party giving notice shall not be required to give more than one (1) notice for a similar default in any twelve (12) month period.
- C. The County or the Agency shall not be deemed to have waived any breach of this Agreement by the other Party except by an express waiver in writing. An express written waiver as to one breach shall not be deemed a waiver of any other breach not expressly identified, even though the other breach is of the same nature as that waived.
- D. Either party may terminate this Agreement in the event that party fails to receive expenditure authority sufficient to allow the party, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement, or if federal or state laws, regulations or guidelines are modified or interpreted in such a way that performance under this Agreement is prohibited or the party is prohibited from paying for such work from the planned funding source.
- E. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.

7. Indemnification.

Subject to the limits of the Oregon Constitution and the Oregon Tort Claims Act or successor statute, the Agency agrees to indemnify, save harmless and defend the County, its officers, elected officials, agents and employees from and against all costs, losses, damages, claims or actions and all expenses incidental to the investigation and defense thereof arising out of or based upon damages or injuries to persons or property caused by the negligent or willful acts of the Agency or its officers, elected officials, owners, employees, agents, or its subcontractors or anyone over which the Agency has a right to control.

- 8. **Insurance.** The Agency agrees to furnish the County with evidence of commercial general liability insurance with a combined single limit of not less than \$1,000,000 for each claim, incident, or occurrence, with an aggregate limit of \$2,000,000 for bodily injury and property damage for the protection of Clackamas County, and their officers, elected officials, agents, and employees against liability for damages because of personal injury, bodily injury, death or damage to property, including loss of use thereof, in any way related to this Agreement. If self-insured, Agency shall provide documentation to the County of Agency's self-insured status by completing the Self-Insurance Certification form provided by the County.
- 9. **Notices; Contacts.** Legal notice provided under this Agreement shall be delivered personally, by email or by certified mail to the individuals identified below. Any communication or notice so

Molalla Fire District

Intergovernmental Agreement #10441

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addressed and mailed shall be deemed to be given upon receipt. Any communication or notice sent by electronic mail to an address indicated herein is deemed to be received 2 hours after the time sent (as recorded on the device from which the sender sent the email), unless the sender receives an automated message or other indication that the email has not been delivered. Any communication or notice by personal delivery shall be deemed to be given when actually delivered. Either Party may change the Party contact information, or the invoice or payment addresses by giving prior written notice thereof to the other Party at its then current notice address.

- A. Philip Mason-Joyner, Public Health Director, or their designee will act as liaison for the County.

Contact Information:

503-742-5956 - PMason@clackamas.us

Chief Vince Stafford, Fire Chief, or their designee will act as liaison for the Agency.

Contact Information:

(503) 829-2200- vstafford@molallafire.org

10. General Provisions.

- A. **Oregon Law and Forum.** This Agreement, and all rights, obligations, and disputes arising out of it will be governed by and construed in accordance with the laws of the State of Oregon and the ordinances of Clackamas County without giving effect to the conflict of law provisions thereof. Any claim between County and Agency that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Clackamas County for the State of Oregon; provided, however, if a claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this section be construed as a waiver by the County of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court. Agency, by execution of this Agreement, hereby consents to the in personam jurisdiction of the courts referenced in this section.
- B. **Compliance with Applicable Law.** Both Parties shall comply with all applicable local, state and federal ordinances, statutes, laws and regulations, including HIPAA and state privacy laws. All provisions of law required to be a part of this Agreement, whether listed or otherwise, are hereby integrated and adopted herein. Failure to comply with such obligations is a material breach of this Agreement.
- C. **Non-Exclusive Rights and Remedies.** Except as otherwise expressly provided herein, the rights and remedies expressly afforded under the provisions of this Agreement shall not be deemed exclusive, and shall be in addition to and cumulative with any and all rights and remedies otherwise available at law or in equity. The exercise by either Party of any one or more of such remedies shall not preclude the exercise by it, at the same or different times, of any other remedies for the same default or breach, or for any other default or breach, by the other Party.

- D. **Access to Records.** Agency shall retain, maintain, and keep accessible all records relevant to this Agreement ("Records") for a minimum of six (6) years, following Agreement termination or full performance or any longer period as may be required by applicable law, or until the conclusion of an audit, controversy or litigation arising out of or related to this Agreement, whichever is later. Agency shall maintain all financial records in accordance with generally accepted accounting principles. All other Records shall be maintained to the extent necessary to clearly reflect actions taken. During this record retention period, Agency shall permit the County's authorized representatives' access to the Records at reasonable times and places for purposes of examining and copying.
- E. **Hazard Communication.** Contractor shall notify County prior to using products containing hazardous chemicals to which County employees may be exposed, which includes any hazardous, toxic, or dangerous substance, waste, or material that is the subject of environmental protection legal requirements or that becomes regulated under any applicable local, state or federal law, including but not limited to the items listed in the United States Department of Transportation Hazardous Materials Table (49 CFR §172.101) or designated as hazardous substances by Oregon Administrative Rules, Chapter 137, or the United States Environmental Protection Agency (40 CFR Part 302), and any amendments thereto. Upon County's request, Agency shall immediately provide Material Safety Data Sheets for the products subject to this provision.
- F. **Debt Limitation.** This Agreement is expressly subject to the limitations of the Oregon Constitution and Oregon Tort Claims Act, and is contingent upon appropriation of funds. Any provisions herein that conflict with the above referenced laws are deemed inoperative to that extent.
- G. **Severability.** If any provision of this Agreement is found to be unconstitutional, illegal or unenforceable, this Agreement nevertheless shall remain in full force and effect and the offending provision shall be stricken. The Court or other authorized body finding such provision unconstitutional, illegal or unenforceable shall construe this Agreement without such provision to give effect to the maximum extent possible the intentions of the Parties.
- H. **Integration, Amendment and Waiver.** Except as otherwise set forth herein, this Agreement constitutes the entire agreement between the Parties on the matter of the Project. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either Party unless in writing and signed by both Parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of either Party to enforce any provision of this Agreement shall not constitute a waiver by such Party of that or any other provision.
- I. **Interpretation.** The titles of the sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.
- J. **Independent Contractor.** Each of the Parties hereto shall be deemed an independent contractor for purposes of this Agreement. No representative, agent, employee or contractor of one Party shall be deemed to be a representative, agent, employee or contractor of the other Party for any purpose, except to the extent specifically provided herein. Nothing herein is intended, nor shall it be construed, to create between the Parties any relationship of principal and agent, partnership, joint venture or any similar relationship, and each Party hereby specifically disclaims any such relationship.

- K. **No Third-Party Beneficiary.** Agency and County are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.
- L. **Subcontract and Assignment.** Agency shall not enter into any subcontracts for any of the work required by this Agreement, or assign or transfer any of its interest in this Agreement by operation of law or otherwise, without obtaining prior written approval from the County, which shall be granted or denied in the County's sole discretion. County's consent to any subcontract shall not relieve Agency of any of its duties or obligations under this Agreement.
- M. **Counterparts.** This Agreement may be executed in several counterparts (electronic or otherwise), each of which shall be an original, all of which shall constitute the same instrument.
- N. **Survival.** All provisions in Sections 5, 7, and 10 (A), (C), (D), (G), (H), (I), (J), (L), (Q), (T), and (U) shall survive the termination of this Agreement, together with all other rights and obligations herein which by their context are intended to survive.
- O. **Necessary Acts.** Each Party shall execute and deliver to the others all such further instruments and documents as may be reasonably necessary to carry out this Agreement.
- P. **Time is of the Essence.** Agency agrees that time is of the essence in the performance this Agreement.
- Q. **Successors in Interest.** The provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto, and their respective authorized successors and assigns.
- R. **Force Majeure.** Neither Agency nor County shall be held responsible for delay or default caused by events outside of the Agency or County's reasonable control including, but not limited to, fire, terrorism, riot, acts of God, or war. However, Agency shall make all reasonable efforts to remove or eliminate such a cause of delay or default and shall upon the cessation of the cause, diligently pursue performance of its obligations under this Agreement.
- S. **Confidentiality.** Agency acknowledges that it and its employees or agents may, in the course of performing their responsibilities under this Agreement, be exposed to or acquire confidential information. Any and all information of any form obtained by Agency or its employees or agents in the performance of this Agreement shall be deemed confidential information of the County ("Confidential Information"). Agency agrees to hold Confidential Information in strict confidence, using at least the same degree of care that Agency uses in maintaining the confidentiality of its own confidential information, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties or use Confidential Information for any purpose unless specifically authorized in writing under this Agreement.

- T. **No Attorney Fees.** In the event any arbitration, action or proceeding, including any bankruptcy proceeding, is instituted to enforce any term of this Agreement, each party shall be responsible for its own attorneys' fees and expenses.
- U. **Federal terms.** Agency agrees to comply with the federal terms and conditions, and execute all required certifications, set forth in Exhibit D, attached hereto and incorporated by this reference herein.

IN WITNESS HEREOF, the Parties have executed this Agreement by the date set forth opposite their names below.

Clackamas County

MOLALLA FIRE DISTRICT

Chair, Board of County Commissioners



Vince Stafford, Fire Chief

Date



Date



Approved as to form:
Date: 11/15/2021

EXHIBIT A SCOPE OF WORK

Background and Purpose:

- The Clackamas County Public Health Division is requesting the support of local fire agencies in conducting distribution of COVID-19 vaccine via community clinics, drive-thru events, or other congregate settings (e.g. workplaces, retirement communities, and other congregate settings)

1) Vaccine Administration for COVID-19

Agency will:

- Will provide medical and administrative staff, as staffing allows, to community events to provide vaccine administration for eligible populations, when requested by the County.
- Enter vaccine administration data into the ALERT IIS system within 24 hours of clinic date for COVID vaccine.
- Assist in promoting community events via website, flyers, etc. when requested by the county.

County will:

- Support logistics coordination including event set-up (e.g. tents), paperwork, data entry technology (laptops, hot spots, extension cords), administrative and support staff, interpretation, traffic control, etc., if requested in advance and approved.
- Provide Vaccine.
- Providing culturally and linguistically appropriate staff as appropriate.

Compensation

- \$80 per vaccination staff (medical Staff administering vaccines), per hour. If services rendered are less than one full hour, Agency will bill CCPHD in one-quarter ($\frac{1}{4}$) hour increments.
- \$30 per support and administrative staff (Non-medical staff), per hour. If services rendered are less than one full hour, Agency will bill CCPHD in one-quarter ($\frac{1}{4}$) hour increments.
- Agency to invoice CCPHD within 30 days of community event.

Method of Payment. To receive payment, Agency shall submit invoices as follows:

Agency shall submit invoices by the tenth day of the month following that in which service was performed. The invoice shall list the contract #10441, dates of service, assignment, number of hours billed, number of tests conducted, and the total amount due for all service provided during the month. Invoices shall be submitted to:

Clackamas County Public Health Division
Attn: Accounts Payable
2051 Kaen Road, # 367
Oregon City, Oregon 97045

Or electronically to:

PublicHealthFiscalAP@clackamas.us

When submitting electronically, designate Agency name and contract #10441 in the subject of the e-mail.

Within thirty (30) days after receipt of the bill, provided County has approved the service specified on the invoice, County shall pay the amount requested to Agency.

EXHIBIT B
ADDITIONAL FEDERAL TERMS AND CONDITIONS

As used herein, "Contractor" means MOLALLA FIRE DISTRICT, and "County" means Clackamas County, a political subdivision of the State of Oregon.

1. The County intends that all or a portion of the consideration paid to Contractor will be eligible for reimbursement by one or more federal agencies including, but not limited to, the Federal Emergency Management Agency ("FEMA"). This Contract is subject to the additional terms and conditions required by federal law for a federal award. All terms and conditions required under applicable federal law for a federal award including, but not limited to, 2 C.F.R. § 200.326 and 2 C.F.R. § Pt. 200, App. II, are hereby incorporated by this reference herein.
2. Termination. This Contract may be terminated by mutual agreement of the parties or by the County for one of the following reasons: (i) for convenience upon thirty (30) days written notice to Contractor; or (ii) at any time the County fails to receive funding, appropriations, or other expenditure authority as solely determined by the County.
3. By execution of this Contract, Contractor hereby certifies that it and all subcontractors will comply with (i) all Federal statutes relating to nondiscrimination, including, but not limited to: Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis race, color or national origin; Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681 et seq.), which prohibits discrimination on the basis of sex; the Age Discrimination Act of 1975, as amended (29 U.S.C. §§6101 et seq.), which prohibits discrimination on the basis of age; the Rehabilitation Act of 1973, as amended (29 U.S.C. §§793 et seq.), which prohibits discrimination against requires affirmative action for qualified individuals with disabilities; the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (42 U.S.C. §§4541 et seq.), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; Title VII of the Civil Rights Act of 1969 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; any other discrimination provisions in the specific statute(s) under which for Federal assistance is being made; and the requirements of any other nondiscrimination statute(s) which may apply; (ii) will comply with the Byrd Anti-Lobbying Amendment (31 U.S.C. 1352 et. seq.), and shall file the required certification if the award is \$100,000 or more; and (iii) will comply with the provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
4. If this Contract involves a federal award that meets the definition of a "funding agreement" under 37 CFR § 401.2 (a), and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

Molalla Fire District

Intergovernmental Agreement #10441

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5. If this Agreement is in excess of \$150,000, Contractor certifies that it and all subcontractors will comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, 42 U.S.C. 7401 et seq., and the Federal Water Pollution Control Act, as amended 33 U.S.C. 1251 et seq. Violations shall be reported to the awarding Federal Department and the appropriate Regional Office of the Environmental Protection Agency. Contractor shall include these requirements in all contracts with subcontractors receiving more than \$150,000.
6. If this Agreement is in excess of \$100,000 and involves the employment of mechanics or laborers, Contractor and all subcontractors will comply with all applicable standards, orders or regulations issued pursuant to the Contract Work Hours and Safety Standards Act 40 USC §§3701 et seq. as supplemented by Department of Labor regulations at 29 C.F.R. Part 5. See 2 C.F.R. Part 200, Appendix II, ¶ E. Under 40 U.S.C. § 3702, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Further, no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous. Contractor shall include and require all providers 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.
7. Contractor shall comply with 2 CFR 180.220 and 925. These regulations restrict 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. Contractor is responsible for further requiring the inclusion of a similar term or condition in any subsequent lower tier covered transactions. Contractor may access the Excluded Parties List System at <https://www.sam.gov>. The Excluded Parties List System contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than E.O. 12549 and 12689. Awards that exceed the simplified acquisition threshold shall provide the required certification regarding their exclusion status and that of their principals prior to award. Contractor is required to verify that none of the Contractor's principals (defined at 2 C.F.R. 180.995) or its affiliates (defined at 2 C.F.R. 180.905) are excluded (defined at 2 C.F.R. 180.940) or disqualified (defined at 2 C.F.R. 180.935). The Contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction that Contractor enters into. This certification is a material representation of fact relied upon by the County. If it is later determined that the Contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, then in addition to remedies available to the County, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
8. Record Retention. Contractor will retain and keep accessible all such financial records, books, documents, papers, plans, records of shipments and payments and writings that are directly related to this Agreement for a minimum of six (6) years, or such longer period as may be required by the federal agency or applicable state law, following final payment and termination of this Agreement, or until the conclusion of any audit, controversy or litigation arising out of or related to this Agreement, whichever date is later, according to 2 CFR 200.333-337. Contractor agrees to provide to the County, to the FEMA Administrator, to the Comptroller General of the United States, or to any of their authorized representatives, access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and

Molalla Fire District

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transcriptions. Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

The Contractor agrees to provide the FEMA Administrator or the Administrator's authorized representative's access to construction or other work sites pertaining to the Work being completed under the Contract. In compliance with the Disaster Recovery Act of 2018, the County and the Contractor acknowledge and agree that no language in this Contract is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

9. DHS Seal, Logo, and Flags: Contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.
10. Compliance with Federal Law, Regulations, and Executive Orders: This is an acknowledgement that FEMA financial assistance may be used to fund this Contract only. Contractor will comply with all federal law, regulations, executive orders, FEMA policies, procedures, and directives.
11. No Obligation by Federal Government: The Federal Government is not a party to this Contract and is not subject to any obligations or liabilities to the non-Federal entity, Contractor, or any other party pertaining to any matter resulting from the contract.
12. Program Fraud and False or Fraudulent Statements or Related Acts: Contractor acknowledges the 31 U.S.C. Chapter 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor's actions pertaining to this Contract.
13. Contractor will comply with all requirements of 2 CFR 200.321.
14. Procurement of Recovered Materials (Reference 2 CFR 200.322): Contractor must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. Information about this requirement, along with the list of EPA-designate items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.
15. Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended). Contractors who apply or bid for an award of \$100,000 or more shall file the required certification, set forth below. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.

Contractor hereby makes the following certification:

Byrd Anti-Lobbying Amendment Certification
for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

- A. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of 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 undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- C. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. 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.

The Contractor, MOLALLA FIRE DISTRICT, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.



Signature of Contractor's Authorized Official

Vince Stafford, Fire Chief

Name and Title of Contractor's Authorized Official

11-23-2021

Date

**INVOICE
 SAMPLE**

Date: _____

MOLALLA FIRE DISTRICT

Address:
 City, State, Zip
 Code
 Phone: (XXX)XXX-XXXX

Program: Immunizations

SASMP

To: Clackamas County Public Health Division
 Attention: Accounts Payable
 2051 Kaen Road, # 367
 Oregon City, Oregon 97045
 Direct Line: (503)742-5302
 Fax: (503)742-5979

Or electronically to: PublicHealthFiscalAP@clackamas.us

When submitting electronically, designate CONTRACTOR name and contract # 9911 in the subject of the e-mail.

Contract # 10441

Month Service Provided
Month-Year

DATES OF SERVICE	SERVICE DESCRIPTION	LINE TOTAL
02/10/21	# of hours per person (2hrsx\$50per hr. x 2 staff)	\$200.
		6
	# of Covid-19 vaccines administered	0
	Grand Total	\$200.

December 9, 2021

Board of Commissioners Clackamas
County

Members of the Board:

Approval of Amendment #2 extending to the Intergovernmental Agreement between the Housing Authority of Clackamas County and Social Services for six (6) months and adding \$55,000 for case management to assist Public Housing residents.

Funded with County General Funds through the Affordable Housing and Services Fund

Purpose/Outcomes	Approval of Amendment #2 to the Intergovernmental Agreement between the Housing Authority and Social Services for case management for HACC program participants
Dollar Amount and Fiscal Impact	Amendment #2 will add \$55,000 to the total contract value. Total contract value over 3 years with Amendments will be \$280,000.
Funding Source(s)	Affordable Housing & Services – General Funds
Duration	Extension of contract January 1, 2022 - June 30, 2022. Full contract terms July 1, 2019 – June 30, 2022
Previous Board Action	May 16, 2019 - Board approved IGA (fully executed May 28, 2019) May 20, 2021 - Board approved Amendment #1 December 7, 2021 – Item at Issues
Strategic Plan Alignment	<ol style="list-style-type: none"> 1. This funding is in alignment with the H3S priority that residents experience opportunities for stable, affordable and quality housing by providing stabilizing case management services for HACC program residents. 2. This funding aligns with the County’s strategic priority to ensure safe, healthy and secure communities.
Counsel Review	Andrew Naylor, November 22, 2021
Contact Person	Brenda Durbin; Social Services Director x8641
Contract Number	Contract No. 9247

BACKGROUND:

Social Services, a Division of the Health, Housing and Human Services Department (H3S), requests approval to extend the Intergovernmental Agreement with HACC a Division of H3S, to ensure the continuation of case management for families participating in HACC programs.

Amendment #2 to the IGA contract No.9247, extends the term of the agreement by six (6) months, from January 1, 2022 through June 30, 2022 and increases the total contract value by \$55,000. The continuation of this contract to the end of the fiscal year will bring it into alignment with other Affordable Housing and Services Contracts in preparation for a new procurement for these funds for next fiscal year.

This contract funds a full-time case manager for residents of HACC programs. HACC program clients are selected from the wait list. Many are homeless and/or have high barriers and therefore are in need of intensive case management to be successfully housed. The Case Manager works in collaboration with the Social Services Supportive Housing Team (“Housing Pod”) with most of the work taking place at tenant units and in the community.

The scope of work for the case manager is as follows:

- Eligibility and Intake
- Documentation of Homelessness and compliance
- Housing Stability and Increasing Income
- Eviction Prevention
- Vulnerable residents will be connected to support services
- Advocacy for residents to navigate systems
- Tracking Interventions and outcomes, with the goal of supporting long term sustainability, collaboration between service systems, and to keep at risk residents in their housing and off the streets.

RECOMMENDATION:

Staff recommends the Board approve Amendment #2 extending to the IGA between HACC and Social Services for six (6) months for a full-time case manager to assist the residents of Public Housing, adding \$55,000 to the total contract value. Staff recommends the Board authorize Commissioner Tootie Smith, Chair, to sign on behalf of the Housing Authority Board and on behalf of the Board of County Commissioners.

Respectfully submitted,



Rodney A. Cook, Director
Health, Housing and Human Services

Intergovernmental Agreement
Between Housing Authority of Clackamas County and Social Services Division
for the Public Housing Case Manager H3S Contract No. 9247

INTERGOVERNMENTAL AGREEMENT AMENDMENT #2

This Amendment #2 is entered into between **the Housing Authority of Clackamas County** (“HACC”) and **Clackamas County**, on behalf of its Social Services Department (“SSD”), and shall become part of the intergovernmental agreement (“Agreement”) entered into between both parties on May 28, 2019.

The purpose of this Amendment #2 is to make the following changes to the Agreement:

Article III, Section A, Budget and Terms of Payment for Services Rendered, is hereby amended as follows: In consideration for SSD providing a half time Case Manager to HACC during the extended term of this Agreement, HACC agrees to pay SSD an additional \$55,000.00

Article VI, Term of Agreement, Section A, is hereby amended to extend the termination date from December 31, 2021 to **June 30, 2022**.

IN WITNESS HEREOF, the Parties have executed this Amendment #2 by the date set forth opposite their names below.

**HOUSING AUTHORITY OF
CLACKAMAS COUNTY BOARD**

Commissioner Tootie Smith, Chair
Commissioner Sonya Fischer
Commissioner Mark Shull
Commissioner Paul Savas
Commissioner Martha Schrader
Resident Commissioner Ann Leenstra

Signing on Behalf of the Housing Authority of
Clackamas County Board

**CLACKAMAS COUNTY BOARD OF
OF COUNTY COMMISSIONERS**

Commissioner Tootie Smith, Chair
Commissioner Sonya Fischer
Commissioner Mark Shull
Commissioner Paul Savas
Commissioner Martha Schrader

Signing on behalf of Clackamas County
Board of County Commissioners

Commissioner Tootie Smith, Chair Date

Commissioner Tootie Smith, Chair Date

Approved as to Form

County Counsel Date

December 9, 2021

Board of County Commissioner
Clackamas County

Members of the Board:

Approval of Intergovernmental Agreement with Hoodland Fire District for COVID vaccine administration. Contract maximum value is \$150,000. Funding through the ARPA and FEMA funding

No County General Funds are Involved

Purpose/Outcomes	Provide distribution of COVID vaccine via community clinics.
Dollar Amount and Fiscal Impact	Contract maximum value is \$150,000.
Funding Source	Funding through the ARPA and FEMA funding. No County General Funds are involved.
Duration	January 1, 2022 and terminates on December 31, 2022
Previous Board Action	Item approved at issues 12/7/21
Strategic Plan Alignment	1. Improved Community Safety and Health 2. Ensure safe, healthy and secure communities
Counsel Review	County counsel has reviewed and approved this document on November 15, 2021 - KR
Procurement Review	1. Was the item processed through Procurement? yes <input type="checkbox"/> no <input checked="" type="checkbox"/> 2. The documents are IGA's.
Contact Person	Philip Mason-Joyner, EOC Command – (503) 742-5956
Contract No.	10440

BACKGROUND:

The Clackamas County Public Health Division (CCPHD) of the Health, Housing & Human Services Department requests the approval of Intergovernmental Agreement with Hoodland Fire District for COVID vaccine administration.

Clackamas County desires to partner with local fire agencies to conduct COVID-19 testing and distribution of COVID vaccine via community clinics based on guidelines established by the Oregon Health Authority.

Contract maximum value is \$150,000.

This contract is effective January 1, 2022 and continues through December 31, 2022.

RECOMMENDATION:

Staff recommends the Board of County Commissioners approve the attached Intergovernmental Agreement with Hoodland Fire District for COVID vaccine administration.

Respectfully submitted,

Rodney A. Cook, Director
Health, Housing, and Human Services

**INTERGOVERNMENTAL AGREEMENT
BETWEEN CLACKAMAS COUNTY
AND HOODLAND FIRE DISTRICT
Contract #10440**

THIS AGREEMENT (this "Agreement") is entered into and between Clackamas County ("County"), a political subdivision of the State of Oregon, and Hoodland Fire District (Agency"), an Oregon municipal corporation, collectively referred to as the "Parties" and each a "Party."

RECITALS

Oregon Revised Statutes Chapter 190.010 confers authority upon local governments to enter into agreements for the performance of any and all functions and activities that a party to the agreement, its officers or agencies have authority to perform.

Clackamas County desires to partner with Hoodland Fire District in support of the County's efforts towards Reopening Clackamas as a component of the prerequisites required by the Governor's Office. The County is requesting local fire agencies to support distribution of COVID-19 vaccine via community clinics

In consideration of the mutual promises set forth below and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

TERMS

1. **Term.** This Agreement shall be effective January 1, 2022, and shall expire upon the completion of each and every obligation of the Parties set forth herein, or December 31, 2022, whichever is sooner.
2. **Scope of Work.** The Agency agrees to provide the services further identified in the Scope of Work attached hereto as Exhibit A and incorporated herein ("Work").
3. **Consideration.** The County agrees to pay Agency, from available and authorized funds, a sum not to exceed one hundred fifty thousand dollars (\$150,000.) for accomplishing the Work required by this Agreement.
4. **Payment.** Unless otherwise specified, the Agency shall submit monthly invoices for Work performed and shall include the total amount billed to date by the Agency prior to the current invoice. Invoices shall describe all Work performed with particularity, by whom it was performed, and shall itemize and explain all expenses for which reimbursement is claimed. Payments shall be made to Agency following the County's review and approval of invoices submitted by Agency. Agency shall not submit invoices for, and the County will not pay, any amount in excess of the maximum compensation amount set forth above.
5. **Representations and Warranties.**
 - A. *Agency Representations and Warranties:* Agency represents and warrants to County that Agency has the power and authority to enter into and perform this Agreement, and this Agreement, when executed and delivered, shall be a valid and binding obligation of Agency enforceable in accordance with its terms.
 - B. *County Representations and Warranties:* County represents and warrants to Agency that County has the power and authority to enter into and perform this Agreement, and this Agreement, when executed and delivered, shall be a valid and binding obligation of County enforceable in accordance with its terms.
 - C. The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.

6. Termination.

- A. Either the County or the Agency may terminate this Agreement at any time upon thirty (30) days written notice to the other party.
- B. Either the County or the Agency may terminate this Agreement in the event of a breach of the Agreement by the other. Prior to such termination however, the Party seeking the termination shall give the other Party written notice of the breach and of the Party's intent to terminate. If the breaching Party has not entirely cured the breach within fifteen (15) days of deemed or actual receipt of the notice, then the Party giving notice may terminate the Agreement at any time thereafter by giving written notice of termination stating the effective date of the termination. If the default is of such a nature that it cannot be completely remedied within such fifteen (15) day period, this provision shall be complied with if the breaching Party begins correction of the default within the fifteen (15) day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable. The Party giving notice shall not be required to give more than one (1) notice for a similar default in any twelve (12) month period.
- C. The County or the Agency shall not be deemed to have waived any breach of this Agreement by the other Party except by an express waiver in writing. An express written waiver as to one breach shall not be deemed a waiver of any other breach not expressly identified, even though the other breach is of the same nature as that waived.
- D. Either party may terminate this Agreement in the event that party fails to receive expenditure authority sufficient to allow the party, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement, or if federal or state laws, regulations or guidelines are modified or interpreted in such a way that performance under this Agreement is prohibited or the party is prohibited from paying for such work from the planned funding source.
- E. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.

7. Indemnification.

Subject to the limits of the Oregon Constitution and the Oregon Tort Claims Act or successor statute, the Agency agrees to indemnify, save harmless and defend the County, its officers, elected officials, agents and employees from and against all costs, losses, damages, claims or actions and all expenses incidental to the investigation and defense thereof arising out of or based upon damages or injuries to persons or property caused by the negligent or willful acts of the Agency or its officers, elected officials, owners, employees, agents, or its subcontractors or anyone over which the Agency has a right to control.

- 8. **Insurance.** The Agency agrees to furnish the County with evidence of commercial general liability insurance with a combined single limit of not less than \$1,000,000 for each claim, incident, or occurrence, with an aggregate limit of \$2,000,000 for bodily injury and property damage for the protection of Clackamas County, and their officers, elected officials, agents, and employees against liability for damages because of personal injury, bodily injury, death or damage to property, including loss of use thereof, in any way related to this Agreement. If self-insured, Agency shall provide documentation to the County of Agency's self-insured status by completing the Self-Insurance Certification form provided by the County.
- 9. **Notices; Contacts.** Legal notice provided under this Agreement shall be delivered personally, by email or by certified mail to the individuals identified below. Any communication or notice so

Hoodland Fire District

Intergovernmental Agreement #10440

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addressed and mailed shall be deemed to be given upon receipt. Any communication or notice sent by electronic mail to an address indicated herein is deemed to be received 2 hours after the time sent (as recorded on the device from which the sender sent the email), unless the sender receives an automated message or other indication that the email has not been delivered. Any communication or notice by personal delivery shall be deemed to be given when actually delivered. Either Party may change the Party contact information, or the invoice or payment addresses by giving prior written notice thereof to the other Party at its then current notice address.

- A. Philip Mason-Joyner, Public Health Director, or their designee will act as liaison for the County.

Contact Information:

503-742-5956 - PMason@clackamas.us

Chief Jim Price, Fire Chief, or their designee will act as liaison for the Agency.

Contact Information:

(503) 622-3256- jimprice@hoodlandfire.org

10. General Provisions.

- A. **Oregon Law and Forum.** This Agreement, and all rights, obligations, and disputes arising out of it will be governed by and construed in accordance with the laws of the State of Oregon and the ordinances of Clackamas County without giving effect to the conflict of law provisions thereof. Any claim between County and Agency that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Clackamas County for the State of Oregon; provided, however, if a claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this section be construed as a waiver by the County of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court. Agency, by execution of this Agreement, hereby consents to the in personam jurisdiction of the courts referenced in this section.
- B. **Compliance with Applicable Law.** Both Parties shall comply with all applicable local, state and federal ordinances, statutes, laws and regulations, including HIPAA and state privacy laws. All provisions of law required to be a part of this Agreement, whether listed or otherwise, are hereby integrated and adopted herein. Failure to comply with such obligations is a material breach of this Agreement.
- C. **Non-Exclusive Rights and Remedies.** Except as otherwise expressly provided herein, the rights and remedies expressly afforded under the provisions of this Agreement shall not be deemed exclusive, and shall be in addition to and cumulative with any and all rights and remedies otherwise available at law or in equity. The exercise by either Party of any one or more of such remedies shall not preclude the exercise by it, at the same or different times, of any other remedies for the same default or breach, or for any other default or breach, by the other Party.

- D. **Access to Records.** Agency shall retain, maintain, and keep accessible all records relevant to this Agreement ("Records") for a minimum of six (6) years, following Agreement termination or full performance or any longer period as may be required by applicable law, or until the conclusion of an audit, controversy or litigation arising out of or related to this Agreement, whichever is later. Agency shall maintain all financial records in accordance with generally accepted accounting principles. All other Records shall be maintained to the extent necessary to clearly reflect actions taken. During this record retention period, Agency shall permit the County's authorized representatives' access to the Records at reasonable times and places for purposes of examining and copying.
- E. **Hazard Communication.** Contractor shall notify County prior to using products containing hazardous chemicals to which County employees may be exposed, which includes any hazardous, toxic, or dangerous substance, waste, or material that is the subject of environmental protection legal requirements or that becomes regulated under any applicable local, state or federal law, including but not limited to the items listed in the United States Department of Transportation Hazardous Materials Table (49 CFR §172.101) or designated as hazardous substances by Oregon Administrative Rules, Chapter 137, or the United States Environmental Protection Agency (40 CFR Part 302), and any amendments thereto. Upon County's request, Agency shall immediately provide Material Safety Data Sheets for the products subject to this provision.
- F. **Debt Limitation.** This Agreement is expressly subject to the limitations of the Oregon Constitution and Oregon Tort Claims Act, and is contingent upon appropriation of funds. Any provisions herein that conflict with the above referenced laws are deemed inoperative to that extent.
- G. **Severability.** If any provision of this Agreement is found to be unconstitutional, illegal or unenforceable, this Agreement nevertheless shall remain in full force and effect and the offending provision shall be stricken. The Court or other authorized body finding such provision unconstitutional, illegal or unenforceable shall construe this Agreement without such provision to give effect to the maximum extent possible the intentions of the Parties.
- H. **Integration, Amendment and Waiver.** Except as otherwise set forth herein, this Agreement constitutes the entire agreement between the Parties on the matter of the Project. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either Party unless in writing and signed by both Parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of either Party to enforce any provision of this Agreement shall not constitute a waiver by such Party of that or any other provision.
- I. **Interpretation.** The titles of the sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.
- J. **Independent Contractor.** Each of the Parties hereto shall be deemed an independent contractor for purposes of this Agreement. No representative, agent, employee or contractor of one Party shall be deemed to be a representative, agent, employee or contractor of the other Party for any purpose, except to the extent specifically provided herein. Nothing herein is intended, nor shall it be construed, to create between the Parties

Hoodland Fire District

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any relationship of principal and agent, partnership, joint venture or any similar relationship, and each Party hereby specifically disclaims any such relationship.

- K. **No Third-Party Beneficiary.** Agency and County are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.
- L. **Subcontract and Assignment.** Agency shall not enter into any subcontracts for any of the work required by this Agreement, or assign or transfer any of its interest in this Agreement by operation of law or otherwise, without obtaining prior written approval from the County, which shall be granted or denied in the County's sole discretion. County's consent to any subcontract shall not relieve Agency of any of its duties or obligations under this Agreement.
- M. **Counterparts.** This Agreement may be executed in several counterparts (electronic or otherwise), each of which shall be an original, all of which shall constitute the same instrument.
- N. **Survival.** All provisions in Sections 5, 7, and 10 (A), (C), (D), (G), (H), (I), (J), (L), (Q), (T), and (U) shall survive the termination of this Agreement, together with all other rights and obligations herein which by their context are intended to survive.
- O. **Necessary Acts.** Each Party shall execute and deliver to the others all such further instruments and documents as may be reasonably necessary to carry out this Agreement.
- P. **Time is of the Essence.** Agency agrees that time is of the essence in the performance this Agreement.
- Q. **Successors in Interest.** The provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto, and their respective authorized successors and assigns.
- R. **Force Majeure.** Neither Agency nor County shall be held responsible for delay or default caused by events outside of the Agency or County's reasonable control including, but not limited to, fire, terrorism, riot, acts of God, or war. However, Agency shall make all reasonable efforts to remove or eliminate such a cause of delay or default and shall upon the cessation of the cause, diligently pursue performance of its obligations under this Agreement.
- S. **Confidentiality.** Agency acknowledges that it and its employees or agents may, in the course of performing their responsibilities under this Agreement, be exposed to or acquire confidential information. Any and all information of any form obtained by Agency or its employees or agents in the performance of this Agreement shall be deemed confidential information of the County ("Confidential Information"). Agency agrees to hold Confidential Information in strict confidence, using at least the same degree of care that Agency uses in maintaining the confidentiality of its own confidential information, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose

Hoodland Fire District

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Confidential Information to third parties or use Confidential Information for any purpose unless specifically authorized in writing under this Agreement.

- T. **No Attorney Fees.** In the event any arbitration, action or proceeding, including any bankruptcy proceeding, is instituted to enforce any term of this Agreement, each party shall be responsible for its own attorneys' fees and expenses.
- U. **Federal terms.** Agency agrees to comply with the federal terms and conditions, and execute all required certifications, set forth in Exhibit B, attached hereto and incorporated by this reference herein.

IN WITNESS HEREOF, the Parties have executed this Agreement by the date set forth opposite their names below.

Clackamas County

HOODLAND FIRE DISTRICT

Chair, Board of County Commissioners



Jim Price, Fire Chief

Date

11-16-2021

Date



Approved as to form:
Date: 11/15/2021

EXHIBIT A SCOPE OF WORK

Background and Purpose:

- The Clackamas County Public Health Division is requesting the support of local fire agencies in conducting distribution of COVID-19 vaccine via community clinics, drive-thru events, or other congregate settings (e.g. workplaces, retirement communities, and other congregate settings)

1) Vaccine Administration for COVID-19

Agency will:

- Will provide medical and administrative staff, as staffing allows, to community events to provide vaccine administration for eligible populations, when requested by the County.
- Enter vaccine administration data into the ALERT IIS system within 24 hours of clinic date for COVID vaccine.
- Assist in promoting community events via website, flyers, etc. when requested by the county.

County will:

- Support logistics coordination including event set-up (e.g. tents), paperwork, data entry technology (laptops, hot spots, extension cords), administrative and support staff, interpretation, traffic control, etc., if requested in advance and approved.
- Provide Vaccine.
- Providing culturally and linguistically appropriate staff as appropriate.
-

Compensation

- \$80 per vaccination staff (medical Staff administering vaccines), per hour. If services rendered are less than one full hour, Agency will bill CCPHD in one-quarter (¼) hour increments.
- \$30 per support and administrative staff (Non-medical staff), per hour. If services rendered are less than one full hour, Agency will bill CCPHD in one-quarter (¼) hour increments.
- Agency to invoice CCPHD within 30 days of community event.

Method of Payment. To receive payment, Agency shall submit invoices as follows:

Agency shall submit invoices by the tenth day of the month following that in which service was performed. The invoice shall list the contract #10440, dates of service, assignment, number of hours billed, number of tests conducted, and the total amount due for all service provided during the month. Invoices shall be submitted to:

Clackamas County Public Health Division
Attn: Accounts Payable
2051 Kaen Road, # 367
Oregon City, Oregon 97045

Or electronically to:

Hoodland Fire District

Intergovernmental Agreement #10440

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PublicHealthFiscalAP@clackamas.us

When submitting electronically, designate Agency name and contract #10440 in the subject of the e-mail.

Within thirty (30) days after receipt of the bill, provided County has approved the service specified on the invoice, County shall pay the amount requested to Agency.

EXHIBIT B
ADDITIONAL FEDERAL TERMS AND CONDITIONS

As used herein, "Contractor" means HOODLAND FIRE DISTRICT, and "County" means Clackamas County, a political subdivision of the State of Oregon.

1. The County intends that all or a portion of the consideration paid to Contractor will be eligible for reimbursement by one or more federal agencies including, but not limited to, the Federal Emergency Management Agency ("FEMA"). This Contract is subject to the additional terms and conditions required by federal law for a federal award. All terms and conditions required under applicable federal law for a federal award including, but not limited to, 2 C.F.R. § 200.326 and 2 C.F.R. § Pt. 200, App. II, are hereby incorporated by this reference herein.
2. Termination. This Contract may be terminated by mutual agreement of the parties or by the County for one of the following reasons: (i) for convenience upon thirty (30) days written notice to Contractor; or (ii) at any time the County fails to receive funding, appropriations, or other expenditure authority as solely determined by the County.
3. By execution of this Contract, Contractor hereby certifies that it and all subcontractors will comply with (i) all Federal statutes relating nondiscrimination, including, but not limited to: Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis race, color or national origin; Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681 et seq.), which prohibits discrimination on the basis of sex; the Age Discrimination Act of 1975, as amended (29 U.S.C. §§6101 et seq.), which prohibits discrimination on the basis of age; the Rehabilitation Act of 1973, as amended (29 U.S.C. §§793 et seq.), which prohibits discrimination against requires affirmative action for qualified individuals with disabilities; the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (42 U.S.C. §§4541 et seq.), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; §§523 and 527 of the Public Health Service Act of 1912 (4s U.S.C. §§290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; Title VII of the Civil Rights Act of 1969 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; any other discrimination provisions in the specific statute(s) under which for Federal assistance is being made; and the requirements of any other nondiscrimination statute(s) which may apply; (ii) will comply with the Byrd Anti-Lobbying Amendment (31 U.S.C. 1352 et. seq.), and shall file the required certification if the award is \$100,000 or more; and (iii) will comply with the provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
4. If this Contract involves a federal award that meets the definition of a "funding agreement" under 37 CFR § 401.2 (a), and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

Hoodland Fire District

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5. If this Agreement is in excess of \$150,000, Contractor certifies that it and all subcontractors will comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, 42 U.S.C. 7401 et seq., and the Federal Water Pollution Control Act, as amended 33 U.S.C. 1251 et seq. Violations shall be reported to the awarding Federal Department and the appropriate Regional Office of the Environmental Protection Agency. Contractor shall include these requirements in all contracts with subcontractors receiving more than \$150,000.
6. If this Agreement is in excess of \$100,000 and involves the employment of mechanics or laborers, Contractor and all subcontractors will comply with all applicable standards, orders or regulations issued pursuant to the Contract Work Hours and Safety Standards Act 40 USC §§3701 et seq. as supplemented by Department of Labor regulations at 29 C.F.R. Part 5. See 2 C.F.R. Part 200, Appendix II, ¶ E. Under 40 U.S.C. § 3702, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Further, no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous. Contractor shall include and require all providers 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.
7. Contractor shall comply with 2 CFR 180.220 and 925. These regulations restrict 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. Contractor is responsible for further requiring the inclusion of a similar term or condition in any subsequent lower tier covered transactions. Contractor may access the Excluded Parties List System at <https://www.sam.gov>. The Excluded Parties List System contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than E.O. 12549 and 12689. Awards that exceed the simplified acquisition threshold shall provide the required certification regarding their exclusion status and that of their principals prior to award. Contractor is required to verify that none of the Contractor's principals (defined at 2 C.F.R. 180.995) or its affiliates (defined at 2 C.F.R. 180.905) are excluded (defined at 2 C.F.R. 180.940) or disqualified (defined at 2 C.F.R. 180.935). The Contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction that Contractor enters into. This certification is a material representation of fact relied upon by the County. If it is later determined that the Contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, then in addition to remedies available to the County, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
8. Record Retention. Contractor will retain and keep accessible all such financial records, books, documents, papers, plans, records of shipments and payments and writings that are directly related to this Agreement for a minimum of six (6) years, or such longer period as may be required by the federal agency or applicable state law, following final payment and termination of this Agreement, or until the conclusion of any audit, controversy or litigation arising out of or related to this Agreement, whichever date is later, according to 2 CFR 200.333-337. Contractor agrees to provide to the County, to the FEMA Administrator, to the Comptroller General of the United States, or to any of their authorized representatives, access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and

Hoodland Fire District

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transcriptions. Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

The Contractor agrees to provide the FEMA Administrator or the Administrator's authorized representative's access to construction or other work sites pertaining to the Work being completed under the Contract. In compliance with the Disaster Recovery Act of 2018, the County and the Contractor acknowledge and agree that no language in this Contract is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

9. **DHS Seal, Logo, and Flags:** Contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.
10. **Compliance with Federal Law, Regulations, and Executive Orders:** This is an acknowledgement that FEMA financial assistance may be used to fund this Contract only. Contractor will comply with all federal law, regulations, executive orders, FEMA policies, procedures, and directives.
11. **No Obligation by Federal Government:** The Federal Government is not a party to this Contract and is not subject to any obligations or liabilities to the non-Federal entity, Contractor, or any other party pertaining to any matter resulting from the contract.
12. **Program Fraud and False or Fraudulent Statements or Related Acts:** Contractor acknowledges the 31 U.S.C. Chapter 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor's actions pertaining to this Contract.
13. Contractor will comply with all requirements of 2 CFR 200.321.
14. **Procurement of Recovered Materials (Reference 2 CFR 200.322):** Contractor must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. Information about this requirement, along with the list of EPA-designate items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.
15. **Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended).** Contractors who apply or bid for an award of \$100,000 or more shall file the required certification, set forth below. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.

Contractor hereby makes the following certification:

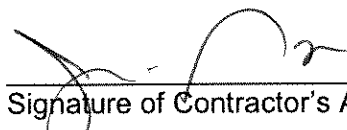
Byrd Anti-Lobbying Amendment Certification
for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

- A. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of 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 undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- C. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. 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.

The Contractor, HOODLAND FIRE DISTRICT, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.



Signature of Contractor's Authorized Official

Jim Price, Fire Chief

Name and Title of Contractor's Authorized Official

11/16/21

Date

December 9, 2021

Board of County Commissioner
Clackamas County

Members of the Board:

Approval of Intergovernmental Agreement with Clackamas Fire District for COVID vaccine administration. Contract maximum value is \$150,000. Funding through the ARPA and FEMA funding

No County General Funds are Involved

Purpose/Outcomes	Provide distribution of COVID vaccine via community clinics.
Dollar Amount and Fiscal Impact	Contract maximum value is \$150,000.
Funding Source	Funding through the ARPA and FEMA funding. No County General Funds are involved.
Duration	January 1, 2022 and terminates on December 31, 2022
Previous Board Action	Item approved at issues 12/7/21
Strategic Plan Alignment	1. Improved Community Safety and Health 2. Ensure safe, healthy and secure communities
Counsel Review	County counsel has reviewed and approved this document on November 15, 2021 - KR
Procurement Review	1. Was the item processed through Procurement? yes <input type="checkbox"/> no <input checked="" type="checkbox"/> 2. The documents are IGA's.
Contact Person	Philip Mason-Joyner, EOC Command – (503) 742-5956
Contract No.	10439

BACKGROUND:

The Clackamas County Public Health Division (CCPHD) of the Health, Housing & Human Services Department requests the approval of Intergovernmental Agreement with Clackamas Fire District for COVID vaccine administration.

Clackamas County desires to partner with local fire agencies to conduct COVID-19 testing and distribution of COVID vaccine via community clinics based on guidelines established by the Oregon Health Authority.

Contract maximum value is \$150,000.

This contract is effective January 1, 2022 and continues through December 31, 2022.

RECOMMENDATION:

Staff recommends the Board of County Commissioners approve the attached Intergovernmental Agreement with Clackamas Fire District for COVID vaccine administration.

Respectfully submitted,

Rodney A. Cook, Director
Health, Housing, and Human Services

**INTERGOVERNMENTAL AGREEMENT
BETWEEN CLACKAMAS COUNTY
AND CLACKAMAS COUNTY FIRE DISTRICT #1
Contract #10439**

THIS AGREEMENT (this "Agreement") is entered into and between Clackamas County ("County"), a political subdivision of the State of Oregon, and Clackamas County Fire District #1 (Agency"), an Oregon municipal corporation, collectively referred to as the "Parties" and each a "Party."

RECITALS

Oregon Revised Statutes Chapter 190.010 confers authority upon local governments to enter into agreements for the performance of any and all functions and activities that a party to the agreement, its officers or agencies have authority to perform.

Clackamas County desires to partner with Clackamas County Fire District #1 in support of the County's efforts towards Reopening Clackamas as a component of the prerequisites required by the Governor's Office. The County is requesting local fire agencies to conduct distribution of COVID vaccine via community clinics

In consideration of the mutual promises set forth below and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

TERMS

1. **Term.** This Agreement shall be effective January 1, 2022, and shall expire upon the completion of each and every obligation of the Parties set forth herein, or December 31, 2022, whichever is sooner.
2. **Scope of Work.** The Agency agrees to provide the services further identified in the Scope of Work attached hereto as Exhibit A and incorporated herein ("Work").
3. **Consideration.** The County agrees to pay Agency, from available and authorized funds, a sum not to exceed one hundred fifty thousand dollars (\$150,000.) for accomplishing the Work required by this Agreement.
4. **Payment.** Unless otherwise specified, the Agency shall submit monthly invoices for Work performed and shall include the total amount billed to date by the Agency prior to the current invoice. Invoices shall describe all Work performed with particularity, by whom it was performed, and shall itemize and explain all expenses for which reimbursement is claimed. Payments shall be made to Agency following the County's review and approval of invoices submitted by Agency. Agency shall not submit invoices for, and the County will not pay, any amount in excess of the maximum compensation amount set forth above.
5. **Representations and Warranties.**
 - A. *Agency Representations and Warranties:* Agency represents and warrants to County that Agency has the power and authority to enter into and perform this Agreement, and this Agreement, when executed and delivered, shall be a valid and binding obligation of Agency enforceable in accordance with its terms.
 - B. *County Representations and Warranties:* County represents and warrants to Agency that County has the power and authority to enter into and perform this Agreement, and this Agreement, when executed and delivered, shall be a valid and binding obligation of County enforceable in accordance with its terms.
 - C. The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.

6. Termination.

- A. Either the County or the Agency may terminate this Agreement at any time upon thirty (30) days written notice to the other party.
- B. Either the County or the Agency may terminate this Agreement in the event of a breach of the Agreement by the other. Prior to such termination however, the Party seeking the termination shall give the other Party written notice of the breach and of the Party's intent to terminate. If the breaching Party has not entirely cured the breach within fifteen (15) days of deemed or actual receipt of the notice, then the Party giving notice may terminate the Agreement at any time thereafter by giving written notice of termination stating the effective date of the termination. If the default is of such a nature that it cannot be completely remedied within such fifteen (15) day period, this provision shall be complied with if the breaching Party begins correction of the default within the fifteen (15) day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable. The Party giving notice shall not be required to give more than one (1) notice for a similar default in any twelve (12) month period.
- C. The County or the Agency shall not be deemed to have waived any breach of this Agreement by the other Party except by an express waiver in writing. An express written waiver as to one breach shall not be deemed a waiver of any other breach not expressly identified, even though the other breach is of the same nature as that waived.
- D. Either party may terminate this Agreement in the event that party fails to receive expenditure authority sufficient to allow the party, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement, or if federal or state laws, regulations or guidelines are modified or interpreted in such a way that performance under this Agreement is prohibited or the party is prohibited from paying for such work from the planned funding source.
- E. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.

7. Indemnification.

Subject to the limits of the Oregon Constitution and the Oregon Tort Claims Act or successor statute, the Agency agrees to indemnify, save harmless and defend the County, its officers, elected officials, agents and employees from and against all costs, losses, damages, claims or actions and all expenses incidental to the investigation and defense thereof arising out of or based upon damages or injuries to persons or property caused by the negligent or willful acts of the Agency or its officers, elected officials, owners, employees, agents, or its subcontractors or anyone over which the Agency has a right to control.

- 8. **Insurance.** The Agency agrees to furnish the County with evidence of commercial general liability insurance with a combined single limit of not less than \$1,000,000 for each claim, incident, or occurrence, with an aggregate limit of \$2,000,000 for bodily injury and property damage for the protection of Clackamas County, and their officers, elected officials, agents, and employees against liability for damages because of personal injury, bodily injury, death or damage to property, including loss of use thereof, in any way related to this Agreement. If self-insured, Agency shall provide documentation to the County of Agency's self-insured status by completing the Self-Insurance Certification form provided by the County.
- 9. **Notices; Contacts.** Legal notice provided under this Agreement shall be delivered personally, by email or by certified mail to the individuals identified below. Any communication or notice so

addressed and mailed shall be deemed to be given upon receipt. Any communication or notice sent by electronic mail to an address indicated herein is deemed to be received 2 hours after the time sent (as recorded on the device from which the sender sent the email), unless the sender receives an automated message or other indication that the email has not been delivered. Any communication or notice by personal delivery shall be deemed to be given when actually delivered. Either Party may change the Party contact information, or the invoice or payment addresses by giving prior written notice thereof to the other Party at its then current notice address.

- A. Philip Mason-Joyner, Public Health Director, or their designee will act as liaison for the County.

Contact Information:

503-742-5956 - PMason@clackamas.us

Josh Santos, Medical Services Chief, or their designee will act as liaison for the Agency.

Contact Information:

503-742-2777- Josh.Santos@ClackamasFire.com

10. General Provisions.

- A. **Oregon Law and Forum.** This Agreement, and all rights, obligations, and disputes arising out of it will be governed by and construed in accordance with the laws of the State of Oregon and the ordinances of Clackamas County without giving effect to the conflict of law provisions thereof. Any claim between County and Agency that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Clackamas County for the State of Oregon; provided, however, if a claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this section be construed as a waiver by the County of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court. Agency, by execution of this Agreement, hereby consents to the in personam jurisdiction of the courts referenced in this section.
- B. **Compliance with Applicable Law.** Both Parties shall comply with all applicable local, state and federal ordinances, statutes, laws and regulations, including HIPAA and state privacy laws. All provisions of law required to be a part of this Agreement, whether listed or otherwise, are hereby integrated and adopted herein. Failure to comply with such obligations is a material breach of this Agreement.
- C. **Non-Exclusive Rights and Remedies.** Except as otherwise expressly provided herein, the rights and remedies expressly afforded under the provisions of this Agreement shall not be deemed exclusive, and shall be in addition to and cumulative with any and all rights and remedies otherwise available at law or in equity. The exercise by either Party of any one or more of such remedies shall not preclude the exercise by it, at the same or different times, of any other remedies for the same default or breach, or for any other default or breach, by the other Party.

- D. **Access to Records.** Agency shall retain, maintain, and keep accessible all records relevant to this Agreement ("Records") for a minimum of six (6) years, following Agreement termination or full performance or any longer period as may be required by applicable law, or until the conclusion of an audit, controversy or litigation arising out of or related to this Agreement, whichever is later. Agency shall maintain all financial records in accordance with generally accepted accounting principles. All other Records shall be maintained to the extent necessary to clearly reflect actions taken. During this record retention period, Agency shall permit the County's authorized representatives' access to the Records at reasonable times and places for purposes of examining and copying.
- E. **Hazard Communication.** Contractor shall notify County prior to using products containing hazardous chemicals to which County employees may be exposed, which includes any hazardous, toxic, or dangerous substance, waste, or material that is the subject of environmental protection legal requirements or that becomes regulated under any applicable local, state or federal law, including but not limited to the items listed in the United States Department of Transportation Hazardous Materials Table (49 CFR §172.101) or designated as hazardous substances by Oregon Administrative Rules, Chapter 137, or the United States Environmental Protection Agency (40 CFR Part 302), and any amendments thereto. Upon County's request, Agency shall immediately provide Material Safety Data Sheets for the products subject to this provision.
- F. **Debt Limitation.** This Agreement is expressly subject to the limitations of the Oregon Constitution and Oregon Tort Claims Act, and is contingent upon appropriation of funds. Any provisions herein that conflict with the above referenced laws are deemed inoperative to that extent.
- G. **Severability.** If any provision of this Agreement is found to be unconstitutional, illegal or unenforceable, this Agreement nevertheless shall remain in full force and effect and the offending provision shall be stricken. The Court or other authorized body finding such provision unconstitutional, illegal or unenforceable shall construe this Agreement without such provision to give effect to the maximum extent possible the intentions of the Parties.
- H. **Integration, Amendment and Waiver.** Except as otherwise set forth herein, this Agreement constitutes the entire agreement between the Parties on the matter of the Project. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either Party unless in writing and signed by both Parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of either Party to enforce any provision of this Agreement shall not constitute a waiver by such Party of that or any other provision.
- I. **Interpretation.** The titles of the sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.
- J. **Independent Contractor.** Each of the Parties hereto shall be deemed an independent contractor for purposes of this Agreement. No representative, agent, employee or contractor of one Party shall be deemed to be a representative, agent, employee or contractor of the other Party for any purpose, except to the extent specifically provided herein. Nothing herein is intended, nor shall it be construed, to create between the Parties

any relationship of principal and agent, partnership, joint venture or any similar relationship, and each Party hereby specifically disclaims any such relationship.

- K. **No Third-Party Beneficiary.** Agency and County are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.
- L. **Subcontract and Assignment.** Agency shall not enter into any subcontracts for any of the work required by this Agreement, or assign or transfer any of its interest in this Agreement by operation of law or otherwise, without obtaining prior written approval from the County, which shall be granted or denied in the County's sole discretion. County's consent to any subcontract shall not relieve Agency of any of its duties or obligations under this Agreement.
- M. **Counterparts.** This Agreement may be executed in several counterparts (electronic or otherwise), each of which shall be an original, all of which shall constitute the same instrument.
- N. **Survival.** All provisions in Sections 5, 7, and 10 (A), (C), (D), (G), (H), (I), (J), (L), (Q), (T), and (U) shall survive the termination of this Agreement, together with all other rights and obligations herein which by their context are intended to survive.
- O. **Necessary Acts.** Each Party shall execute and deliver to the others all such further instruments and documents as may be reasonably necessary to carry out this Agreement.
- P. **Time is of the Essence.** Agency agrees that time is of the essence in the performance this Agreement.
- Q. **Successors in Interest.** The provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto, and their respective authorized successors and assigns.
- R. **Force Majeure.** Neither Agency nor County shall be held responsible for delay or default caused by events outside of the Agency or County's reasonable control including, but not limited to, fire, terrorism, riot, acts of God, or war. However, Agency shall make all reasonable efforts to remove or eliminate such a cause of delay or default and shall upon the cessation of the cause, diligently pursue performance of its obligations under this Agreement.
- S. **Confidentiality.** Agency acknowledges that it and its employees or agents may, in the course of performing their responsibilities under this Agreement, be exposed to or acquire confidential information. Any and all information of any form obtained by Agency or its employees or agents in the performance of this Agreement shall be deemed confidential information of the County ("Confidential Information"). Agency agrees to hold Confidential Information in strict confidence, using at least the same degree of care that Agency uses in maintaining the confidentiality of its own confidential information, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose

Confidential Information to third parties or use Confidential Information for any purpose unless specifically authorized in writing under this Agreement.

- T. **No Attorney Fees.** In the event any arbitration, action or proceeding, including any bankruptcy proceeding, is instituted to enforce any term of this Agreement, each party shall be responsible for its own attorneys' fees and expenses.
- U. **Federal terms.** Agency agrees to comply with the federal terms and conditions, and execute all required certifications, set forth in Exhibit B, attached hereto and incorporated by this reference herein.

IN WITNESS HEREOF, the Parties have executed this Agreement by the date set forth opposite their names below.

Clackamas County

Clackamas County Fire District #1

Chair, Board of County Commissioners

Nick J. Browne

Nick Browne, Fire Chief

Date

11/17/2021

Date

Kathleen J. Rasketter

Approved as to form:
Date: 11/15/2021

EXHIBIT A SCOPE OF WORK

Background and Purpose:

- The Clackamas County Public Health Division is requesting the support of local fire agencies in conducting distribution of COVID vaccine via community clinics, drive-thru events, or other congregate settings (e.g. workplaces, retirement communities, and other congregate settings)

1) Vaccine Administration for COVID-19

Agency will:

- Host events to provide vaccine administration for eligible populations **when requested in advance and approved.**
- Enter vaccine administration data into the ALERT IIS system within 24 hours of clinic date for COVID vaccine.
- Assist in promoting community events via website, flyers, etc. when requested by the county
- Be responsible for all vaccine administration supplies including PPE, syringes, alcohol wipes, cotton balls, bandages, sharps containers, etc. County will provide vaccine
- Provide logistics coordination including event set-up (e.g. tents), paperwork, data entry technology (laptops, hot spots, extension cords), administrative and support staff, interpretation, traffic control, etc. unless requested in advance and approved by County.

County will:

- Support logistics coordination including event set-up (e.g. tents), paperwork, data entry technology (laptops, hot spots, extension cords), administrative and support staff, interpretation, traffic control, etc., if requested in advance and approved.
- County will provide vaccine.
- Request to be submitted to: covidvaccine@clackamas.us
- assist with providing culturally and linguistically appropriate staff as appropriate, if requested in advance and approved

Compensation

- \$80 per Agency vaccination staff (medical Staff administering vaccines, administrative and support staff), per hour. If services rendered are less than one full hour, Agency will bill CCPHD in one-quarter ($\frac{1}{4}$) hour increments.
- Agency to invoice CCPHD within 30 days of community event.

Method of Payment. To receive payment, Agency shall submit invoices as follows:

Agency shall submit invoices by the tenth day of the month following that in which service was performed. The invoice shall list the contract #10439, dates of service, assignment, number of hours billed, number of tests conducted, and the total amount due for all service provided during the month. Invoices shall be submitted to:

Clackamas County Fire District #1
Intergovernmental Agreement #10439
Page 8 of 13

Clackamas County Public Health Division
Attn: Accounts Payable
2051 Kaen Road, # 367
Oregon City, Oregon 97045

Or electronically to:

PublicHealthFiscalAP@clackamas.us

When submitting electronically, designate Agency name and contract #10439 in the subject of the e-mail.

Within thirty (30) days after receipt of the bill, provided County has approved the service specified on the invoice, County shall pay the amount requested to Agency.

EXHIBIT B
ADDITIONAL FEDERAL TERMS AND CONDITIONS

As used herein, "Contractor" means Clackamas County Fire District #1, and "County" means Clackamas County, a political subdivision of the State of Oregon.

1. The County intends that all or a portion of the consideration paid to Contractor will be eligible for reimbursement by one or more federal agencies including, but not limited to, the Federal Emergency Management Agency ("FEMA"). This Contract is subject to the additional terms and conditions required by federal law for a federal award. All terms and conditions required under applicable federal law for a federal award including, but not limited to, 2 C.F.R. § 200.326 and 2 C.F.R. § Pt. 200, App. II, are hereby incorporated by this reference herein.
2. Termination. This Contract may be terminated by mutual agreement of the parties or by the County for one of the following reasons: (i) for convenience upon thirty (30) days written notice to Contractor; or (ii) at any time the County fails to receive funding, appropriations, or other expenditure authority as solely determined by the County.
3. By execution of this Contract, Contractor hereby certifies that it and all subcontractors will comply with (i) all Federal statutes relating nondiscrimination, including, but not limited to: Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis race, color or national origin; Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681 et seq.), which prohibits discrimination on the basis of sex; the Age Discrimination Act of 1975, as amended (29 U.S.C. §§6101 et seq.), which prohibits discrimination on the basis of age; the Rehabilitation Act of 1973, as amended (29 U.S.C. §§793 et seq.), which prohibits discrimination against requires affirmative action for qualified individuals with disabilities; the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (42 U.S.C. §§4541 et seq.), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; §§523 and 527 of the Public Health Service Act of 1912 (4s U.S.C. §§290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; Title VII of the Civil Rights Act of 1969 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; any other discrimination provisions in the specific statute(s) under which for Federal assistance is being made; and the requirements of any other nondiscrimination statute(s) which may apply; (ii) will comply with the Byrd Anti-Lobbying Amendment (31 U.S.C. 1352 et. seq.), and shall file the required certification if the award is \$100,000 or more; and (iii) will comply with the provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
4. If this Contract involves a federal award that meets the definition of a "funding agreement" under 37 CFR § 401.2 (a), and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

5. If this Agreement is in excess of \$150,000, Contractor certifies that it and all subcontractors will comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, 42 U.S.C. 7401 et seq., and the Federal Water Pollution Control Act, as amended 33 U.S.C. 1251 et seq. Violations shall be reported to the awarding Federal Department and the appropriate Regional Office of the Environmental Protection Agency. Contractor shall include these requirements in all contracts with subcontractors receiving more than \$150,000.
6. If this Agreement is in excess of \$100,000 and involves the employment of mechanics or laborers, Contractor and all subcontractors will comply with all applicable standards, orders or regulations issued pursuant to the Contract Work Hours and Safety Standards Act 40 USC §§3701 et seq. as supplemented by Department of Labor regulations at 29 C.F.R. Part 5. See 2 C.F.R. Part 200, Appendix II, ¶ E. Under 40 U.S.C. § 3702, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Further, no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous. Contractor shall include and require all providers 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.
7. Contractor shall comply with 2 CFR 180.220 and 925. These regulations restrict 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. Contractor is responsible for further requiring the inclusion of a similar term or condition in any subsequent lower tier covered transactions. Contractor may access the Excluded Parties List System at <https://www.sam.gov>. The Excluded Parties List System contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than E.O. 12549 and 12689. Awards that exceed the simplified acquisition threshold shall provide the required certification regarding their exclusion status and that of their principals prior to award. Contractor is required to verify that none of the Contractor's principals (defined at 2 C.F.R. 180.995) or its affiliates (defined at 2 C.F.R. 180.905) are excluded (defined at 2 C.F.R. 180.940) or disqualified (defined at 2 C.F.R. 180.935). The Contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction that Contractor enters into. This certification is a material representation of fact relied upon by the County. If it is later determined that the Contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, then in addition to remedies available to the County, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
8. Record Retention. Contractor will retain and keep accessible all such financial records, books, documents, papers, plans, records of shipments and payments and writings that are directly related to this Agreement for a minimum of six (6) years, or such longer period as may be required by the federal agency or applicable state law, following final payment and termination of this Agreement, or until the conclusion of any audit, controversy or litigation arising out of or related to this Agreement, whichever date is later, according to 2 CFR 200.333-337. Contractor agrees to provide to the County, to the FEMA Administrator, to the Comptroller General of the United States, or to any of their authorized representatives, access to any books, documents, papers, and records of the Contractor which are directly

pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions. Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

The Contractor agrees to provide the FEMA Administrator or the Administrator's authorized representative's access to construction or other work sites pertaining to the Work being completed under the Contract. In compliance with the Disaster Recovery Act of 2018, the County and the Contractor acknowledge and agree that no language in this Contract is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

9. DHS Seal, Logo, and Flags: Contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.
10. Compliance with Federal Law, Regulations, and Executive Orders: This is an acknowledgement that FEMA financial assistance may be used to fund this Contract only. Contractor will comply with all federal law, regulations, executive orders, FEMA policies, procedures, and directives.
11. No Obligation by Federal Government: The Federal Government is not a party to this Contract and is not subject to any obligations or liabilities to the non-Federal entity, Contractor, or any other party pertaining to any matter resulting from the contract.
12. Program Fraud and False or Fraudulent Statements or Related Acts: Contractor acknowledges the 31 U.S.C. Chapter 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor's actions pertaining to this Contract.
13. Contractor will comply with all requirements of 2 CFR 200.321.
14. Procurement of Recovered Materials (Reference 2 CFR 200.322): Contractor must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. Information about this requirement, along with the list of EPA-designate items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.
15. Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended). Contractors who apply or bid for an award of \$100,000 or more shall file the required certification, set forth below. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.

Contractor hereby makes the following certification:

Byrd Anti-Lobbying Amendment Certification
for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

- A. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of 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 undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- C. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. 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.

The Contractor, Clackamas County Fire District #1, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.

Nick J. Browne

Signature of Contractor's Authorized Official

Nick Browne, Fire Chief
Name and Title of Contractor's Authorized Official

11/17/2021

Date

December 9, 2021

Board of County Commissioner
Clackamas County

Members of the Board:

Approval of Intergovernmental Agreement with Canby Fire District for COVID vaccine administration. Contract maximum value is \$150,000. Funding through the ARPA and FEMA funding

No County General Funds are Involved

Purpose/Outcomes	Provide distribution of COVID vaccine via community clinics.
Dollar Amount and Fiscal Impact	Contract maximum value is \$150,000.
Funding Source	Funding through the ARPA and FEMA funding. No County General Funds are involved.
Duration	January 1, 2022 and terminates on December 31, 2022
Previous Board Action	Item approved at issues 12/7/21
Strategic Plan Alignment	1. Improved Community Safety and Health 2. Ensure safe, healthy and secure communities
Counsel Review	County counsel has reviewed and approved this document on November 15, 2021 - KR
Procurement Review	1. Was the item processed through Procurement? yes <input type="checkbox"/> no <input checked="" type="checkbox"/> 2. The documents are IGA's.
Contact Person	Philip Mason-Joyner, EOC Command – (503) 742-5956
Contract No.	10432

BACKGROUND:

The Clackamas County Public Health Division (CCPHD) of the Health, Housing & Human Services Department requests the approval of Intergovernmental Agreement with Canby Fire District for COVID vaccine administration.

Clackamas County desires to partner with local fire agencies to conduct COVID-19 testing and distribution of COVID vaccine via community clinics based on guidelines established by the Oregon Health Authority.

Contract maximum value is \$150,000.

This contract is effective January 1, 2022 and continues through December 31, 2022.

RECOMMENDATION:

Staff recommends the Board of County Commissioners approve the attached Intergovernmental Agreement with Canby Fire District for COVID vaccine administration.

Respectfully submitted,

Rodney A. Cook, Director
Health, Housing, and Human Services

**INTERGOVERNMENTAL AGREEMENT
BETWEEN CLACKAMAS COUNTY
AND CANBY FIRE DISTRICT
Contract #10432**

THIS AGREEMENT (this "Agreement") is entered into and between Clackamas County ("County"), a political subdivision of the State of Oregon, and Canby Fire District (Agency"), an Oregon municipal corporation, collectively referred to as the "Parties" and each a "Party."

RECITALS

Oregon Revised Statutes Chapter 190.010 confers authority upon local governments to enter into agreements for the performance of any and all functions and activities that a party to the agreement, its officers or agencies have authority to perform.

Clackamas County desires to partner with Canby Fire District in support of the County's efforts towards Reopening Clackamas as a component of the prerequisites required by the Governor's Office. The County is requesting local fire agencies to support distribution of COVID-19 vaccine via community clinics

In consideration of the mutual promises set forth below and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

TERMS

1. **Term.** This Agreement shall be effective January 1, 2022, and shall expire upon the completion of each and every obligation of the Parties set forth herein, or December 31, 2022, whichever is sooner.
2. **Scope of Work.** The Agency agrees to provide the services further identified in the Scope of Work attached hereto as Exhibit A and incorporated herein ("Work").
3. **Consideration.** The County agrees to pay Agency, from available and authorized funds, a sum not to exceed one hundred fifty thousand dollars (\$150,000.) for accomplishing the Work required by this Agreement.
4. **Payment.** Unless otherwise specified, the Agency shall submit monthly invoices for Work performed and shall include the total amount billed to date by the Agency prior to the current invoice. Invoices shall describe all Work performed with particularity, by whom it was performed, and shall itemize and explain all expenses for which reimbursement is claimed. Payments shall be made to Agency following the County's review and approval of invoices submitted by Agency. Agency shall not submit invoices for, and the County will not pay, any amount in excess of the maximum compensation amount set forth above.
5. **Representations and Warranties.**
 - A. *Agency Representations and Warranties:* Agency represents and warrants to County that Agency has the power and authority to enter into and perform this Agreement, and this Agreement, when executed and delivered, shall be a valid and binding obligation of Agency enforceable in accordance with its terms.
 - B. *County Representations and Warranties:* County represents and warrants to Agency that County has the power and authority to enter into and perform this Agreement, and this Agreement, when executed and delivered, shall be a valid and binding obligation of County enforceable in accordance with its terms.
 - C. The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.

6. Termination.

- A. Either the County or the Agency may terminate this Agreement at any time upon thirty (30) days written notice to the other party.
- B. Either the County or the Agency may terminate this Agreement in the event of a breach of the Agreement by the other. Prior to such termination however, the Party seeking the termination shall give the other Party written notice of the breach and of the Party's intent to terminate. If the breaching Party has not entirely cured the breach within fifteen (15) days of deemed or actual receipt of the notice, then the Party giving notice may terminate the Agreement at any time thereafter by giving written notice of termination stating the effective date of the termination. If the default is of such a nature that it cannot be completely remedied within such fifteen (15) day period, this provision shall be complied with if the breaching Party begins correction of the default within the fifteen (15) day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable. The Party giving notice shall not be required to give more than one (1) notice for a similar default in any twelve (12) month period.
- C. The County or the Agency shall not be deemed to have waived any breach of this Agreement by the other Party except by an express waiver in writing. An express written waiver as to one breach shall not be deemed a waiver of any other breach not expressly identified, even though the other breach is of the same nature as that waived.
- D. Either party may terminate this Agreement in the event that party fails to receive expenditure authority sufficient to allow the party, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement, or if federal or state laws, regulations or guidelines are modified or interpreted in such a way that performance under this Agreement is prohibited or the party is prohibited from paying for such work from the planned funding source.
- E. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.

7. Indemnification.

Subject to the limits of the Oregon Constitution and the Oregon Tort Claims Act or successor statute, the Agency agrees to indemnify, save harmless and defend the County, its officers, elected officials, agents and employees from and against all costs, losses, damages, claims or actions and all expenses incidental to the investigation and defense thereof arising out of or based upon damages or injuries to persons or property caused by the negligent or willful acts of the Agency or its officers, elected officials, owners, employees, agents, or its subcontractors or anyone over which the Agency has a right to control.

- 8. **Insurance.** The Agency agrees to furnish the County with evidence of commercial general liability insurance with a combined single limit of not less than \$1,000,000 for each claim, incident, or occurrence, with an aggregate limit of \$2,000,000 for bodily injury and property damage for the protection of Clackamas County, and their officers, elected officials, agents, and employees against liability for damages because of personal injury, bodily injury, death or damage to property, including loss of use thereof, in any way related to this Agreement. If self-insured, Agency shall provide documentation to the County of Agency's self-insured status by completing the Self-Insurance Certification form provided by the County.
- 9. **Notices; Contacts.** Legal notice provided under this Agreement shall be delivered personally, by email or by certified mail to the individuals identified below. Any communication or notice so

addressed and mailed shall be deemed to be given upon receipt. Any communication or notice sent by electronic mail to an address indicated herein is deemed to be received 2 hours after the time sent (as recorded on the device from which the sender sent the email), unless the sender receives an automated message or other indication that the email has not been delivered. Any communication or notice by personal delivery shall be deemed to be given when actually delivered. Either Party may change the Party contact information, or the invoice or payment addresses by giving prior written notice thereof to the other Party at its then current notice address.

- A. Philip Mason-Joyner, Public Health Director, or their designee will act as liaison for the County.

Contact Information:

503-742-5956 - PMason@clackamas.us

Chief Matt Dale, DC Paramedic, or their designee will act as liaison for the Agency.

Contact Information:

971-413-0419 - mdale@canbyfire.org

10. General Provisions.

- A. **Oregon Law and Forum.** This Agreement, and all rights, obligations, and disputes arising out of it will be governed by and construed in accordance with the laws of the State of Oregon and the ordinances of Clackamas County without giving effect to the conflict of law provisions thereof. Any claim between County and Agency that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Clackamas County for the State of Oregon; provided, however, if a claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this section be construed as a waiver by the County of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court. Agency, by execution of this Agreement, hereby consents to the in personam jurisdiction of the courts referenced in this section.
- B. **Compliance with Applicable Law.** Both Parties shall comply with all applicable local, state and federal ordinances, statutes, laws and regulations, including HIPAA and state privacy laws. All provisions of law required to be a part of this Agreement, whether listed or otherwise, are hereby integrated and adopted herein. Failure to comply with such obligations is a material breach of this Agreement.
- C. **Non-Exclusive Rights and Remedies.** Except as otherwise expressly provided herein, the rights and remedies expressly afforded under the provisions of this Agreement shall not be deemed exclusive, and shall be in addition to and cumulative with any and all rights and remedies otherwise available at law or in equity. The exercise by either Party of any one or more of such remedies shall not preclude the exercise by it, at the same or different times, of any other remedies for the same default or breach, or for any other default or breach, by the other Party.

- D. Access to Records.** Agency shall retain, maintain, and keep accessible all records relevant to this Agreement ("Records") for a minimum of six (6) years, following Agreement termination or full performance or any longer period as may be required by applicable law, or until the conclusion of an audit, controversy or litigation arising out of or related to this Agreement, whichever is later. Agency shall maintain all financial records in accordance with generally accepted accounting principles. All other Records shall be maintained to the extent necessary to clearly reflect actions taken. During this record retention period, Agency shall permit the County's authorized representatives' access to the Records at reasonable times and places for purposes of examining and copying.
- E. Hazard Communication.** Contractor shall notify County prior to using products containing hazardous chemicals to which County employees may be exposed, which includes any hazardous, toxic, or dangerous substance, waste, or material that is the subject of environmental protection legal requirements or that becomes regulated under any applicable local, state or federal law, including but not limited to the items listed in the United States Department of Transportation Hazardous Materials Table (49 CFR §172.101) or designated as hazardous substances by Oregon Administrative Rules, Chapter 137, or the United States Environmental Protection Agency (40 CFR Part 302), and any amendments thereto. Upon County's request, Agency shall immediately provide Material Safety Data Sheets for the products subject to this provision.
- F. Debt Limitation.** This Agreement is expressly subject to the limitations of the Oregon Constitution and Oregon Tort Claims Act, and is contingent upon appropriation of funds. Any provisions herein that conflict with the above referenced laws are deemed inoperative to that extent.
- G. Severability.** If any provision of this Agreement is found to be unconstitutional, illegal or unenforceable, this Agreement nevertheless shall remain in full force and effect and the offending provision shall be stricken. The Court or other authorized body finding such provision unconstitutional, illegal or unenforceable shall construe this Agreement without such provision to give effect to the maximum extent possible the intentions of the Parties.
- H. Integration, Amendment and Waiver.** Except as otherwise set forth herein, this Agreement constitutes the entire agreement between the Parties on the matter of the Project. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either Party unless in writing and signed by both Parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of either Party to enforce any provision of this Agreement shall not constitute a waiver by such Party of that or any other provision.
- I. Interpretation.** The titles of the sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.
- J. Independent Contractor.** Each of the Parties hereto shall be deemed an independent contractor for purposes of this Agreement. No representative, agent, employee or contractor of one Party shall be deemed to be a representative, agent, employee or contractor of the other Party for any purpose, except to the extent specifically provided herein. Nothing herein is intended, nor shall it be construed, to create between the Parties any relationship of principal and agent, partnership, joint venture or any similar relationship, and each Party hereby specifically disclaims any such relationship.

- K. No Third-Party Beneficiary.** Agency and County are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.
- L. Subcontract and Assignment.** Agency shall not enter into any subcontracts for any of the work required by this Agreement, or assign or transfer any of its interest in this Agreement by operation of law or otherwise, without obtaining prior written approval from the County, which shall be granted or denied in the County's sole discretion. County's consent to any subcontract shall not relieve Agency of any of its duties or obligations under this Agreement.
- M. Counterparts.** This Agreement may be executed in several counterparts (electronic or otherwise), each of which shall be an original, all of which shall constitute the same instrument.
- N. Survival.** All provisions in Sections 5, 7, and 10 (A), (C), (D), (G), (H), (I), (J), (L), (Q), (T), and (U) shall survive the termination of this Agreement, together with all other rights and obligations herein which by their context are intended to survive.
- O. Necessary Acts.** Each Party shall execute and deliver to the others all such further instruments and documents as may be reasonably necessary to carry out this Agreement.
- P. Time is of the Essence.** Agency agrees that time is of the essence in the performance this Agreement.
- Q. Successors in Interest.** The provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto, and their respective authorized successors and assigns.
- R. Force Majeure.** Neither Agency nor County shall be held responsible for delay or default caused by events outside of the Agency or County's reasonable control including, but not limited to, fire, terrorism, riot, acts of God, or war. However, Agency shall make all reasonable efforts to remove or eliminate such a cause of delay or default and shall upon the cessation of the cause, diligently pursue performance of its obligations under this Agreement.
- S. Confidentiality.** Agency acknowledges that it and its employees or agents may, in the course of performing their responsibilities under this Agreement, be exposed to or acquire confidential information. Any and all information of any form obtained by Agency or its employees or agents in the performance of this Agreement shall be deemed confidential information of the County ("Confidential Information"). Agency agrees to hold Confidential Information in strict confidence, using at least the same degree of care that Agency uses in maintaining the confidentiality of its own confidential information, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties or use Confidential Information for any purpose unless specifically authorized in writing under this Agreement.

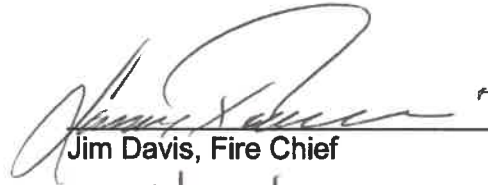
- T. **No Attorney Fees.** In the event any arbitration, action or proceeding, including any bankruptcy proceeding, is instituted to enforce any term of this Agreement, each party shall be responsible for its own attorneys' fees and expenses.
- U. **Federal terms.** Agency agrees to comply with the federal terms and conditions, and execute all required certifications, set forth in Exhibit D, attached hereto and incorporated by this reference herein.

IN WITNESS HEREOF, the Parties have executed this Agreement by the date set forth opposite their names below.

Clackamas County

CANBY FIRE DISTRICT

Chair, Board of County Commissioners



Jim Davis, Fire Chief

Date

11/14/2021

Date

Approved as to form: _
Date: 11/15/2021



EXHIBIT A SCOPE OF WORK

Background and Purpose:

- The Clackamas County Public Health Division is requesting the support of local fire agencies in conducting distribution of COVID-19 vaccine via community clinics, drive-thru events, or other congregate settings (e.g. workplaces, retirement communities, and other congregate settings)

1) Vaccine Administration for COVID-19

Agency will:

- Will provide medical and administrative staff, as staffing allows, to community events to provide vaccine administration for eligible populations, when requested by the County.
- Enter vaccine administration data into the ALERT IIS system within 24 hours of clinic date for COVID vaccine.
- Assist in promoting community events via website, flyers, etc. when requested by the county.

County will:

- Support logistics coordination including event set-up (e.g. tents), paperwork, data entry technology (laptops, hot spots, extension cords), administrative and support staff, interpretation, traffic control, etc., if requested in advance and approved.
- Provide Vaccine.
- Providing culturally and linguistically appropriate staff as appropriate.
-

Compensation

- \$80 per vaccination staff (medical Staff administering vaccines), per hour. If services rendered are less than one full hour, Agency will bill CCPHD in one-quarter (¼) hour increments.
- \$30 per support and administrative staff (Non-medical staff), per hour. If services rendered are less than one full hour, Agency will bill CCPHD in one-quarter (¼) hour increments.
- Agency to invoice CCPHD within 30 days of community event.

Method of Payment. To receive payment, Agency shall submit invoices as follows:

Agency shall submit invoices by the tenth day of the month following that in which service was performed. The invoice shall list the contract #10432, dates of service, assignment, number of hours billed, number of tests conducted, and the total amount due for all service provided during the month. Invoices shall be submitted to:

Clackamas County Public Health Division
Attn: Accounts Payable
2051 Kaen Road, # 367
Oregon City, Oregon 97045

Or electronically to:

PublicHealthFiscalAP@clackamas.us

When submitting electronically, designate Agency name and contract #10432 in the subject of the e-mail.

Within thirty (30) days after receipt of the bill, provided County has approved the service specified on the invoice, County shall pay the amount requested to Agency.

EXHIBIT B
ADDITIONAL FEDERAL TERMS AND CONDITIONS

As used herein, "Contractor" means CANBY FIRE DISTRICT, and "County" means Clackamas County, a political subdivision of the State of Oregon.

1. The County intends that all or a portion of the consideration paid to Contractor will be eligible for reimbursement by one or more federal agencies including, but not limited to, the Federal Emergency Management Agency ("FEMA"). This Contract is subject to the additional terms and conditions required by federal law for a federal award. All terms and conditions required under applicable federal law for a federal award including, but not limited to, 2 C.F.R. § 200.326 and 2 C.F.R. § Pt. 200, App. II, are hereby incorporated by this reference herein.
2. Termination. This Contract may be terminated by mutual agreement of the parties or by the County for one of the following reasons: (i) for convenience upon thirty (30) days written notice to Contractor; or (ii) at any time the County fails to receive funding, appropriations, or other expenditure authority as solely determined by the County.
3. By execution of this Contract, Contractor hereby certifies that it and all subcontractors will comply with (i) all Federal statutes relating nondiscrimination, including, but not limited to: Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis race, color or national origin; Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681 et seq.), which prohibits discrimination on the basis of sex; the Age Discrimination Act of 1975, as amended (29 U.S.C. §§6101 et seq.), which prohibits discrimination on the basis of age; the Rehabilitation Act of 1973, as amended (29 U.S.C. §§793 et seq.), which prohibits discrimination against requires affirmative action for qualified individuals with disabilities; the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (42 U.S.C. §§4541 et seq.), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; §§523 and 527 of the Public Health Service Act of 1912 (4s U.S.C. §§290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; Title VII of the Civil Rights Act of 1969 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; any other discrimination provisions in the specific statute(s) under which for Federal assistance is being made; and the requirements of any other nondiscrimination statute(s) which may apply; (ii) will comply with the Byrd Anti-Lobbying Amendment (31 U.S.C. 1352 et. seq.), and shall file the required certification if the award is \$100,000 or more; and (iii) will comply with the provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
4. If this Contract involves a federal award that meets the definition of a "funding agreement" under 37 CFR § 401.2 (a), and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

5. If this Agreement is in excess of \$150,000, Contractor certifies that it and all subcontractors will comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, 42 U.S.C. 7401 et seq., and the Federal Water Pollution Control Act, as amended 33 U.S.C. 1251 et seq. Violations shall be reported to the awarding Federal Department and the appropriate Regional Office of the Environmental Protection Agency. Contractor shall include these requirements in all contracts with subcontractors receiving more than \$150,000.
6. If this Agreement is in excess of \$100,000 and involves the employment of mechanics or laborers, Contractor and all subcontractors will comply with all applicable standards, orders or regulations issued pursuant to the Contract Work Hours and Safety Standards Act 40 USC §§3701 et seq. as supplemented by Department of Labor regulations at 29 C.F.R. Part 5. See 2 C.F.R. Part 200, Appendix II, ¶ E. Under 40 U.S.C. § 3702, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Further, no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous. Contractor shall include and require all providers 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.
7. Contractor shall comply with 2 CFR 180.220 and 925. These regulations restrict 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. Contractor is responsible for further requiring the inclusion of a similar term or condition in any subsequent lower tier covered transactions. Contractor may access the Excluded Parties List System at <https://www.sam.gov>. The Excluded Parties List System contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than E.O. 12549 and 12689. Awards that exceed the simplified acquisition threshold shall provide the required certification regarding their exclusion status and that of their principals prior to award. Contractor is required to verify that none of the Contractor's principals (defined at 2 C.F.R. 180.995) or its affiliates (defined at 2 C.F.R. 180.905) are excluded (defined at 2 C.F.R. 180.940) or disqualified (defined at 2 C.F.R. 180.935). The Contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction that Contractor enters into. This certification is a material representation of fact relied upon by the County. If it is later determined that the Contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, then in addition to remedies available to the County, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
8. Record Retention. Contractor will retain and keep accessible all such financial records, books, documents, papers, plans, records of shipments and payments and writings that are directly related to this Agreement for a minimum of six (6) years, or such longer period as may be required by the federal agency or applicable state law, following final payment and termination of this Agreement, or until the conclusion of any audit, controversy or litigation arising out of or related to this Agreement, whichever date is later, according to 2 CFR 200.333-337. Contractor agrees to provide to the County, to the FEMA Administrator, to the Comptroller General of the United States, or to any of their authorized representatives, access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and

transcriptions. Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

The Contractor agrees to provide the FEMA Administrator or the Administrator's authorized representative's access to construction or other work sites pertaining to the Work being completed under the Contract. In compliance with the Disaster Recovery Act of 2018, the County and the Contractor acknowledge and agree that no language in this Contract is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

9. **DHS Seal, Logo, and Flags:** Contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.
10. **Compliance with Federal Law, Regulations, and Executive Orders:** This is an acknowledgement that FEMA financial assistance may be used to fund this Contract only. Contractor will comply with all federal law, regulations, executive orders, FEMA policies, procedures, and directives.
11. **No Obligation by Federal Government:** The Federal Government is not a party to this Contract and is not subject to any obligations or liabilities to the non-Federal entity, Contractor, or any other party pertaining to any matter resulting from the contract.
12. **Program Fraud and False or Fraudulent Statements or Related Acts:** Contractor acknowledges the 31 U.S.C. Chapter 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor's actions pertaining to this Contract.
13. Contractor will comply with all requirements of 2 CFR 200.321.
14. **Procurement of Recovered Materials (Reference 2 CFR 200.322):** Contractor must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. Information about this requirement, along with the list of EPA-designate items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.
15. **Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended).** Contractors who apply or bid for an award of \$100,000 or more shall file the required certification, set forth below. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.

Contractor hereby makes the following certification:

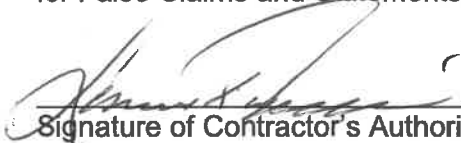
**Byrd Anti-Lobbying Amendment Certification
for Contracts, Grants, Loans, and Cooperative Agreements**

The undersigned certifies, to the best of his or her knowledge and belief, that:

- A. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of 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 undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- C. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. 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.

The Contractor, CANBY FIRE DISTRICT, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.



Signature of Contractor's Authorized Official

Jim Davis, Fire Chief

Name and Title of Contractor's Authorized Official

11/16/21

Date

December 9, 2021

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of Amendment 1 to the Ground Lease between Clackamas County
Development Agency and Clackamas County Pertaining to Property located at
16575 SE 115th Avenue for the continued site use for the Veterans Village Program
No County General Funds are involved

Purpose/ Outcomes	To insure that a location is available to continue operations of the successful Veterans Village program.
Dollar Amount and Fiscal Impact	Lessee pays lessor no rent. This is a Net Lease
Funding Source	N/A
Duration	October 1, 2021 – September 30, 2022, with option of one automatic additional extension to September 30, 2023.
Previous Board Action	Original Lease signed 11.8.18 Memo and issues topic presented to the Board on 11/18/21
Strategic Plan Alignment	1. Individuals and families in need are healthy and safe 2. Ensure safe, healthy, secure communities
Counsel Review	11.29.21 Nathan Boderman
Procurement Review	Was the item processed through Procurement? yes no(x) N/A
Contact Person	Rodney A. Cook, Director of Health, Housing & Human Services

BACKGROUND:

The Veterans Village is sited on a portion of a remnant property owned by the Clackamas County Development Agency at 16575 SE 115th Ave. Clackamas County began operation of the Veterans Village as a pilot transitional shelter community program in October of 2018. This program was enacted in alignment with the County’s strategic goal of ending veteran homelessness. At the end of the two-year pilot period, on December 15th, 2020, the Board of County Commissioners unanimously approved a resolution to continue the current operations of the program, negotiating an extension of the lease with the Development Agency while exploring options for the County, through H3S, to purchase the property for the continuation of the Veteran’s Village Program. As H3S continues to assess options and opportunities for additional transitional services, staff would request the Board support a one year extension on the current lease with an option of an automatic one additional year extension to provide additional time to assess options at this facility and elsewhere throughout the County. Unfortunately the current lease expired on September 30, 2021 so time is of the essence to ensure no interruption of service to the current occupants.

Healthy Families. Strong Communities.

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

www.clackamas.us

PROCUREMENT PROCESS: N/A

RECOMMENDATION:

Staff recommends that the Board of County Commissioners of Clackamas County approve this amendment.

Respectfully submitted,

A handwritten signature in cursive script that reads "Rodney Cook".

Rodney A. Cook, Interim Director
Health, Housing & Human Services

**FIRST AMENDMENT TO THE GROUND LEASE BETWEEN CLACKAMAS COUNTY
DEVELOPMENT AGENCY AND CLACKAMAS COUNTY**

THIS FIRST AMENDMENT TO THE GROUND LEASE BETWEEN CLACKAMAS COUNTY DEVELOPMENT AGENCY AND CLACKAMAS COUNTY (“Amendment”) is entered into effective as of December __, 2021, between **CLACKAMAS COUNTY DEVELOPMENT AGENCY**, the Urban Renewal Agency of Clackamas County, a corporate body politic (“**Lessor**”), and **Clackamas County**, a political subdivision of the State of Oregon, acting through the Clackamas County Department of Health, Housing and Human Services (“**Lessee**”).

RECITALS

A. Lessor and Lessee are parties to that certain Ground Lease dated effective as of October 1, 2018, (the “**Lease**”), concerning real property commonly known as 16575 SE 115th Avenue in Clackamas County, Oregon, and as more particularly described in the Lease (the “**Property**”).

B. Lessee has operated a pilot transitional shelter community program known as Veterans Village on the Property since October of 2018.

C. On December 15th, 2020, the Board of County Commissioners unanimously approved a resolution to allow Lessor to continue the current operations of the Veterans Village program, and to affirm its intent to continue with the lease of the Property from the Lessor while exploring options for the County, through its Department of Health, Housing and Human Services, to potentially purchase the Property for the continuation of the Veterans Village Program.

D. The Lease expired by its terms on September 30, 2021 and the parties desire to extend the term of the Lease on the terms and conditions set forth herein. All capitalized terms used in this Amendment and not otherwise defined herein shall have their meanings as set forth in the Lease.

AGREEMENT

1. **Amendment to Section 2.1. Section 2.1 of the Lease currently reads:**

Starting on the Commencement Date, the Premises will be leased for a term of approximately two (2) years ending on September 30, 2020 (the “Term”), unless earlier terminated pursuant to the terms of this Lease. This lease is renewable for one additional one (1) year term automatically unless one party provides notice of termination pursuant to paragraph 2.2.

Section 2.1 of the Lease is hereby deleted in its entirety and is replaced with the following:

Starting on the Commencement Date, the Premises will be leased for a term of four (4) years ending on September 30, 2022 (the “Term”), unless earlier terminated pursuant to the terms of this Lease. This lease is renewable for one additional one (1) year term automatically unless one party provides notice of termination pursuant to paragraph 2.2.

2. **Counterpart; Email.** This Amendment may be executed simultaneously or in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Amendment. Facsimile or email transmission of any signed original of this Amendment, and retransmission of any signed facsimile or email transmission, shall be the same as delivery of an original. At the request of either party, the parties shall confirm transmitted signatures by signing an original document.

3. **Confirmation.** The Lease is hereby amended and modified in accordance with the terms of this Amendment. Except as expressly modified by this Amendment, the Lease and all its terms and provisions are hereby acknowledged, approved, ratified and confirmed and shall be and remain in full force and effect.

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

LESSOR:

CLACKAMAS COUNTY DEVELOPMENT AGENCY
the Urban Renewal Agency of Clackamas County

By: _____

Name: Tootie Smith

Its: Chair – Clackamas County Development Agency Board

LESSEE:

CLACKAMAS COUNTY
a political subdivision of the State of Oregon

By: _____

Name: Tootie Smith

Its: Chair – Clackamas County Board of County Commissioners

**RECORDING REQUEST
AGREEMENTS/CONTRACTS**

ORIGINATING COUNTY
DEPARTMENT:

CLACKAMAS COUNTY DEVELOPMENT
AGENCY

OTHER PARTIES TO
CONTRACT/AGREEMENT:

CLACKAMAS COUNTY DEPARTMENT OF
HEALTH, HOUSING AND HUMAN SERVICES

BOARD AGENDA ITEM

NUMBER: Val

DATE: 11-8-18

PURPOSE OF
CONTRACT/AGREEMENT:

**Approval of a Ground Lease Between Clackamas County and
the Clackamas County Development Agency
Pertaining to Property located at
16575 SE 115th Avenue**

**After Recording, Please Return to:
Lori Phillips
Clackamas County Department of
Transportation & Development
150 Beaver Creek Rd.
Oregon City, OR 97045**

Clackamas County Official Records
Sherry Hall, County Clerk
Commissioners' Journals
Agreements & Contracts

2018-1783

11/13/2018 2:55:22 PM

2

GROUND LEASE BETWEEN
CLACKAMAS COUNTY DEVELOPMENT AGENCY
AND
CLACKAMAS COUNTY

This GROUND LEASE (this "Lease") is made and entered into on October 1, 2018 (the "Commencement Date"), by and between the Clackamas County Development Agency, the urban renewal agency of Clackamas County, a corporate body politic ("Lessor"), and Clackamas County, a political subdivision of the State of Oregon, acting through the Clackamas County Department of Health, Housing and Human Services ("Lessee").

RECITALS

A. Lessor desires to lease to Lessee, and Lessee desires to lease from Lessor, the land depicted on Exhibit A attached hereto, together with any and all rights, privileges, easements, and appurtenances (collectively, the "Premises"), together with any and all fixtures, rights, privileges, easements, and appurtenances that may now or exist in the future (collectively, the "Improvements").

B. Lessor owns the Premises. Lessee owns certain Improvements, shelter buildings, intended to be placed upon the Premises, more specifically described on Exhibit B, attached hereto. Lessee owns the right to use the Premises and the Improvements for the term of the Lease.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties to this Lease agree as follows:

Article 1

Premises

Lessor does hereby demise, lease, and let unto Lessee, and Lessee does hereby take and lease from Lessor, the Premises, including permission for continued use of the Improvements, for the Term (as defined below) and on the rents, conditions, and provisions herein.

Article 2

Lease Term

2.1 Lease Term. Starting on the Commencement Date, the Premises will be leased for a term of approximately two (2) years ending on September 30, 2020 (the "Term"), unless earlier terminated pursuant to the terms of this Lease. This lease is renewable for one additional one (1) year term automatically unless one party provides notice of termination pursuant to paragraph 2.2.

2.2 Early Termination. Notwithstanding anything in this Lease to the contrary, Lessor or Lessee may terminate the Lease upon providing the other party with written notice of intent to terminate at least 180 days prior to the desired termination date.

Article 3

Rent

3.1 Payment of Rent. Lessee shall pay Lessor no rent.

3.2 Net Lease. This Lease is a net lease. Lessee will be responsible for paying all costs and expenses relating to the Premises and the Improvements, including any real and personal property taxes, fees, utilities, maintenance, repairs, interior and exterior structural repairs, interior and exterior nonstructural repairs, insurance, and all other costs and expenses relating to the Premises and the Improvements. Without notice or demand and without abatement, deduction, or setoff except as may be otherwise provided in this Lease, Lessee is required to pay, all sums, impositions, costs, and other payments that Lessee assumes or agrees to pay in any provision of this Lease. If Lessee fails to make a payment, Lessor will have (in addition to all other rights and remedies) all the rights and remedies provided for in this Lease or by law for nonpayment of rent.

Article 4

USE AND COMPLIANCE WITH LEGAL REQUIREMENTS

4.1 Permitted Use. Lessee may use and occupy the Premises and the Improvements during the Term and shall use the Premises and the Improvements in compliance with all applicable Legal Requirements (as defined in section 4.2 below).

4.2 Compliance with Legal Requirements. Lessee shall observe and comply with all Legal Requirements that may apply to the Premises, or to the use or manner of uses of the Premises, or the Improvements or the owners or users of the Improvements, whether or not the Legal Requirements affect the interior or exterior of the Improvements, necessitate structural changes or improvements, or interfere with the use and enjoyment of the Premises or the Improvements, and whether or not compliance with the Legal Requirements is required by reason of any

condition, event, or circumstance existing before or after the Term. Lessee will pay all costs of compliance with the Legal Requirements.

“Legal Requirements” means all applicable present and future laws, ordinances, orders, rules, regulations, codes, and requirements of all federal, state, and municipal governments, departments, commissions, boards, and officers, that now or hereafter apply to the Premises, the Improvements, or any component hereof or any activity conducted thereon, including but not limited to those pertaining to Environmental Laws and the use and storage of Hazardous Substances (as these terms are defined below).

“Environmental Laws” means all present or future federal, state, and local laws or regulations related to the protection of health or the environment, including the Resource Conservation and Recovery Act of 1976 (RCRA) (42 USC § 6901 *et seq.*), the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) (42 USC § 9601 *et seq.*), the Toxic Substances Control Act (15 USC § 2601 *et seq.*), the Federal Water Pollution Control Act (the Clean Water Act) (33 USC § 1251 *et seq.*), the Clean Air Act (42 USC § 7401 *et seq.*), amendments to the foregoing, and any rules and regulations promulgated thereunder.

“Hazardous Substances” means any hazardous or toxic substance, material, or waste that is or becomes regulated by any local, state, or federal governmental authority, including without limitation, any hazardous material, hazardous substance, ultra-hazardous material, toxic waste, toxic substance, pollutant, radioactive material, petroleum product, and PCB, as those and similar terms are commonly used or defined by Environmental Laws.

4.3 Prohibited Uses. Lessee shall not use or occupy the Premises or the Improvements, or permit or suffer all or any part of the Premises or the Improvements to be used or occupied: (a) for any unlawful or illegal business, use, or purpose; (b) in any manner so as to constitute a nuisance of any kind; (c) for any purpose or in any way in violation of the certificate of occupancy, or of any Legal Requirements, including Legal Requirements respecting Hazardous Substances; or (d) for any business, use, or purpose deemed disreputable.

4.4 No Waste. Lessee shall not cause or permit any waste, damage, disfigurement, or injury to the Premises, but Lessee may demolish and remove any and all the Improvements on the Premises at Lessee’s own expense and pursuant to and in accordance with the terms of Article 5 below.

Article 5

Improvements

5.1 Construction, Modification, and Demolition of Improvements. Upon obtaining Lessor’s prior written approval, Lessee may, at any time and from time to time during the Term at its cost and expense, construct, reconstruct, demolish, remove, replace, remodel, or rebuild on any part or all of the Premises such buildings, structures, parking areas, driveways, walks, and other Improvements of any nature (including excavation, earthmoving, paving, installation or relocation of utilities, and all other development activities) pertaining thereto as Lessee.

Construction of any buildings or improvements will be undertaken in compliance with all Legal Requirements and will be performed in a good and workmanlike manner, and which shall be removed from the Premises prior to the end of this Lease unless renewed. Utilities installed at the Premises shall not be demolished or removed without prior written approval of the Lessor.

5.2 Lessor Cooperation. Lessor shall reasonably cooperate with Lessee in connection with Lessee's construction of any Improvements, including but not limited to executing any applications and other instruments reasonably necessary for construction of the Improvements at Lessee's expense, and further provided that Lessor is not required to pay any application fees or incur any other costs or liabilities in connection with the Improvements.

5.3 Easements and Dedications. Lessee and Lessor each recognize that in order to provide for the development of the Premises, it may be necessary, desirable, or required that street, water, sewer, drainage, gas, power line, and other easements and dedications and similar rights be granted or dedicated over or within portions of the Premises. Lessor shall, upon request of Lessee, join with Lessee in executing and delivering such documents, from time to time, and throughout the Term of this Lease as may be appropriate, necessary, or required by any governmental agency or public utility company for the purpose of granting such easements and dedications.

Article 6

Taxes and Utilities

6.1 Taxes Defined. As used in this Lease, the terms "Tax" and "Taxes" mean any and all taxes, service payments in lieu of taxes, general or special assessments, excise taxes, transit charges, utility assessments, and any and all charges, levies, fees, or costs, general or special, ordinary or extraordinary, of any kind that are levied or at the direction of laws, rules, or regulations of any federal, state, or local authority on the Premises or the Improvements, or based on or otherwise in connection with the use, occupancy, or operations of the Premises or the Improvements, or with respect to services or utilities in connection with the use, occupancy, or operations of the Premises or the Improvements, or on Lessor with respect to the Premises or the Improvements, or on any act of leasing space in the Improvements, or in connection with the business of leasing space in the Improvements, including any tax on rents, whether direct or as a part of any "gross receipts" tax, and whether or not in lieu of, in whole or in part, ad valorem property taxes. Taxes will include, but not be limited to, state and local real-property taxes, levies, and assessments, and any tax, fee, or other excise, however described, that may be levied or assessed in lieu of, or as a substitute, in whole or in part, for, or as an addition to any other taxes, and all other governmental impositions and governmental charges of every kind and nature relating to the Premises or the Improvements, including, but not limited to, any road-user or transportation-system-maintenance fee and any charges or fees measured by trip generation or length, parking spaces, impervious surfaces, buildings, vehicle usage, or similar bases for measurement.

6.2 Payment of Taxes. Throughout the Term, Lessee shall pay any Taxes that may be applicable as they become due. If by law any Tax is payable, or may at the option of the taxpayer

be paid, in installments, Lessee may pay the same in installments as each installment becomes due and payable, but in any event shall do so before any fine, penalty, interest, or cost may be added for nonpayment of any installment or interest.

6.3 Contesting Taxes. If Lessee in good faith desires to contest the validity or the amount of any Tax, Lessee may be permitted to do so by giving to Lessor written notice requesting permission to do so before commencement of such contest. If approved, Lessee may contest with respect to the Property and/or the Improvements. Lessor may, at Lessee's expense (including reimbursement of attorney fees reasonably incurred by Lessor), cooperate with Lessee in any such contest to the extent that Lessee may reasonably request, but Lessor shall not be subject to any liability for the payment of any costs or expenses in connection with any proceeding brought by Lessee, and Lessee shall indemnify and save Lessor harmless from any such costs or expenses. Any rebates on account of the Taxes required to be paid and paid by Lessee under the provisions of this Lease shall belong to Lessee, except that to the extent any rebates or refunds are related to a period of time in which this Lease is not in effect (either before commencement or after expiration or termination), the portion of the rebate attributable to such time shall be returned to Lessor to the extent previously paid by Lessor.

6.4 Evidence of Payment. Promptly after payment, Lessee shall provide Lessor with evidence reasonably satisfactory to Lessor that all Taxes required to be paid by Lessee have been paid.

6.5 Utilities and Services. Lessee shall pay, directly to the appropriate supplier, for all water, sanitary-sewer, storm sewer, gas, electric, telephone, cable, garbage pickup, and all other utilities and services used by Lessee on the Premises as they become due, together with any taxes thereon, from and after the Commencement Date. Lessor shall not be in default hereunder nor be liable in damages or otherwise for any failure or interruption of any utility or other service being furnished to the Premises, and no such failure or interruption will entitle Lessee to terminate this Lease.

Article 7

Insurance

7.1 Fire and Casualty Insurance. Lessee shall keep the Premises and improvements insured at Lessee's expense against fire and other risks covered by an All Risk Property Coverage policy, and other policies as appropriate. The insurance shall be maintained (without any co insurance clause) in an amount equal to the greater of the fair market value of the Premises and improvements or the amount required by any mortgagee of the Premises, or absent such requirement, in an amount sufficient to prevent Lessor and Lessee from becoming co insurers under applicable provisions of the insurance policy. Said coverage may be through self-insurance, through an insurance pool established for the benefit of governmental entities or from a general insurance carrier that meets the requirements set out below.

7.2 Liability Insurance. Lessee, at its cost and expense, shall maintain general liability insurance coverage sufficient to cover liability that may be imposed due to the condition of the

premises and the activities conducted thereon. Said coverage may be through self-insurance, through an insurance pool established for the benefit of governmental entities or from a general insurance carrier that meets the requirements set out below.

7.3 Additional Requirements. In the event that a policy is obtained from a commercial carrier the carrier(s) shall be a reputable insurance company acceptable to Lessor, licensed to do business in the State of Oregon, and have a minimum A-VIII rating as determined by the then-current edition of *Best's Insurance Reports* published by A.M. Best Co. Lessee shall provide Lessor with certificates of insurance concurrently with the execution of this Lease and upon each renewal thereafter to establish that Lessee's insurance obligations have been met and that the policies are not subject to cancellation or material change without at least 30 days advance written notice to Lessor; provided, however, that Lessor may inspect and require full copies of all insurance policies to be provided to Lessor.

Article 8

Release and Indemnification

8.1 Release. Lessee shall be in exclusive control of the Premises, and Lessor shall not in any event whatsoever be liable for any injury or damage to any property or to any person happening on, in, or about the Premises or the Lessee owned or leased Improvements, or any injury or damage to the Premises or the Lessee owned Improvements or to any property, whether belonging to Lessee or to any other person, caused by any fire, breakage, leakage, defect, or condition on any part of the Premises or the Lessee owned or leased Improvements, or from steam, gas, electricity, water, rain, or snow that may leak into, issue, or flow from any part of the Premises or the Lessee owned or leased Improvements from the drains, pipes, or plumbing work of the same, or from the street, subsurface, or any place or quarter, or because of the use, misuse, or abuse of all or any of the Premises or the Lessee owned or leased Improvements, or from any kind of injury that may arise from any other cause whatsoever on the Premises or in or on the Lessee owned or leased Improvements, including defects in construction of the Lessee owned or leased Improvements, latent or otherwise; and Lessee hereby releases Lessor from and against any and all liabilities resulting from any such injuries and damages. Lessor acknowledges that it remains responsible for liability to any third party to the extent that the liability arises from Lessor's gross negligence or willful misconduct that causes damage or injury to persons or property on the Premises.

8.2 Indemnification. Except to the extent caused by the gross negligence or willful misconduct of Lessor, Lessee shall indemnify, defend and hold Lessor harmless from and against any and all liabilities, obligations, damages, fines, penalties, claims, costs, except for attorney's fees, charges, and expenses (including, without limitation, environmental response and remedial costs; environmental consultant and laboratory fees; and natural resource damages) that may be imposed on or incurred by or asserted against Lessor arising from or related to the activities of the Lessee conducted on the Premises during the term of this Lease.

Article 9

Liens

9.1 No Liens. Lessee shall not suffer or permit any construction liens to attach to or be filed against any part of the Premises or the Improvements owned by Lessor by reason of any work, labor, services, or materials done for, or supplied to, or claimed to have been done for or supplied to, Lessee or any person occupying or holding an interest in any part of the Premises or the Improvements owned by Lessee. If any such lien is filed against any portion of the Premises or the Improvements, Lessee shall cause the same to be discharged of record within 15 days after the date of its filing by payment, deposit, or bond.

9.2 Lessor Right to Post Notices. Lessor may post and keep posted at all reasonable times on the Premises and the Improvements notices of non-responsibility and any other notices that Lessor desires or is required to post for the protection of Lessor's interest in the Premises and the Improvements from any such lien.

9.3 No Right to Lien Lessor's Interest. Nothing in this Lease may be deemed to be, or be construed in any way as constituting, the consent or request of Lessor, express or implied, by inference or otherwise, to any person, firm, or corporation for the performance of any labor or the furnishing of any materials for any construction, rebuilding, alteration, or repair of or to the Premises or to the Improvements, or as giving Lessee any right, power, or authority to contract for or permit the rendering of any services or the furnishing of any materials that might in any way give rise to the right to file any lien against Lessor's interest in the Premises or against Lessor's interest, if any, in the Improvements. Lessee shall not be an agent for Lessor.

Article 10

Repairs and Maintenance

10.1 Lessee Obligation. Lessee must maintain, repair and replace the Premises and the Lessor owned Improvements as and when needed so as to keep them clean and in good condition and repair, throughout the entire Term. Lessee's obligations extend to both structural and nonstructural items and to all maintenance, repair, and replacement work.

10.2 Lessor Obligation. Consistent with Section 6.5 of this Lease, Lessor is not required to furnish to Lessee, the Premises, or the Improvements any facilities, utilities, or services of any kind whatsoever during the Term, such as, but not limited to, water, sanitary sewer, storm sewer, gas, electric, telephone, cable, garbage pickup, or any other utilities or services used by Lessee. Lessor is not required to make any alterations, re-buildings, replacements, changes, additions, improvements, or repairs to any portion of the Premises or the Improvements during the Term.

10.3 Lessee Environmental Obligations. Lessee shall take all the responsibilities to environmental issues and damages on the Premises and the Improvements related to its activities.

10.4 Limited Assignment of Rights. Lessor shall assign to Lessee, without recourse, any rights that Lessor may have against any parties causing damage to the Lessee owned Improvements on the Premises to sue for and recover amounts expended by Lessee as a result of the damage.

Article 11

Inspection and Access

Lessor may enter onto the Premises and the Improvements at reasonable times during reasonable business hours for the purposes of allowing potential buyers or tenants to perform inspections, to inspect and take measurements, samples or other activities to access any potential contamination issues and ensure compliance with the terms of this Lease. Nothing in this Lease implies any duty or obligation, however, on Lessor's part to make such inspections or perform such work (including, but not limited to, repairs and other restoration work made necessary because of any fire or other casualty or partial condemnation, irrespective of the sufficiency or availability of any property or other insurance proceeds, or any award in condemnation, that may be payable). Lessor's performance of any work will not constitute a waiver of Lessee's default in failing to perform the same.

Article 12

Damage and Destruction

If any Lessee owned Improvement(s) on the Premises are damaged or destroyed by flood, fire or other casualty, Lessee's obligations under the lease will not abate and Lessee shall promptly determine whether to repair, replace, reconstruct, demolish or abandon the Improvement(s). Lessee shall promptly inform Lessor of its decision and its proposed plan of action. Should the Lessee decide to abandon or demolish the damaged Lessee owned Improvement(s) Lessee shall at Lessee's expense clear the remains of the Improvement(s) from the premises unless otherwise directed by Lessor.

Article 13

Condemnation

13.1 Total Taking. If all the Premises and the Improvements are taken or condemned by right of eminent domain or by purchase in lieu of condemnation (a "Taking"), or if in Lessee's reasonable judgment the Taking of any portion of the Premises or the Improvements renders the portion remaining insufficient and unsuitable to permit the restoration of the Improvements following the Taking, then Lessee may terminate this Lease by providing written notice thereof to Lessor within 30 days after Lessee is notified of the Taking, in which case the Lease will cease and terminate (except those provisions intended to survive the expiration or termination of the Lease) and Lessee shall vacate the Premises and the Improvements as of the date on which the condemning authority takes possession (any Taking in this section being called a "Total Taking").

13.2 Award for Total Taking. If this Lease terminates as a result of a Total Taking, the rights and interests of the parties will be determined as follows:

(a) The total award or awards for the Total Taking will be apportioned and paid in the following order of priority:

(i) Lessor will have the right to receive directly from the condemning authority, in its entirety and not subject to any trust, a portion of the award that is defined and referred to as the Land Award (as defined below), and Lessee will not be entitled to receive any part of the Land Award. The term "Land Award" means that portion of the award in the condemnation proceeding that represents the fair market value of the Premises and the Lessor owned Improvements, the consequential damage to any part of the Premises that may not be taken; the diminution of the assemblage or plottage value of the Premises not so taken; and all other elements and factors of damage to the Premises; but in all events the damage or valuation will take into consideration that the Premises are encumbered by this Lease.

(ii) Lessee will have the right to receive directly from the condemning authority that portion of the award referred to as the Leasehold Award (as defined below). The term "Leasehold Award" means that portion of the award in the condemnation proceeding that represents the fair market value of Lessee's interest in the Premises and the Lessee owned Improvements and the fair market value of Lessee's leasehold estate as so taken and, if this Lease is not terminated as a result of the Taking.

(iii) It is the intent of the parties that the Land Award and the Leasehold Award will equal the total amount of the awards respecting the Total Taking.

(b) If a court or another lawful authority that is authorized to fix and determine the awards fails to fix and determine, separately and apart, the Land Award and the Leasehold Award, the awards will be determined and fixed by written agreement mutually entered into by and among Lessor and Lessee, and if an agreement is not reached within 30 days after the judgment is entered in the proceeding, the controversy will be resolved in the same court in which the condemnation action is brought, in any proceedings that are appropriate for adjudicating the controversy.

13.3 Partial Taking and Award for Partial Taking. If, during the Term, there is a Taking of the Premises or the Improvements, but the Taking is not a Total Taking and not a temporary taking of the kind described in section 13.4, or if a change occurs in the grade of the streets or avenues on which the Premises abuts, this Lease will not terminate but will remain in full force and effect with respect to the portion of the Premises and the Improvements not taken (any Taking or change of grade of the kind described in this section being referred to as a "Partial Taking"), and in that event the total award or awards for the taking will be apportioned and paid in the following order of priority:

(a) Lessor may receive directly from the condemning authority, in its entirety and not subject to any trust, that portion of the award that equals the Land Award, and Lessee may not receive any part of the award; and

(b) Lessee, may receive directly from the condemning authority the balance of the award, to be applied by the recipient as it deems appropriate.

13.4 Temporary Taking. If there is a Taking of all or a part of the Premises or the Improvements for temporary use, this Lease will continue without change, as between Lessor and Lessee, and Lessee will be entitled to the entire award made for that use. Lessee will also have the right to file and prosecute any claim against the condemnor for damages, and to recover the same, for any negligent use, waste, or injury to the Premises or the Improvements throughout the balance of the then-current Term. The amount of damages so recovered will belong to Lessee.

13.5 Dispute Resolution. In the event of any dispute between Lessee and Lessor regarding any issue of fact arising out of a Taking mentioned in this Article, the dispute shall be resolved by the same court in which the condemnation action is brought, in any proceedings that are appropriate for adjudicating the dispute.

Article 14

Assignment and Subletting

14.1 Limitations on Transfers. Except as permitted under section 14.2 and article 16 below, Lessee shall not, voluntarily or by operation of law, sell, assign, or transfer this Lease or any interest therein, sublet the Premises or any part thereof, or grant any right to use the Premises, the Improvements, or any respective part thereof (each a "Transfer") without the prior written consent of Lessor. Any attempted Transfer without such prior written consent will be void. Lessor's consent to a Transfer will in no event release Lessee, any assignee, or any guarantor from their respective liabilities or obligations under this Lease or any guaranty of this Lease, nor relieve Lessee from the requirement of obtaining Lessor's prior written consent to any further Transfer. Lessor's acceptance of Rent from any other person will not be deemed to be a waiver by Lessor of any provision of this Lease or consent to any Transfer.

14.2. Assignments Prohibited. An assignment prohibited within the meaning of this section 14.1 includes, without limitation, one or more sales or transfers, direct or indirect, by operation of law or otherwise.

Article 15

Lessor Mortgages

15.1 Lessor Mortgages. Lessor shall not, at any time, borrow against or encumber its interest in the Premises, or this Lease. Lessee may borrow against the Lessee owned Improvements so long as the term of such debt will end prior to the Term of this Lease, and further that if any

claim or security interest is asserted against the Lessee owned Improvements, that Lessee shall not suffer the same but pay fully such debt and remove any claim or security interest on the Lessee owned Improvements fully before the Term of the Lease expires. If Lessor exercises its right of early termination, then Lessee shall be obligated to remove the security interest or other encumbrance prior to the termination date of the Lease as so established.

Article 16

Default

16.1 Event of Default. The occurrence of any one or more of the following constitutes an event of default under this Lease:

- (a) Failure by Lessee to pay any amount required to be paid by Lessee to Lessor under this Lease within 10 days after written notice of such nonpayment is given to Lessee;
- (b) Failure by Lessee to obtain and maintain any insurance or provide evidence of insurance as required by the terms of this Lease and such failure continues and is not remedied within 10 days after written notice thereof is given to Lessee;
- (c) Failure by Lessee, whether by action or inaction, to comply with any term or condition or fulfill any obligation under this Lease (other than as set forth in subsections (a) and (b) above) and such failure continues and is not remedied within 30 days after written notice thereof is given to Lessee;
- (d) Lessee becomes insolvent; Lessee makes an assignment for the benefit of creditors; Lessee files a voluntary petition in bankruptcy; Lessee is adjudged bankrupt or a receiver is appointed for Lessee's properties; the filing of any involuntary petition of bankruptcy and Lessee's failure to secure a dismissal of the petition within 45 days after filing; or the attachment of or the levying of execution on the leasehold interest and Lessee's failure to secure discharge of the attachment or release of the levy of execution within 30 days; or
- (e) Lessee has a material breach as described in section 3.2, which shall be deemed as a breach without any cure period set forth in provision (c) of this article.

Article 17

Remedies

17.1 Remedies. Upon the occurrence of an event of default, Lessor may exercise any one or more of the remedies set forth in this section or any other remedy available under applicable law or contained in this Lease:

(a) Lessor may terminate this Lease by written notice to Lessee, which is effective immediately.

(b) Lessor or Lessor's agent or employee may immediately or at any time thereafter, without terminating the Lease, reenter the Premises and the Improvements (as provided in Section 19) either by summary eviction proceedings or by any suitable action or proceeding at law, or by force or otherwise, without being liable to indictment, prosecution, or damages, and may repossess the same, and may remove any person from the Premises and the Improvements, to the end that Lessor may have, hold, and enjoy the Premises and the Improvements. **RE-ENTRY OR TAKING POSSESSION OF THE PREMISES OR THE IMPROVEMENTS BY LESSOR WILL NOT BE CONSTRUED AS AN ELECTION ON ITS PART TO TERMINATE THIS LEASE UNLESS A WRITTEN NOTICE OF SUCH INTENTION IS GIVEN TO LESSEE.**

(c) Lessor may, without terminating the Lease, relet the whole or any part of the Premises and the Lessor owned Improvements from time to time, either in the name of Lessor or otherwise, to any persons, for any terms ending before, on, or after the expiration date of the Term, at any rentals and on any other conditions (including concessions and free rent) that Lessor determines to be appropriate. To the extent allowed under Oregon law, Lessor may not relet all or any part of the Premises or the Lessor owned Improvements and shall not be liable for refusing to relet the Premises or the Lessor owned Improvements, or, in the event of reletting, for refusing or failing to collect any rent due on such reletting; and any action of Lessor will not operate to relieve Lessee of any liability under this Lease or otherwise affect such liability. Lessor at its option may make any physical change to the Premises or the Lessor owned Improvements that Lessor, in its sole discretion, considers advisable and necessary in connection with any reletting or proposed reletting, without relieving Lessee of any liability under this Lease or otherwise affecting Lessee's liability.

(d) Whether or not Lessor retakes possession of or relets the Premises and the Lessor owned Improvements, Lessor may recover its damages, including without limitation, all lost rentals and all costs incurred by Lessor in restoring the Premises or otherwise preparing the Premises and for reletting, and all costs incurred by Lessor in reletting the Premises.

(e) To the extent permitted under Oregon law, Lessor may sue periodically for damages as they accrue without barring a later action for further damages. Lessor may in one action recover accrued damages plus damages attributable to the remaining Term equal to the difference between the Rent (including Taxes) reserved in this Lease for the balance of the Term after the time of award and the fair rental value of the Premises and the Lessor owned Improvements for the same period, discounted at the time of award at a reasonable rate not to exceed 10 percent per annum. If Lessor relets the Premises and the Lessor owned Improvements for the period that otherwise would have constituted all or part of the unexpired portion of the Term, the amount of rent reserved on the reletting will be deemed to be the fair and reasonable rental value for the part or the whole of the Premises and the Improvements so relet during the term of the reletting.

17.2 Lessor's Self-Help Right. If Lessee at any time (a) fails to pay any Tax in accordance with the provisions of this Lease, (b) fails to make any other payment required under this Lease, or (c) fails to perform any other obligation on its part to be made or performed under this Lease, then after 10 days' written notice to Lessee (or without notice in the event of an emergency) and without waiving or releasing Lessee from any obligation of Lessee contained in this Lease or from any default by Lessee and without waiving Lessor's right to take any action that is permissible under this Lease as a result of the default, Lessor may, (i) pay any Tax or make any other payment required of Lessee under this Lease, and (ii) perform any other act on Lessee's part to be made or performed as provided in this Lease, and may enter the Premises and the Improvements for any such purpose, and take any action that may be necessary. All payments so made by Lessor and all costs and expenses incurred by Lessor in connection with the performance of any such act will constitute additional costs payable by Lessee under this Lease and must be paid to Lessor on demand. In no instance shall Lessee be entitled to attorney's fees relating to any default, remedy or self-help, even if it is determined that Lessor did not act appropriately with respect to the same.

17.3 No Waiver. No failure by Lessor to insist on the strict performance of any agreement, term, covenant, or condition of this Lease or to exercise any right or remedy consequent upon a breach, and no acceptance of full or partial Rent during the continuance of any such breach, constitutes a waiver of any such breach or of such agreement, term, covenant, or condition. No agreement, term, covenant, or condition to be performed or complied with by Lessee, and no breach by Lessee, may be waived, altered, or modified except by a written instrument executed by Lessor. No waiver of any breach will affect or alter this Lease, but each and every agreement, term, covenant, and condition of this Lease will continue in full force and effect with respect to any other then-existing or subsequent breach.

17.4 Remedies Cumulative and Nonexclusive. Each right and remedy provided for in this Lease is cumulative and is in addition to every other right or remedy provided for now or hereafter existing at law or in equity or by statute or otherwise, and Lessor's or Lessee's exercise or beginning to exercise of any one or more of the rights or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise will not preclude the simultaneous or later exercise by the party in question of any or all other rights or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise.

Article 18

Sale By Lessor and Limitation of Lessor's Liability

18.1 Sale by Lessor. Upon sale of the Premises during the Term of this Lease or any extensions, this Lease shall be terminated. Lessor shall not agree to any sale terms that shorten the notice of termination period required to be given to Lessee in section 2.2.

18.2 Nonrecourse Obligation. Regarding any claim against Lessor, including any claim of default by Lessor under this Lease or in any claim or cause of action arising under this Lease or arising out of the Lessor-Lessee relationship created by this Lease, the sole and exclusive remedy

of Lessee shall be against the interests of Lessor in the Premises and its reversionary interest in the Lessor owned Improvements and Lessor will have no other liability hereunder. Lessee shall not enforce any judgment against Lessor except against the interest of Lessor in the Premises and its reversionary interest in the Lessor owned Improvements. In no event will any elected official, officer, employee, or agent of Lessor have any personal liability to Lessee. Lessee agrees that this provision will apply to any and all liabilities, claims, and causes of action whatsoever, including those based on any provision of this Lease, any implied covenant, or any statute or common-law principle. Notwithstanding any other provision of this Lease, in no event whatsoever may Lessor be responsible for any consequential or incidental damages or for any action that Lessor believes in good faith is necessary to comply with Legal Requirements with respect to the Premises or the Improvements.

Article 19

Surrender and Holdover

19.1 Condition of Premises and Improvements. Upon expiration of the Term or earlier termination of this Lease, Lessee shall deliver to Lessor the Premises in good condition, free and clear of all occupancies other than subleases to which Lessor has specifically consented and free and clear of all liens and encumbrances other than those, if any, existing on the date of this Lease or created or suffered by Lessor. Lessee shall surrender the Premises and the Lessor owned Improvements in good condition and repair (reasonable wear and tear excepted), free and clear of all occupancies other than subleases to which Lessor has specifically consented and free and clear of all liens and encumbrances other than those, if any, existing on the date of this Lease or created or suffered by Lessor.

19.2 Lessee's Property. Before the expiration or earlier termination of this Lease, Lessee shall remove all Lessee owned Improvements, furnishings, furniture, and trade fixtures that remain Lessee's property (the "Lessee's Property"). If Lessee fails to do so, at Lessor's option, (a) the failure to remove Lessee's Property will be deemed an abandonment of Lessee's Property, and Lessor may retain Lessee's Property and all rights of Lessee with respect to it will cease; or (b) by written notice given to Lessee, Lessor may elect to hold Lessee to Lessee's obligation of removal, in which case Lessor may effect the removal, transportation, and storage of Lessee's Property and Lessee shall reimburse Lessor for the costs incurred in connection therewith on demand.

Article 20

Condition of Premises

Lessee acknowledges that it has examined the physical condition of the Premises (including whether the Premises contains any Hazardous Substances or fails to comply with any Environmental Laws) and as a result agrees to accept the Premises in "as-is" condition, with all faults. Lessee further acknowledges that no representations or warranties regarding the condition of the Premises have been made by Lessor or any agent or person acting for Lessor.

Article 21

Quiet Enjoyment

On paying the Rent and adhering to all covenants, agreements, and conditions of this Lease, Lessee will have quiet enjoyment of the Premises during the Term without hindrance or disturbance by any person claiming by, through, or under Lessor, subject, however, to the Permitted Exceptions.

Article 22

Notices

22.1 Notice Parties and Means of Delivery. Any notice required or permitted by the terms of this Lease will be deemed given if delivered personally, sent by United States registered or certified mail, postage prepaid, return receipt requested, or sent by fax with electronic confirmation of fax receipt, and addressed as follows:

If to Lessor: Clackamas County Development Agency
150 Beaver Creek Rd., Oregon City, OR 97045
Attn: Dan Johnson

With a copy to: Clackamas County Counsel's Office
2051 Kaen Rd., Oregon City, OR 97045

If to Lessee: Clackamas County
Department of Health, Housing, and Human Services
2051 Kaen Rd., Oregon City, OR 97045
Attn.: Richard Swift

With a copy to: Clackamas County Counsel's Office
2051 Kaen Rd., Oregon City, OR 97045

22.2 Copies of Certain Notices to Lessee. Lessee shall immediately send to Lessor, in the manner prescribed in this Article, copies of all notices that Lessee gives to or receives with respect to the Premises or the Improvements from any entity that impacts the Premises, including but not limited to any government authority, fire regulatory agency, or similarly constituted body, and copies of its responses to those notices.

22.3 Failure to Notify of Change of Address or Refusal to Accept a Notice.

Notwithstanding anything in this Article to the contrary, any notice mailed to the last-designated address of any person or party to which a notice may be or is required to be delivered pursuant to this Lease or this Article shall not be deemed ineffective if actual delivery cannot be made because of a change of address of the person or party to which the notice is directed or the failure or refusal of such a person or party to accept delivery of the notice.

Article 23

Miscellaneous

23.1 Survival. All agreements (including, but not limited to, indemnification agreements) set forth in this Lease, the full performance of which are not required before the expiration or earlier termination of this Lease, will survive the expiration or earlier termination of this Lease and be fully enforceable thereafter.

23.2 Invalidity. If any term or provision of this Lease or the application of the Lease to any person or circumstance is, to any extent, held to be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, will not be affected, and each term and provision of this Lease will be valid and be enforced to the fullest extent permitted by law.

23.3 Force Majeure. If either party's performance of an obligation under this Lease (excluding a monetary obligation) is delayed or prevented in whole or in part by (a) any Legal Requirement (and not attributable to an act or omission of the party); (b) any act of God, fire, or other casualty, flood, storm, explosion, accident, epidemic, war, terrorism, civil disorder, strike, or other labor difficulty; (c) shortage or failure of supply of materials, labor, fuel, power, equipment, supplies, or transportation; or (d) any other cause not reasonably within the party's control, whether or not the cause is specifically mentioned in this Lease, the party will be excused, discharged, and released of performance to the extent that such performance or obligation (excluding any monetary obligation) is so limited or prevented by the occurrence without liability of any kind.

23.4 Nonmerger. There may be no merger of this Lease, or of the leasehold estate created by this Lease, with the fee estate in the Premises by reason of the fact that this Lease, the leasehold estate created by this Lease, or any interest in this Lease, may be held, directly or indirectly, by or for the account of any person who owns the fee estate in the Premises or any interest in such fee estate. No merger will occur unless and until all persons having an interest in the fee estate in the Premises and all persons (including all Permitted Leasehold Mortgagees) having an interest in this Lease, or in the leasehold estate created by this Lease, join in a written instrument effecting the merger and duly record the same.

23.5 Lease Documents and Expenses. This Lease shall be prepared by Lessor. Lessor shall be responsible for its own costs of legal review and documentation, and Lessee shall be responsible for its own costs of legal review and documentation in the drafting and execution of this Lease.

23.6 Entire Agreement; Counterparts. This Lease contains the entire agreement between the parties and, except as otherwise provided, can be changed, modified, amended, or terminated only by an instrument in writing executed by the parties. Lessee and Lessor mutually acknowledge and agree that there are no verbal agreements or other representations, warranties, or understandings affecting this Lease. This Lease may be executed in any number of

counterparts, including by fax signatures, each of which will constitute an original, but all of which will constitute one Lease.

23.7 Applicable Law. This Lease will be governed by, and construed in accordance with, the laws of the State of Oregon, without giving effect to the conflict of law provisions thereof.

23.8 Brokerage. Lessor and Lessee represent to each other that they have not employed any brokers in negotiating and consummating the transaction set forth in this Lease, but have negotiated directly with each other.

23.9 Binding Effect. The covenants and agreements contained in this Lease are binding on and inure to the benefit of Lessor, Lessee, and their respective successors.

23.10 Recordation of Lease. Lessee may elect that a copy of this Lease or a memorandum of it, executed and acknowledged by both parties, be recorded in the public records of Clackamas County, Oregon. Lessee will pay the recording costs.

23.11 Time Is of the Essence. Time is of the essence as to the performance of all the covenants, conditions, and agreements of this Lease.

23.12 Interpretation. In interpreting this Lease in its entirety, the printed provisions of this Lease and any additions written or typed thereon shall be given equal weight, and there shall be no inference, by operation of law or otherwise, that any provision of this Lease may be construed against either party hereto. Lessor and Lessee acknowledge that they and their counsel have reviewed and revised this Lease and that any otherwise applicable rule of construction or any other presumption to the effect that any ambiguities are to be resolved against the drafting party will not be used in the interpretation of this Lease or any exhibit or amendment hereto.

23.13 Headings, Captions, and References. The headings and captions contained in this Lease are for convenience only and do not in any way define, describe, limit, or amplify the scope or intent of this lease or any term or provision in it. The use of the term "Herein" refers to this Lease as a whole, inclusive of the Exhibits, except when noted otherwise. The use of a masculine or neutral gender in this Lease includes the masculine, feminine, and neutral genders and the singular form includes the plural when the context so requires.

23.14 Relationship of Parties. Nothing contained in this Lease is to be deemed or construed, either by the parties to this Lease or by any third party, to create the relationship of principal and agent or to create any partnership, joint venture, or other association between Lessor and Lessee.

23.15 USA PATRIOT Act Compliance. Lessee represents to Lessor that Lessee is not (and is not engaged in this transaction on behalf of) a person or entity with which Lessor is prohibited from doing business pursuant to Antiterrorism Laws. "Antiterrorism Laws" means any law, regulation, or executive order pertaining to national security and specifically includes, but is not limited to, the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (the PATRIOT Act) (Pub L 107-56, 115 Stat 272); the Bank Secrecy Act (31 USC § 5311 *et seq.*); the Trading with the Enemy Act (50 USC App

§ 1 *et seq.*); the International Emergency Economic Powers Act (50 USC §§ 1701–1706); sanctions and regulations promulgated pursuant thereto by the Office of Foreign Assets Control, as well as laws related to the prevention and detection of money laundering in 18 USC sections 1956 to 1957. Lessee hereby agrees to indemnify, defend, and hold Lessor harmless from and against any and all claims, damages, losses, risks, liabilities, and expenses (including attorney fees and costs at trial and on appeal) arising from or related to any breach of the foregoing warranty, representation, and certification. Following a Transfer, Lessee will cause the transferee (including, but not limited to, an assignee, sublessee, and licensee), for the benefit of Lessor, to reaffirm, on behalf of such transferee, the representations of, and to otherwise comply with the obligations set forth in this section 29.15, and it is reasonable for Lessor to refuse to consent to a Transfer in the absence of such reaffirmation and compliance.

[Signature Page Follows]

IN WITNESS WHEREOF, Lessee and Lessor have caused this Lease to be executed by their duly authorized representatives as of the day and year first written above.

CLACKAMAS COUNTY
DEVELOPMENT AGENCY

/s/ 11-8-18 V.L.

By: 

Name: Jim Bernard

Title: Chair

CLACKAMAS COUNTY

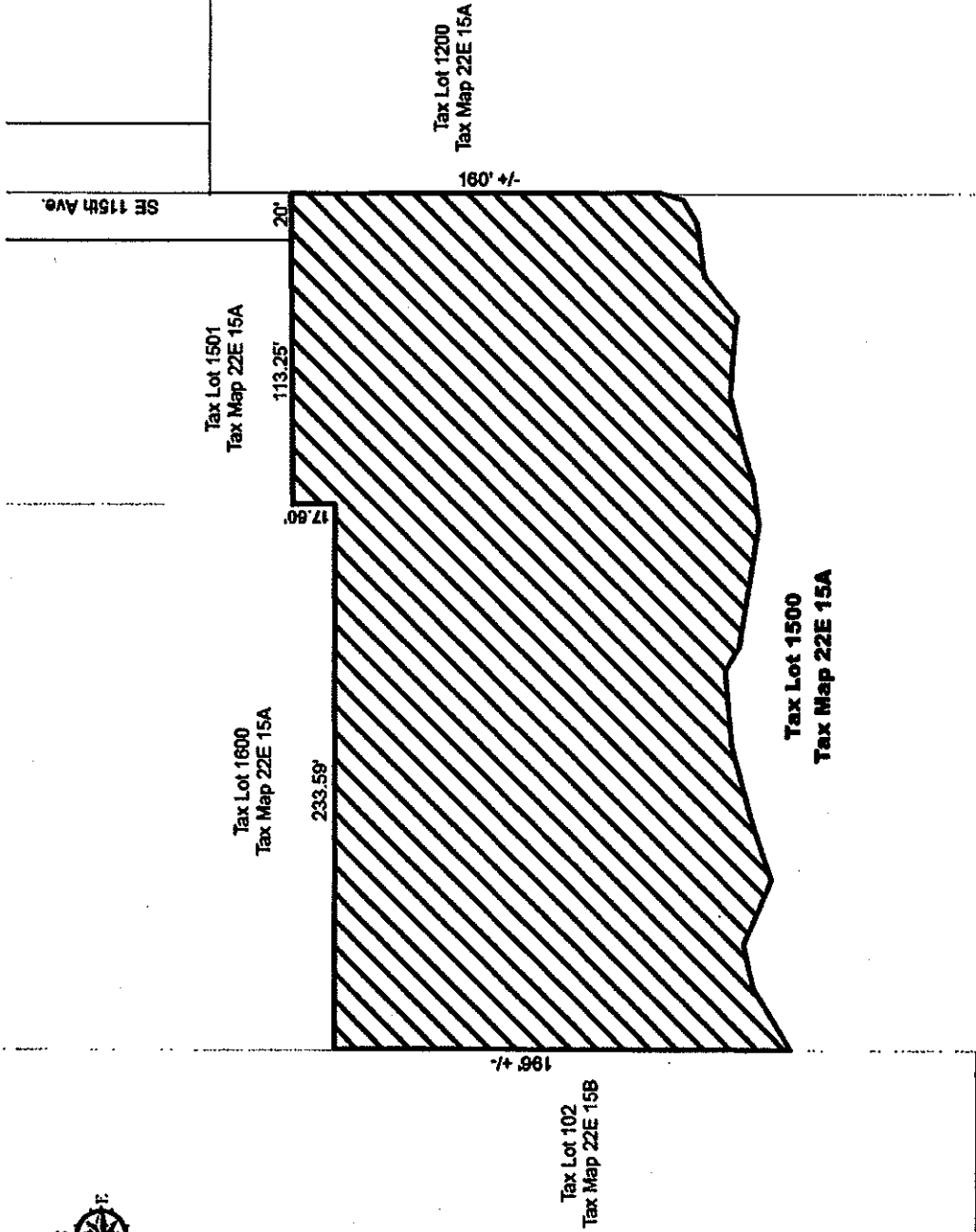
/s/ 11-8-18 A3.

By: 

Name: Jim Bernard

Title: Chair

EXHIBIT A




 Veteran's Village Boundary.

EXHIBIT B

Lessee Owned Improvements

- Up to 30 sleeping pods
- Bathroom and kitchen facilities
- ADA accessibility improvements
- Power poles



DAN JOHNSON
DIRECTOR

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

Board of County Commissioners
Clackamas County

Members of the Board:

**Approval of a Contract with Hart Crowser, Inc. for the
Transportation Earthquake Preparation and Response Plan Project**

Purpose/Outcome	Contract will update the County’s understanding of the earthquake vulnerabilities of the identified Emergency Transportation Routes, identify cost-effective pre-disaster mitigation options, develop a prioritized list of improvements to the ETR roads and bridges to improve the resilience of the ETRs and develop checklists and procedures to be used by county staff for assessment of roads and bridges immediately following an earthquake.
Dollar Amount and Fiscal Impact	Contract of \$128,940 with a contingency of \$39,245 for assessment of single span bridges that must be approved by the County prior to expenditure. Total Contract Value \$168,185
Funding Source	The funding source is County Road Funds
Duration	June 30, 2023
Previous Board Action/Review	12/07/21: Discussion item at issues
Strategic Plan Alignment	1. This plan will advance implementation of the Strategic Business Plan goal for Emergency Preparedness Disaster Response: “Department of Transportation and Development customers will experience coordinated resources and efficient service response in the event of an emergency or disaster” 2.. Ensure safe, healthy and secure communities.
Counsel Review	1. Date of Counsel review: 11/16/21 2. Initials of Counsel reviewer: AN
Procurement Review	Was the item processed through Procurement? Yes
Contact Person	Stephen Williams, Project Manager, 503-742-4696
Contract No.	4505

Background:

Clackamas County is vulnerable to a number of types of disasters due to seismic activity including liquefaction, seismic deformation, shifting of existing water courses resulting in flooding and landslides triggered by seismic activity. Such disasters, depending on the severity of the seismic event, can result in wide spread damage to residential, commercial and governmental buildings, as well as other types of critical structures including failure of critical

portions of the county's transportation system. A severe seismic event that caused extensive damage to the county's roads and bridges could greatly impede the ability of emergency response personnel to access the impacted areas to conduct rescue operations, and also delay or prevent the movement of people to safety. Of particular concern are the roads and bridges on the county Emergency Transportation Route (ETR) system. The Oregon Department of Transportation recently assessed the seismic vulnerability of bridges throughout Oregon on both state and local roads, and prioritized the most vulnerable for improvement or replacement. Clackamas County currently has 186 bridges of which 159 are on the National Bridge Inventory ("NBI") and are inspected by ODOT inspectors. The other 27 bridges are not on the NBI and are inspected by Clackamas County. Bridges are a critical element of the county transportation network. If those bridge fail as a result of a severe seismic event, areas that rely on those bridges could be inaccessible or have very high response times.

The Transportation Earthquake Preparation and Response Plan that is to be developed through this project will address several aspects of this potential issue:

- A. Compile existing data and identify the earthquake vulnerability for all areas of Clackamas County.
- B. Develop procedures and guidance for county personnel to complete road/bridge inspections following a disaster
- C. Develop long term improvement recommendations for vulnerable portions of the county transportation system and prioritize bridge improvement/replacement.
- D. As a contingency, conduct a structural evaluation of critical single-span bridges identified by the county and prepare a one page summary data sheet for each bridge.

Procurement Process:

This project was advertised in accordance with ORS and LCRB Rules on July 6, 2021. Proposals were opened on July 29, 2021. The County received one (1) Proposal: Hart Crowser, Inc. An evaluation committee of three DTD personnel evaluated the proposals. The evaluation committee scored and approved Hart Crowser as qualified and beneficial to the County. Following the intent to award, the scope of work and project fees were negotiated and finalized.

Recommendation:

Staff respectfully recommends that the Board approve and execute the Contract with Hart Crowser, Inc. for the Transportation Earthquake Preparation and Response Plan Project

Sincerely,

Stephen Williams

Stephen Williams
Project Manager

Placed on the BCC Agenda _____ by Procurement and Contract Services



**CLACKAMAS COUNTY
PERSONAL SERVICES CONTRACT
Contract #4505**

This Personal Services Contract (this “Contract”) is entered into between **Hart Crowser, Inc.**, a division of Haley and Aldrich, (“Contractor”), and Clackamas County, a political subdivision of the State of Oregon (“County”) on behalf of its Department of Transportation and Development.

ARTICLE I.

- 1. Effective Date and Duration.** This Contract shall become effective upon signature of both parties. Unless earlier terminated or extended, this Contract shall expire on **June 30, 2022**.
- 2. Scope of Work.** Contractor shall provide the following personal services: development of a Transportation Earthquake Disaster Response Plan and associated plans, reviews, actions, and other tasks (“Work”), further described in **Exhibit A**.
- 3. Consideration.** The County agrees to pay Contractor, from available and authorized funds, a sum not to exceed **one hundred sixty-eight thousand one hundred eighty-five dollars (\$168,185.00)**, for accomplishing the Work required by this Contract. The amount set forth above includes \$39,245.00_ for contingency Work. Contractor may not perform, and County will not pay for, any contingency Work without the County’s prior written approval. Consideration rates are on time and materials basis in accordance with the rates and costs specified in Exhibit A. If any interim payments to Contractor are made, such payments shall be made only in accordance with the schedule and requirements in Exhibit A.
- 4. Invoices and Payments.** Unless otherwise specified, Contractor shall submit monthly invoices for Work performed. Invoices shall describe all Work performed with particularity, by whom it was performed, and shall itemize and explain all expenses for which reimbursement is claimed. The invoices shall include the total amount billed to date by Contractor prior to the current invoice. If Contractor fails to present invoices in proper form within ninety (90) calendar days after the end of the month in which the services were rendered, Contractor waives any rights to present such invoice thereafter and to receive payment therefor. Payments shall be made in accordance with ORS 293.462 to Contractor following the County’s review and approval of invoices submitted by Contractor. Contractor shall not submit invoices for, and the County will not be obligated to pay, any amount in excess of the maximum compensation amount set forth above. If this maximum compensation amount is increased by amendment of this Contract, the amendment must be fully effective before Contractor performs Work subject to the amendment.

Invoices shall reference the above Contract Number and be submitted to: Stephen Williams.

- 5. Travel and Other Expense.** Authorized: Yes No
If travel expense reimbursement is authorized in this Contract, such expense shall only be reimbursed at the rates in the County Contractor Travel Reimbursement Policy, hereby incorporated by reference and found at: <https://www.clackamas.us/finance/terms.html>. Travel expense reimbursement is not in excess of the not to exceed consideration.
- 6. Contract Documents.** This Contract consists of the following documents, which are listed in descending order of precedence and are attached and incorporated by reference, this Contract and Exhibit A.

7. Contractor and County Contacts.

Contractor Administrator: Allison Pyrch Phone: 503-620-7284 Email: Allison.Pyrch@hartcrowser.com	County Administrator: Stephen Williams Phone: 503-742-4696 Email: swilliams@clackamas.us
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Payment information will be reported to the Internal Revenue Service (“IRS”) under the name and taxpayer ID number submitted. (See I.R.S. 1099 for additional instructions regarding taxpayer ID numbers.) Information not matching IRS records will subject Contractor payments to backup withholding.

ARTICLE II.

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

The Contractor agrees to indemnify, hold harmless and defend the County, and its officers, elected officials, agents and employees from and against all claims and actions, and all expenses incidental to the investigation and defense thereof, arising out of or based upon damage or injuries to persons or

property caused by the errors, omissions, fault or negligence of the Contractor or the Contractor's employees, subcontractors, or agents.

The Contractor further agrees to indemnify, and hold harmless and defend the County, and its officers, elected officials, agents and employees from and against all claims and actions, and all expenses incidental to the investigation and defense thereof, to the extent caused by and arising out of or based upon Contractor's negligent acts or omissions in performing the Work under this Contract.

However, neither Contractor nor any attorney engaged by Contractor shall defend the claim in the name of County or any department of County, nor purport to act as legal representative of County or any of its departments, without first receiving from the Clackamas County Counsel's Office authority to act as legal counsel for County, nor shall Contractor settle any claim on behalf of County without the approval of the Clackamas County Counsel's Office. County may, at its election and expense, assume its own defense and settlement.

- 8. INDEPENDENT CONTRACTOR STATUS.** The service(s) to be rendered under this Contract are those of an independent contractor. Although the County reserves the right to determine (and modify) the delivery schedule for the Work to be performed and to evaluate the quality of the completed performance, County cannot and will not control the means or manner of Contractor's performance. Contractor is responsible for determining the appropriate means and manner of performing the Work. Contractor is not to be considered an agent or employee of County for any purpose, including, but not limited to: (A) The Contractor will be solely responsible for payment of any Federal or State taxes required as a result of this Contract; and (B) This Contract is not intended to entitle the Contractor to any benefits generally granted to County employees, including, but not limited to, vacation, holiday and sick leave, other leaves with pay, tenure, medical and dental coverage, life and disability insurance, overtime, Social Security, Workers' Compensation, unemployment compensation, or retirement benefits.
- 9. INSURANCE.** Contractor shall secure at its own expense and keep in effect during the term of the performance under this Contract the insurance required and minimum coverage indicated below. The insurance requirement outlined below do not in any way limit the amount of scope of liability of Contractor under this Contract. Contractor shall provide proof of said insurance and name the County as an additional insured on all required liability policies. Proof of insurance and notice of any material change should be submitted to the following address: Clackamas County Procurement Division, 2051 Kaen Road, Oregon City, OR 97045 or procurement@clackamas.us.

Required - Workers Compensation: Contractor shall comply with the statutory workers' compensation requirements in ORS 656.017, unless exempt under ORS 656.027 or 656.126.
<input checked="" type="checkbox"/> Required – Commercial General Liability: combined single limit, or the equivalent, of not less than \$1,000,000 per occurrence, with an annual aggregate limit of \$2,000,000 for Bodily Injury and Property Damage.
<input checked="" type="checkbox"/> Required – Professional Liability: combined single limit, or the equivalent, of not less than \$1,000,000 per claim, with an annual aggregate limit of \$2,000,000 for damages caused by error, omission or negligent acts.
<input checked="" type="checkbox"/> Required – Automobile Liability: combined single limit, or the equivalent, of not less than \$1,000,000 per accident for Bodily Injury and Property Damage.

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

- 10. LIMITATION OF LIABILITIES.** This Contract is expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10, of the Oregon Constitution, and is contingent upon funds being appropriated therefore. Any provisions herein which would conflict with law are deemed inoperative to that extent. Except for liability arising under or related to Article II, Section 13

or Section 20 neither party shall be liable for (i) any indirect, incidental, consequential or special damages under this Contract or (ii) any damages of any sort arising solely from the termination of this Contract in accordance with its terms.

- 11. NOTICES.** Except as otherwise provided in this Contract, any required notices between the parties shall be given in writing by personal delivery, email, or mailing the same, to the Contract Administrators identified in Article 1, Section 6. If notice is sent to County, a copy shall also be sent to: Clackamas County Procurement, 2051 Kaen Road, Oregon City, OR 97045, or procurement@clackamas.us. Any communication or notice so addressed and mailed shall be deemed to be given five (5) days after mailing, and immediately upon personal delivery, or within 2 hours after the email is sent during County's normal business hours (Monday – Thursday, 7:00 a.m. to 6:00 p.m.) (as recorded on the device from which the sender sent the email), unless the sender receives an automated message or other indication that the email has not been delivered.
- 12. OWNERSHIP OF WORK PRODUCT.** All work product of Contractor that results from this Contract (the "Work Product") is the exclusive property of County. County and Contractor intend that such Work Product be deemed "work made for hire" of which County shall be deemed the author. If for any reason the Work Product is not deemed "work made for hire," Contractor hereby irrevocably assigns to County all of its right, title, and interest in and to any and all of the Work Product, whether arising from copyright, patent, trademark or trade secret, or any other state or federal intellectual property law or doctrine. Contractor shall execute such further documents and instruments as County may reasonably request in order to fully vest such rights in County. Contractor forever waives any and all rights relating to the Work Product, including without limitation, any and all rights arising under 17 USC § 106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use or subsequent modifications. Notwithstanding the above, County shall have no rights in any pre-existing Contractor intellectual property provided to County by Contractor in the performance of this Contract except to copy, use and re-use any such Contractor intellectual property for County use only.
- 13. REPRESENTATIONS AND WARRANTIES.** Contractor represents and warrants to County that (A) Contractor has the power and authority to enter into and perform this Contract; (B) this Contract, when executed and delivered, shall be a valid and binding obligation of Contractor enforceable in accordance with its terms; (C) Contractor shall at all times during the term of this Contract, be qualified, professionally competent, and duly licensed to perform the Work; (D) Contractor is an independent contractor as defined in ORS 670.600; and (E) the Work under this Contract shall be performed in the same professional skill, care, diligence and standards as other professionals performing similar services under similar conditions.. The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided. The Contractor shall be responsible for the technical accuracy of its services and documents resulting therefrom, and District shall not be responsible for discovering deficiencies therein. The Contractor shall correct such deficiencies without additional compensation except to the extent such action is directly attributable to deficiencies in information furnished by the District.
- 14. SURVIVAL.** All rights and obligations shall cease upon termination or expiration of this Contract, except for the rights and obligations set forth in Article II, Sections 1, 6, 7, 10, 12, 13, 14, 15, 17, 20, 21, 25, 27, and 29 and all other rights and obligations which by their context are intended to survive. However, such expiration shall not extinguish or prejudice the County's right to enforce this Contract with respect to: (a) any breach of a Contractor warranty; or (b) any default or defect in Contractor performance that has not been cured.
- 15. SEVERABILITY.** If any term or provision of this Contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Contract did not contain the particular term or provision held to be invalid.

- 16. SUBCONTRACTS AND ASSIGNMENTS.** Contractor shall not enter into any subcontracts for any of the Work required by this Contract, or assign or transfer any of its interest in this Contract by operation of law or otherwise, without obtaining prior written approval from the County, which shall be granted or denied in the County's sole discretion. In addition to any provisions the County may require, Contractor shall include in any permitted subcontract under this Contract a requirement that the subcontractor be bound by this Article II, Sections 1, 7, 8, 13, 16 and 27 as if the subcontractor were the Contractor. County's consent to any subcontract shall not relieve Contractor of any of its duties or obligations under this Contract.
- 17. SUCCESSORS IN INTEREST.** The provisions of this Contract shall be binding upon and shall inure to the benefit of the parties hereto, and their respective authorized successors and assigns.
- 18. TAX COMPLIANCE CERTIFICATION.** The Contractor shall comply with all federal, state and local laws, regulation, executive orders and ordinances applicable to this Contract. Contractor represents and warrants that it has complied, and will continue to comply throughout the duration of this Contract and any extensions, with all tax laws of this state or any political subdivision of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318. Any violation of this section shall constitute a material breach of this Contract and shall entitle County to terminate this Contract, to pursue and recover any and all damages that arise from the breach and the termination of this Contract, and to pursue any or all of the remedies available under this Contract or applicable law.
- 19. TERMINATIONS.** This Contract may be terminated for the following reasons: (A) by mutual agreement of the parties or by the County (i) for convenience upon thirty (30) days written notice to Contractor, or (ii) at any time the County fails to receive funding, appropriations, or other expenditure authority as solely determined by the County; or (B) if contractor breaches any Contract provision or is declared insolvent, County may terminate after thirty (30) days written notice with an opportunity to cure.
- Upon receipt of written notice of termination from the County, Contractor shall immediately stop performance of the Work. Upon termination of this Contract, Contractor shall deliver to County all documents, Work Product, information, works-in-progress and other property that are or would be deliverables had the Contract Work been completed. Upon County's request, Contractor shall surrender to anyone County designates, all documents, research, objects or other tangible things needed to complete the Work.
- 20. REMEDIES.** If terminated by the County due to a breach by the Contractor, then the County shall have any remedy available to it in law or equity. If this Contract is terminated for any other reason, Contractor's sole remedy is payment for the goods and services delivered and accepted by the County, less any setoff to which the County is entitled.
- 21. NO THIRD PARTY BENEFICIARIES.** County and Contractor are the only parties to this Contract and are the only parties entitled to enforce its terms. Nothing in this Contract gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Contract.
- 22. TIME IS OF THE ESSENCE.** Contractor agrees that time is of the essence in the performance this Contract.
- 23. FOREIGN CONTRACTOR.** If the Contractor is not domiciled in or registered to do business in the State of Oregon, Contractor shall promptly provide to the Oregon Department of Revenue and the Secretary of State, Corporate Division, all information required by those agencies relative to this Contract. The Contractor shall demonstrate its legal capacity to perform these services in the State of Oregon prior to entering into this Contract.

- 24. FORCE MAJEURE.** Neither County nor Contractor shall be held responsible for delay or default caused by events outside the County or Contractor's reasonable control including, but not limited to, fire, terrorism, riot, acts of God, or war. However, Contractor shall make all reasonable efforts to remove or eliminate such a cause of delay or default and shall upon the cessation of the cause, diligently pursue performance of its obligations under this Contract.
- 25. WAIVER.** The failure of County to enforce any provision of this Contract shall not constitute a waiver by County of that or any other provision.
- 26. PUBLIC CONTRACTING REQUIREMENTS.** Pursuant to the public contracting requirements contained in Oregon Revised Statutes ("ORS") Chapter 279B.220 through 279B.235, Contractor shall:
- a. Make payments promptly, as due, to all persons supplying to Contractor labor or materials for the prosecution of the work provided for in the Contract.
 - b. Pay all contributions or amounts due the Industrial Accident Fund from such Contractor or subcontractor incurred in the performance of the Contract.
 - c. Not permit any lien or claim to be filed or prosecuted against County on account of any labor or material furnished.
 - d. Pay the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.
 - e. As applicable, the Contractor shall pay employees for work in accordance with ORS 279B.235, which is incorporated herein by this reference. The Contractor shall comply with the prohibitions set forth in ORS 652.220, compliance of which is a material element of this Contract, and failure to comply is a breach entitling County to terminate this Contract for cause.
 - f. If the Work involves lawn and landscape maintenance, Contractor shall salvage, recycle, compost, or mulch yard waste material at an approved site, if feasible and cost effective.
- 27. NO ATTORNEY FEES.** In the event any arbitration, action or proceeding, including any bankruptcy proceeding, is instituted to enforce any term of this Contract, each party shall be responsible for its own attorneys' fees and expenses.
- 28. KEY PERSONS.** Contractor acknowledges and agrees that a significant reason the County is entering into this Contract is because of the special qualifications of certain Key Persons set forth in the contract. Under this Contract, the County is engaging the expertise, experience, judgment, and personal attention of such Key Persons. Neither Contractor nor any of the Key Persons shall delegate performance of the management powers and responsibilities each such Key Person is required to provide under this Contract to any other employee or agent of the Contractor unless the County provides prior written consent to such delegation. Contractor shall not reassign or transfer a Key Person to other duties or positions such that the Key Person is no longer available to provide the County with such Key Person's services unless the County provides prior written consent to such reassignment or transfer.
- 29. MERGER.** THIS CONTRACT CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PARTIES WITH RESPECT TO THE SUBJECT MATTER REFERENCED THEREIN. THERE ARE NO UNDERSTANDINGS, AGREEMENTS, OR REPRESENTATIONS, ORAL OR WRITTEN, NOT SPECIFIED HEREIN REGARDING THIS CONTRACT. NO AMENDMENT, CONSENT, OR WAIVER OF TERMS OF THIS CONTRACT SHALL BIND EITHER PARTY UNLESS IN WRITING AND SIGNED BY ALL PARTIES. ANY SUCH AMENDMENT, CONSENT, OR WAIVER SHALL BE EFFECTIVE ONLY IN THE SPECIFIC INSTANCE AND FOR THE SPECIFIC PURPOSE GIVEN. CONTRACTOR, BY THE SIGNATURE HERETO OF ITS AUTHORIZED REPRESENTATIVE, IS AN INDEPENDENT CONTRACTOR, ACKNOWLEDGES HAVING READ AND UNDERSTOOD THIS CONTRACT, AND CONTRACTOR AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

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

SCOPE OF WORK AND PRODUCTS

Task 1 – Review Existing Data and Reports. We, the Contractor, will summarize existing data and analysis to provide the best understanding of the existing emergency transportation data and earthquake disaster planning efforts in the County, region, and state. In addition to the *Clackamas County Lifeline Seismic Bridge Priority Detour Recommendations Report*, the DRZ and ETR mapping, and County and ODOT bridge evaluation data, we will utilize the GIS database and report recently completed by the RDPO ETR Project, the *Oregon Highways Seismic Options Report*, and the *Oregon Seismic Lifelines Identification Project Report*. In addition to these documents and datasets, we will work with the County to get locations of maintenance yards, storage areas, equipment storage locations, and potential contractor/employee locations for disaster response planning purposes.

During the RDPO ETR Project, members of the project team worked with the County to update and identify regional ETRs in the County. The data collected for that project includes the latest geological hazard information as well as locations of critical infrastructure and essential facilities within the County. We propose to review this data in relation to the currently designated DRZs with the County project team and to update as needed. These updates could include changes to regional ETRs needed, addition to the facilities and infrastructure data used for connectivity evaluation, and the addition of local ETRs that were not included in the regional effort.

County Input: Review existing ETRs, facilities/infrastructure, and DRZs and update as needed.

Deliverables: Bibliography summarizing documents reviewed and GIS updates to ETRs, DRZs, and facilities/infrastructure. We will work with County GIS staff to update GIS database accordingly.

Schedule: Weeks 2 through 4

Task 2 – Evaluate Road Network for Vulnerabilities. Using the RDPO GIS data, available updates through DOGAMI and the County, and ODOT and County bridge data, we will update the RDPO vulnerability evaluation for seismic hazards including ground shaking, liquefaction, ground deformation, and seismically induced landslides and flooding at the County level for the County ETRs. Working with County GIS staff, we will map the hazards and identify route and bridges potentially affected by the hazards. The vulnerabilities will be compared to the DRZs and we will work with the County to update the ETR network and DRZs as appropriate. Vulnerabilities on each route will be categorized and summarized in tables for prioritization.

County Input: Review ETR vulnerabilities and update ETRs and DRZs as needed.

Deliverables: Updated GIS database and mapping including additional geologic data, additional or updated ETRs, and bridge vulnerability data. Tables of vulnerabilities/areas of improvement for each County ETR.

Schedule: Weeks 3 through 16

Task 3 – Develop Disaster Response Procedure. Once the County develops the ETR ratings and vulnerabilities are evaluated, we will work with the County team to develop a disaster response procedure based on the existing conditions and expected seismic vulnerabilities of the County roads and bridges. The plan will include check sheets and procedures for preliminary damage surveys of landslides, culverts, embankments, roadways, and bridges.

The procedure for specific bridge inspections will at a minimum involve a post-seismic investigation form, such as has been used at other major agencies such as Caltrans. This form, in conjunction with the standard bridge inspection report, will guide personnel through the key elements to be checked based on structure type and geometric configuration. Where information is available, we will develop a companion guide to the checklist for the bridges in each DRZ, which could provide more background and context to the checklist items based on existing bridge inspection information. Standardized bridge check sheets will be developed for up to five (5) general types of bridges representative of bridges within the County.

In addition to inspection procedures, the procedure will include a prioritized list of inspection points based on expected damage and criticality of the routes (based on County provided ratings) and detour potential where possible for each DRZ. Some bridges or areas may be more vulnerable than others, and all the routes and bridges could be unsafe for passage until inspected. The best procedure is simply to inspect down the length of the route, visiting each vulnerable location and bridge in sequence as encountered. We will base the procedure on route priority and expected personnel dispatch locations in each DRZ. The goal will be to help County response staff quickly assess the damage to the system in a way that allows recovery of prioritized routes as quickly as possible.

County Input: Review check sheets and procedures for damage surveys. Review inspection procedure for each DRZ.

Deliverables: Draft Transportation Earthquake Response Procedure document.

Schedule: Weeks 16 through 32

Task 4 – Long Term Improvement Prioritization Tool Preparation. In order to provide the County with appropriate tools to seek funding and proceed with resilience improvements, prioritization of the identified seismic vulnerabilities is needed. Due to the magnitude of the vulnerabilities identified during the RDPO ETR study, it is apparent that prioritization of resilience improvements is needed so that critical transportation functions are mitigated first. Based on Hart Crowser and Quincy's experience in seismic system evaluation, we recommend that improvements be completed based on overall route resilience instead of individual improvements. This ensures that as funding is available, improvements are focused on critical corridors so that overall system connectivity is restored more quickly. The County ETR tiers will identify priority routes for use in prioritization of improvements. Our team will work with the County to complete this prioritization.

In addition to consideration of County bridges, the prioritization should also take into account that vulnerable ODOT structures will be retrofitted on ODOT's timetable and with ODOT funds. Bridges on ODOT Seismic Lifeline routes (SLRs) will eventually be retrofitted with ODOT funds, but these bridges may be low on ODOT's own priority list; thus, actual retrofit could be decades out. ODOT bridges off SLRs are not currently slated for retrofit at all. If ODOT routes are deemed critical in the County ETR tier designation, funding may have to come from local sources with ODOT coordination. We will work with the County to identify where ODOT vulnerable bridges affect County ETRs for use in prioritization improvements as appropriate.

The ETR tiering will be overlaid with the route and bridge vulnerability assessment using the combined expertise of Hart Crowser and Quincy along with all prior vulnerability assessment data. DKS will then work with the County to identify key criteria to evaluate vulnerability repairs including cost estimates, duration of repair, permanent versus temporary, and needs for equipment, staff, and materials. The Contractor will develop a tool to aid County staff in developing appropriate weighting of the road and bridge criteria. The vulnerability mitigation prioritization tool will be a spreadsheet that will combine a quantitative assessment of route importance with the road and bridge vulnerability using weighted criteria to best meet County goals. The County will then be able to use the spreadsheet in the prioritization process using a matrix format as well as a GIS mapping to consider route connectivity.

County Input: Provide input into development of criteria and weighting and review and comment on prioritization and weighting results.

Deliverables: GIS Database and spreadsheet prioritization tool.

Schedule: Weeks 32 through 40

Task 5 – Final Deliverables. We will work with the County to solicit review of the draft Transportation Earthquake Preparation and Response Procedure by the appropriate stakeholders and will provide a final report once comments are included. Comment logs will be maintained during the review processes.

In addition to final report, we will assist the County in preparation of up to 10 large format figures and presentation materials for plan dissemination. Also, a key deliverable for the project is the updated GIS system maintained by the

County which includes the ETR system, bridge vulnerability data, geotechnical hazard and vulnerability data, and the results of the ETR and mitigation prioritization.

County Input: Provide review of draft deliverables.

Deliverables: Final Transportation Earthquake Preparation and Response Plan, Prioritization Spreadsheet, GIS Database, Large Format Figures, Power Point Presentation, and support material for dissemination.

Schedule: Final reports will be provided within 3 weeks of receipt of final comments.

Task 6 – Project Management, Coordination, and Meetings. We will provide project management and coordination including contract preparation, invoicing, internal project coordination, and coordination with the County team as needed throughout the project schedule. Meeting assumptions are outlined below.

- **Bi-weekly ½-hour check in calls** - Allison as the project lead will conduct bi-weekly ½-hour project update video conferences with the County (13 hours for 26 meetings).
- **Project Development Meetings** - Members of the consultant team will attend up to five (5) in-person 2-hour project development meetings with the County team and appropriate stakeholders as needed for the project. (4-hours for meetings and travel and 2 hours prep each meeting for 4 people – 126 hours total)
- **DISSEMINATION WORKSHOP** – We will host a dissemination workshop in person or via video conference. If via video conference, we will provide a Zoom link and use appropriate collaboration tools and breakout sessions as needed based on the topic of the workshop. (3-hour workshops with travel (5 hours) and prep (10 hours) – 38 hours total)

County Input: Provide input into meeting stakeholders and content.

Deliverables: Meeting material, agendas, and minutes. Project invoices, contract documents, and email correspondence as required.

Contingency (Task 7c) – structural evaluation of single-span bridges. Based on our work with ODOT and RDPO, we understand the current ODOT seismic vulnerability ratings have rated all single span bridges as “not vulnerable”. While this may be acceptable from ODOT’s perspective, single span bridges are critical to many county roads. For this task we will conduct a structural and geotechnical evaluation of single span bridges on county ETRs. For each bridge, the evaluation will include a geotechnical hazard review, review of available as-built plans, and an onsite structural evaluation. Based on this, the bridge will be rated as “vulnerable”, “potentially vulnerable”, and “not vulnerable” in accordance with current ODOT ratings for other county bridges. For bridges rated “vulnerable”, retrofit concepts and a high-level cost estimate for mitigation will be developed. A one-page summary of each bridge evaluation will be prepared that will include pertinent bridge information as well as expected seismic performance. The bridge data will be incorporated into the county GIS database for future use and mitigation recommendations will be included in the mitigation prioritization in task 4. For the purposes of this proposal, we have assumed that we will evaluate 30 single span bridges based on preliminary information from the RDPO project data.

County input: bridge inspection information, as-built plans, bridge GIS locations, and review of data sheets prior to vulnerability assessments.

Deliverables: bridge data sheets and GIS data input.

Schedule: weeks 16 through 32

Clackamas County Earthquake Preparation and Response Plan - RFP 2021-60 (Job #20-S-1540-023)

Revised Summary of Hours and Expenses

Task Description	Hart Crowser, Inc.										Quincy Engineering				DKS Associates						Professional Staff Fees Subtotal	Reimbursables / Expenses	Total	
	Principal	Sr. Associate	Associate	Sr. Project	Project	Sr. Staff	Staff	Graphics/Drafter/GIS	Project Assistant	Expenses	Principal Engineer	Senior Engineer	Associate Engineer	Expenses	Principal	Project Manager	Sr. Planner	Planner	Graphics	Project Assistant				Expenses
<i>Billing Rates (2021)</i>	\$275	\$220	\$200	\$180	\$155	\$135	\$105	\$115	\$95		\$275	\$190	\$120		\$245	\$225	\$205	\$145	\$175	\$95				
Task 1 - Review Existing Data and Reports		4			4			8	2			6			2			6			\$5,070	\$0	\$5,070	
Task 2 - Evaluate Road Network for Vulnerabilities	2	6			12			4	4			12			2	1	4				\$8,085	\$0	\$8,085	
Task 3 - Develop Disaster Response Procedure	2	40			16			20	20		32	88	40								\$46,350	\$0	\$46,350	
Task 4 - Long Term Improvement Recommendations		8						4			4	8		2	10	8	14	6	2		\$12,490	\$0	\$12,490	
Task 5 - Final Deliverables	2	16			8			6	6			8		1	8	6	12				\$13,105	\$0	\$13,105	
Task 6 - Meetings and Coordination		48			45				\$ 25			30			30					\$ 25	\$29,985	\$75	\$30,060	
Task 6a - Project Management	2	15		16					16			16			6				12		\$13,780	\$0	\$13,780	
Cont Task 7c - Seismic Evaluation of Single-Span Bridges		6			40	25				\$ 250	12	80	80	\$ 250							\$38,995	\$250	\$39,245	
TOTAL (without contingency)	8	137	0	16	85	0	0	42	48	25	36	168	40	25	3	58	15	36	6	14	25	\$128,865	\$75	\$128,940
Total Cost Without Contingency																					\$	128,940		
Contingency Cost																					\$	39,245		
Total Cost																					\$	168,185		



DAN JOHNSON
DIRECTOR

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

December 9, 2021

Board of Commissioners
Clackamas County

Members of the Board:

Board Order Vacating a Portion of an Unnamed Non-Maintained Local Access Road
situated in Section 26 T.1 S., R.3 E., W.M.

Purpose/Outcomes	Vacates a portion of a Local Access Road right of way
Dollar Amount and Fiscal Impact	Application and processing fee received, Revenue
Funding Source	N/A
Duration	Upon execution; permanent vacation.
Previous Board Action	12/7/21: Discussion item at issues
Counsel Review	Reviewed and approved by County Counsel on 7/1/21
Procurement Review	This item was not processed through Procurement. This is a Petition for a Road Vacation.
Strategic Plan Alignment	Build public trust through good government Ensure safe, healthy and secure communities
Contact Person	Doug Cutshall, Engineering Technician 503-742-4669

BACKGROUND

The Non-Maintained Local Access Road, created July 7, 1913, through “Sunshine Valley Orchard Tracts”, Plat Number 379, is a very steep right of way that has been vacant since its creation 108 years ago. The petitioner proposes to vacate the 30-foot wide, 636-foot long, road right-of-way lying south of and adjoining the entire south line of tract 59 of the plat. The portion of road right-of-way to be vacated contains approximately 19,075 square feet of right-of-way that serves no public need and is not a benefit to the traveling public. Vacating this portion of road right of way will not affect area traffic flow or deprive public access to adjoining properties.

The Petition to Vacate under ORS 368.341 has been filed with the determined fee and acknowledged signatures of owners of 100 percent of property abutting public property proposed to be vacated, pursuant to ORS 368.351. All abutting property owners in this instance have signed the Consent to Vacate forms that have been acknowledged by the proper authority.

Clackamas County Department of Transportation Maintenance, Engineering, Planning, Traffic Divisions, and all local utility companies, have been contacted and do not have any objections to this vacation.

RECOMMENDATION

Staff respectfully recommends that the Board adopt the attached Board Order approving the vacation of this portion of an Unnamed Non-Maintained Local Access Road right of way situated in Section 26 T.1 S., R.3 E., W.M.

Sincerely,

Douglas Cutshall

Douglas Cutshall
Engineering Technician

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

In the matter of the Vacation of
a portion of a Local Access Road
situated In Section 26,
T.1 S., R.3 E., W.M.
Clackamas County, Oregon



Board Order No. _____
Page 1 of 1

This matter coming before the Board of County Commissioners at this time and appearing to the Board that in accordance with ORS 368.341 and pursuant to ORS 368.346, a petition has been filed with the determined fee, and a written report finding this vacation to be in the public interest from the County Road Official, Dan Johnson, Director, have been submitted in the matter of the vacation of a Non-maintained Local Access Road right of way, described as follows:

All of that portion of a Local Access Road, in Sunshine Valley Orchard Tracts, Plat 379, Clackamas County Plat Records, situated in the SE¼ of Section 26, T.1 S., R.3 E., W.M., Clackamas County, Oregon, lying south of and between the south line of Lot 59 and the north line of Lot 58 of said plat and, between the northerly extension of west right of way of 257th Drive and, the southerly extension of east right of way of an un-named road between Lots 59 and 60 of said plat. Depicted on attached Exhibit "A" and, by this reference being a part of this description. Containing 19,075 square feet more or less.

Whereas the Board having read said petition and report from the County Road Official, have determined the vacation of the above described portion of roadway to be in the public interest; and,

Whereas the Board adopts as its own, the findings and conclusions contained in the written report from the County Road Official dated June 10, 2021; and,

Whereas Clackamas County Departments of Transportation Maintenance, Engineering, Planning, Traffic, along with all local utility companies, have been contacted and do not have any objections to this vacation; now therefore,

IT IS HEREBY ORDERED that the above described portion of a Local Access Road as depicted on attached Exhibit "B", containing, 19,075 square feet, more or less, be vacated; and,

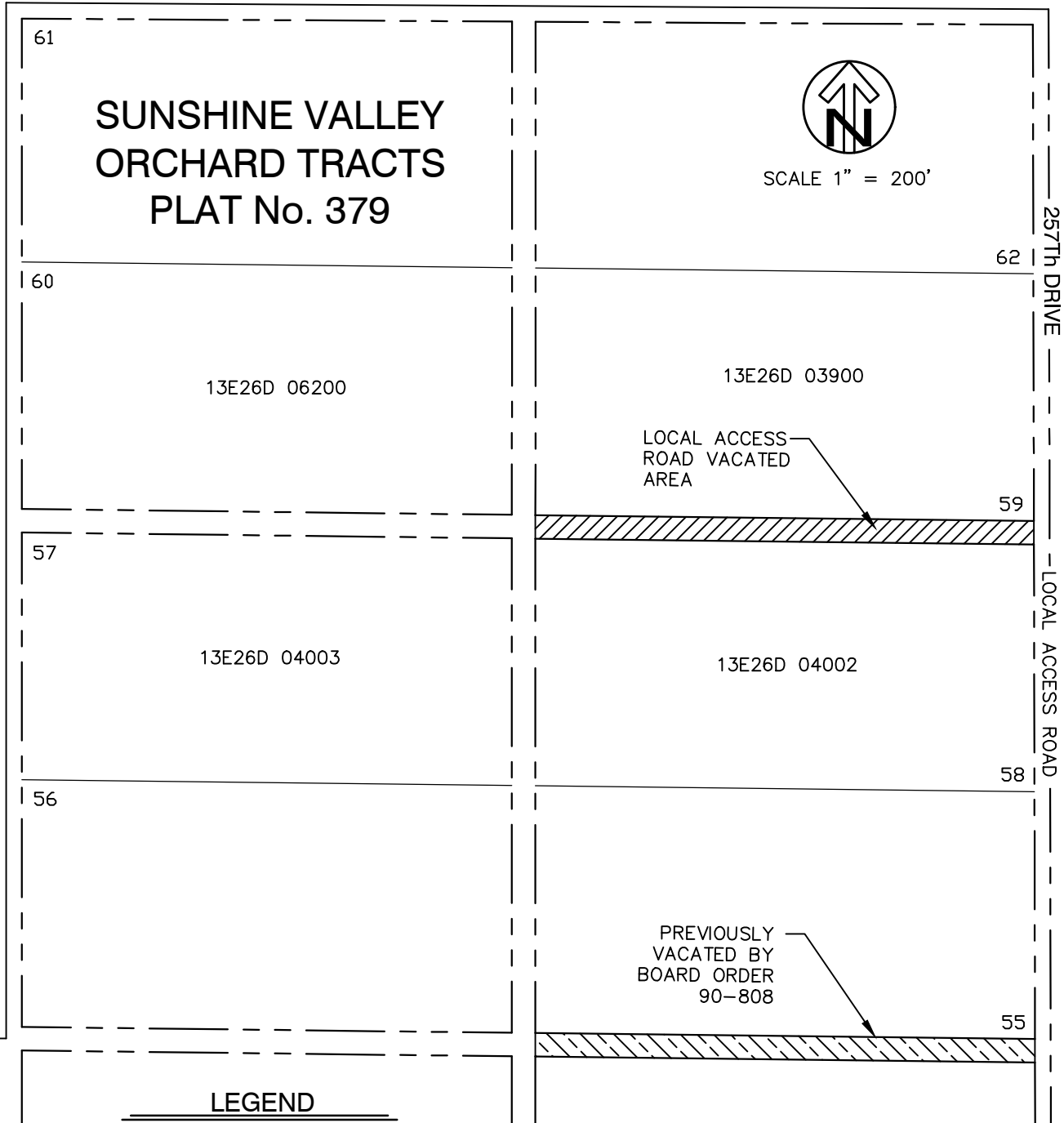
IT IS FURTHER ORDERED, that this Order and attached exhibits be recorded in the Deed Records for Clackamas County and that a copy be filed with the County Surveyor, County Assessor, and Finance Office/Fixed Assets.

ADOPTED this _____ day of _____, 2021
BOARD OF COUNTY COMMISSIONERS

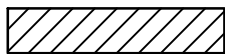
Chair

Recording Secretary

SITUATED IN THE SE $\frac{1}{4}$ OF
SECTION 26, T.1 S., R.3 E., W.M.



LEGEND



VACATED AREA
19,075 Sq. Ft.

MEMORANDUM

TO: Board of Commissioners

FROM: Dan Johnson, Director D.T.D.

DATE: June 10, 2021

SUBJ: **BOARD ORDER VACATING A PORTION OF A LOCAL ACCESS ROAD**

LOCATION: The proposed road vacation is situated in the southeast quarter of Section 26, Township 1 South, Range 3 East, Willamette Meridian, northwesterly of Boring.

FACTS AND FINDINGS: The Non-Maintained Local Access Road, created July 7, 1913, through "Sunshine Valley Orchard Tracts", Plat Number 379, is a perilously steep right of way that has been vacant since its creation 108 years ago. The topography of this area of the county has limited the construction of most roads within the platted right of way. The petitioner requests to vacate the 30-foot wide, 636-foot long, road right-of-way lying south of and adjoining the entire south line of tract 59 of the plat. The portion of road right-of-way to be vacated contains approximately 19,075 square feet of right-of-way that serves no public need and is not a benefit to the traveling public. Vacating this portion of road right of way will not affect area traffic flow or deprive public access to adjoining properties.

The Petition to Vacate under ORS 368.341 has been filed with the determined fee and, acknowledged signatures of owners of 100 percent of private property proposed to be vacated and acknowledged signatures of owners of 100 percent of property abutting the public property proposed to be vacated, pursuant to ORS 368.351. All abutting property owners in this instance have signed the Consent to Vacate forms that have been acknowledged by the proper authority.

Clackamas County Departments of Transportation Maintenance, Engineering, Planning, Traffic, along with all local utility companies have been contacted and do not have any objections to this vacation.

This road vacation does not violate any portion of Clackamas County Code 7.03.095 (4) (A). Said Code enumerated as follows;

a. Whether the vacation would inhibit or preclude access to an abutting property, and whether an access reservation would be adequate to protect that access;

Finding: Vacating this right of way would not inhibit or preclude access to any abutting property. Access to abutting properties is available via existing paved roads and driveways.

b. Whether it is physically possible to build a road that meets contemporary standards over the existing terrain or right of way;

Finding: The construction of a Local Access Road within this right of way would exceed current county road degree of slope standards.

c. Whether it is economically feasible to build a road that meets contemporary standards over the existing terrain or right of way;

Finding: It is not economically feasible to build a road in this right of way there is no public need to improve this right of way.

d. Whether there is another nearby road that can effectively provide the same access as the right-of-way to be vacated;

Finding: There are several roads that effectively provide access to all of the properties in the area.

e. Whether the right-of-way to be vacated has present or future value in terms of development potential, use in transportation linkages, or use in road replacements;

Finding: Due to the steepness of the terrain the right of way has present and future value to only the adjoining properties.

f. Whether there are present and future likely benefits of the right-of way to the traveling public;

Finding: There are no present and future likely benefits of the right of way to the traveling public.

g. Whether anticipated growth or changes in use of the surrounding area are likely to impact the future use of the right-of-way proposed to be vacated;

Finding: There are no anticipated impacts to the future use of the right of way proposed to be vacated.

h. Whether the right-of-way proposed to be vacated leads to a creek, river, or other waterway that can be used for public recreation; and

Finding: Not applicable.

i. Whether the right-of-way proposed to be vacated leads to federal, state or local public lands that can be used for public recreation.

Finding: Not applicable.

It is my assessment that the proposed vacation is in the public interest.



Elizabeth Comfort
Finance Director

Department of Finance

Public Services Building
2051 Kaen Road, Suite 490 | Oregon City, OR 97045

December 9, 2021

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of a Resolution for Extension and 4-H Service District Supplemental Budget
(Less Than Ten Percent) and Transfers for Fiscal Year 2021-2022

Purpose/Outcomes	Supplemental Budget changes for Extension and 4-H Service District FY 2021-2022
Dollar Amount and Fiscal Impact	The effect has an increase in appropriation of \$16,500
Funding Source	Interest Income
Duration	July 1, 2021 June 30, 2022
Previous Board Action/Review	Budget Adopted June 16, 2021
Counsel Review	N/A
Strategic Plan Alignment	Build public trust through good government
Procurement Review	1. Was the item processed through Procurement? yes <input type="checkbox"/> no <input checked="" type="checkbox"/> 2. If no, provide brief explanation: This is a Budget item and does not require Procurement's involvement
Contact Person	Sandra Montoya, smontoya@clackamas.us

BACKGROUND:

Each fiscal year it is necessary to allocate additional revenue and expenditures to accurately meet the changing operational needs. The attached resolution reflects such changes requested by departments in keeping with a legally accurate budget. These changes comply with ORS. 294.471 which allows for governing body approval of supplemental budget changes of less than ten percent of qualifying expenditures in the fund(s) being adjusted.

The Extension and 4-H Service District Fund is recognizing interest income of \$16,500 and increasing fee expense by \$16,500 to align with anticipated expenses in the Materials & Services category.

RECOMMENDATION:

Staff respectfully recommends the adoption of the attached Resolution Order and Exhibit A.

Sincerely,

Elizabeth Comfort
Finance Director

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

In the Matter of Providing
Authorization Regarding Adoption of a
Supplemental Budget for Transfers
and items Less Than 10 Percent of
the Total Qualifying Expenditures and
Making to Appropriations for Fiscal
2021-22



Resolution Order No. _____
Page 1

WHEREAS, during the fiscal year changes in appropriated expenditures may become necessary and appropriations may need to be increased, decreased or transferred from one appropriation category to another;

WHEREAS, a supplemental budget for the period of July 1, 2021, through June 30, 2022, inclusive, has been prepared, published, and submitted to the taxpayers as provided by statute;

WHEREAS; the funds being adjusted are:

. Extension 4-H Service District Fund;

It further appearing that it is in the best interest of the County to approve this less than 10 percent appropriations for the period of July 1, 2021, through June 30, 2021.

BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS THAT:

Pursuant to its authority under OR 294.471, the supplemental budget be adopted and appropriations established as shown in the attached Exhibit A which by this reference is made a part of this Resolution.

DATED this 9th day of December 2021

BOARD OF COUNTY COMMISSIONERS

Chair

Recording Secretary

SUMMARY OF PROPOSED BUDGET CHANGES

Exhibit A

December 9, 2021

AMOUNTS SHOWN ARE REVISED TOTALS IN THOSE FUNDS BEING MODIFIED

Item

1	Extension and 4-H Service District Fund (Fund 235)							
Resources		Original	Change	Revised	Requirement	Original	Change	Revised
	Beginning Fund Balance	10,967,078		8,197,952	Operating Expenses	10,927	16,500	27,427
	Taxes	2,675,049		2,675,049	Special Payments	2,369,152		2,369,152
	Federal,State,Local,All Other Gifts & Donations	253		253	Reserve	8,310,086		8,310,086
	All Other Revenue Resources	93,824	16,500	110,324	Contingency	276,913		276,913
	Revised Total Fund Resources			10,983,578	Revised Total Fund Requirements			10,983,578

Comments: The Extension and 4-H Service District Fund is recognizing interest income and increasing fee expense to align with projected fiscal year actuals.



Department of Finance

Public Services Building
2051 Kaen Road, Suite 490 | Oregon City, OR 97045

December 9, 2021

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of a Parking Lot Space Lease Agreement with Edington Properties, LLC

Purpose/Outcomes	Execution of a contract between Facilities Management and Edington Properties LLC for the lease of nine (9) Courthouse staff parking spaces located at 713 Main Street, Oregon City, OR 97045.
Dollar Amount and Fiscal Impact	Total contracted amount is \$34,875 for the entire term of the contract.
Funding Source	No additional funding is required. The current Facilities Management allocated budget covered by 744-15-1505-150501-46160 contains the funding requirements.
Duration	Leased from December 1, 2021 and ends on June 30, 2024.
Previous Board Action/Review	No previous review has occurred.
County Counsel Review	Reviewed and approved by ARN 10/12/21.
Strategic Plan Alignment	Supports the building of strong infrastructure and public trust through good government and safe and secure facilities.
Procurement Review	1. Was the item processed through Procurement? yes <input type="checkbox"/> no <input checked="" type="checkbox"/> 2. If no, provide brief explanation: This is a Facilities property lease agreement that does not require Procurement review.
Contact Person	Jeff Jorgensen, Director, Facilities Management, 971.221.8033

BACKGROUND:

This lease agreement is creating a legal document for the lease of nine (9) parking spaces for County and State Courts staff in a parking lot in close proximity to the Clackamas County Courthouse. These parking spaces have been leased by the County on a month-to-month basis since 2013 just after completion of the Courthouse Sally Port Extension Project when numerous parking spaces were lost due to the expansion of the building footprint. An agreement was made between the County and State Courts to lease these additional parking spaces to support continued Courthouse operations into the future.

RECOMMENDATION:

Staff recommends the Board approves and authorizes the Chair of the Board to execute this policy.

Sincerely,

Elizabeth Comfort

Elizabeth Comfort,
Director, Finance

PARKING SPACE LEASE AGREEMENT

- I. **The Parties.** This agreement is by and between Edginton Properties, LLC with a mailing address of PO Box 1321, Manzanita, OR 97130 *Hereinafter known as the "Lessor") and **Clackamas County, with a street address of 1710 Red Soils Court, Oregon City, OR 97045** (Hereinafter known as the 'Lessee') for **nine (9)** parking spaces located at 713 Main Street, Oregon City, OR 97045. **Spaces: 5, 6, 9, 10, 34, 35, 37, 38, 39.** This agreement is effective upon execution by both parties. This agreement shall supersede all previous communications, representations, or agreements, either oral or written between the parties.

- II. **Term.** The tenancy shall be on a fixed term.
This agreement effective **December 1, 2021 and ends on June 30, 2024.**

- III. **Rent.** The payment of rent by the Lessee to the Lessor shall be due on the first (1st) of every month in the amount of **\$1,125** (\$125/space) USD. Payment shall be delivered to the Lessor by the Lessee in the following manner: via check to the Lessor's mailing address provided, via Quickbooks, or via ACH transfer. A \$25 late fee will be assessed on the 11th day if payment has not been received by the 10th day.

- IV. **Subletting.** The lessee is not allowed to sublease (sublet) the space without the direct written consent from the Lessor.

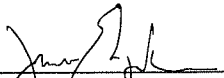
- V. **Current Registration & Insurance.** Lessee may only use the space for vehicles that are up-to-date with all State and local registrations. In addition, all vehicles must maintain current insurance that is legal under the State of registration.

- VI. **Maintenance.** Lessee is required to keep the vehicle in good repair and free of hazardous leaks of oils or liquids. No repairs of any type are allowed on the parking space and, if needed, must be towed to a location that allows such activities.

- VII. **Use of Space & Damage.** The use of the space may only be for the parking of a vehicle that is owned/leased by the owner. No storage of personal property may be allowed in the space. Lessor is not liable for any damage done to the vehicle or personal property taken from it. All liability to the vehicle and personal property will be the responsibility of the Lessee.

- VIII. **Termination.** Either party may terminate this Agreement by providing a 30 day written notice to the other party. Any such notice shall be directed to a party at the party's address as listed below in this Agreement.

- IX. **Governing Law.** This agreement shall be governed under the laws in the State of Oregon.

Lessor's Signature:  Date: 11/10/21
Edginton Properties, LLC / Jenna Edginton

Lessee's Signature: _____ Date: _____
BCC / Tootie Smith



Board of County Commissioners December 7, 2021

Clackamas County Members of the Board:

Approval of an Intergovernmental Agreement between Clackamas County Equity and Inclusion (County Administration) and the city of Lake Oswego

Purpose/Outcomes	Approval of an IGA between Clackamas County Equity and Inclusion Office (County Administration) and the city of Lake Oswego, the city is financially contributing to support the contract with the Coalition of Communities of Color for the Racial Research Justice study.
Dollar Amount and Fiscal Impact	The city of Lake Oswego is contributing \$30,000 – No County funds are involved, this is reimbursement for costs incurred under the Coalition of Communities of Color project.
Funding Source(s)	N/A
Duration	Upon Execution – July 31, 2023 or final payment, whichever is later
Previous Board Action	Approval of the contract with the Coalition of Communities of Color to conduct the study.
Strategic Plan Alignment	<ol style="list-style-type: none"> 1. Ensure safe, healthy and secure communities 2. Build public trust through good government
Counsel Review	This IGA has had final review by County Counsel on 11/29/2021
Contact Person	Martine Coblenz, County Equity and Inclusion Officer (503) 655-8579
Contract Number	#4013 Coalition of Communities of Color contract

BACKGROUND: On May 20, 2021, the Board of County Commissioners approved the Contract with the Coalition of Communities of Color to conduct a racial research justice study within Clackamas County. While the overall cost of the contract is \$300,000, local governments and businesses are committed to financially supporting this project. City of Lake Oswego has had



OFFICE OF THE COUNTY ADMINISTRATOR
PUBLIC SERVICES BUILDING
2051 KAEN ROAD | OREGON CITY, OR 97045

city Council approval to contribute \$30,000.00 to Clackamas County in support of the contract with the Coalition of Communities of Color. (See IGA attached)

RECOMMENDATION: The Equity and Inclusion Office within County Administration requests that the Board of County Commissioners approve this Intergovernmental Agreement with the city of Lake Oswego.

Respectfully submitted,

Martine Coblentz
Equity and Inclusion Officer, County Administration

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

THIS AGREEMENT (this "Agreement") is entered into and between Clackamas County ("County"), a political subdivision of the State of Oregon, and the City of Lake Oswego ("City"), a political subdivision of the State of Oregon, collectively referred to as the "Parties" and each a "Party."

RECITALS

Oregon Revised Statutes Chapter 190.010 confers authority upon local governments to enter into agreements for the performance of any and all functions and activities that a party to the agreement, its officers or agencies have authority to perform.

County has entered into a contract (the "Contract") with the Coalition of Communities of Color ("CCC") to perform a racial research justice project (the "Project"). The Project will involve a multi-year, three-phase process in partnership with the county, local community-based organizations, and jurisdictional agencies to implement a community-based participatory action research project into the lived realities of communities of color in Clackamas County, Oregon. The results of the Project will benefit not only the County itself, but also cities, rural areas, and unincorporated areas. The results of the Project will likely have impacts across many housing, health, transportation, civic, and employment systems within Oregon. Since the findings of the work of CCC extends beyond the County as an organization into a wider network of community, cities and organizations, including the City, have agreed to contribute funds to this work with Clackamas County.

In consideration of the mutual promises set forth below and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

TERMS

1. **Term.** This Agreement shall be effective upon execution, and shall expire upon the completion of each and every obligation of the Parties set forth herein, or January, 2023, whichever is later.
2. **Consideration.** During the course of this Agreement, the City agrees to pay the County, from available and authorized funds, a sum not to exceed \$30,000.00 to support the Project (the "Funds"). The City shall tender payment of Funds in three parts. The first payment of \$10,000 shall be made within thirty (30) days of execution of this Agreement. The second payment of \$10,000 shall be made by July 31, 2022. The third and final payment shall be made by July 31, 2023. County may only use the Funds to reimburse County for costs incurred under the Contract with CCC to complete the Project.

The City may, in its sole discretion, agree to pay the County additional Funds to support the Project during the Term of this Agreement. If the City decides to pay the County additional Funds to support the Project, the parties will execute a written amendment to this Agreement, on terms acceptable to both parties, detailing the additional sums to be provided.

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3. Representations and Warranties.

- A. *The City Representations and Warranties:* The City represents and warrants to County that the City has the power and authority to enter into and perform this Agreement, and this Agreement, when executed and delivered, shall be a valid and binding obligation of the City enforceable in accordance with its terms.
- B. *County Representations and Warranties:* County represents and warrants to the City that County has the power and authority to enter into and perform this Agreement, and this Agreement, when executed and delivered, shall be a valid and binding obligation of County enforceable in accordance with its terms.
- C. The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.

4. Termination.

- A. Termination for Convenience. Either the County or the City may terminate this Agreement at any time prior to the City distributing funds to County. After the City has distributed funds to County, either Party may terminate this Agreement upon thirty (30) days' written notice to the other Party. In the event a party terminates this Agreement under this Section 4 A, County shall immediately return all unspent Funds, if any, to the City.
- B. Termination for Breach. Either the County or the City may terminate this Agreement in the event of a breach of the Agreement by the other Party. Prior to such termination however, the party seeking the termination shall give the other Party written notice of the breach and of the Party's intent to terminate. If the breaching Party has not entirely cured the breach within fifteen (15) days of deemed or actual receipt of the notice, then the Party giving notice may terminate the Agreement at any time thereafter by giving written notice of termination stating the effective date of the termination. If the default is of such a nature that it cannot be completely remedied within such fifteen (15) day period, this provision shall be complied with if the breaching Party begins correction of the default within the fifteen (15) day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable. The Party giving notice shall not be required to give more than one (1) notice for a similar default in any twelve (12) month period. Upon termination for breach, the non-breaching Party shall have all remedies available to it at law, in equity, or under this Agreement.
- C. Termination for Non-appropriation/Change in Law. Either Party may terminate this Agreement in the event either Party fails to receive expenditure authority sufficient to allow the Party, in the exercise of its reasonable administrative discretion, to perform under this Agreement. Additionally, either Party may terminate this Agreement if federal or state laws, regulations or guidelines are modified or interpreted in such a way that performance under this Agreement is prohibited. In the event of termination under this Subsection C, County shall immediately return all unspent Funds, if any, to the City.
- D. Waiver. The County or the City shall not be deemed to have waived any breach of this Agreement by the other party except by an express waiver in writing. An express written waiver as to one breach shall not be deemed a waiver of any other breach not expressly identified, even though the other breach is of the same nature as that waived.

- E. **Reservation of Remedies.** The termination of this Agreement, regardless of cause, shall not prejudice any rights or obligations accrued to the Parties prior to termination. Each Party shall have all rights and remedies available to it at law, in equity, or under this Agreement.

5. Indemnification

- A. Subject to the limits of the Oregon Constitution and the Oregon Tort Claims Act or successor statute, the County agrees to indemnify, save harmless and defend the City, its officers, elected officials, agents and employees from and against all costs, losses, damages, claims or actions and all expenses incidental to the investigation and defense thereof arising out of or based upon damages or injuries to persons or property caused by the negligent or willful acts of the County or its officers, elected officials, owners, employees, agents, or its subcontractors or anyone over which the County has a right to control.

Subject to the limits of the Oregon Constitution and the Oregon Tort Claims Act or successor statute, the City agrees to indemnify, save harmless and defend the County, its officers, elected officials, agents and employees from and against all costs, losses, damages, claims or actions and all expenses incidental to the investigation and defense thereof arising out of or based upon damages or injuries to persons or property caused by the negligent or willful acts of the City or its officers, elected officials, owners, employees, agents, or its subcontractors or anyone over which the City has a right to control.

- 6. **Insurance.** The Parties agree to maintain levels of insurance, or self-insurance, sufficient to satisfy their obligations under this Agreement and all requirements under applicable law.
- 7. **Notices; Contacts.** Legal notice provided under this Agreement shall be delivered personally, by email or by certified mail to the individuals identified below. Any communication or notice so addressed and mailed shall be deemed to be given upon receipt. Any communication or notice sent by electronic mail to an address indicated herein is deemed to be received 2 hours after the time sent (as recorded on the device from which the sender sent the email), unless the sender receives an automated message or other indication that the email has not been delivered. Any communication or notice by personal delivery shall be deemed to be given when actually delivered. Either Party may change the Party contact information, or the invoice or payment addresses by giving prior written notice thereof to the other Party at its then current notice address.

- A. Martine Coblentz or their designee will act as liaison for the County.

Contact Information:

2051 Kaen Rd #450, Oregon City OR 97045
MCoblentz@clackmas.us
503-655-8579

Megan Phelan or their designee will act as liaison for the City.

Contact Information:

380 A Avenue, Lake Oswego, OR 97034

mphelan@lakeoswego.city

503-635-0281

8. General Provisions.

- A. **Oregon Law and Forum.** This Agreement, and all rights, obligations, and disputes arising out of it will be governed by and construed in accordance with the laws of the State of Oregon and the ordinances of Clackamas County without giving effect to the conflict of law provisions thereof. Any claim between County and the City that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Clackamas County for the State of Oregon; provided, however, if a claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this section be construed as a waiver by either Party of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court. The City, by execution of this Agreement, hereby consents to the in personam jurisdiction of the courts referenced in this section.
- B. **Compliance with Applicable Law.** Both Parties shall comply with all applicable local, state and federal ordinances, statutes, laws and regulations. All provisions of law required to be a part of this Agreement, whether listed or otherwise, are hereby integrated and adopted herein. Failure to comply with such obligations is a material breach of this Agreement.
- C. **Non-Exclusive Rights and Remedies.** Except as otherwise expressly provided herein, the rights and remedies expressly afforded under the provisions of this Agreement shall not be deemed exclusive, and shall be in addition to and cumulative with any and all rights and remedies otherwise available at law or in equity. The exercise by either Party of any one or more of such remedies shall not preclude the exercise by it, at the same or different times, of any other remedies for the same default or breach, or for any other default or breach, by the other Party.
- D. **Access to Records.** The Parties shall retain, maintain, and keep accessible all records relevant to this Agreement ("Records") for a minimum of six (6) years, following Agreement termination or full performance or any longer period as may be required by applicable law, or until the conclusion of an audit, controversy or litigation arising out of or related to this Agreement, whichever is later.
- E. **Debt Limitation.** This Agreement is expressly subject to the limitations of the Oregon Constitution and Oregon Tort Claims Act, and is contingent upon appropriation of funds. Any provisions herein that conflict with the above referenced laws are deemed inoperative to that extent.

- F. **Severability.** If any provision of this Agreement is found to be unconstitutional, illegal or unenforceable, this Agreement nevertheless shall remain in full force and effect and the offending provision shall be stricken. The Court or other authorized body finding such provision unconstitutional, illegal or unenforceable shall construe this Agreement without such provision to give effect to the maximum extent possible the intentions of the Parties.
- G. **Integration, Amendment and Waiver.** Except as otherwise set forth herein, this Agreement constitutes the entire agreement between the Parties on the matter of the Project. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either Party unless in writing and signed by both Parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of either Party to enforce any provision of this Agreement shall not constitute a waiver by such Party of that or any other provision.
- H. **Interpretation.** The titles of the sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.
- I. **Independent Contractor.** Each of the Parties hereto shall be deemed an independent contractor for purposes of this Agreement. No representative, agent, employee or contractor of one Party shall be deemed to be a representative, agent, employee or contractor of the other Party for any purpose, except to the extent specifically provided herein. Nothing herein is intended, nor shall it be construed, to create between the Parties any relationship of principal and agent, partnership, joint venture or any similar relationship, and each Party hereby specifically disclaims any such relationship.
- J. **No Third-Party Beneficiary.** The City and County are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.
- K. **Subcontract and Assignment.** No Party shall assign or transfer any of its interest in this Agreement, by operation of law or otherwise, without obtaining prior written approval from the other Party, which shall be granted or denied in that Party's sole discretion.
- L. **Counterparts.** This Agreement may be executed in several counterparts (electronic or otherwise), each of which shall be an original, all of which shall constitute the same instrument.

- M. **Survival.** All provisions in Sections 5 and 8 (A), (C), (D), (E), (F), (G), (H), (J), (M), (P), and (R) shall survive the termination of this Agreement, together with all other rights and obligations herein which by their context are intended to survive.
- N. **Necessary Acts.** Each Party shall execute and deliver to the others all such further instruments and documents as may be reasonably necessary to carry out this Agreement.
- O. **Time is of the Essence.** The City agrees that time is of the essence in the performance this Agreement.
- P. **Successors in Interest.** The provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto, and their respective authorized successors and assigns.
- Q. **Force Majeure.** Neither the City nor County shall be held responsible for delay or default caused by events outside of the City or County's reasonable control including, but not limited to, fire, terrorism, riot, acts of God, or war. However, the City shall make all reasonable efforts to remove or eliminate such a cause of delay or default and shall upon the cessation of the cause, diligently pursue performance of its obligations under this Agreement.
- R. **No Attorney Fees.** In the event any arbitration, action or proceeding, including any bankruptcy proceeding, is instituted to enforce any term of this Agreement, each party shall be responsible for its own attorneys' fees and expenses.

IN WITNESS HEREOF, the Parties have executed this Agreement by the date set forth opposite their names below.

Clackamas County

City of Lake Oswego

Chair, Board of County Commissioners



Martha Bennett, City Manager

Date



Date



Board of County Commissioners December 7, 2021

Clackamas County Members of the Board:

Approval of a Funding Agreement between Clackamas County Equity and Inclusion (County Administration) and Portland General Electric (PGE)

Purpose/Outcomes	Approval of an IGA between Clackamas County Equity and Inclusion Office (County Administration) and PGE. PGE is financially contributing to support the contract with the Coalition of Communities of Color for the Racial Research Justice study.
Dollar Amount and Fiscal Impact	PGE is contributing \$45,000 – No County funds are involved, this is reimbursement for costs incurred under the Coalition of Communities of Color project.
Funding Source(s)	N/A
Duration	Upon execution through final payment or December 31, 2024 whichever is later.
Previous Board Action	Approval of the contract with the Coalition of Communities of Color to conduct the study.
Strategic Plan Alignment	<ol style="list-style-type: none"> 1. Ensure safe, healthy and secure communities 2. Build public trust through good government
Counsel Review	This Funding Agreement has had final review by County Counsel on 11/29/2021
Contact Person	Martine Coblenz, County Equity and Inclusion Officer (503) 655-8579
Contract Number	#4013 Coalition of Communities of Color contract

BACKGROUND: On May 20, 2021, the Board of County Commissioners approved the Contract with the Coalition of Communities of Color to conduct a racial research justice study within Clackamas County. While the overall cost of the contract is \$300,000, local governments and businesses are committed to financially supporting this project. PGE has approved and signed



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a Funding Agreement for \$45,000.00 to Clackamas County in support of the contract with the Coalition of Communities of Color. (See Funding Agreement attached)

RECOMMENDATION: The Equity and Inclusion Office within County Administration requests that the Board of County Commissioners approve this Funding Agreement with PGE.

Respectfully submitted,

Martine Coblenz
Equity and Inclusion Officer, County Administration

**FUNDING AGREEMENT
BETWEEN CLACKAMAS COUNTY
AND PORTLAND GENERAL ELECTRIC**

THIS FUNDING AGREEMENT (this “Agreement”) is entered into and between Clackamas County (“County”), a political subdivision of the State of Oregon, and Portland General Electric Company (“PGE”), collectively referred to as the “Parties” and each a “Party.”

RECITALS

County has entered into a contract (the “Contract”) with the Coalition of Communities of Color (“CCC”) to perform a racial research justice project (the “Project”). The Project will involve a multi-year, three-phase process in partnership with the county, local community-based organizations, and jurisdictional agencies to implement a community-based participatory action research project into the lived realities of communities of color in Clackamas County, Oregon. The results of the Project will benefit not only the County itself, but also cities, rural areas, and unincorporated areas. The results of the Project will likely have impacts across many housing, health, transportation, civic, and employment systems within Oregon. Since the findings of the work of CCC extends beyond the County as an organization into a wider network of community, cities and organizations, including PGE, have agreed to contribute funds to this work with Clackamas County.

In consideration of the mutual promises set forth below and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

TERMS

1. **Term.** This Agreement shall be effective upon execution, and shall expire upon the completion of each and every obligation of the Parties set forth herein, or December 31, 2024, whichever is later (“Term”).
2. **Consideration.** On or before December 31st of each year during the Term, PGE agrees to pay the County, from available and authorized funds, \$15,000.00 (a total sum of \$45,000.00 for the entire Term) to support the Project (the “Funds”). County may only use the Funds to reimburse County for costs incurred under the Contract with CCC to complete the Project. In the event the County’s costs are less than the Funds received by PGE, County shall reimburse PGE for any unspent amounts. By contributing to the Project, PGE will be one of the sponsors and as such will be acknowledged in the final report as a sponsor and contributor. Additionally, County will provide quarterly updates on the status of the Project to each of the sponsors. Each sponsor will receive the final written report at the completion of the Project. Other than the payment of Funds, there are no other obligations or expectations of sponsors and/or contributors for the Project.

PGE may, in its sole discretion, agree to pay the County additional Funds to support the Project during the Term of this Agreement. If PGE decides to pay the County additional Funds to support the Project, the parties will execute a written amendment to this Agreement, on terms acceptable to both parties, detailing the additional sums to be provided.

3. Representations and Warranties.

- A. *PGE Representations and Warranties:* PGE represents and warrants to County that PGE has the power and authority to enter into and perform this Agreement, and this Agreement, when executed and delivered, shall be a valid and binding obligation of PGE enforceable in accordance with its terms.
- B. *County Representations and Warranties:* County represents and warrants to PGE that County has the power and authority to enter into and perform this Agreement, and this Agreement, when executed and delivered, shall be a valid and binding obligation of County enforceable in accordance with its terms.
- C. The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.

4. Termination.

- A. Termination for Convenience. Either the County or PGE may terminate this Agreement at any time prior to PGE distributing Funds to County. After PGE has distributed Funds to County, either Party may terminate this Agreement upon thirty (30) days' written notice to the other Party. In the event a Party terminates this Agreement under this Section 4 A, County shall immediately return all unspent Funds, if any, to PGE.
- B. Termination for Breach. Either the County or PGE may terminate this Agreement in the event of a breach of the Agreement by the other Party. Prior to such termination however, the Party seeking the termination shall give the other Party written notice of the breach and of the Party's intent to terminate. If the breaching Party has not entirely cured the breach within fifteen (15) days of deemed or actual receipt of the notice, then the Party giving notice may terminate the Agreement at any time thereafter by giving written notice of termination stating the effective date of the termination. If the default is of such a nature that it cannot be completely remedied within such fifteen (15) day period, this provision shall be complied with if the breaching Party begins correction of the default within the fifteen (15) day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable. The Party giving notice shall not be required to give more than one (1) notice for a similar default in any twelve (12) month period. Upon termination for breach, the non-breaching Party shall have all remedies available to it at law, in equity, or under this Agreement.
- C. Termination for Non-appropriation/Change in Law. Either Party may terminate this Agreement in the event either Party fails to receive expenditure authority sufficient to allow the Party, in the exercise of its reasonable administrative discretion, to perform under this Agreement. Additionally, either Party may terminate this Agreement if federal or state laws, regulations or guidelines are modified or interpreted in such a way that performance under this Agreement is prohibited. In the event of termination under this Subsection C, County shall immediately return all unspent Funds, if any, to PGE.
- D. Waiver. The County or PGE shall not be deemed to have waived any breach of this Agreement by the other Party except by an express waiver in writing. An express written waiver as to one breach shall not be deemed a waiver of any other breach not expressly identified, even though the other breach is of the same nature as that waived.

E. **Reservation of Remedies.** The termination of this Agreement, regardless of cause, shall not prejudice any rights or obligations accrued to the Parties prior to termination. Each Party shall have all rights and remedies available to it at law, in equity, or under this Agreement.

5. Indemnification

A. Subject to the limits of the Oregon Constitution and the Oregon Tort Claims Act or successor statute, the County agrees to indemnify, save harmless and defend PGE, its officers, elected officials, agents and employees from and against all costs, losses, damages, claims or actions and all expenses incidental to the investigation and defense thereof arising out of or based upon damages or injuries to persons or property caused by the negligent or willful acts of the County or its officers, elected officials, owners, employees, agents, or its subcontractors or anyone over which the County has a right to control.

6. **Insurance.** The Parties agree to maintain levels of insurance, or self-insurance, sufficient to satisfy their obligations under this Agreement and all requirements under applicable law.

7. **Notices; Contacts.** Legal notice provided under this Agreement shall be delivered personally, by email or by certified mail to the individuals identified below. Any communication or notice so addressed and mailed shall be deemed to be given upon receipt. Any communication or notice sent by electronic mail to an address indicated herein is deemed to be received 2 hours after the time sent (as recorded on the device from which the sender sent the email), unless the sender receives an automated message or other indication that the email has not been delivered. Any communication or notice by personal delivery shall be deemed to be given when actually delivered. Either Party may change the Party contact information, or the invoice or payment addresses by giving prior written notice thereof to the other Party at its then current notice address.

A. Martine Coblentz or their designee will act as liaison for the County.

Contact Information:

2051 Kaen Rd #450, Oregon City OR 97045
MCoblentz@clackmas.us
503-655-8579

DeAngelo Wells, or her designee will act as liaison for PGE.

Contact Information:

121 SW Salmon Street, Portland OR 97205
DeAngelo.Wells@pgn.com
503-464-7676

8. General Provisions.

- A. **Oregon Law and Forum.** This Agreement, and all rights, obligations, and disputes arising out of it will be governed by and construed in accordance with the laws of the State of Oregon and the ordinances of Clackamas County without giving effect to the conflict of law provisions thereof. Any claim between County and PGE that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Clackamas County for the State of Oregon; provided, however, if a claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this section be construed as a waiver by either Party of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court. PGE, by execution of this Agreement, hereby consents to the in personam jurisdiction of the courts referenced in this section.
- B. **Compliance with Applicable Law.** Both Parties shall comply with all applicable local, state and federal ordinances, statutes, laws and regulations. All provisions of law required to be a part of this Agreement, whether listed or otherwise, are hereby integrated and adopted herein. Failure to comply with such obligations is a material breach of this Agreement.
- C. **Non-Exclusive Rights and Remedies.** Except as otherwise expressly provided herein, the rights and remedies expressly afforded under the provisions of this Agreement shall not be deemed exclusive, and shall be in addition to and cumulative with any and all rights and remedies otherwise available at law or in equity. The exercise by either Party of any one or more of such remedies shall not preclude the exercise by it, at the same or different times, of any other remedies for the same default or breach, or for any other default or breach, by the other Party.
- D. **Access to Records.** The Parties shall retain, maintain, and keep accessible all records relevant to this Agreement ("Records") for a minimum of six (6) years, following Agreement termination or full performance or any longer period as may be required by applicable law, or until the conclusion of an audit, controversy or litigation arising out of or related to this Agreement, whichever is later.
- E. **Debt Limitation.** This Agreement is expressly subject to the limitations of the Oregon Constitution and Oregon Tort Claims Act, and is contingent upon appropriation of funds. Any provisions herein that conflict with the above referenced laws are deemed inoperative to that extent.
- F. **Severability.** If any provision of this Agreement is found to be unconstitutional, illegal or unenforceable, this Agreement nevertheless shall remain in full force and effect and the offending provision shall be stricken. The Court or other authorized body finding such provision unconstitutional, illegal or unenforceable shall construe this Agreement without such provision to give effect to the maximum extent possible the intentions of the Parties.

- G. **Integration, Amendment and Waiver.** Except as otherwise set forth herein, this Agreement constitutes the entire agreement between the Parties on the matter of the Project. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either Party unless in writing and signed by both Parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of either Party to enforce any provision of this Agreement shall not constitute a waiver by such Party of that or any other provision.
- H. **Interpretation.** The titles of the sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.
- I. **Independent Contractor.** Each of the Parties hereto shall be deemed an independent contractor for purposes of this Agreement. No representative, agent, employee or contractor of one Party shall be deemed to be a representative, agent, employee or contractor of the other Party for any purpose, except to the extent specifically provided herein. Nothing herein is intended, nor shall it be construed, to create between the Parties any relationship of principal and agent, partnership, joint venture or any similar relationship, and each Party hereby specifically disclaims any such relationship.
- J. **No Third-Party Beneficiary.** PGE and County are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.
- K. **Subcontract and Assignment.** No Party shall assign or transfer any of its interest in this Agreement, by operation of law or otherwise, without obtaining prior written approval from the other Party, which shall be granted or denied in that Party's sole discretion.
- L. **Counterparts.** This Agreement may be executed in several counterparts (electronic or otherwise), each of which shall be an original, all of which shall constitute the same instrument.
- M. **Survival.** All provisions in Sections 5 and 8 (A), (C), (D), (E), (F), (G), (H), (J), (M), (P), and (R) shall survive the termination of this Agreement, together with all other rights and obligations herein which by their context are intended to survive.
- N. **Necessary Acts.** Each Party shall execute and deliver to the others all such further instruments and documents as may be reasonably necessary to carry out this Agreement.

- O. **Time is of the Essence.** PGE agrees that time is of the essence in the performance this Agreement.
- P. **Successors in Interest.** The provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto, and their respective authorized successors and assigns.
- Q. **Force Majeure.** Neither PGE nor County shall be held responsible for delay or default caused by events outside of PGE or County's reasonable control including, but not limited to, fire, terrorism, riot, acts of God, or war. However, PGE shall make all reasonable efforts to remove or eliminate such a cause of delay or default and shall upon the cessation of the cause, diligently pursue performance of its obligations under this Agreement.
- R. **No Attorney Fees.** In the event any arbitration, action or proceeding, including any bankruptcy proceeding, is instituted to enforce any term of this Agreement, each Party shall be responsible for its own attorneys' fees and expenses.

IN WITNESS HEREOF, the Parties have executed this Agreement by the date set forth opposite their names below.

Clackamas County

Portland General Electric Company

Chair, Board of County Commissioners

De Wells

DeAngelo Wells
Diversity, Equity & Inclusion Director
Portland General Electric

Date

11/29/2021

Date



Board of County Commissioners December 7, 2021

Clackamas County Members of the Board:

Approval of an Intergovernmental Agreement between Clackamas County Equity and Inclusion (County Administration) and the city of Oregon City

Purpose/Outcomes	Approval of an IGA between Clackamas County Equity and Inclusion Office (County Administration) and the city of Oregon City, the city is financially contributing to support the contract with the Coalition of Communities of Color for the Racial Research Justice study.
Dollar Amount and Fiscal Impact	The city of Oregon City is contributing \$8,000 – No County funds are involved, this is reimbursement for costs incurred under the Coalition of Communities of Color project.
Funding Source(s)	N/A
Duration	Upon Execution through January 31, 2023 or final payment, whichever is later
Previous Board Action	Approval of the contract with the Coalition of Communities of Color to conduct the study.
Strategic Plan Alignment	<ol style="list-style-type: none"> 1. Ensure safe, healthy and secure communities 2. Build public trust through good government
Counsel Review	This IGA has had final review by County Counsel on 11/29/2021
Contact Person	Martine Coblenz, County Equity and Inclusion Officer (503) 655-8579
Contract Number	#4013 Coalition of Communities of Color contract

BACKGROUND: On May 20, 2021, the Board of County Commissioners approved the Contract with the Coalition of Communities of Color to conduct a racial research justice study within Clackamas County. While the overall cost of the contract is \$300,000, local governments and businesses are committed to financially supporting this project. City of Oregon City has



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approved and signed an IGA for \$8,000.00 to Clackamas County in support of the contract with the Coalition of Communities of Color. (See IGA attached)

RECOMMENDATION: The Equity and Inclusion Office within County Administration requests that the Board of County Commissioners approve this Intergovernmental Agreement with the city of Oregon City.

Respectfully submitted,

Martine Coblentz
Equity and Inclusion Officer, County Administration

**INTERGOVERNMENTAL AGREEMENT
BETWEEN CLACKAMAS COUNTY
AND THE CITY OF OREGON CITY**

THIS AGREEMENT (this "Agreement") is entered into and between Clackamas County ("County"), a political subdivision of the State of Oregon, and the City of Oregon City ("City"), an Oregon municipal corporation, collectively referred to as the "Parties" and each a "Party."

RECITALS

Oregon Revised Statutes Chapter 190.010 confers authority upon local governments to enter into agreements for the performance of any and all functions and activities that a party to the agreement, its officers or agencies have authority to perform.

County has entered into a contract (the "Contract") with the Coalition of Communities of Color ("CCC") to perform a racial research justice project (the "Project"). The Project will involve a multi-year, three-phase process in partnership with the county, local community-based organizations, and jurisdictional agencies to implement a community-based participatory action research project into the lived realities of communities of color in Clackamas County, Oregon. The results of the Project will benefit not only the County itself, but also cities, rural areas, and unincorporated areas. The results of the Project will likely have impacts across many housing, health, transportation, civic, and employment systems within Oregon. Since the findings of the work of CCC extends beyond the County as an organization into a wider network of community, cities and organizations, including the City, have agreed to contribute funds to this work with Clackamas County.

In consideration of the mutual promises set forth below and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

TERMS

1. **Term.** This Agreement shall be effective upon execution, and shall expire upon the completion of each and every obligation of the Parties set forth herein, or January, 2023, whichever is later.
2. **Consideration.** During the first year of this Agreement, the City agrees to pay the County, from available and authorized funds, a sum not to exceed \$8,000.00 to support the Project (the "Funds"). The City shall tender payment of Funds within thirty (30) days of execution of this Agreement. County may only use the Funds to reimburse County for costs incurred under the Contract with CCC to complete the Project.

The City may, in its sole discretion, agree to pay the County additional Funds to support the Project during the Term of this Agreement. If the City decides to pay the County additional Funds to support the Project, the parties will execute a written amendment to this Agreement, on terms acceptable to both parties, detailing the additional sums to be provided.

3. **Representations and Warranties.**
 - A. *The City Representations and Warranties:* The City represents and warrants to County that the City has the power and authority to enter into and perform this Agreement, and this Agreement, when executed and delivered, shall be a valid and binding obligation of the City enforceable in accordance with its terms.

- B. *County Representations and Warranties*: County represents and warrants to the City that County has the power and authority to enter into and perform this Agreement, and this Agreement, when executed and delivered, shall be a valid and binding obligation of County enforceable in accordance with its terms.
- C. The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.

4. **Termination.**

- A. **Termination for Convenience.** Either the County or the City may terminate this Agreement at any time prior to the City distributing funds to County. After the City has distributed funds to County, either Party may terminate this Agreement upon thirty (30) days' written notice to the other Party. In the event a party terminates this Agreement under this Section 4 A, County shall immediately return all unspent Funds, if any, to the City.
- B. **Termination for Breach.** Either the County or the City may terminate this Agreement in the event of a breach of the Agreement by the other Party. Prior to such termination however, the party seeking the termination shall give the other Party written notice of the breach and of the Party's intent to terminate. If the breaching Party has not entirely cured the breach within fifteen (15) days of deemed or actual receipt of the notice, then the Party giving notice may terminate the Agreement at any time thereafter by giving written notice of termination stating the effective date of the termination. If the default is of such a nature that it cannot be completely remedied within such fifteen (15) day period, this provision shall be complied with if the breaching Party begins correction of the default within the fifteen (15) day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable. The Party giving notice shall not be required to give more than one (1) notice for a similar default in any twelve (12) month period. Upon termination for breach, the non-breaching Party shall have all remedies available to it at law, in equity, or under this Agreement.
- C. **Termination for Non-appropriation/Change in Law.** Either Party may terminate this Agreement in the event either Party fails to receive expenditure authority sufficient to allow the Party, in the exercise of its reasonable administrative discretion, to perform under this Agreement. Additionally, either Party may terminate this Agreement if federal or state laws, regulations or guidelines are modified or interpreted in such a way that performance under this Agreement is prohibited. In the event of termination under this Subsection C, County shall immediately return all unspent Funds, if any, to the City.
- D. **Waiver.** The County or the City shall not be deemed to have waived any breach of this Agreement by the other party except by an express waiver in writing. An express written waiver as to one breach shall not be deemed a waiver of any other breach not expressly identified, even though the other breach is of the same nature as that waived.
- E. **Reservation of Remedies.** The termination of this Agreement, regardless of cause, shall not prejudice any rights or obligations accrued to the Parties prior to termination. Each Party shall have all rights and remedies available to it at law, in equity, or under this Agreement.

5. Indemnification

- A. Subject to the limits of the Oregon Constitution and the Oregon Tort Claims Act or successor statute, the County agrees to indemnify, save harmless and defend the City, its officers, elected officials, agents and employees from and against all costs, losses, damages, claims or actions and all expenses incidental to the investigation and defense thereof arising out of or based upon damages or injuries to persons or property caused by the negligent or willful acts of the County or its officers, elected officials, owners, employees, agents, or its subcontractors or anyone over which the County has a right to control.

Subject to the limits of the Oregon Constitution and the Oregon Tort Claims Act or successor statute, the City agrees to indemnify, save harmless and defend the County, its officers, elected officials, agents and employees from and against all costs, losses, damages, claims or actions and all expenses incidental to the investigation and defense thereof arising out of or based upon damages or injuries to persons or property caused by the negligent or willful acts of the City or its officers, elected officials, owners, employees, agents, or its subcontractors or anyone over which the City has a right to control.

6. **Insurance.** The Parties agree to maintain levels of insurance, or self-insurance, sufficient to satisfy their obligations under this Agreement and all requirements under applicable law.
7. **Notices; Contacts.** Legal notice provided under this Agreement shall be delivered personally, by email or by certified mail to the individuals identified below. Any communication or notice so addressed and mailed shall be deemed to be given upon receipt. Any communication or notice sent by electronic mail to an address indicated herein is deemed to be received 2 hours after the time sent (as recorded on the device from which the sender sent the email), unless the sender receives an automated message or other indication that the email has not been delivered. Any communication or notice by personal delivery shall be deemed to be given when actually delivered. Either Party may change the Party contact information, or the invoice or payment addresses by giving prior written notice thereof to the other Party at its then current notice address.
- A. Martine Coblentz or their designee will act as liaison for the County.

Contact Information:

2051 Kaen Rd #450, Oregon City OR 97045
MCoblentz@clackmas.us
503-655-8579

Patrick Foiles or their designee will act as liaison for the City.

Contact Information:

625 Center Street, Oregon City OR 97045
pfoiles@orcitey.org
503-657-0891

8. General Provisions.

- A. **Oregon Law and Forum.** This Agreement, and all rights, obligations, and disputes arising out of it will be governed by and construed in accordance with the laws of the State of Oregon and the ordinances of Clackamas County without giving effect to the conflict of law provisions thereof. Any claim between County and the City that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Clackamas County for the State of Oregon; provided, however, if a claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this section be construed as a waiver by either Party of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court. The City, by execution of this Agreement, hereby consents to the in personam jurisdiction of the courts referenced in this section.
- B. **Compliance with Applicable Law.** Both Parties shall comply with all applicable local, state and federal ordinances, statutes, laws and regulations. All provisions of law required to be a part of this Agreement, whether listed or otherwise, are hereby integrated and adopted herein. Failure to comply with such obligations is a material breach of this Agreement.
- C. **Non-Exclusive Rights and Remedies.** Except as otherwise expressly provided herein, the rights and remedies expressly afforded under the provisions of this Agreement shall not be deemed exclusive, and shall be in addition to and cumulative with any and all rights and remedies otherwise available at law or in equity. The exercise by either Party of any one or more of such remedies shall not preclude the exercise by it, at the same or different times, of any other remedies for the same default or breach, or for any other default or breach, by the other Party.
- D. **Access to Records.** The Parties shall retain, maintain, and keep accessible all records relevant to this Agreement ("Records") for a minimum of six (6) years, following Agreement termination or full performance or any longer period as may be required by applicable law, or until the conclusion of an audit, controversy or litigation arising out of or related to this Agreement, whichever is later.
- E. **Debt Limitation.** This Agreement is expressly subject to the limitations of the Oregon Constitution, the Oregon City Charter, and Oregon Tort Claims Act, and is contingent upon appropriation of funds. Any provisions herein that conflict with the above referenced laws are deemed inoperative to that extent.
- F. **Severability.** If any provision of this Agreement is found to be unconstitutional, illegal or unenforceable, this Agreement nevertheless shall remain in full force and effect and the offending provision shall be stricken. The Court or other authorized body finding such provision unconstitutional, illegal or unenforceable shall construe this Agreement without such provision to give effect to the maximum extent possible the intentions of the Parties.

- G. **Integration, Amendment and Waiver.** Except as otherwise set forth herein, this Agreement constitutes the entire agreement between the Parties on the matter of the Project. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either Party unless in writing and signed by both Parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of either Party to enforce any provision of this Agreement shall not constitute a waiver by such Party of that or any other provision.
- H. **Interpretation.** The titles of the sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.
- I. **Independent Contractor.** Each of the Parties hereto shall be deemed an independent contractor for purposes of this Agreement. No representative, agent, employee or contractor of one Party shall be deemed to be a representative, agent, employee or contractor of the other Party for any purpose, except to the extent specifically provided herein. Nothing herein is intended, nor shall it be construed, to create between the Parties any relationship of principal and agent, partnership, joint venture or any similar relationship, and each Party hereby specifically disclaims any such relationship.
- J. **No Third-Party Beneficiary.** The City and County are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.
- K. **Subcontract and Assignment.** No Party shall assign or transfer any of its interest in this Agreement, by operation of law or otherwise, without obtaining prior written approval from the other Party, which shall be granted or denied in that Party's sole discretion.
- L. **Counterparts.** This Agreement may be executed in several counterparts (electronic or otherwise), each of which shall be an original, all of which shall constitute the same instrument.
- M. **Survival.** All provisions in Sections 5 and 8 (A), (C), (D), (E), (F), (G), (H), (J), (M), (P), and (R) shall survive the termination of this Agreement, together with all other rights and obligations herein which by their context are intended to survive.
- N. **Necessary Acts.** Each Party shall execute and deliver to the others all such further instruments and documents as may be reasonably necessary to carry out this Agreement.

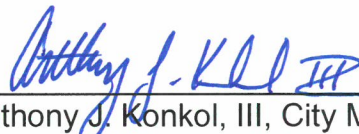
- O. **Time is of the Essence.** The City agrees that time is of the essence in the performance this Agreement.
- P. **Successors in Interest.** The provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto, and their respective authorized successors and assigns.
- Q. **Force Majeure.** Neither the City nor County shall be held responsible for delay or default caused by events outside of the City or County's reasonable control including, but not limited to, fire, terrorism, riot, acts of God, or war. However, the City shall make all reasonable efforts to remove or eliminate such a cause of delay or default and shall upon the cessation of the cause, diligently pursue performance of its obligations under this Agreement.
- R. **No Attorney Fees.** In the event any arbitration, action or proceeding, including any bankruptcy proceeding, is instituted to enforce any term of this Agreement, each party shall be responsible for its own attorneys' fees and expenses.

IN WITNESS HEREOF, the Parties have executed this Agreement by the date set forth opposite their names below.

Clackamas County


City of Oregon City

Chair, Board of County Commissioners



Anthony J. Konkol, III, City Manager

Date



Date



Board of County Commissioners December 7, 2021

Clackamas County Members of the Board:

Approval of an Intergovernmental Agreement between Clackamas County Equity and Inclusion (County Administration) and Clackamas Community College

Purpose/Outcomes	Approval of an IGA between Clackamas County Equity and Inclusion Office (County Administration) and Clackamas Community College, the College is financially contributing to support the contract with the Coalition of Communities of Color for the Racial Research Justice study.
Dollar Amount and Fiscal Impact	Clackamas Community College is contributing \$15,000 – No County funds are involved, this is reimbursement for costs incurred under the Coalition of Communities of Color project.
Funding Source(s)	N/A
Duration	Upon Execution through January 31, 2023 or final payment, whichever is later
Previous Board Action	Approval of the contract with the Coalition of Communities of Color to conduct the study.
Strategic Plan Alignment	<ol style="list-style-type: none"> 1. Ensure safe, healthy and secure communities 2. Build public trust through good government
Counsel Review	This IGA has had final review by County Counsel on 11/29/2021
Contact Person	Martine Coblenz, County Equity and Inclusion Officer (503) 655-8579
Contract Number	#4013 Coalition of Communities of Color contract

BACKGROUND: On May 20, 2021, the Board of County Commissioners approved the Contract with the Coalition of Communities of Color to conduct a racial research justice study within Clackamas County. While the overall cost of the contract is \$300,000, local governments and



OFFICE OF THE COUNTY ADMINISTRATOR
PUBLIC SERVICES BUILDING
2051 KAEN ROAD | OREGON CITY, OR 97045

businesses are committed to financially supporting this project. Clackamas Community College has approved and signed an IGA for \$15,000.00 to Clackamas County in support of the contract with the Coalition of Communities of Color. (See IGA attached)

RECOMMENDATION: The Equity and Inclusion Office within County Administration requests that the Board of County Commissioners approve this Intergovernmental Agreement with Clackamas Community College.

Respectfully submitted,

Martine Coblenz
Equity and Inclusion Officer, County Administration

**INTERGOVERNMENTAL AGREEMENT
BETWEEN CLACKAMAS COUNTY
AND CLACKAMAS COMMUNITY COLLEGE**

THIS AGREEMENT (this “Agreement”) is entered into and between Clackamas County (“County”), a political subdivision of the State of Oregon, and the Clackamas Community College, a community college district formed pursuant to the laws of the State of Oregon (“College”) collectively referred to as the “Parties” and each a “Party.”

RECITALS

Oregon Revised Statutes Chapter 190.010 confers authority upon local governments to enter into agreements for the performance of any and all functions and activities that a party to the agreement, its officers or agencies have authority to perform.

County has entered into a contract (the “Contract”) with the Coalition of Communities of Color (“CCC”) to perform a racial research justice project (the “Project”). The Project will involve a multi-year, three-phase process in partnership with the county, local community-based organizations, and jurisdictional agencies to implement a community-based participatory action research project into the lived realities of communities of color in Clackamas County, Oregon. The results of the Project will benefit not only the County itself, but also cities, rural areas, and unincorporated areas. The results of the Project will likely have impacts across many housing, health, transportation, civic, and employment systems within Oregon. Since the findings of the work of CCC extends beyond the County as an organization into a wider network of community, cities and organizations, including the College, have agreed to contribute funds to this work with Clackamas County.

In consideration of the mutual promises set forth below and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

TERMS

1. **Term.** This Agreement shall be effective upon execution, and shall expire upon the completion of each and every obligation of the Parties set forth herein, or January, 2023, whichever is later.
2. **Consideration.** During the course of this Agreement, the College agrees to pay the County, from available and authorized funds, a sum not to exceed \$15,000.00 to support the Project (the “Funds”). The College shall tender payment of Funds in three parts. The first payment of \$5,000 shall be made within thirty (30) days of execution of this Agreement. The second payment of \$5,000 shall be made by January 30, 2022. The third and final payment of \$5,000 shall be made by January 30, 2023. County may only use the Funds to reimburse County for costs incurred under the Contract with CCC to complete the Project.

The College may, in its sole discretion, agree to pay the County additional Funds to support the Project during the Term of this Agreement. If the College decides to pay the County additional Funds to support the Project, the parties will execute a written amendment to this Agreement, on terms acceptable to both parties, detailing the additional sums to be provided.

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3. **Representations and Warranties.**

- A. *The College Representations and Warranties:* The College represents and warrants to County that the College has the power and authority to enter into and perform this Agreement, and this Agreement, when executed and delivered, shall be a valid and binding obligation of the College enforceable in accordance with its terms.
- B. *County Representations and Warranties:* County represents and warrants to the College that County has the power and authority to enter into and perform this Agreement, and this Agreement, when executed and delivered, shall be a valid and binding obligation of County enforceable in accordance with its terms.
- C. The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.

4. **Termination.**

- A. **Termination for Convenience.** Either the County or the College may terminate this Agreement at any time prior to The College distributing funds to County. After the College has distributed funds to County, either Party may terminate this Agreement upon thirty (30) days' written notice to the other Party. In the event a party terminates this Agreement under this Section 4 A, County shall immediately return all unspent Funds, if any, to the College.
- B. **Termination for Breach.** Either the County or the College may terminate this Agreement in the event of a breach of the Agreement by the other Party. Prior to such termination however, the party seeking the termination shall give the other Party written notice of the breach and of the Party's intent to terminate. If the breaching Party has not entirely cured the breach within fifteen (15) days of deemed or actual receipt of the notice, then the Party giving notice may terminate the Agreement at any time thereafter by giving written notice of termination stating the effective date of the termination. If the default is of such a nature that it cannot be completely remedied within such fifteen (15) day period, this provision shall be complied with if the breaching Party begins correction of the default within the fifteen (15) day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable. The Party giving notice shall not be required to give more than one (1) notice for a similar default in any twelve (12) month period. Upon termination for breach, the non-breaching Party shall have all remedies available to it at law, in equity, or under this Agreement.
- C. **Termination for Non-appropriation/Change in Law.** Either Party may terminate this Agreement in the event either Party fails to receive expenditure authority sufficient to allow the Party, in the exercise of its reasonable administrative discretion, to perform under this Agreement. Additionally, either Party may terminate this Agreement if federal or state laws, regulations or guidelines are modified or interpreted in such a way that performance under this Agreement is prohibited. In the event of termination under this Subsection C, County shall immediately return all unspent Funds, if any, to the College.
- D. **Waiver.** The County or the College shall not be deemed to have waived any breach of this Agreement by the other party except by an express waiver in writing. An express written waiver as to one breach shall not be deemed a waiver of any other breach not expressly identified, even though the other breach is of the same nature as that waived.

E. **Reservation of Remedies.** The termination of this Agreement, regardless of cause, shall not prejudice any rights or obligations accrued to the Parties prior to termination. Each Party shall have all rights and remedies available to it at law, in equity, or under this Agreement.

5. **Indemnification**

A. Subject to the limits of the Oregon Constitution and the Oregon Tort Claims Act or successor statute, the County agrees to indemnify, save harmless and defend the College, its officers, elected officials, agents and employees from and against all costs, losses, damages, claims or actions and all expenses incidental to the investigation and defense thereof arising out of or based upon damages or injuries to persons or property caused by the negligent or willful acts of the County or its officers, elected officials, owners, employees, agents, or its subcontractors or anyone over which the County has a right to control.

Subject to the limits of the Oregon Constitution and the Oregon Tort Claims Act or successor statute, the College agrees to indemnify, save harmless and defend the County, its officers, elected officials, agents and employees from and against all costs, losses, damages, claims or actions and all expenses incidental to the investigation and defense thereof arising out of or based upon damages or injuries to persons or property caused by the negligent or willful acts of the College or its officers, elected officials, owners, employees, agents, or its subcontractors or anyone over which the College has a right to control.

6. **Insurance.** The Parties agree to maintain levels of insurance, or self-insurance, sufficient to satisfy their obligations under this Agreement and all requirements under applicable law.

7. **Notices; Contacts.** Legal notice provided under this Agreement shall be delivered personally, by email or by certified mail to the individuals identified below. Any communication or notice so addressed and mailed shall be deemed to be given upon receipt. Any communication or notice sent by electronic mail to an address indicated herein is deemed to be received 2 hours after the time sent (as recorded on the device from which the sender sent the email), unless the sender receives an automated message or other indication that the email has not been delivered. Any communication or notice by personal delivery shall be deemed to be given when actually delivered. Either Party may change the Party contact information, or the invoice or payment addresses by giving prior written notice thereof to the other Party at its then current notice address.

A. Martine Coblentz or their designee will act as liaison for the County.

Contact Information:

2051 Kaen Rd #450, Oregon City OR 97045

MCoblentz@clackmas.us

503-655-8579

Casey Layton or their designee will act as liaison for the College.

Contact Information:

19600 Molalla Ave., Oregon City, OR 97045

Casey.layton@clackamas.edu

503-594-3008

8. General Provisions.

- A. **Oregon Law and Forum.** This Agreement, and all rights, obligations, and disputes arising out of it will be governed by and construed in accordance with the laws of the State of Oregon and the ordinances of Clackamas County without giving effect to the conflict of law provisions thereof. Any claim between County and the College that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Clackamas County for the State of Oregon; provided, however, if a claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this section be construed as a waiver by either Party of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court. The College, by execution of this Agreement, hereby consents to the in personam jurisdiction of the courts referenced in this section.
- B. **Compliance with Applicable Law.** Both Parties shall comply with all applicable local, state and federal ordinances, statutes, laws and regulations. All provisions of law required to be a part of this Agreement, whether listed or otherwise, are hereby integrated and adopted herein. Failure to comply with such obligations is a material breach of this Agreement.
- C. **Non-Exclusive Rights and Remedies.** Except as otherwise expressly provided herein, the rights and remedies expressly afforded under the provisions of this Agreement shall not be deemed exclusive, and shall be in addition to and cumulative with any and all rights and remedies otherwise available at law or in equity. The exercise by either Party of any one or more of such remedies shall not preclude the exercise by it, at the same or different times, of any other remedies for the same default or breach, or for any other default or breach, by the other Party.
- D. **Access to Records.** The Parties shall retain, maintain, and keep accessible all records relevant to this Agreement ("Records") for a minimum of six (6) years, following Agreement termination or full performance or any longer period as may be required by applicable law, or until the conclusion of an audit, controversy or litigation arising out of or related to this Agreement, whichever is later.
- E. **Debt Limitation.** This Agreement is expressly subject to the limitations of the Oregon Constitution and Oregon Tort Claims Act, and is contingent upon appropriation of funds. Any provisions herein that conflict with the above referenced laws are deemed inoperative to that extent.

- F. **Severability.** If any provision of this Agreement is found to be unconstitutional, illegal or unenforceable, this Agreement nevertheless shall remain in full force and effect and the offending provision shall be stricken. The Court or other authorized body finding such provision unconstitutional, illegal or unenforceable shall construe this Agreement without such provision to give effect to the maximum extent possible the intentions of the Parties.
- G. **Integration, Amendment and Waiver.** Except as otherwise set forth herein, this Agreement constitutes the entire agreement between the Parties on the matter of the Project. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either Party unless in writing and signed by both Parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of either Party to enforce any provision of this Agreement shall not constitute a waiver by such Party of that or any other provision.
- H. **Interpretation.** The titles of the sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.
- I. **Independent Contractor.** Each of the Parties hereto shall be deemed an independent contractor for purposes of this Agreement. No representative, agent, employee or contractor of one Party shall be deemed to be a representative, agent, employee or contractor of the other Party for any purpose, except to the extent specifically provided herein. Nothing herein is intended, nor shall it be construed, to create between the Parties any relationship of principal and agent, partnership, joint venture or any similar relationship, and each Party hereby specifically disclaims any such relationship.
- J. **No Third-Party Beneficiary.** The College and County are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.
- K. **Subcontract and Assignment.** No Party shall assign or transfer any of its interest in this Agreement, by operation of law or otherwise, without obtaining prior written approval from the other Party, which shall be granted or denied in that Party's sole discretion.
- L. **Counterparts.** This Agreement may be executed in several counterparts (electronic or otherwise), each of which shall be an original, all of which shall constitute the same instrument.

- M. **Survival.** All provisions in Sections 5 and 8 (A), (C), (D), (E), (F), (G), (H), (J), (M), (P), and (R) shall survive the termination of this Agreement, together with all other rights and obligations herein which by their context are intended to survive.
- N. **Necessary Acts.** Each Party shall execute and deliver to the others all such further instruments and documents as may be reasonably necessary to carry out this Agreement.
- O. **Time is of the Essence.** The College agrees that time is of the essence in the performance this Agreement.
- P. **Successors in Interest.** The provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto, and their respective authorized successors and assigns.
- Q. **Force Majeure.** Neither The College nor County shall be held responsible for delay or default caused by events outside of the College or County's reasonable control including, but not limited to, fire, terrorism, riot, acts of God, or war. However, The City shall make all reasonable efforts to remove or eliminate such a cause of delay or default and shall upon the cessation of the cause, diligently pursue performance of its obligations under this Agreement.
- R. **No Attorney Fees.** In the event any arbitration, action or proceeding, including any bankruptcy proceeding, is instituted to enforce any term of this Agreement, each party shall be responsible for its own attorneys' fees and expenses.

IN WITNESS HEREOF, the Parties have executed this Agreement by the date set forth opposite their names below.

BOARD OF COUNTY COMMISSIONERS

CLACKAMAS COMMUNITY COLLEGE

Chair

Alissa Mahar, Vice President Digitally signed by Alissa Mahar, Vice President
Date: 2021.11.29 15:16:11 -08'00'


Alissa Mahar, Vice President

11/29/2021

Date

Date

Approved as to form



11/29/2021
County Counsel



December 9, 2021

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of Amendment #4 of the MOU between Business and Community Services and Hoodland Women's Club to extend time to transfer properties to a Local Park District upon its formation

Purpose/Outcomes	Amend the Memorandum of Understanding (MOU) between Clackamas County Business and Community Services (BCS) and the Hoodland Women's Club to allow additional time for the formation of a Park District and subsequent transfer of property from Clackamas County to the newly formed Park District.
Dollar Amount and Fiscal Impact	Upon successful formation of a Park District by the Hoodland Women's Club, BCS would transfer certain real properties to the Park District.
Funding Source	County owned property assets
Duration	February 1, 2018 through December 31, 2022
Previous Board Action	The Board of County Commissioners (BCC) approved the original MOU on February 1, 2018, Agenda Item E.1; BCC approved Amend #1 MOU on April 30, 2020, Agenda Item F.1; BCC approved Amend #2 MOU on October 15, 2020, Agenda item F.1; BCC approved Amend #3 MOU on July 15, 2021, Agenda item C.1
Strategic Plan Alignment	<ol style="list-style-type: none"> 1) This MOU supports the BCS goal of providing outdoor recreation, camping, and land stewardship services to residents and visitors so they can experience clean, safe and healthy recreation and natural resource opportunities in rural Clackamas County by providing the Hoodland area community with park lands for utilization by a newly formed Park District. 2) This MOU supports County strategic priority to Honor, Utilize, Promote and Invest in our Natural Resources by providing county assets to a newly formed Park District so community members can benefit from the land and engage in outdoor recreation, contributing to the Policy Perspective of supporting a healthy and active lifestyle.
County Counsel Review	County Counsel Review Date: 11/10/2021 Counsel Initials: ARN
Procurement Review	Was the item processed through procurement? N/A
Contact Person	Sarah Eckman, BCS Interim Director, 503-894-3135 Tom Riggs, BCS – County Parks Manager, 503-781-3137
Contract No.	N/A

BACKGROUND:

On February 1, 2018, the Board of County Commissioners approved Business & Community Services (BCS) to enter into an MOU with the Hoodland Women's Club through the November 2020 election. The MOU provided the recognition of time for Hoodland Women's Club (HWC) and the desire of Clackamas County, as approved by the Board of County Commissioners and County Parks Advisory Board, to transfer certain real properties to a local Park District upon its successful formation so that the community can self-determine and support the ongoing uses of the transferred real property assets. If district formation is not successful, BCS County Parks would move forward with the sale of these surplus assets as presented to the BCC in 2018. Since that time, the HWC and community have been working diligently to navigate the complex processes for district formation.

On April 30, 2020, the BCC approved an amendment to the MOU due to the COVID-19 pandemic creating challenges to organizing and getting the park district on the ballot as planned. Two additional amendments followed, with the new goal of getting the proposed district on the May 2022 ballot. BCS, in coordination with the Board of County Commissioners, has agreed to a fourth amendment to the MOU, extending it through December 31, 2022 to provide additional time for the park district to be placed on the ballot.

Should a Park District not be formed resulting in the properties not being transferred, BCS intends this to be the last extension granted for this purpose due to the need to transition the real properties to other purposes to reduce and/or eliminate ongoing operational and maintenance costs.

RECOMMENDATION:

Staff respectfully recommends the BCC approve the MOU amendment #4 through December 31, 2022, and clarify that this will be the final extension of this MOU.

ATTACHEMENT:

Amendment #4 to Memorandum of Understanding between Clackamas County Business and Community Services and the Hoodland Women's Club

Respectfully submitted,

A handwritten signature in blue ink that reads "Sarah Eckman". The signature is written in a cursive, flowing style.

Sarah Eckman
Interim Director
Business & Community Services

**AMENDMENT #4 TO MEMORANDUM OF UNDERSTANDING
BETWEEN CLACKAMAS COUNTY BUSINESS AND
COMMUNITY SERVICES AND
AND THE HOODLAND WOMEN'S CLUB**

THIS AMENDMENT #4 is entered into by and between Clackamas County on behalf of its Department of Business and Community Services ("BCS"), a political subdivision of the State of Oregon, and the Hoodland Women's Club ("HWC") and shall become a part of that Memorandum of Understanding entered between the parties on February 1, 2018 (the "MOU").

RECITALS

WHEREAS, Clackamas County currently owns certain real properties known as Hoodland Park, 25400 East Salmon River Road in Welches Oregon. Specifically, the properties are known as the Dorman Center – Map 37E04AA03600 (2.71 acres) and 37E04AA03300 (1.24 acres), the Water Tower – Map 37E04 00903 (5.14 acres), and the Hunchback Strip – Map 37E04 00904 (10.62 acres);

WHEREAS, it is the intent and desire of Clackamas County, as acknowledged by the Board of County Commissioners and County Parks Advisory Board, to transfer the above referenced real property, consistent with applicable law, upon the successful formation of a Park District;

WHEREAS, the parties desire to extend the effective date of the MOU through December 31, 2022;

WHEREAS, the parties desire to further defer designation of the properties as surplus with the intention of selling for a period through December 31, 2022 to give time for the HWC to form and approve a Park District.

NOW, THEREFORE, in consideration of the mutual promises set forth below and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree to amend the Agreement as follows:

1. **General Provisions.** Section B.1 is hereby amended to provide a new deferral date, as set for below:

BCS will agree to defer designation of the properties as surplus with the intention of selling for a period through **December 31, 2022** to give time for the HWC to form and approve a Park District consistent with applicable law. Any further deferral is contingent upon written approval by the Clackamas County Board of Commissioners.

Except as expressly amended above, all other terms and conditions of the MOU shall remain in full force and effect. By signature below, the parties agree to this Amendment #4, effective upon the date of the last signature below.

Clackamas County

Chair, Board of County Commissioners

Date

Hoodland Women's Club



Marci Slater, Committee Chair
Hoodland Park District Petition Committee

11/21/21

Date

December 9, 2021

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of Local Grant Agreement Amendment #6 between Clackamas County and Micro Enterprise Services of Oregon (MESO) for MESO to provide a grant program on behalf of Clackamas County in support of the local small business community impacted by the COVID-19 pandemic

Purpose/Outcomes	Approve Local Grant Agreement Amendment #6 between Clackamas County and MESO for MESO to provide grants to the Clackamas County small business community.
Dollar Amount and Fiscal Impact	\$228,486 (CARES Act CFDA 20.019) and \$22,614 (State Lottery dollars) for programmatic and administrative expenditures allocated as follows: a) \$228,486 in State CARES Act dollars for grants to small businesses b) \$4,014 in State lottery dollars for grants to small businesses c) \$18,600 in State lottery dollars for administrative fees There are no general funds involved
Funding Source	- CARES Act funds issued to County by State of Oregon Department of Administrative Services - State Lottery dollars
Duration	Term and Effective Date. May 21, 2020 through December 31, 2021
Previous Board Action	<ul style="list-style-type: none"> • Original agreement signed by the BCC on May 21, 2020, Agenda Item # E.1. • Amendment #1 signed by the BCC on July 16, 2020, Agenda Item # C.4. • Amendment #2 signed by BCS Director Laura Zentner on behalf of the BCC on August 26, 2020. Board agenda date August 20, 2020, Agenda Item # D.1. • Amendment #3 signed by BCC Chair Jim Bernard on December 17, 2020. Board agenda date December 17, 2020, Agenda Item # F.1. • Amendment #4 signed by BCC Chair Tootie Smith on June 16, 2021. Board agenda date June 16, 2021, Agenda Item # A.1. • Amendment #5 signed by BCC Chair Tootie Smith on September 23, 2021. Board agenda date September 23, 2021, Agenda Item # H.1.
Strategic Plan Alignment	<ol style="list-style-type: none"> 1) This grant agreement amendment supports the BCS goal of giving businesses access to innovative tools and programs to help them locate or expand in Clackamas County. Providing grants to businesses impacted by COVID-19 will help them make it through the pandemic so they can operate/reopen under the new normal, and eventually expand as economic times improve. 2) This grant agreement amendment supports the County strategic priority of Growing a Vibrant Economy by providing much needed assistance to Clackamas County small businesses so they can remain in business beyond the COVID-19 pandemic.
County Counsel Review	County Counsel Review Date: December 7, 2021 Counsel Initials: ARN
Procurement Review	Was the item processed through procurement? No This agreement is a grant agreement, therefore is not subject to Procurement oversight.
Contact Person	Sarah Eckman, BCS Interim Director (503) 742-4303
Contract No.	BCS-20-038

BACKGROUND:

Business and Community Services (BCS) has developed a program with MESO to provide economic and social assistance to Clackamas County small businesses affected by COVID-19. A key element of this program is providing much needed cash to businesses.

On behalf of Clackamas County, MESO has already completed multiple rounds of grants and provided over 1,000 grants to county small businesses. Amending our agreement with MESO will allow us to fund 31 additional grant applicants who were eligible in the June 2021 application period, but were not funded due to lack of dollars.

Award amounts are \$7,500. Businesses eligible for these funds had to meet the following criteria, and MESO will query them to confirm they still have eligible expenses and remain open for business:

- i. The business is headquartered in Clackamas County and has its principal operations in Clackamas County.
- ii. If required by Oregon law to be registered with the Oregon Secretary of State to do business in Oregon, the business is so registered.
- iii. The business is either for-profit or an entity tax-exempt under section 501(c)(3).
- iv. During the Performance Period, the business incurred necessary expenditures due to the COVID-19 public health emergency.

Responses to Board of County Commissioner Questions:

Members of the Board asked several questions about the grant administration process during Administrator's Issues on December 7, 2021. Following is a summary of those questions and the responses from staff:

Q: Which 31 businesses will receive grants and how will they be selected?

A: MESO will establish a list of 31 businesses once a fully executed agreement is in place. Businesses without past awards from Clackamas County, and those owned by minorities/women/veterans will be prioritized for funding. A final list of recipients will be published once all recipients are confirmed.

Q: Are there any non-profits on the list? How were they informed of the grant opportunity?

A: Yes, there are non-profits on the list for consideration. Businesses and non-profits were informed of the grant opportunity through a variety of channels, including press release, social media posts, email notices via networks such as the Chambers of Commerce, Business Recovery Centers, Clackamas County Economic Development Commission and Community Partners Roundtable.

Q: What assistance has the County given out to businesses impacted by the COVID-19 pandemic?

A: Approximately \$8,000,000 in grants has been distributed to small businesses. Other resources provided by the County include six Business Recovery Centers, scholarships at Clackamas Community College, Environmental Health fee waivers, temporary business zoning modifications, a *Who's Open?* business map and free Personal Protective Equipment.

Q: What kind of businesses are receiving grants?

A: The highest number of businesses are in the food and beverage industry. Other businesses fall within a variety of industries, including: agriculture, beauty/personal care, childcare, construction, education, health and medical, professionals and recreation. A list of all grant recipients will be published once all grants are confirmed.

RECOMMENDATION:

Staff respectfully recommends the BCC approve grant agreement amendment #6 with MESO.

ATTACHMENT:

Local Grant Agreement Amendment #6 between Clackamas County and Micro Enterprise Services of Oregon (MESO)

Respectfully submitted,



Sarah Eckman
Interim Director, Business & Community Services

Federal and State Subrecipient Agreement Amendment (FY 21-22)

Business & Community Services

Subrecipient Grant Agreement Number No. 20-038

Board Order Number:

Department/Division: Business & Community Services

Amendment No. 6

Recipient: Micro Enterprise Services of Oregon

Amendment Requested By: Business & Community Services

Approved as to form:

County Counsel

Date

Changes: Work Plan

Agreement Budget

Agreement Term

Other: Add federal terms and conditions

Justification for Amendment:

This Amendment #6 is entered into between Micro Enterprise Services of Oregon (“Subrecipient”) and Clackamas County (“County”) and shall become part of that Subrecipient Grant Agreement (“Agreement”). This Amendment #6 adds additional funds to extend business relief payments, adding additional CARES and State Lottery dollars. This Amendment adds to the maximum compensation.

Maximum compensation is increased by \$251,100 for a revised maximum of \$8,376,042. This Amendment #6 becomes effective upon signature. The purpose of this Amendment #5 is to make the following changes to the Agreement:

1. **Section 4, Grant Funds**, is hereby replaced with the following (changes in italics):

Grant Funds. The maximum, not to exceed, grant amount COUNTY will pay is **\$8,376,042**. Disbursements will be made in accordance with the schedule and requirements contained in Exhibit D: Required Financial Reporting and Payment Request. Failure to comply with the terms of this Agreement may result in withholding of payment. Funding on this award is sourced as follows:

4.1 CARES Act (Catalogue of Federal Domestic Assistance [CFDA] #: 21.019) issued to COUNTY by DAS and the U.S. Department of the Treasury (Federal Award Identification #: Unavailable) and reserved for small business grant payments: **\$311,000**.

4.2 COUNTY State Lottery dollars reserved for technical assistance, online tool development, and administration fees: **\$317,420**.

4.3 COVID-19 Emergency Business Assistance Program Forgivable Loan dollars entered into between the County and the State of Oregon (“State Business Assistance Loan”) (Loan Agreement No. C2020197), reserved for small business grant payments: **\$45,000**

- 4.4 **Second COVID-19 Emergency Business Assistance Program Forgivable Loan** (*Catalogue of Federal Domestic Assistance [CFDA] #: 21.019*) entered into between the County and the State of Oregon (“Second State Business Assistance Loan”) (Loan Agreement No. C2020385), reserved for small business grant payments: **\$155,000**
- 4.5 **CARES Act (Catalogue of Federal Domestic Assistance [CFDA] #: 21.019)** issued to County by DAS and the U.S. Department of the Treasury (Federal Award Identification #: Unavailable; State grant #2503) and reserved for small business grant payments and administration fees: **\$4,179,636**.
- 4.6 **CARES Act (Catalogue of Federal Domestic Assistance [CFDA] #: 21.019)** issued to County by DAS and the U.S. Department of the Treasury (Federal Award Identification #: Unavailable) and reserved for small business grant payments and administration fees: **\$672,000**. (Added via Amendment #4)
- 4.7 **CARES Act (Catalogue of Federal Domestic Assistance [CFDA] #: 21.019)** issued to County by DAS and the U.S. Department of the Treasury (Federal Award Identification #: SLT0038) and reserved for small business grant payments and administration fees: **\$2,467,500**. (Added via Amendment #5)
- 4.8 **CARES Act (Catalogue of Federal Domestic Assistance [CFDA] #: 21.019)** issued to County by DAS and the U.S. Department of the Treasury (Federal Award Identification #: SLT0038) and reserved for small business grant payments: **\$228,486**. (Added via Amendment #6)

2. **Section 5, Disbursements**, is hereby amended to add the following:

- 5.6 \$228,486 (CARES Act **CFDA 20.019**) for small grants to small businesses pursuant to the terms and conditions of the CARES Act payable upon execution. SUBRECIPIENT must invoice COUNTY to receive advanced payment of the amounts listed in this section (5.6).
- 5.7 \$4,014 in State lottery dollars for additional small grants to small businesses.
- 5.8 \$18,600 in State lottery dollars for administrative fees.

3. **Exhibit A, Statement of Program Objectives**, the following language is hereby added to this Exhibit:

CARES Act funds (\$251,100) added to this Agreement in Amendment #6 will be disbursed by SUBRECIPIENT to Clackamas County businesses via the following method:

- a) **Fund Unfunded Grant Applications:** SUBRECIPIENT will fund 31, \$7,500 grant applications received under Clackamas County’s prior grant application period(s) that were not funded due to applications in excess of the available grant funding. In funding the 31 grants, SUBRECIPIENT will continue to use its prior grant application process and distribute the funds provided by this Amendment #6 to business that meet the following eligibility criteria:
 - 4.4.1 The business is headquartered in Clackamas County and has its principal operations in Clackamas County.
 - 4.4.2 If required by Oregon law to be registered with the Oregon Secretary of State to do business in Oregon, the business is so registered.
 - 4.4.3 The business is either for-profit or an entity tax-exempt under section 501(c)(3) of the Internal Revenue Code.
 - 4.4.4 During the Performance Period, the business incurred necessary expenditures due to the COVID-19 public health emergency, including

those necessary expenditures incurred in response to Grantee's return to an "Extreme Risk" level effective as of April 30, 2021.

The following businesses are **ineligible** to apply for or receive funding under this Amendment #6:

- 1) Passive real estate holding companies and entities holding passive investments.
- 2) Non-profit entities that do not have federal 501(c)(3) status.
- 3) Businesses that experience a decline in revenues for reasons other than those caused by the COVID-19 pandemic (e.g. seasonal or cyclical businesses cycles).
- 4) Businesses that are delinquent on federal, state or local taxes that were due on or before the date of application.
- 5) Businesses that do not comply with all federal, state and local laws and regulations.
- 6) Businesses that have closed and do not intend to reopen.

5 **Exhibit B, Program Budget** is hereby replaced with the following amended budget (changes in italics):

	CARES (CFDA 21.019)	Lottery (Local funding)	State # C202197	CARES (CFDA 21.019) C2020385	Total
Program Assistance	<i>7,432,095</i>	<i>4,014</i>	45,000	<i>155,000</i>	<i>7,636,109</i>
Technical Assistance		100,000			100,000
Online tools		1,500			1,500
Admin Fee	<i>426,527</i>	<i>211,906</i>			<i>638,433</i>
Total	<i>7,858,622</i>	<i>317,420</i>	45,000	<i>155,000</i>	<i>8,376,042</i>

Except as amended hereby, all other terms and conditions of the Agreement remain in full force and effect.

[Signature page follows]

IN WITNESS WHEREOF, the parties hereto have caused this Amendment #6 to be executed by their duly authorized officers.

Micro Enterprise Services of Oregon

4008 NE MLK Jr. Blvd.
Portland, OR 97212

CLACKAMAS COUNTY

Commissioner: Tootie Smith, Chair

Commissioner: Sonya Fischer

Commissioner: Mark Shull

Commissioner: Paul Savas


Commissioner: Martha Schrader

Signing on behalf of the Board:

Cobi Lewis

Name: _____

Title: Executive Director _____

Signed:  _____

Dated: 12 / 08 / 2021 _____

Tootie Smith, Chair

Dated: _____



Daniel Nibouar
Interim Director

Disaster Management
1710 Red Soils Ct., Ste. 225
Oregon City, OR 97045

T 503-655-8378

clackamas.us

December 9, 2021

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of Amendment Number 1 to Intergovernmental Agreement #34636 with Oregon Department of Transportation for Right-of-Way (ROW) Wildfire-Damaged Hazard Tree Removal. No County General Funds are Involved.

Purpose/Outcomes	Amending Exhibit A to the existing Intergovernmental Agreement with Oregon Department of Transportation (ODOT) to facilitate removal of wildfire hazard trees in the County Right-of-Way.
Dollar Amount and Fiscal Impact	No cost to the County for work performed by under this IGA. Authorized separately, the County is incurring reimbursable costs under its debris monitoring contract (not to exceed \$228,000) in support of wildfire debris removal.
Funding Source	No funding source is required.
Duration	This IGA remains in effect for 2 years from the original signature in February 2021.
Strategic Plan Alignment	1) How does this item align with your Department's Strategic Business Plan goals? Work to support recovery by removing wildfire debris aligns with both the mission of the Disaster Management Department including disaster recovery, and Department of Transportation and Development's mission to support disaster debris management and transportation safety. 2) How does this item align with the County's Performance Clackamas goals? Work to support recovery by removing wildfire debris helps to ensure safe, healthy and secure communities by removing hazards to public health, the environment, and the travelling public.
Previous Board Action	February 4, 2021: the Board approved the existing IGA with the State of Oregon and directed Disaster Management to request that ODOT conduct removal of wildfire-damaged hazard trees along County roads.
County Counsel Review	The IGA has been reviewed and cleared by County Counsel. 2/1/21 JM
Procurement Review	No. Procurement review is not applicable. Item is a no cost IGA.
Contact Person	Daniel Nibouar (971) 219-6932 / Eben Polk (503) 422-1520

BACKGROUND:

Under an IGA approved by the Board on February 4, 2021, and under Executive Order 20-60, the Oregon Department of Transportation (ODOT) is tasked with removing wildfire-damaged trees along County roads that constitute a hazard to the traveling public. Also covered under the IGA is the removal of hazardous and other wildfire debris from property owners. The private property cleanup has successfully concluded and ODOT is ready to begin surveying and cutting trees along county roads.



Daniel Nibouar

Interim Director

Disaster Management
1710 Red Soils Ct., Ste. 225
Oregon City, OR 97045

T 503-655-8378

clackamas.us

After the fires of September 2020, an estimated 3,000 – 5,000 trees along County roads needed to be surveyed by arborists. Some have since been removed by property owners. It is unknown how many trees remain to be surveyed and, of those, how many will be determined to be a hazard that must be removed. If professional arborists contracted by ODOT determine that a fire-damaged tree is dead or likely to die in the near future, and may fall into the roadway or the clear zone, it will be eligible for removal.

This amendment is exclusively operational in nature and clarifies how County staff, ODOT, and state contractors will collaborate to execute the mission. Substantive changes include the potential for the County to provide sites to temporarily deck logs before their sale or disposal, the option for property owners to keep logs cut down in the right-of-way (at no cost to them), the option for property owners to request that trees beyond the right-of-way also be surveyed and potentially removed, and recognition of the possibility that some logs may be donated for use by local non-profits in stream protection or restoration projects.

ODOT-led activities will continue to be completed at no cost to the County. To facilitate ODOT's work in our community, however, the County activated our debris monitoring contract with Tetra Tech, under which Tetra Tech is providing a field liaison to coordinate activities with property owners and the County. This activation (currently not to exceed \$228,000) allows the County to promote good communication with our community members and is reimbursable by FEMA at 75%. This amendment does not change the amount already authorized on the current Tetra Tech task order. The initial cost (pre-reimbursement) and ultimate 25% cost match is already included in the Disaster Management and Transportation and Development budgets.

RECOMMENDATION:

Staff respectfully recommends the Board approve the Amendment Number 1 to Intergovernmental Agreement #34636 between the State of Oregon and Clackamas County concerning the removal of hazard trees on the County ROW

Sincerely,

Daniel Nibouar
Interim Director Disaster Management

AMENDMENT NUMBER 1
INTERGOVERNMENTAL AGREEMENT
Wildfire Recovery Operations; Step 2 Cleanup Activities

This is **Amendment No. 1** to the Agreement between the **State of Oregon**, acting by and through its Department of Transportation, hereinafter referred to as “**ODOT**,” and **Clackamas County**, acting by and through its elected officials, hereinafter referred to as “**Agency**,” entered into on February 4, 2021.

It has now been determined by State and Clackamas County that the Agreement referenced above shall be amended to Amend Exhibit A – Hazard Tree Mitigation and Removal Process in Clackamas County Right-of-Way Under Step 2 Cleanup of Debris from 2020 Wildfire Disaster.

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

2. Amendment to Agreement.

a. Exhibit A. Hazard Tree Mitigation and Removal Process in Clackamas County Right-of-Way Easements, Step 2 Cleanup of Hazard Tree Removal from 2020 Wildfire Disaster shall be deleted in its entirety and replaced with the attached Revised Exhibit A. Hazard Tree Mitigation and Removal Process in Clackamas County Right-of-Way Easements, Step 2 Cleanup of Hazard Tree Removal from 2020 Wildfire Disaster.

All references to “Exhibit A. Hazard Tree Mitigation and Removal Process in Clackamas County Right-of-Way Easements, Step 2 Cleanup of Hazard Tree Removal from 2020 Wildfire Disaster” shall hereinafter be referred to as “Revised Exhibit A. Hazard Tree Mitigation and Removal Process in Clackamas County Right-of-Way Easements, Step 2 Cleanup of Hazard Tree Removal from 2020 Wildfire Disaster”

b. Delete and replace in its entirety the ODOT Representative with the following:

ODOT Representative:

Name: Jeff Shambaugh

Phone: 503-986-5764 Cell: 971-301-0903

E-Mail: jeff.shambaugh@odot.state.or.us

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

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

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

Clackamas County, by and through its
Elected Officials


By _____

Date _____

By _____

Date _____

**LEGAL REVIEW APPROVAL (If required in
Agency's process)**

By  _____
Agency Counsel

Date 11/30/2021

STATE OF OREGON, by and through
its Department of Transportation

By _____

Frank Reading, ODOT Wildfire Recovery
Area Commander

Date _____

APPROVAL RECOMMENDED: Not Required

APPROVED AS TO LEGAL SUFFICIENCY: Not
Required

Agency Contact:

Name: Eben Polk
Title: Debris Manager
Address: 150 Beaver Creek Road, Oregon
City, OR 97045
Phone: 503-205-2678 / 503-742-4470
E-Mail: epolk@clackamas.us

ODOT Contact:

Name: Jeff Shambaugh
Phone: 503-986-5764 / 971-301-0903
E-Mail: jeff.shambaugh@odot.state.or.us

Revised Exhibit A. Hazard Tree Mitigation and Removal Process in Clackamas County Right-of-Way Easements, Step 2 Cleanup of Hazard Tree Removal from 2020 Wildfire Disaster

1. **General.** ODOT will deploy its contractors to perform hazardous tree removal in accordance with the Hazardous Tree Contract and Statement of Work referenced in those Contracts for removal of hazard trees impacted by Oregon’s federally declared September 2020 wildfires.
2. **Clackamas County Right-of-Way.** The right-of-way (ROW) on Agency roads varies from 30 feet wide (15 feet per side from centerline) on minor roads, up to 120 feet wide (60 feet per side from centerline) for major roads. The Agency also has “clear zone” requirements described in paragraph 245.3 of the *Clackamas Roadway Standards* (2020), provided by the Agency to ODOT. Burned trees on the Agency ROW shall be assessed and if found to meet ODOT criteria for removal as a “hazard tree” shall be marked for felling.
3. **Historical, Cultural and Environmental Compliance.** Prior to commencing work ODOT shall conduct required historical, cultural and environmental reviews, and obtain permits if required.
4. **Coordination with Agency Liaison.** To support coordination with property owners, ODOT will provide schedule estimates or forecasts of locations for upcoming tree assessments or felling operations to the Agency. During daily start of work (or similar) tail-board meetings, ODOT will provide a verbal briefing to the Agency Liaison describing where upcoming tree assessments or felling operations are planned.
5. **Agency Work Requests, Work Areas, and Map Book.** If requested the Agency shall provide to ODOT within 14 business days a table and a map-book with complete information as outlined below and similar to that as provided in Attachment A (as an example) showing the Agency ROW and property lines.
 - A Summary of Work Requests.
 - Clear Concise Work Area Descriptions including but not limited to;
 - Clackamas County Roads Table including County Road Name, Starting and Ending Mile Point, Road Type, and ROW Width.
 - Private Property(s) Table including property owner name, Map & Taxlot, Site Address, ROE, and County Road Name.
 - Federal Property(s) Table, including property owner name, Map & Taxlot, and County Road Name.
 - Private Property Maps – Hazard Tree Permits Requested, with the property clearly delineated by a color contrasted property boundary.

- Federal Property Maps – Bureau of Land Management & U.S. Forest Service with the property clearly delineated by a color contrasted property boundary.

Late entries will not be accepted into the wildfire recovery program after October 31, 2021.

6. **Hazard Trees on the Agency ROW Easement.** The Agency's ROW is an easement; hazard trees within the ROW are owned by the underlying property owner. Prior to the removal of hazard trees on the Agency ROW, the Agency Liaison shall contact property owners to inform them of the scheduled tree felling operations. If the property owner wants to receive the felled trees and a safe decking location is available on their property outside the ROW, they shall sign a Tree Permit Right of Entry Form and ODOT shall leave logs decked on the property outside the ROW. The ROE shall provide the authority for ODOT's contractor to leave the felled trees decked at or near the location where felled and outside of the "clear zone" on the property owner's property. Felled trees not requested by the property owner through completion of the Tree Permit ROE will be removed and disposed by ODOT.

Hazard Trees Beyond the Agency ROW Easement. At least fourteen business days prior to the removal of hazard trees adjacent to the County Agency ROW, the Agency will identify potential hazard trees located on private and federal property and beyond the Agency ROW but still within "striking distance" (1.5 times the tree height) of the edge of pavement. This information will be used by the Agency to contact property owners and request a ROE along with permission for ODOT and its contractors to enter, assess individual trees, and, fell the trees that pose a hazard and meet removal criteria. Permission to assess, survey, and cut down hazard trees on private property beyond the Agency ROW shall be obtained by the Agency using an approved Tree Permit ROE. If the property owner is non-responsive (at least 7 calendar days after notification attempts) or not does submit a Tree Permit ROE, then the trees will not be assessed or removed.

7. **Chips and Slash.** ODOT will process and distribute chips (hog fuel) no more than three (3) inches in accordance with ODOT's existing Contracts and SOW along with the Debris Removal Operations Plan (DROP) and Environmental Protection Plan (EPP). Such material will not be placed in or near drainages, wetlands, streams, or water bodies to avoid blockages or impedances to water flow. Excess slash, chips or vegetative material may be left at nearby decking sites in the Clackamas County ROW outside clear zones or decking locations described below for up to six months. Subject to chip quality, the Agency may assist in identifying opportunities for chip-drops by ODOT to local property owners that want chips, where doing so reduces chip disposal costs.
8. **Decking Locations.** ODOT has salvage rights and responsibility for all logs, chips and slash not requested by property owners with a Tree Permit ROE as described above. In

the event that temporary decking locations at or near the hazard tree felling operation are not available because (1) there is not space available to safely place a log deck or excess chips outside the County Road clear zone or (2) the property owner has not requested to retain ownership of the felled hazard tree, then ODOT will have salvage rights, take possession, and may transport the logs to an Agency-provided decking locations. ODOT will subsequently sell the logs. Proceeds from any ODOT wildfire related log sale shall be retained by ODOT and used to off-set wildfire recovery effort cost by ODOT and FEMA, in accordance with FEMA requirements.

ODOT desires not to un-necessarily haul all logs to the Agency provided decking locations. ODOT has been successful in selling logs from decked location adjacent to but outside of clear zones along state highways. Where physically possible, the Agency agrees ODOT's current log decking criteria deployed along state highway may be used along County roads.

In such circumstances where logs cannot be decked adjacent to County Roads, then ODOT may haul logs to an Agency provided location. The Agency offers two decking locations for ODOT to use pursuant to this work.

Location 1 shall be the Agency's Steel Bridge stockpile site at 16154 Hwy 211. This location has a railroad car steel bridge that provides access to the south portion of this site. The southern portion of the site is located in a designated floodplain, therefore will not be used for temporary storage. If necessary, the Agency and ODOT will work together to locate alternate sites within 30 business days of amending this IGA.

Location 2 shall be at the Agency's Springwater stockpile site at southeast corner of South Springwater Road and South Tucker Road. Decking locations may be used to temporarily site logs and chips, with chip storage subject to available space and in accordance with best management practices, such as for fire safety. Both locations may be used for up to within 6 months of commencement of last log or chips placement at a decking location. This time period may be extended by mutual agreement.

9. **Clackamas River Basin Council Log Donation.** The Agency desires to donate some resultant logs to the [Clackamas River Basin Council \(CRBC\)](#) for purposes of habitat restoration. The Agency and CRBC shall be able to haul logs directly from either a decking location or directly from field operations. The CRBC and Agency shall not employ or use ODOT contractors to haul, load, or off-load logs for this habitat restoration effort. CRBC and the Agency shall be solely responsible for obtaining the desired logs with the desired dimensions. CRBC log loading and hauling shall be coordinated with ODOT contractors through ODOT's On-Scene Incident Commanders (OSIC) and shall not interfere with any ODOT operation.

10. **Documentation.** The Agency Liaison will document situations where burned trees on private property are observed beyond the County ROW and believed to be a hazard, and the property owner is either unreachable or declines permission to enter the property. ODOT shall document the number and size of trees felled on private property by location.



DAN JOHNSON
DIRECTOR

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

December 9, 2021

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of Amendment 1 to the Ground Lease between Clackamas County Development Agency and Clackamas County Pertaining to Property located at 16575 SE 115th Avenue for the continued site use for the Veterans Village Program
No County General Funds are involved

Purpose/ Outcomes	To insure that a location is available to continue operations of the successful Veterans Village program.
Dollar Amount and Fiscal Impact	Lessee pays lessor no rent. This is a Net Lease
Funding Source	N/A
Duration	October 1, 2021 – September 30, 2022, with option of one automatic additional extension to September 30, 2023.
Previous Board Action	Original Lease signed 11.8.18 Memo and issues topic presented to the Board on 11/18/21
Strategic Plan Alignment	1. Individuals and families in need are healthy and safe 2. Ensure safe, healthy, secure communities
Counsel Review	11.29.21 Nathan Boderman
Procurement Review	Was the item processed through Procurement? yes no(x) N/A
Contact Person	Dan Johnson, Director of Transportation and Development

BACKGROUND:

The Veterans Village is sited on a portion of a remnant property owned by the Clackamas County Development Agency at 16575 SE 115th Ave. Clackamas County began operation of the Veterans Village as a pilot transitional shelter community program in October of 2018. This program was enacted in alignment with the County’s strategic goal of ending veteran homelessness. At the end of the two-year pilot period, on December 15th, 2020, the Board of County Commissioners unanimously approved a resolution to continue the current operations of the program, negotiating an extension of the lease with the Development Agency while exploring options for the County, through H3S, to purchase the property for the continuation of the Veteran’s Village Program. As H3S continues to assess options and opportunities for additional transitional services, staff would request the Board support a one year extension on the current lease with an option of an automatic one additional year extension to provide additional time to assess options at this facility and elsewhere throughout the County.

Unfortunately the current lease expired on September 30, 2021 so time is of the essence to ensure no interruption of service to the current occupants.

RECOMMENDATION:

Staff respectfully recommends that the Board of County Commissioners of Clackamas County approve this amendment.

Respectfully submitted,

Dan Johnson

Dan Johnson,
Director of Transportation and Development

**FIRST AMENDMENT TO THE GROUND LEASE BETWEEN CLACKAMAS COUNTY
DEVELOPMENT AGENCY AND CLACKAMAS COUNTY**

THIS FIRST AMENDMENT TO THE GROUND LEASE BETWEEN CLACKAMAS COUNTY DEVELOPMENT AGENCY AND CLACKAMAS COUNTY (“Amendment”) is entered into effective as of December __, 2021, between **CLACKAMAS COUNTY DEVELOPMENT AGENCY**, the Urban Renewal Agency of Clackamas County, a corporate body politic (“**Lessor**”), and **Clackamas County**, a political subdivision of the State of Oregon, acting through the Clackamas County Department of Health, Housing and Human Services (“**Lessee**”).

RECITALS

A. Lessor and Lessee are parties to that certain Ground Lease dated effective as of October 1, 2018, (the “**Lease**”), concerning real property commonly known as 16575 SE 115th Avenue in Clackamas County, Oregon, and as more particularly described in the Lease (the “**Property**”).

B. Lessee has operated a pilot transitional shelter community program known as Veterans Village on the Property since October of 2018.

C. On December 15th, 2020, the Board of County Commissioners unanimously approved a resolution to allow Lessor to continue the current operations of the Veterans Village program, and to affirm its intent to continue with the lease of the Property from the Lessor while exploring options for the County, through its Department of Health, Housing and Human Services, to potentially purchase the Property for the continuation of the Veterans Village Program.

D. The Lease expired by its terms on September 30, 2021 and the parties desire to extend the term of the Lease on the terms and conditions set forth herein. All capitalized terms used in this Amendment and not otherwise defined herein shall have their meanings as set forth in the Lease.

AGREEMENT

1. **Amendment to Section 2.1. Section 2.1 of the Lease currently reads:**

Starting on the Commencement Date, the Premises will be leased for a term of approximately two (2) years ending on September 30, 2020 (the “Term”), unless earlier terminated pursuant to the terms of this Lease. This lease is renewable for one additional one (1) year term automatically unless one party provides notice of termination pursuant to paragraph 2.2.

Section 2.1 of the Lease is hereby deleted in its entirety and is replaced with the following:

Starting on the Commencement Date, the Premises will be leased for a term of four (4) years ending on September 30, 2022 (the “Term”), unless earlier terminated pursuant to the terms of this Lease. This lease is renewable for one additional one (1) year term automatically unless one party provides notice of termination pursuant to paragraph 2.2.

2. **Counterpart; Email.** This Amendment may be executed simultaneously or in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Amendment. Facsimile or email transmission of any signed original of this Amendment, and retransmission of any signed facsimile or email transmission, shall be the same as delivery of an original. At the request of either party, the parties shall confirm transmitted signatures by signing an original document.

3. **Confirmation.** The Lease is hereby amended and modified in accordance with the terms of this Amendment. Except as expressly modified by this Amendment, the Lease and all its terms and provisions are hereby acknowledged, approved, ratified and confirmed and shall be and remain in full force and effect.

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

LESSOR:

CLACKAMAS COUNTY DEVELOPMENT AGENCY
the Urban Renewal Agency of Clackamas County

By: _____

Name: Tootie Smith

Its: Chair – Clackamas County Development Agency Board

LESSEE:

CLACKAMAS COUNTY
a political subdivision of the State of Oregon

By: _____

Name: Tootie Smith

Its: Chair – Clackamas County Board of County Commissioners

**RECORDING REQUEST
AGREEMENTS/CONTRACTS**

ORIGINATING COUNTY
DEPARTMENT:

CLACKAMAS COUNTY DEVELOPMENT
AGENCY

OTHER PARTIES TO
CONTRACT/AGREEMENT:

CLACKAMAS COUNTY DEPARTMENT OF
HEALTH, HOUSING AND HUMAN SERVICES

BOARD AGENDA ITEM

NUMBER: Val

DATE: 11-8-18

PURPOSE OF
CONTRACT/AGREEMENT:

**Approval of a Ground Lease Between Clackamas County and
the Clackamas County Development Agency
Pertaining to Property located at
16575 SE 115th Avenue**

**After Recording, Please Return to:
Lori Phillips
Clackamas County Department of
Transportation & Development
150 Beaver Creek Rd.
Oregon City, OR 97045**

Clackamas County Official Records
Sherry Hall, County Clerk
Commissioners' Journals
Agreements & Contracts

2018-1783

11/13/2018 2:55:22 PM

2

GROUND LEASE BETWEEN
CLACKAMAS COUNTY DEVELOPMENT AGENCY
AND
CLACKAMAS COUNTY

This GROUND LEASE (this "Lease") is made and entered into on October 1, 2018 (the "Commencement Date"), by and between the Clackamas County Development Agency, the urban renewal agency of Clackamas County, a corporate body politic ("Lessor"), and Clackamas County, a political subdivision of the State of Oregon, acting through the Clackamas County Department of Health, Housing and Human Services ("Lessee").

RECITALS

A. Lessor desires to lease to Lessee, and Lessee desires to lease from Lessor, the land depicted on Exhibit A attached hereto, together with any and all rights, privileges, easements, and appurtenances (collectively, the "Premises"), together with any and all fixtures, rights, privileges, easements, and appurtenances that may now or exist in the future (collectively, the "Improvements").

B. Lessor owns the Premises. Lessee owns certain Improvements, shelter buildings, intended to be placed upon the Premises, more specifically described on Exhibit B, attached hereto. Lessee owns the right to use the Premises and the Improvements for the term of the Lease.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties to this Lease agree as follows:

Article 1

Premises

Lessor does hereby demise, lease, and let unto Lessee, and Lessee does hereby take and lease from Lessor, the Premises, including permission for continued use of the Improvements, for the Term (as defined below) and on the rents, conditions, and provisions herein.

Article 2

Lease Term

2.1 Lease Term. Starting on the Commencement Date, the Premises will be leased for a term of approximately two (2) years ending on September 30, 2020 (the "Term"), unless earlier terminated pursuant to the terms of this Lease. This lease is renewable for one additional one (1) year term automatically unless one party provides notice of termination pursuant to paragraph 2.2.

2.2 Early Termination. Notwithstanding anything in this Lease to the contrary, Lessor or Lessee may terminate the Lease upon providing the other party with written notice of intent to terminate at least 180 days prior to the desired termination date.

Article 3

Rent

3.1 Payment of Rent. Lessee shall pay Lessor no rent.

3.2 Net Lease. This Lease is a net lease. Lessee will be responsible for paying all costs and expenses relating to the Premises and the Improvements, including any real and personal property taxes, fees, utilities, maintenance, repairs, interior and exterior structural repairs, interior and exterior nonstructural repairs, insurance, and all other costs and expenses relating to the Premises and the Improvements. Without notice or demand and without abatement, deduction, or setoff except as may be otherwise provided in this Lease, Lessee is required to pay, all sums, impositions, costs, and other payments that Lessee assumes or agrees to pay in any provision of this Lease. If Lessee fails to make a payment, Lessor will have (in addition to all other rights and remedies) all the rights and remedies provided for in this Lease or by law for nonpayment of rent.

Article 4

USE AND COMPLIANCE WITH LEGAL REQUIREMENTS

4.1 Permitted Use. Lessee may use and occupy the Premises and the Improvements during the Term and shall use the Premises and the Improvements in compliance with all applicable Legal Requirements (as defined in section 4.2 below).

4.2 Compliance with Legal Requirements. Lessee shall observe and comply with all Legal Requirements that may apply to the Premises, or to the use or manner of uses of the Premises, or the Improvements or the owners or users of the Improvements, whether or not the Legal Requirements affect the interior or exterior of the Improvements, necessitate structural changes or improvements, or interfere with the use and enjoyment of the Premises or the Improvements, and whether or not compliance with the Legal Requirements is required by reason of any

condition, event, or circumstance existing before or after the Term. Lessee will pay all costs of compliance with the Legal Requirements.

“Legal Requirements” means all applicable present and future laws, ordinances, orders, rules, regulations, codes, and requirements of all federal, state, and municipal governments, departments, commissions, boards, and officers, that now or hereafter apply to the Premises, the Improvements, or any component hereof or any activity conducted thereon, including but not limited to those pertaining to Environmental Laws and the use and storage of Hazardous Substances (as these terms are defined below).

“Environmental Laws” means all present or future federal, state, and local laws or regulations related to the protection of health or the environment, including the Resource Conservation and Recovery Act of 1976 (RCRA) (42 USC § 6901 *et seq.*), the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) (42 USC § 9601 *et seq.*), the Toxic Substances Control Act (15 USC § 2601 *et seq.*), the Federal Water Pollution Control Act (the Clean Water Act) (33 USC § 1251 *et seq.*), the Clean Air Act (42 USC § 7401 *et seq.*), amendments to the foregoing, and any rules and regulations promulgated thereunder.

“Hazardous Substances” means any hazardous or toxic substance, material, or waste that is or becomes regulated by any local, state, or federal governmental authority, including without limitation, any hazardous material, hazardous substance, ultra-hazardous material, toxic waste, toxic substance, pollutant, radioactive material, petroleum product, and PCB, as those and similar terms are commonly used or defined by Environmental Laws.

4.3 Prohibited Uses. Lessee shall not use or occupy the Premises or the Improvements, or permit or suffer all or any part of the Premises or the Improvements to be used or occupied: (a) for any unlawful or illegal business, use, or purpose; (b) in any manner so as to constitute a nuisance of any kind; (c) for any purpose or in any way in violation of the certificate of occupancy, or of any Legal Requirements, including Legal Requirements respecting Hazardous Substances; or (d) for any business, use, or purpose deemed disreputable.

4.4 No Waste. Lessee shall not cause or permit any waste, damage, disfigurement, or injury to the Premises, but Lessee may demolish and remove any and all the Improvements on the Premises at Lessee’s own expense and pursuant to and in accordance with the terms of Article 5 below.

Article 5

Improvements

5.1 Construction, Modification, and Demolition of Improvements. Upon obtaining Lessor’s prior written approval, Lessee may, at any time and from time to time during the Term at its cost and expense, construct, reconstruct, demolish, remove, replace, remodel, or rebuild on any part or all of the Premises such buildings, structures, parking areas, driveways, walks, and other Improvements of any nature (including excavation, earthmoving, paving, installation or relocation of utilities, and all other development activities) pertaining thereto as Lessee.

Construction of any buildings or improvements will be undertaken in compliance with all Legal Requirements and will be performed in a good and workmanlike manner, and which shall be removed from the Premises prior to the end of this Lease unless renewed. Utilities installed at the Premises shall not be demolished or removed without prior written approval of the Lessor.

5.2 Lessor Cooperation. Lessor shall reasonably cooperate with Lessee in connection with Lessee's construction of any Improvements, including but not limited to executing any applications and other instruments reasonably necessary for construction of the Improvements at Lessee's expense, and further provided that Lessor is not required to pay any application fees or incur any other costs or liabilities in connection with the Improvements.

5.3 Easements and Dedications. Lessee and Lessor each recognize that in order to provide for the development of the Premises, it may be necessary, desirable, or required that street, water, sewer, drainage, gas, power line, and other easements and dedications and similar rights be granted or dedicated over or within portions of the Premises. Lessor shall, upon request of Lessee, join with Lessee in executing and delivering such documents, from time to time, and throughout the Term of this Lease as may be appropriate, necessary, or required by any governmental agency or public utility company for the purpose of granting such easements and dedications.

Article 6

Taxes and Utilities

6.1 Taxes Defined. As used in this Lease, the terms "Tax" and "Taxes" mean any and all taxes, service payments in lieu of taxes, general or special assessments, excise taxes, transit charges, utility assessments, and any and all charges, levies, fees, or costs, general or special, ordinary or extraordinary, of any kind that are levied or at the direction of laws, rules, or regulations of any federal, state, or local authority on the Premises or the Improvements, or based on or otherwise in connection with the use, occupancy, or operations of the Premises or the Improvements, or with respect to services or utilities in connection with the use, occupancy, or operations of the Premises or the Improvements, or on Lessor with respect to the Premises or the Improvements, or on any act of leasing space in the Improvements, or in connection with the business of leasing space in the Improvements, including any tax on rents, whether direct or as a part of any "gross receipts" tax, and whether or not in lieu of, in whole or in part, ad valorem property taxes. Taxes will include, but not be limited to, state and local real-property taxes, levies, and assessments, and any tax, fee, or other excise, however described, that may be levied or assessed in lieu of, or as a substitute, in whole or in part, for, or as an addition to any other taxes, and all other governmental impositions and governmental charges of every kind and nature relating to the Premises or the Improvements, including, but not limited to, any road-user or transportation-system-maintenance fee and any charges or fees measured by trip generation or length, parking spaces, impervious surfaces, buildings, vehicle usage, or similar bases for measurement.

6.2 Payment of Taxes. Throughout the Term, Lessee shall pay any Taxes that may be applicable as they become due. If by law any Tax is payable, or may at the option of the taxpayer

be paid, in installments, Lessee may pay the same in installments as each installment becomes due and payable, but in any event shall do so before any fine, penalty, interest, or cost may be added for nonpayment of any installment or interest.

6.3 Contesting Taxes. If Lessee in good faith desires to contest the validity or the amount of any Tax, Lessee may be permitted to do so by giving to Lessor written notice requesting permission to do so before commencement of such contest. If approved, Lessee may contest with respect to the Property and/or the Improvements. Lessor may, at Lessee's expense (including reimbursement of attorney fees reasonably incurred by Lessor), cooperate with Lessee in any such contest to the extent that Lessee may reasonably request, but Lessor shall not be subject to any liability for the payment of any costs or expenses in connection with any proceeding brought by Lessee, and Lessee shall indemnify and save Lessor harmless from any such costs or expenses. Any rebates on account of the Taxes required to be paid and paid by Lessee under the provisions of this Lease shall belong to Lessee, except that to the extent any rebates or refunds are related to a period of time in which this Lease is not in effect (either before commencement or after expiration or termination), the portion of the rebate attributable to such time shall be returned to Lessor to the extent previously paid by Lessor.

6.4 Evidence of Payment. Promptly after payment, Lessee shall provide Lessor with evidence reasonably satisfactory to Lessor that all Taxes required to be paid by Lessee have been paid.

6.5 Utilities and Services. Lessee shall pay, directly to the appropriate supplier, for all water, sanitary-sewer, storm sewer, gas, electric, telephone, cable, garbage pickup, and all other utilities and services used by Lessee on the Premises as they become due, together with any taxes thereon, from and after the Commencement Date. Lessor shall not be in default hereunder nor be liable in damages or otherwise for any failure or interruption of any utility or other service being furnished to the Premises, and no such failure or interruption will entitle Lessee to terminate this Lease.

Article 7

Insurance

7.1 Fire and Casualty Insurance. Lessee shall keep the Premises and improvements insured at Lessee's expense against fire and other risks covered by an All Risk Property Coverage policy, and other policies as appropriate. The insurance shall be maintained (without any co insurance clause) in an amount equal to the greater of the fair market value of the Premises and improvements or the amount required by any mortgagee of the Premises, or absent such requirement, in an amount sufficient to prevent Lessor and Lessee from becoming co insurers under applicable provisions of the insurance policy. Said coverage may be through self-insurance, through an insurance pool established for the benefit of governmental entities or from a general insurance carrier that meets the requirements set out below.

7.2 Liability Insurance. Lessee, at its cost and expense, shall maintain general liability insurance coverage sufficient to cover liability that may be imposed due to the condition of the

premises and the activities conducted thereon. Said coverage may be through self-insurance, through an insurance pool established for the benefit of governmental entities or from a general insurance carrier that meets the requirements set out below.

7.3 Additional Requirements. In the event that a policy is obtained from a commercial carrier the carrier(s) shall be a reputable insurance company acceptable to Lessor, licensed to do business in the State of Oregon, and have a minimum A-VIII rating as determined by the then-current edition of *Best's Insurance Reports* published by A.M. Best Co. Lessee shall provide Lessor with certificates of insurance concurrently with the execution of this Lease and upon each renewal thereafter to establish that Lessee's insurance obligations have been met and that the policies are not subject to cancellation or material change without at least 30 days advance written notice to Lessor; provided, however, that Lessor may inspect and require full copies of all insurance policies to be provided to Lessor.

Article 8

Release and Indemnification

8.1 Release. Lessee shall be in exclusive control of the Premises, and Lessor shall not in any event whatsoever be liable for any injury or damage to any property or to any person happening on, in, or about the Premises or the Lessee owned or leased Improvements, or any injury or damage to the Premises or the Lessee owned Improvements or to any property, whether belonging to Lessee or to any other person, caused by any fire, breakage, leakage, defect, or condition on any part of the Premises or the Lessee owned or leased Improvements, or from steam, gas, electricity, water, rain, or snow that may leak into, issue, or flow from any part of the Premises or the Lessee owned or leased Improvements from the drains, pipes, or plumbing work of the same, or from the street, subsurface, or any place or quarter, or because of the use, misuse, or abuse of all or any of the Premises or the Lessee owned or leased Improvements, or from any kind of injury that may arise from any other cause whatsoever on the Premises or in or on the Lessee owned or leased Improvements, including defects in construction of the Lessee owned or leased Improvements, latent or otherwise; and Lessee hereby releases Lessor from and against any and all liabilities resulting from any such injuries and damages. Lessor acknowledges that it remains responsible for liability to any third party to the extent that the liability arises from Lessor's gross negligence or willful misconduct that causes damage or injury to persons or property on the Premises.

8.2 Indemnification. Except to the extent caused by the gross negligence or willful misconduct of Lessor, Lessee shall indemnify, defend and hold Lessor harmless from and against any and all liabilities, obligations, damages, fines, penalties, claims, costs, except for attorney's fees, charges, and expenses (including, without limitation, environmental response and remedial costs; environmental consultant and laboratory fees; and natural resource damages) that may be imposed on or incurred by or asserted against Lessor arising from or related to the activities of the Lessee conducted on the Premises during the term of this Lease.

Article 9

Liens

9.1 No Liens. Lessee shall not suffer or permit any construction liens to attach to or be filed against any part of the Premises or the Improvements owned by Lessor by reason of any work, labor, services, or materials done for, or supplied to, or claimed to have been done for or supplied to, Lessee or any person occupying or holding an interest in any part of the Premises or the Improvements owned by Lessee. If any such lien is filed against any portion of the Premises or the Improvements, Lessee shall cause the same to be discharged of record within 15 days after the date of its filing by payment, deposit, or bond.

9.2 Lessor Right to Post Notices. Lessor may post and keep posted at all reasonable times on the Premises and the Improvements notices of non-responsibility and any other notices that Lessor desires or is required to post for the protection of Lessor's interest in the Premises and the Improvements from any such lien.

9.3 No Right to Lien Lessor's Interest. Nothing in this Lease may be deemed to be, or be construed in any way as constituting, the consent or request of Lessor, express or implied, by inference or otherwise, to any person, firm, or corporation for the performance of any labor or the furnishing of any materials for any construction, rebuilding, alteration, or repair of or to the Premises or to the Improvements, or as giving Lessee any right, power, or authority to contract for or permit the rendering of any services or the furnishing of any materials that might in any way give rise to the right to file any lien against Lessor's interest in the Premises or against Lessor's interest, if any, in the Improvements. Lessee shall not be an agent for Lessor.

Article 10

Repairs and Maintenance

10.1 Lessee Obligation. Lessee must maintain, repair and replace the Premises and the Lessor owned Improvements as and when needed so as to keep them clean and in good condition and repair, throughout the entire Term. Lessee's obligations extend to both structural and nonstructural items and to all maintenance, repair, and replacement work.

10.2 Lessor Obligation. Consistent with Section 6.5 of this Lease, Lessor is not required to furnish to Lessee, the Premises, or the Improvements any facilities, utilities, or services of any kind whatsoever during the Term, such as, but not limited to, water, sanitary sewer, storm sewer, gas, electric, telephone, cable, garbage pickup, or any other utilities or services used by Lessee. Lessor is not required to make any alterations, re-buildings, replacements, changes, additions, improvements, or repairs to any portion of the Premises or the Improvements during the Term.

10.3 Lessee Environmental Obligations. Lessee shall take all the responsibilities to environmental issues and damages on the Premises and the Improvements related to its activities.

10.4 Limited Assignment of Rights. Lessor shall assign to Lessee, without recourse, any rights that Lessor may have against any parties causing damage to the Lessee owned Improvements on the Premises to sue for and recover amounts expended by Lessee as a result of the damage.

Article 11

Inspection and Access

Lessor may enter onto the Premises and the Improvements at reasonable times during reasonable business hours for the purposes of allowing potential buyers or tenants to perform inspections, to inspect and take measurements, samples or other activities to access any potential contamination issues and ensure compliance with the terms of this Lease. Nothing in this Lease implies any duty or obligation, however, on Lessor's part to make such inspections or perform such work (including, but not limited to, repairs and other restoration work made necessary because of any fire or other casualty or partial condemnation, irrespective of the sufficiency or availability of any property or other insurance proceeds, or any award in condemnation, that may be payable). Lessor's performance of any work will not constitute a waiver of Lessee's default in failing to perform the same.

Article 12

Damage and Destruction

If any Lessee owned Improvement(s) on the Premises are damaged or destroyed by flood, fire or other casualty, Lessee's obligations under the lease will not abate and Lessee shall promptly determine whether to repair, replace, reconstruct, demolish or abandon the Improvement(s). Lessee shall promptly inform Lessor of its decision and its proposed plan of action. Should the Lessee decide to abandon or demolish the damaged Lessee owned Improvement(s) Lessee shall at Lessee's expense clear the remains of the Improvement(s) from the premises unless otherwise directed by Lessor.

Article 13

Condemnation

13.1 Total Taking. If all the Premises and the Improvements are taken or condemned by right of eminent domain or by purchase in lieu of condemnation (a "Taking"), or if in Lessee's reasonable judgment the Taking of any portion of the Premises or the Improvements renders the portion remaining insufficient and unsuitable to permit the restoration of the Improvements following the Taking, then Lessee may terminate this Lease by providing written notice thereof to Lessor within 30 days after Lessee is notified of the Taking, in which case the Lease will cease and terminate (except those provisions intended to survive the expiration or termination of the Lease) and Lessee shall vacate the Premises and the Improvements as of the date on which the condemning authority takes possession (any Taking in this section being called a "Total Taking").

13.2 Award for Total Taking. If this Lease terminates as a result of a Total Taking, the rights and interests of the parties will be determined as follows:

(a) The total award or awards for the Total Taking will be apportioned and paid in the following order of priority:

(i) Lessor will have the right to receive directly from the condemning authority, in its entirety and not subject to any trust, a portion of the award that is defined and referred to as the Land Award (as defined below), and Lessee will not be entitled to receive any part of the Land Award. The term "Land Award" means that portion of the award in the condemnation proceeding that represents the fair market value of the Premises and the Lessor owned Improvements, the consequential damage to any part of the Premises that may not be taken; the diminution of the assemblage or plottage value of the Premises not so taken; and all other elements and factors of damage to the Premises; but in all events the damage or valuation will take into consideration that the Premises are encumbered by this Lease.

(ii) Lessee will have the right to receive directly from the condemning authority that portion of the award referred to as the Leasehold Award (as defined below). The term "Leasehold Award" means that portion of the award in the condemnation proceeding that represents the fair market value of Lessee's interest in the Premises and the Lessee owned Improvements and the fair market value of Lessee's leasehold estate as so taken and, if this Lease is not terminated as a result of the Taking.

(iii) It is the intent of the parties that the Land Award and the Leasehold Award will equal the total amount of the awards respecting the Total Taking.

(b) If a court or another lawful authority that is authorized to fix and determine the awards fails to fix and determine, separately and apart, the Land Award and the Leasehold Award, the awards will be determined and fixed by written agreement mutually entered into by and among Lessor and Lessee, and if an agreement is not reached within 30 days after the judgment is entered in the proceeding, the controversy will be resolved in the same court in which the condemnation action is brought, in any proceedings that are appropriate for adjudicating the controversy.

13.3 Partial Taking and Award for Partial Taking. If, during the Term, there is a Taking of the Premises or the Improvements, but the Taking is not a Total Taking and not a temporary taking of the kind described in section 13.4, or if a change occurs in the grade of the streets or avenues on which the Premises abuts, this Lease will not terminate but will remain in full force and effect with respect to the portion of the Premises and the Improvements not taken (any Taking or change of grade of the kind described in this section being referred to as a "Partial Taking"), and in that event the total award or awards for the taking will be apportioned and paid in the following order of priority:

(a) Lessor may receive directly from the condemning authority, in its entirety and not subject to any trust, that portion of the award that equals the Land Award, and Lessee may not receive any part of the award; and

(b) Lessee, may receive directly from the condemning authority the balance of the award, to be applied by the recipient as it deems appropriate.

13.4 Temporary Taking. If there is a Taking of all or a part of the Premises or the Improvements for temporary use, this Lease will continue without change, as between Lessor and Lessee, and Lessee will be entitled to the entire award made for that use. Lessee will also have the right to file and prosecute any claim against the condemnor for damages, and to recover the same, for any negligent use, waste, or injury to the Premises or the Improvements throughout the balance of the then-current Term. The amount of damages so recovered will belong to Lessee.

13.5 Dispute Resolution. In the event of any dispute between Lessee and Lessor regarding any issue of fact arising out of a Taking mentioned in this Article, the dispute shall be resolved by the same court in which the condemnation action is brought, in any proceedings that are appropriate for adjudicating the dispute.

Article 14

Assignment and Subletting

14.1 Limitations on Transfers. Except as permitted under section 14.2 and article 16 below, Lessee shall not, voluntarily or by operation of law, sell, assign, or transfer this Lease or any interest therein, sublet the Premises or any part thereof, or grant any right to use the Premises, the Improvements, or any respective part thereof (each a "Transfer") without the prior written consent of Lessor. Any attempted Transfer without such prior written consent will be void. Lessor's consent to a Transfer will in no event release Lessee, any assignee, or any guarantor from their respective liabilities or obligations under this Lease or any guaranty of this Lease, nor relieve Lessee from the requirement of obtaining Lessor's prior written consent to any further Transfer. Lessor's acceptance of Rent from any other person will not be deemed to be a waiver by Lessor of any provision of this Lease or consent to any Transfer.

14.2. Assignments Prohibited. An assignment prohibited within the meaning of this section 14.1 includes, without limitation, one or more sales or transfers, direct or indirect, by operation of law or otherwise.

Article 15

Lessor Mortgages

15.1 Lessor Mortgages. Lessor shall not, at any time, borrow against or encumber its interest in the Premises, or this Lease. Lessee may borrow against the Lessee owned Improvements so long as the term of such debt will end prior to the Term of this Lease, and further that if any

claim or security interest is asserted against the Lessee owned Improvements, that Lessee shall not suffer the same but pay fully such debt and remove any claim or security interest on the Lessee owned Improvements fully before the Term of the Lease expires. If Lessor exercises its right of early termination, then Lessee shall be obligated to remove the security interest or other encumbrance prior to the termination date of the Lease as so established.

Article 16

Default

16.1 Event of Default. The occurrence of any one or more of the following constitutes an event of default under this Lease:

- (a) Failure by Lessee to pay any amount required to be paid by Lessee to Lessor under this Lease within 10 days after written notice of such nonpayment is given to Lessee;
- (b) Failure by Lessee to obtain and maintain any insurance or provide evidence of insurance as required by the terms of this Lease and such failure continues and is not remedied within 10 days after written notice thereof is given to Lessee;
- (c) Failure by Lessee, whether by action or inaction, to comply with any term or condition or fulfill any obligation under this Lease (other than as set forth in subsections (a) and (b) above) and such failure continues and is not remedied within 30 days after written notice thereof is given to Lessee;
- (d) Lessee becomes insolvent; Lessee makes an assignment for the benefit of creditors; Lessee files a voluntary petition in bankruptcy; Lessee is adjudged bankrupt or a receiver is appointed for Lessee's properties; the filing of any involuntary petition of bankruptcy and Lessee's failure to secure a dismissal of the petition within 45 days after filing; or the attachment of or the levying of execution on the leasehold interest and Lessee's failure to secure discharge of the attachment or release of the levy of execution within 30 days; or
- (e) Lessee has a material breach as described in section 3.2, which shall be deemed as a breach without any cure period set forth in provision (c) of this article.

Article 17

Remedies

17.1 Remedies. Upon the occurrence of an event of default, Lessor may exercise any one or more of the remedies set forth in this section or any other remedy available under applicable law or contained in this Lease:

(a) Lessor may terminate this Lease by written notice to Lessee, which is effective immediately.

(b) Lessor or Lessor's agent or employee may immediately or at any time thereafter, without terminating the Lease, reenter the Premises and the Improvements (as provided in Section 19) either by summary eviction proceedings or by any suitable action or proceeding at law, or by force or otherwise, without being liable to indictment, prosecution, or damages, and may repossess the same, and may remove any person from the Premises and the Improvements, to the end that Lessor may have, hold, and enjoy the Premises and the Improvements. **RE-ENTRY OR TAKING POSSESSION OF THE PREMISES OR THE IMPROVEMENTS BY LESSOR WILL NOT BE CONSTRUED AS AN ELECTION ON ITS PART TO TERMINATE THIS LEASE UNLESS A WRITTEN NOTICE OF SUCH INTENTION IS GIVEN TO LESSEE.**

(c) Lessor may, without terminating the Lease, relet the whole or any part of the Premises and the Lessor owned Improvements from time to time, either in the name of Lessor or otherwise, to any persons, for any terms ending before, on, or after the expiration date of the Term, at any rentals and on any other conditions (including concessions and free rent) that Lessor determines to be appropriate. To the extent allowed under Oregon law, Lessor may not relet all or any part of the Premises or the Lessor owned Improvements and shall not be liable for refusing to relet the Premises or the Lessor owned Improvements, or, in the event of reletting, for refusing or failing to collect any rent due on such reletting; and any action of Lessor will not operate to relieve Lessee of any liability under this Lease or otherwise affect such liability. Lessor at its option may make any physical change to the Premises or the Lessor owned Improvements that Lessor, in its sole discretion, considers advisable and necessary in connection with any reletting or proposed reletting, without relieving Lessee of any liability under this Lease or otherwise affecting Lessee's liability.

(d) Whether or not Lessor retakes possession of or relets the Premises and the Lessor owned Improvements, Lessor may recover its damages, including without limitation, all lost rentals and all costs incurred by Lessor in restoring the Premises or otherwise preparing the Premises and for reletting, and all costs incurred by Lessor in reletting the Premises.

(e) To the extent permitted under Oregon law, Lessor may sue periodically for damages as they accrue without barring a later action for further damages. Lessor may in one action recover accrued damages plus damages attributable to the remaining Term equal to the difference between the Rent (including Taxes) reserved in this Lease for the balance of the Term after the time of award and the fair rental value of the Premises and the Lessor owned Improvements for the same period, discounted at the time of award at a reasonable rate not to exceed 10 percent per annum. If Lessor relets the Premises and the Lessor owned Improvements for the period that otherwise would have constituted all or part of the unexpired portion of the Term, the amount of rent reserved on the reletting will be deemed to be the fair and reasonable rental value for the part or the whole of the Premises and the Improvements so relet during the term of the reletting.

17.2 Lessor's Self-Help Right. If Lessee at any time (a) fails to pay any Tax in accordance with the provisions of this Lease, (b) fails to make any other payment required under this Lease, or (c) fails to perform any other obligation on its part to be made or performed under this Lease, then after 10 days' written notice to Lessee (or without notice in the event of an emergency) and without waiving or releasing Lessee from any obligation of Lessee contained in this Lease or from any default by Lessee and without waiving Lessor's right to take any action that is permissible under this Lease as a result of the default, Lessor may, (i) pay any Tax or make any other payment required of Lessee under this Lease, and (ii) perform any other act on Lessee's part to be made or performed as provided in this Lease, and may enter the Premises and the Improvements for any such purpose, and take any action that may be necessary. All payments so made by Lessor and all costs and expenses incurred by Lessor in connection with the performance of any such act will constitute additional costs payable by Lessee under this Lease and must be paid to Lessor on demand. In no instance shall Lessee be entitled to attorney's fees relating to any default, remedy or self-help, even if it is determined that Lessor did not act appropriately with respect to the same.

17.3 No Waiver. No failure by Lessor to insist on the strict performance of any agreement, term, covenant, or condition of this Lease or to exercise any right or remedy consequent upon a breach, and no acceptance of full or partial Rent during the continuance of any such breach, constitutes a waiver of any such breach or of such agreement, term, covenant, or condition. No agreement, term, covenant, or condition to be performed or complied with by Lessee, and no breach by Lessee, may be waived, altered, or modified except by a written instrument executed by Lessor. No waiver of any breach will affect or alter this Lease, but each and every agreement, term, covenant, and condition of this Lease will continue in full force and effect with respect to any other then-existing or subsequent breach.

17.4 Remedies Cumulative and Nonexclusive. Each right and remedy provided for in this Lease is cumulative and is in addition to every other right or remedy provided for now or hereafter existing at law or in equity or by statute or otherwise, and Lessor's or Lessee's exercise or beginning to exercise of any one or more of the rights or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise will not preclude the simultaneous or later exercise by the party in question of any or all other rights or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise.

Article 18

Sale By Lessor and Limitation of Lessor's Liability

18.1 Sale by Lessor. Upon sale of the Premises during the Term of this Lease or any extensions, this Lease shall be terminated. Lessor shall not agree to any sale terms that shorten the notice of termination period required to be given to Lessee in section 2.2.

18.2 Nonrecourse Obligation. Regarding any claim against Lessor, including any claim of default by Lessor under this Lease or in any claim or cause of action arising under this Lease or arising out of the Lessor-Lessee relationship created by this Lease, the sole and exclusive remedy

of Lessee shall be against the interests of Lessor in the Premises and its reversionary interest in the Lessor owned Improvements and Lessor will have no other liability hereunder. Lessee shall not enforce any judgment against Lessor except against the interest of Lessor in the Premises and its reversionary interest in the Lessor owned Improvements. In no event will any elected official, officer, employee, or agent of Lessor have any personal liability to Lessee. Lessee agrees that this provision will apply to any and all liabilities, claims, and causes of action whatsoever, including those based on any provision of this Lease, any implied covenant, or any statute or common-law principle. Notwithstanding any other provision of this Lease, in no event whatsoever may Lessor be responsible for any consequential or incidental damages or for any action that Lessor believes in good faith is necessary to comply with Legal Requirements with respect to the Premises or the Improvements.

Article 19

Surrender and Holdover

19.1 Condition of Premises and Improvements. Upon expiration of the Term or earlier termination of this Lease, Lessee shall deliver to Lessor the Premises in good condition, free and clear of all occupancies other than subleases to which Lessor has specifically consented and free and clear of all liens and encumbrances other than those, if any, existing on the date of this Lease or created or suffered by Lessor. Lessee shall surrender the Premises and the Lessor owned Improvements in good condition and repair (reasonable wear and tear excepted), free and clear of all occupancies other than subleases to which Lessor has specifically consented and free and clear of all liens and encumbrances other than those, if any, existing on the date of this Lease or created or suffered by Lessor.

19.2 Lessee's Property. Before the expiration or earlier termination of this Lease, Lessee shall remove all Lessee owned Improvements, furnishings, furniture, and trade fixtures that remain Lessee's property (the "Lessee's Property"). If Lessee fails to do so, at Lessor's option, (a) the failure to remove Lessee's Property will be deemed an abandonment of Lessee's Property, and Lessor may retain Lessee's Property and all rights of Lessee with respect to it will cease; or (b) by written notice given to Lessee, Lessor may elect to hold Lessee to Lessee's obligation of removal, in which case Lessor may effect the removal, transportation, and storage of Lessee's Property and Lessee shall reimburse Lessor for the costs incurred in connection therewith on demand.

Article 20

Condition of Premises

Lessee acknowledges that it has examined the physical condition of the Premises (including whether the Premises contains any Hazardous Substances or fails to comply with any Environmental Laws) and as a result agrees to accept the Premises in "as-is" condition, with all faults. Lessee further acknowledges that no representations or warranties regarding the condition of the Premises have been made by Lessor or any agent or person acting for Lessor.

Article 21

Quiet Enjoyment

On paying the Rent and adhering to all covenants, agreements, and conditions of this Lease, Lessee will have quiet enjoyment of the Premises during the Term without hindrance or disturbance by any person claiming by, through, or under Lessor, subject, however, to the Permitted Exceptions.

Article 22

Notices

22.1 Notice Parties and Means of Delivery. Any notice required or permitted by the terms of this Lease will be deemed given if delivered personally, sent by United States registered or certified mail, postage prepaid, return receipt requested, or sent by fax with electronic confirmation of fax receipt, and addressed as follows:

If to Lessor: Clackamas County Development Agency
150 Beaver Creek Rd., Oregon City, OR 97045
Attn: Dan Johnson

With a copy to: Clackamas County Counsel's Office
2051 Kaen Rd., Oregon City, OR 97045

If to Lessee: Clackamas County
Department of Health, Housing, and Human Services
2051 Kaen Rd., Oregon City, OR 97045
Attn.: Richard Swift

With a copy to: Clackamas County Counsel's Office
2051 Kaen Rd., Oregon City, OR 97045

22.2 Copies of Certain Notices to Lessee. Lessee shall immediately send to Lessor, in the manner prescribed in this Article, copies of all notices that Lessee gives to or receives with respect to the Premises or the Improvements from any entity that impacts the Premises, including but not limited to any government authority, fire regulatory agency, or similarly constituted body, and copies of its responses to those notices.

22.3 Failure to Notify of Change of Address or Refusal to Accept a Notice. Notwithstanding anything in this Article to the contrary, any notice mailed to the last-designated address of any person or party to which a notice may be or is required to be delivered pursuant to this Lease or this Article shall not be deemed ineffective if actual delivery cannot be made because of a change of address of the person or party to which the notice is directed or the failure or refusal of such a person or party to accept delivery of the notice.

Article 23

Miscellaneous

23.1 Survival. All agreements (including, but not limited to, indemnification agreements) set forth in this Lease, the full performance of which are not required before the expiration or earlier termination of this Lease, will survive the expiration or earlier termination of this Lease and be fully enforceable thereafter.

23.2 Invalidity. If any term or provision of this Lease or the application of the Lease to any person or circumstance is, to any extent, held to be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, will not be affected, and each term and provision of this Lease will be valid and be enforced to the fullest extent permitted by law.

23.3 Force Majeure. If either party's performance of an obligation under this Lease (excluding a monetary obligation) is delayed or prevented in whole or in part by (a) any Legal Requirement (and not attributable to an act or omission of the party); (b) any act of God, fire, or other casualty, flood, storm, explosion, accident, epidemic, war, terrorism, civil disorder, strike, or other labor difficulty; (c) shortage or failure of supply of materials, labor, fuel, power, equipment, supplies, or transportation; or (d) any other cause not reasonably within the party's control, whether or not the cause is specifically mentioned in this Lease, the party will be excused, discharged, and released of performance to the extent that such performance or obligation (excluding any monetary obligation) is so limited or prevented by the occurrence without liability of any kind.

23.4 Nonmerger. There may be no merger of this Lease, or of the leasehold estate created by this Lease, with the fee estate in the Premises by reason of the fact that this Lease, the leasehold estate created by this Lease, or any interest in this Lease, may be held, directly or indirectly, by or for the account of any person who owns the fee estate in the Premises or any interest in such fee estate. No merger will occur unless and until all persons having an interest in the fee estate in the Premises and all persons (including all Permitted Leasehold Mortgagees) having an interest in this Lease, or in the leasehold estate created by this Lease, join in a written instrument effecting the merger and duly record the same.

23.5 Lease Documents and Expenses. This Lease shall be prepared by Lessor. Lessor shall be responsible for its own costs of legal review and documentation, and Lessee shall be responsible for its own costs of legal review and documentation in the drafting and execution of this Lease.

23.6 Entire Agreement; Counterparts. This Lease contains the entire agreement between the parties and, except as otherwise provided, can be changed, modified, amended, or terminated only by an instrument in writing executed by the parties. Lessee and Lessor mutually acknowledge and agree that there are no verbal agreements or other representations, warranties, or understandings affecting this Lease. This Lease may be executed in any number of

counterparts, including by fax signatures, each of which will constitute an original, but all of which will constitute one Lease.

23.7 Applicable Law. This Lease will be governed by, and construed in accordance with, the laws of the State of Oregon, without giving effect to the conflict of law provisions thereof.

23.8 Brokerage. Lessor and Lessee represent to each other that they have not employed any brokers in negotiating and consummating the transaction set forth in this Lease, but have negotiated directly with each other.

23.9 Binding Effect. The covenants and agreements contained in this Lease are binding on and inure to the benefit of Lessor, Lessee, and their respective successors.

23.10 Recordation of Lease. Lessee may elect that a copy of this Lease or a memorandum of it, executed and acknowledged by both parties, be recorded in the public records of Clackamas County, Oregon. Lessee will pay the recording costs.

23.11 Time Is of the Essence. Time is of the essence as to the performance of all the covenants, conditions, and agreements of this Lease.

23.12 Interpretation. In interpreting this Lease in its entirety, the printed provisions of this Lease and any additions written or typed thereon shall be given equal weight, and there shall be no inference, by operation of law or otherwise, that any provision of this Lease may be construed against either party hereto. Lessor and Lessee acknowledge that they and their counsel have reviewed and revised this Lease and that any otherwise applicable rule of construction or any other presumption to the effect that any ambiguities are to be resolved against the drafting party will not be used in the interpretation of this Lease or any exhibit or amendment hereto.

23.13 Headings, Captions, and References. The headings and captions contained in this Lease are for convenience only and do not in any way define, describe, limit, or amplify the scope or intent of this lease or any term or provision in it. The use of the term "Herein" refers to this Lease as a whole, inclusive of the Exhibits, except when noted otherwise. The use of a masculine or neutral gender in this Lease includes the masculine, feminine, and neutral genders and the singular form includes the plural when the context so requires.

23.14 Relationship of Parties. Nothing contained in this Lease is to be deemed or construed, either by the parties to this Lease or by any third party, to create the relationship of principal and agent or to create any partnership, joint venture, or other association between Lessor and Lessee.

23.15 USA PATRIOT Act Compliance. Lessee represents to Lessor that Lessee is not (and is not engaged in this transaction on behalf of) a person or entity with which Lessor is prohibited from doing business pursuant to Antiterrorism Laws. "Antiterrorism Laws" means any law, regulation, or executive order pertaining to national security and specifically includes, but is not limited to, the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (the PATRIOT Act) (Pub L 107-56, 115 Stat 272); the Bank Secrecy Act (31 USC § 5311 *et seq.*); the Trading with the Enemy Act (50 USC App

§ 1 *et seq.*); the International Emergency Economic Powers Act (50 USC §§ 1701–1706); sanctions and regulations promulgated pursuant thereto by the Office of Foreign Assets Control, as well as laws related to the prevention and detection of money laundering in 18 USC sections 1956 to 1957. Lessee hereby agrees to indemnify, defend, and hold Lessor harmless from and against any and all claims, damages, losses, risks, liabilities, and expenses (including attorney fees and costs at trial and on appeal) arising from or related to any breach of the foregoing warranty, representation, and certification. Following a Transfer, Lessee will cause the transferee (including, but not limited to, an assignee, sublessee, and licensee), for the benefit of Lessor, to reaffirm, on behalf of such transferee, the representations of, and to otherwise comply with the obligations set forth in this section 29.15, and it is reasonable for Lessor to refuse to consent to a Transfer in the absence of such reaffirmation and compliance.

[Signature Page Follows]

IN WITNESS WHEREOF, Lessee and Lessor have caused this Lease to be executed by their duly authorized representatives as of the day and year first written above.

CLACKAMAS COUNTY
DEVELOPMENT AGENCY

/s/ 11-8-18 V.L.

By: 

Name: Jim Bernard

Title: Chair

CLACKAMAS COUNTY

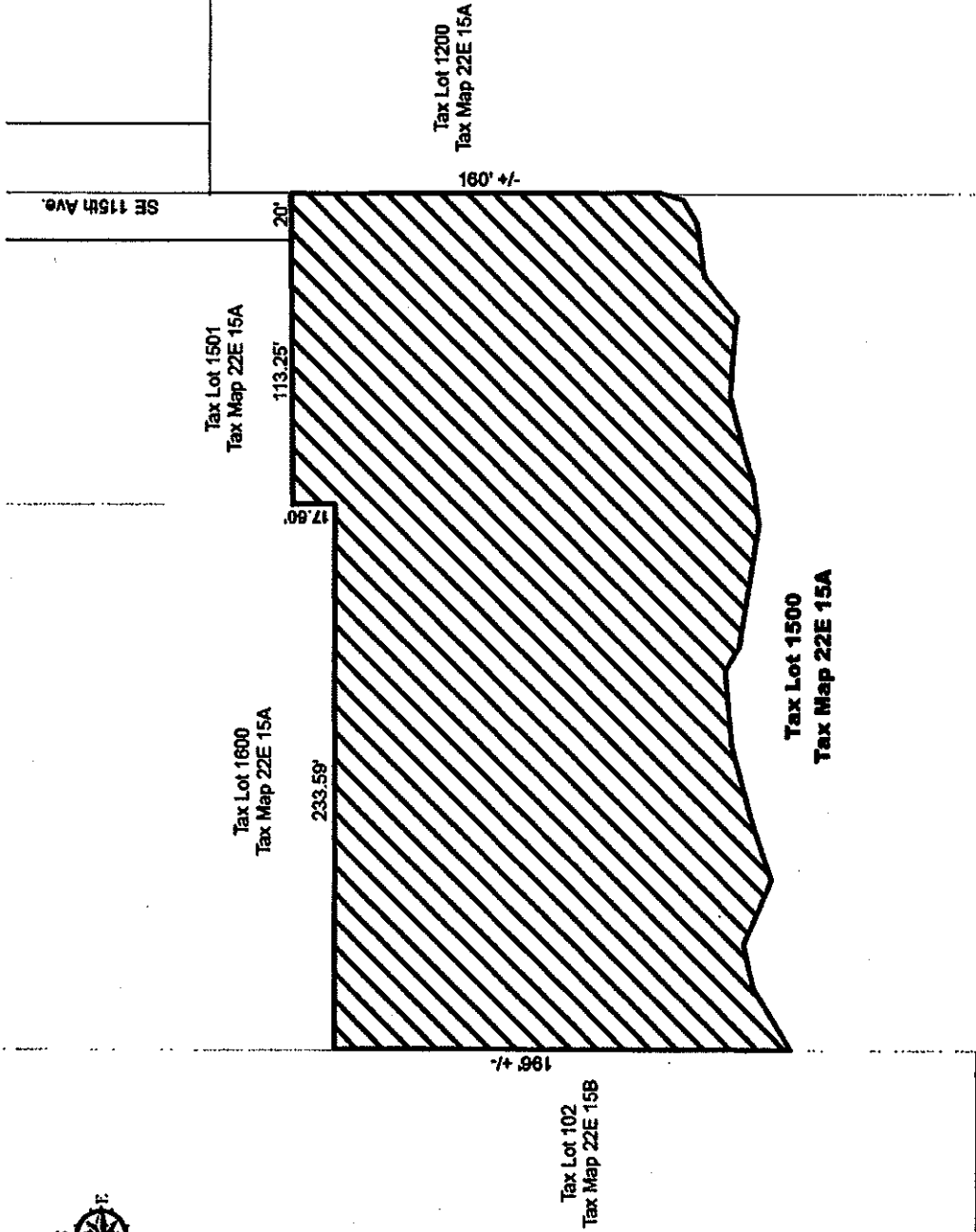
/s/ 11-8-18 A3.

By: 

Name: Jim Bernard

Title: Chair

EXHIBIT A




 Veteran's Village Boundary

EXHIBIT B

Lessee Owned Improvements

- Up to 30 sleeping pods
- Bathroom and kitchen facilities
- ADA accessibility improvements
- Power poles