

AGENDA

Thursday February 28, 2019 - 10:00 AM
BOARD OF COUNTY COMMISSIONERS

Beginning Board Order No. 2019-12

CALL TO ORDER

- Roll Call
- Pledge of Allegiance

I. PRESENTATION *(Following are items of interest to the citizens of the County)*

1. Recognition of Raeline *Kammeyer* Oregon Fair Association's 2018 Fair Board Member of the Year (Laura Zentner, Business & Community Services)

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

III. READING AND ADOPTION OF PREVIOUSLY APPROVED LAND USE ORDINANCE

(No public testimony on this item) - Previously approved at the 2-6-19 Land Use Hearing

1. Adoption of ZDO-271 a Previously Approved Zoning and Development Ordinance Amendments, - Marijuana Production License Limits (Nate Boderman, County Counsel)

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

1. Board Order No. _____ and Public Hearing for the Vacation of McNary Road (Nate Boderman, County Counsel)

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

A. Health, Housing & Human Services

1. Approval of a Subrecipient Agreement with Quest Center for Integrative Health for Wellness, Integrity, and Sustainable Health Program (W.I.S.H.) *Behavioral Health*
2. Approval of Amendment No. 1 to an Agency Service Agreement with Clackamas Women's Services for System Diversion, Homelessness Prevention and Rapid Re-Housing – *Social Services*
3. Approval of Amendment No. 1 to an Agency Service Agreement with Northwest Housing Alternatives, Inc. for Rapid Re-Housing Services – *Social Services*

B. Department of Transportation & Development

1. Approval of an Grant Agreement and Grant Award Acceptance for the Safe Routes to Schools Infrastructure Grant for crossing improvements at SE Fuller Rd and SE Causey Ave.
2. Approval of a Contract with David Evans and Associates for Trolley Trail Bridge: Gladstone to Oregon City Feasibility Study - *Procurement*
3. Approval of a Contract with Nutter Corporation for the Bridge Approach Repair: Clackamas River Bridge and Clear Creek Bridge - *Procurement*

C. Disaster Management

1. Approval of a Sub-Recipient Grant Agreement for Local Emergency Planning Committee (LEPC) Planning and Exercise

D. Human Resources

1. Approval of Contract between Clackamas County, Department of Human Resources and Mercer Health & Benefits LLC to Provide Benefits Consulting Services - *Procurement*

E. Business & Community Services

1. Board Order No. _____ Approving a Tax Foreclosed Property for Declaration as Surplus

F. Technology Services

1. Approval for a Service Level Agreement with the Molalla River School District for the Leas of Dark Fiber

VI. DEVELOPMENT AGENCY

1. Approval of a Commercial Lease with Miles Fiberglass and Composites, Inc.
2. Granting of a Permanent Right-of-Way Easement for Road Purposes

VII. WATER ENVIRONMENT SERVICES

1. Approval of an Intergovernmental Agreement between Water Environment Services and the Oregon Department of Transportation for the Hwy. 99 E Paving Project Performance Bond Funding
2. Approval of a Goods and Services Contract between Water Environment Services and Newco, Inc. a Corporation of Washington dba Cascade Columbia Distribution Company for the Chemical Supply for Water Environment Services - *Procurement*
3. Approval of a Public Improvement Contract between Water Environment Services and Univar USA, Inc. for the Chemical Supply for Water Environment Services - *Procurement*

VIII. COUNTY ADMINISTRATOR UPDATE

IX. COMMISSIONERS COMMUNICATION



February 28, 2019

Board of County Commissioners
Clackamas County

Members of the Board:

Recognition of Raeline Kammeyer, Oregon Fairs Association's
2018 Fair Board Member of the Year

Purpose/Outcomes	To recognize Clackamas County Fair Board member Raeline Kammeyer for receiving the Oregon Fairs Association's 2018 Fair Board Member of the Year award.
Dollar Amount and Fiscal Impact	N/A
Funding Source	N/A
Duration	N/A
Strategic Plan Alignment	<ul style="list-style-type: none">• Build public trust through good government
Previous Board Action	N/A
Contact Person	Laura Zentner, CPA Director, Business and Community Services, 503-742-4351 Laurie Bothwell Executive Director, Clackamas County Fairgrounds and Event Center, 503-266-1136

BACKGROUND:

The Oregon Fairs Association (OFA) was formed in 1928 to provide inspiring leadership, create agriculture and education opportunities, and develop strategies and techniques that enhance and advance the state's 36 county fairs. Every year, the OFA presents the Fair Board Member of the Year award to honor a member of an Oregon fair board who has gone above and beyond his or her expected responsibilities and has made significant contributions to improve the fair he or she represents. The OFA recently presented the 2018 Fair Board Member of the Year award to Clackamas County Fair Board member Raeline Kammeyer.

Raeline graduated from Oregon State University, taught agriculture in the Estacada School District for 22 years, and served as an FFA advisor. Raeline joined the Clackamas County Fair Board in 2008, and also serves on the Clackamas County Fair Improvement Foundation.

In nominating Raeline for the Fair Board Member of the Year award, her fellow Fair Board members recognized her dedication and contributions, writing:

This humble and hardworking volunteer has tirelessly devoted her time and resources to the Clackamas County Fairgrounds and Event Center.

This dedicated individual has a background in livestock and agriculture. In fact, she was an FFA Advisor for many years and even showed sheep at the Clackamas County Fair when she was an FFA student.

Raeline is not afraid to get her hands dirty. She attends the Fair every day with an upbeat and cheerful attitude asking what she can do to help; no job is too menial for her to tackle.

As a member of the Fair Board she actively seeks out and is awarded grants for financial assistance for the improvement to the Fair facility.

Raeline is very well-liked by everyone and is appreciated by our other Fair Board members and staff for her tireless dedication.

RECOMMENDATION:

Staff respectfully recommends the Board recognize Clackamas County Fair Board member Raeline Kammeyer for receiving the Oregon Fairs Association's 2018 Fair Board Member of the Year award, her contributions to the Clackamas County Fair, and her service to the community.

Respectfully submitted,

Laura Zentner, CPA
Director, Business and Community Services



OFFICE OF COUNTY COUNSEL

PUBLIC SERVICES BUILDING
2051 KAEN ROAD OREGON CITY, OR 97045

February 28, 2019

Board of County Commissioners
Clackamas County

Members of the Board:

Adoption of Previously Approved Zoning and Development Ordinance
Amendments – ZDO-271 – Marijuana Production License Limits

Stephen L. Madkour
County Counsel

Kathleen Rastetter
Scott C. Ciecko
Amanda Keller
Nathan K. Boderman
Shawn Lillegren
Jeffrey D. Munns
Andrew R. Naylor
Andrew Narus
Sarah Foreman
Assistants

Purpose/Outcomes	Amend the Clackamas County Zoning and Development Ordinance
Dollar Amount and Fiscal Impact	N/A
Funding Source	N/A
Duration	Indefinitely
Previous Board Action	Board of County Commissioners held a public hearing on January 16, 2019, continued to February 6, 2019
Strategic Plan Alignment	1. Ensure Safe, Healthy and Secure Communities 2. Honor, Utilize, Promote and Invest in our Natural Resources 3. Build Public Trust Through Good Government
Contact Person	Nate Boderman, Assistant County Counsel; 503-655-8364
Contract No.	N/A

BACKGROUND:

ZDO-271 proposes legislative amendments to the Clackamas County Zoning and Development Ordinance, which would limit the number of State-approved marijuana producers that may operate from a tract of land in the County's natural resource zoning districts and would make other non-substantive clarifying amendments to the County's existing marijuana-related land use regulations. Specifically, the amendments would:

- In the Ag/Forest (AG/F), Exclusive Farm Use (EFU), and Timber (TBR) Districts, limit a tract to only one medical marijuana grow site registered with the Oregon Health Authority (OHA) or one recreational marijuana production premises licensed by the Oregon Liquor Control Commission (OLCC); and
- Adopt non-substantive amendments to Section 841 of the Zoning and Development Ordinance that do no change existing policies but:
 - Further standardize provisions related to property access throughout the Zoning and Development Ordinance;
 - Correct references to licensed engineers completing odor and noise studies for marijuana-related land uses, consistent with relevant State terminology;

- Change references to “yard depth” to “setback,” consistent with other Zoning and Development Ordinance sections;
- Clarify the applicability of existing noise standards; and
- Provide consistency with other 800-series Zoning and Development Ordinance sections’ formatting and content.

To achieve this, ZDO-271 includes amendments to Zoning and Development Ordinance Section 841.

A public hearing was held on November 26, 2018, for Planning Commission consideration of the amendments proposed by staff. The Planning Commission voted 7-0 to recommend to the BCC that the non-substantive amendments in ZDO-271 be approved as recommended by staff, and voted 5-2 to recommend that limitations on the number of registered grow sites and licensed premises be limited in the natural resource zoning districts based in part on a tract’s area. A public hearing was held on January 16, 2019, for the Board of County Commissioners’ consideration of the recommended amendments. The Board continued the public hearing to February 6, 2019, at which time the BCC voted 5-0 to approve the non-substantive amendments in ZDO-271 as recommended by staff and the Planning Commission, but to limit a tract in the natural resource zoning districts to only one registered grow site or licensed premises per tract, regardless of the tract’s size (assuming the existing minimum tract size standard is met).

The attached exhibit reflects the amendments, as approved by the BCC.

RECOMMENDATION:

Staff respectfully requests that the Board adopt the proposed ordinance.

Respectfully submitted,



Nate Boderman
Assistant County Counsel

ORDINANCE NO. ZDO-271

**An Ordinance Amending Section 841 of the
Clackamas County Zoning and Development Ordinance**

WHEREAS, Oregon voters voted in November 1998 to permit the production of medical marijuana and in November 2014 to permit the production of recreational marijuana; and

WHEREAS, in order to comply with the State law mandate, the County adopted regulations for marijuana-related land uses and placed certain restrictions on development and activities that would have otherwise been permitted under state law; and

WHEREAS, the County's first land use regulations of medical and recreational marijuana production were in effect by March 1, 2016, and have been amended with two ordinances since then to clarify terms, further define areas permitted for production and production conditions, adopt fencing standards, and provide consistency with other provisions of the Zoning and Development Ordinance (ZDO); and

WHEREAS, recognizing that further amendments to these local regulations to address the land use impacts of marijuana production in rural areas might be warranted, the Board of County Commissioners included an update project in the Planning and Zoning Division's 2019-2020 work program to propose restrictions on the number of State-approved marijuana producers that may operate on a property; and

WHEREAS, after a duly-noticed public hearing on November 26, 2018, the Clackamas County Planning Commission recommended approval of non-substantive legislative text amendments to ZDO Section 841 that would further standardize provisions related to property access, correct references to licensed engineers completing odor and noise studies, provide consistency in terminology and formatting, and clarify the applicability of existing noise standards; and

WHEREAS, the Planning Commission also recommended substantive amendments to ZDO Section 841 that would restrict a tract in the Ag/Forest (AG/F), Exclusive Farm Use (EFU), and Timber (TBR) Districts to only one medical marijuana grow site registered with the Oregon Health Authority (OHA), or one recreational marijuana production premises licensed by the Oregon Liquor Control Commission (OLCC), if the tract is less than 20 acres, with one additional registered grow site or licensed premises allowed per additional 10 acres of tract area, up to a combined maximum of five registered grow sites and/or licensed premises per tract; and

WHEREAS, the Board of County Commissioners took public testimony on the recommendations at a duly-noticed public hearing on January 16, 2019, and continued the public hearing to February 6, 2019, for deliberation and decision; and

WHEREAS, at the continued public hearing on February 6, 2019, the Board of County Commissioners took up deliberation on the recommendations before orally approving the non-substantive amendments to ZDO Section 841 as recommend by the Planning Commission and approving substantive amendments to ZDO Section 841 that would, in the AG/F, EFU, and TBR Districts, limit a tract to only one medical marijuana grow site

registered with the OHA or one recreational marijuana production premises licensed by the OLCC; now therefore

The Board of Commissioners of Clackamas County ordains as follows:

Section 1: Section 841 of the Clackamas County Zoning and Development Ordinance is hereby amended as shown in Exhibit A, hereto attached.

Section 2: Emergency. The Board of Commissioners hereby finds and declares that an emergency exists inasmuch as the immediate effect of this Ordinance is necessary for the peace, health and welfare of the residents of the County. Accordingly, this Ordinance shall be effective after February 28, 2019.

ADOPTED this 28th day of February, 2019

BOARD OF COUNTY COMMISSIONERS

Chair

Recording Secretary

Exhibit A
Ordinance ZDO-271
Zoning and Development Ordinance Amendments

Text to be added is underlined. Text to be deleted is ~~strikethrough~~.

841 MARIJUANA PRODUCTION, PROCESSING, AND RETAILING

~~841.01~~ ~~APPLICABILITY~~

~~Section 841 applies to:~~

~~A. Marijuana production in the AG/F, EFU, FF-10, RRFF-5, and TBR Districts;~~

~~B. Marijuana processing in the AG/F and EFU Districts; and~~

~~C. Marijuana retailing in the C-2, C-3, CC, NC, OC, PMU, RC, RCC, RCO, RTC, RTL, and SCMU Districts.~~

841.01~~2~~ PROCEDURE

Marijuana production and marijuana retailing require review as Type I applications pursuant to Section 1307, *Procedures*. Marijuana processing requires review as a Type II application pursuant to Section 1307.

841.02~~3~~ MARIJUANA PRODUCTION

Marijuana production shall be subject to the following standards and criteria:

A. Maximum Number of Licensed Premises/Registered Sites: In the AG/F, EFU, and TBR Districts, only one premises licensed for marijuana production by the Oregon Liquor Control Commission¹ or one medical marijuana grow site registered by the Oregon Health Authority² may be located on a tract.

1 The Oregon Liquor Control Commission is referred to herein as "OLCC." References to OLCC shall include any successor entity that may be created by the State of Oregon to assume the responsibility of administering the state's recreational marijuana program.

2 The Oregon Health Authority is referred to herein as "OHA." References to OHA shall include any successor entity that may be created by the State of Oregon to assume the responsibility of administering the state's medical marijuana program.

AB. Outdoor Production:

1. Outdoor production means producing marijuana:
 - a. In an expanse of open or cleared ground; or
 - b. In a greenhouse, hoop house, or similar non-rigid structure that does not utilize any artificial lighting on mature marijuana plants, including but not limited to electrical lighting sources. A mature marijuana plant is a marijuana plant that is flowering.
2. Outdoor production is prohibited in the FF-10 and RRFF-5 Districts but is permitted in the AG/F, EFU, and TBR Districts. Where permitted, outdoor production is subject to the same standards and criteria as indoor production, except where specifically noted.

BC. Minimum Tract Size: A minimum tract size standard shall apply as follows:

1. In the FF-10 and RRFF-5 Districts, the subject tract shall be a minimum of five acres, except that if the majority of abutting lots of record are equal to or greater than two acres, the subject tract shall be a minimum of two acres. Abutting lots of record include lots of record that are contiguous to the subject tract, as well as lots of record directly across any access drive, or private, public, or county road, provided the functional classification of the road is below that of a collector.
2. In the AG/F, EFU, and TBR Districts, the subject tract shall be a minimum of two acres, except that if outdoor production is proposed, the subject tract shall be a minimum of five acres.

CD. Minimum ~~Yard Depth~~Setback/Distance from Lot Lines: The following standards shall apply:

1. In the FF-10 and RRFF-5 Districts, the minimum front, rear, and side ~~yard depths~~setbacks for any structure used for marijuana production shall be 50 feet.
 - a. Pursuant to Oregon Revised Statutes (ORS) 475B.340(2)(b), these ~~yard depth~~setback standards do not apply to an agricultural building used to produce marijuana located on a premises for which a license has been issued under ORS 475B.070 if the agricultural building:
 - i. Was constructed on or before July 1, 2015, in compliance with all applicable land use and building code requirements at the time of construction;

- ii. Is located at an address where a marijuana grow site first registered with the ~~Oregon Health Authority~~¹OHA under ORS 475B.420 on or before January 1, 2015;
 - iii. Was used to produce marijuana pursuant to the provisions of ORS 475B.400 to 475B.525 on or before January 1, 2015; and
 - iv. Has four opaque walls and a roof.
2. In the AG/F, EFU, and TBR Districts:
- a. Outdoor production shall be a minimum of 100 feet from all lot lines.
 - b. Structures used for indoor production shall comply with the ~~yard~~ depthsetback standards of the subject zoning district.
3. If the subject property is a tract that includes more than one lot of record, Subsections 841.023~~(CD)~~(1) and (2)(a) do not apply to the lot line(s) that only separate these lots of record from one another. However, the ~~yard~~ depthsetback standards of the subject zoning district still apply.

~~DE~~. Enclosed Buildings:- In the FF-10 and RRF-5 Districts, marijuana production shall be located entirely within one or more completely enclosed buildings.

~~EF~~. Maximum Building Floor Space:- The following standards apply in the FF-10 and RRF-5 Districts:

1. A maximum of 5,000 square feet of building floor space may be used for marijuana production and all activities associated with marijuana production (hereinafter referred to as marijuana production space) on the subject tract.
2. If only a portion of a building is authorized as marijuana production space, a partition wall at least seven feet in height, or a height as required by the County Building Codes Division, whichever is greater, shall separate the marijuana production space from the remainder of the building. A partition wall may include a door, capable of being closed, for ingress and egress between the marijuana production space and the remainder of the building.

~~1—The Oregon Health Authority is referred to herein as “OHA.” References to OHA shall include any successor entity that may be created by the State of Oregon to assume the responsibility of administering the state’s medical marijuana program.~~

~~FG. Access:~~ ~~If (The subject tract shall have frontage on, and direct access from, a constructed public, county, or state road, or take access on an exclusive road or easement serving only the subject tract. However, this standard will be waived if the subject tract takes access via a private road or access drive thateasement which also serves other properties, and evidence shall beis provided by the applicant, in the form of a petition, that all other property owners who have access rights to the private road or access driveeasement agree to allow the specific marijuana production described in the application. Such evidence shall include any conditions stipulated in the agreement.~~

~~GH. Lighting:~~ Lighting shall be regulated as follows:

1. Light cast by light fixtures inside any building used for marijuana production shall not be visible outside the building from 7:00 p.m. to 7:00 a.m. the following day.
2. Marijuana grow lights located outside a building shall not be illuminated from 7:00 p.m. to 7:00 a.m. the following day.
3. Light cast by exterior light fixtures other than marijuana grow lights (e.g., security lights, driveway lights) shall not be directed skyward and shall be directed within the boundaries of the subject tract.

~~HI. Odor:~~ As used in Subsection 841.023(HI), building means the building, or portion thereof, used for marijuana production. However, Subsection 841.023(HI) does not apply to a building approved as part of outdoor production pursuant to Subsection 841.023(AB)(1)(b).

1. The building shall be equipped with an activated carbon filtration system for odor control to ensure that air leaving the building through an exhaust vent first passes through an activated carbon filter.
2. The filtration system shall consist of one or more fans and activated carbon filters. At a minimum, the fan(s) shall be sized for cubic feet per minute (CFM) equivalent to the volume of the building (length multiplied by width multiplied by height) divided by three. The filter(s) shall be rated for the applicable CFM.
3. The filtration system shall be maintained in working order and shall be in use. The filters shall be changed a minimum of once every 365 days.
4. Negative air pressure shall be maintained inside the building.
5. Doors and windows shall remain closed, except for the minimum length of time needed to allow people to ingress or egress the building.

6. The filtration system shall be designed by ~~an mechanical~~ engineer licensed in the State of Oregon. The engineer shall stamp the design and certify that it complies with Subsection 841.023(HI).
7. An alternative odor control system is permitted if the applicant submits a report by ~~an mechanical~~ engineer licensed in the State of Oregon demonstrating that the alternative system will control odor as well or better than the activated carbon filtration system otherwise required.

~~IJ. Noise-:~~ The applicant shall submit a noise study by an ~~aeoustic~~ engineer licensed in the State of Oregon. The study shall demonstrate that generators used in association with marijuana production, as well as mechanical equipment used for heating, ventilating, air conditioning, or odor control in association with marijuana production, will not cumulatively produce sound that, when measured at any lot line of the subject tract, exceeds 50 dB(A). Only generators used in association with marijuana production and mechanical equipment used in association with marijuana production are subject to this standard.

~~JK. Security Cameras-:~~ If used, security cameras shall be directed to record only the subject tract and may be directed to public rights-of-way as applicable, except as required to comply with licensing requirements of the ~~Oregon Liquor Control Commission~~²OLCC or registration requirements of the OHA.

~~KL. Water-:~~ The applicant shall submit proof of a legal source of water as evidenced by:

1. A copy of a water right permit, certificate, or other water use authorization from the Oregon Water Resources Department (OWRD);
2. A statement from a public or private water provider that water is supplied by that water provider. The statement shall include the name and contact information of the water provider; or
3. Proof from the OWRD that the water to be used for marijuana production is from a source that does not require a water right.

~~LM. Waste Management-:~~ Marijuana waste shall be stored in a secured waste receptacle in the possession of and under the control of the OLCC licensee or OHA registrant.

~~²—The Oregon Liquor Control Commission is referred to herein as “OLCC.” References to OLCC shall include any successor entity that may be created by the State of Oregon to assume the responsibility of administering the state’s recreational marijuana program.~~

MN.Residency:- In the FF-10 and RRF-5 Districts, a minimum of one of the following shall reside in a dwelling unit on the subject tract:

1. An owner of the subject tract;
2. A holder of an OLCC license for marijuana production, provided that the license applies to the subject tract; or
3. A person registered with the OHA as a person designated to produce marijuana by a registry identification cardholder, provided that the registration applies to the subject tract.

NO.Fencing:- The maximum height of any fencing on the subject tract shall be 10 feet. Fences, walls, or other barriers shall not be electrified, or use barbed wire, razor wire, concertina coils, anti-climb spikes or any other similar security feature designed to discourage ingress through the potential of causing bodily harm.

OP.Exceptions:- Marijuana production, provided such production is done pursuant to registration with the OHA, is not required to comply with Subsections 841.023(GH)(3) and (HI) through (NO), provided that the minimum front, rear, and side ~~yard depths~~setbacks for any structure used for marijuana production shall be 100 feet.

841.034 MARIJUANA PROCESSING

Marijuana processing shall be subject to the following standards and criteria:

- A. Maximum Number of ~~Processing Licenses~~Licensed Premises/Registered Sites:- Only one ~~premisesmarijuana processor~~ licensed for marijuana processing by the OLCC or one medical marijuana processing site registered by the OHA may be located on the subject lot of record.
- B. Minimum Lot of Record Size:- The subject lot of record shall be a minimum of 10 acres.
- C. Minimum ~~Yard Depth~~Setbacks:- The minimum front, rear, and side ~~yard~~depthssetbacks for any structure used for marijuana processing shall be 100 feet.
- D. Enclosed Buildings:- Marijuana processing shall be located entirely within one or more completely enclosed buildings.
- E. Access:- ~~If (The subject lot of record shall have frontage on, and direct access from, a constructed public, county, or state road, or take access on an exclusive road or easement serving only the subject lot of record. However, this standard will be waived if the subject lot of record takes access via a private road or~~ access drive ~~thateasement which~~ also serves other properties, ~~and evidence shall be~~ provided ~~by the applicant,~~ in the form of a petition, that all other property owners who have access rights to the private road or access drive~~easement~~ agree to allow

the specific marijuana processing described in the application. Such evidence shall include any conditions stipulated in the agreement.

- F. Lighting: Lighting shall be regulated as follows:
1. Light cast by light fixtures inside any building used for marijuana processing shall not be visible outside the building from 7:00 p.m. to 7:00 a.m. the following day.
 2. Light cast by exterior light fixtures (e.g., security lights, driveway lights) shall not be directed skyward and shall be directed within the boundaries of the subject lot of record.
- G. Odor: As used in Subsection 841.034(G), building means the building, or portion thereof, used for marijuana processing.
1. The building shall be equipped with an activated carbon filtration system for odor control to ensure that air leaving the building through an exhaust vent first passes through an activated carbon filter.
 2. The filtration system shall consist of one or more fans and activated carbon filters. At a minimum, the fan(s) shall be sized for cubic feet per minute (CFM) equivalent to the volume of the building (length multiplied by width multiplied by height) divided by three. The filter(s) shall be rated for the applicable CFM.
 3. The filtration system shall be maintained in working order and shall be in use. The filters shall be changed a minimum of once every 365 days.
 4. Negative air pressure shall be maintained inside the building.
 5. Doors and windows shall remain closed, except for the minimum length of time needed to allow people to ingress or egress the building.
 6. The filtration system shall be designed by ~~an mechanical~~ engineer licensed in the State of Oregon. The engineer shall stamp the design and certify that it complies with Subsection 841.034(G).
 7. An alternative odor control system is permitted if the applicant submits a report by ~~an mechanical~~ engineer licensed in the State of Oregon demonstrating that the alternative system will control odor as well or better than the activated carbon filtration system otherwise required.
- H. Noise: The applicant shall submit a noise study by an ~~aeoustic~~ engineer licensed in the State of Oregon. The study shall demonstrate that generators used in association with marijuana production or processing, as well as mechanical equipment used for heating, ventilating, air conditioning, or odor control in association with marijuana production or processing, will not cumulatively

produce sound that, when measured at any lot line of the subject lot of record, exceeds 50 dB(A). Only generators used in association with marijuana production or processing and mechanical equipment used in association with marijuana production or processing are subject to this standard.

- I. Security Cameras: If used, security cameras shall be directed to record only the subject lot of record and may be directed to public rights-of-way as applicable, except as required to comply with licensing requirements of the OLCC or registration requirements of the OHA.
- J. Water: The applicant shall submit proof of a legal source of water as evidenced by:
 - 1. A copy of a water right permit, certificate, or other water use authorization from the Oregon Water Resources Department (OWRD);
 - 2. A statement from a public or private water provider that water is supplied by that water provider. The statement shall include the name and contact information of the water provider; or
 - 3. Proof from the OWRD that the water to be used for marijuana processing is from a source that does not require a water right.
- K. Waste Management: Marijuana waste shall be stored in a secured waste receptacle in the possession of and under the control of the OLCC licensee or OHA registrant.
- L. Fencing: The maximum height of any fencing on the subject lot of record shall be 10 feet. Fences, walls, or other barriers shall not be electrified, or use barbed wire, razor wire, concertina coils, anti-climb spikes or any other similar security feature designed to discourage ingress through the potential of causing bodily harm.
- N. Exceptions: Marijuana processing, provided such processing is done pursuant to registration with the OHA, is not required to comply with Subsections 841.034(F)(2) and (G) through (L).

841.045 MARIJUANA RETAILING

Marijuana retailing shall be subject to the following standards and criteria:

- A. Hours: A marijuana retailer may only sell to consumers between the hours of 10:00 a.m. and 9 p.m. and may only permit consumers to be present in the building space occupied by the marijuana retailer between the hours of 10:00 a.m. and 9 p.m.
- B. Odor: As used in Subsection 841.045(B), building means the building, or portion thereof, used for marijuana retailing.

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1. The building shall be equipped with an activated carbon filtration system for odor control to ensure that air leaving the building through an exhaust vent first passes through an activated carbon filter.
 2. The filtration system shall consist of one or more fans and activated carbon filters. At a minimum, the fan(s) shall be sized for cubic feet per minute (CFM) equivalent to the volume of the building (length multiplied by width multiplied by height) divided by three. The filter(s) shall be rated for the applicable CFM.
 3. The filtration system shall be maintained in working order and shall be in use. The filters shall be changed a minimum of once every 365 days.
 4. Negative air pressure shall be maintained inside the building.
 5. Doors and windows shall remain closed, except for the minimum length of time needed to allow people to ingress or egress the building.
 6. The filtration system shall be designed by ~~an mechanical~~ engineer licensed in the State of Oregon. The engineer shall stamp the design and certify that it complies with Subsection 841.045(B).
 7. An alternative odor control system is permitted if the applicant submits a report by ~~an mechanical~~ engineer licensed in the State of Oregon demonstrating that the alternative system will control odor as well or better than the activated carbon filtration system otherwise required.
- C. Window Service: The use shall not have a walk-up window or drive-thru window service.
- D. Waste Management: Marijuana waste shall be stored in a secured waste receptacle in the possession of and under the control of the OLCC licensee or OHA registrant.
- E. Minors: No one under the age of 21 shall be permitted to be present in the building space occupied by the marijuana retailer, except as allowed by state law.
- F. Co-Location of Related Activities and Uses: Marijuana and tobacco products shall not be smoked, ingested, or otherwise consumed in the building space occupied by the marijuana retailer. In addition, marijuana retailing shall not be co-located on the same lot of record or within the same building with any marijuana social club or marijuana smoking club.
- G. Minimum Separation Distances: Minimum separation distances shall apply as follows:
1. The use shall be located a minimum of:

CLACKAMAS COUNTY ZONING AND DEVELOPMENT ORDINANCE

- a. 2000 feet from a public elementary or secondary school for which attendance is compulsory under Oregon Revised Statutes (ORS) 339.020, including any parking lot appurtenant thereto and any property used by the school; or a private or parochial elementary or secondary school, teaching children as described in ORS 339.030(1)(a), including any parking lot appurtenant thereto and any property used by the school;
 - b. 1500 feet from a public park, public playground, government-owned recreational use, public library, substance use disorder service provider licensed by the OHA under Oregon Administrative Rules Chapter 415, Division 12, light rail transit station, or a multifamily dwelling owned by a public housing authority.
 - c. 500 feet from a licensed daycare facility or licensed preschool, including any parking lot appurtenant thereto and any property used by the daycare facility or preschool;
 - d. 100 feet from a zoning district listed in Section 300, *Urban and Rural Residential Districts*; however, this provision shall not apply if the subject property has street frontage on a principal interstate, principal expressway, principal arterial, or major arterial, as identified on Comprehensive Plan Map 5-4a, *Road Functional Classification Urban*, or 5-4b, *Road Functional Classification Rural*.
2. If the use is licensed by the OLCC pursuant to ORS 475B.110, it shall be located a minimum of 1,000 feet from any other marijuana retailer so licensed by the OLCC.
 3. If the use is registered with the OHA pursuant to ORS 475B.450, it shall be located a minimum of 1,000 feet from any other marijuana retailer so registered with the OHA.
 4. For purposes of Subsection 841.045(G)(1), distance shall be measured from the lot line of the affected property (e.g., a school) to the closest point of the building space occupied by the marijuana retailer. For purposes of Subsections 841.045(G)(2) and (3), distance shall be measured from the closest point of the building space occupied by one marijuana retailer to the closest point of the building space occupied by the other marijuana retailer.
 5. A change in use (including a zone change) to another property to a use identified in Subsection 841.045(G) after a complete Type I application for marijuana retailing has been filed shall not result in the marijuana retailer being in violation of Subsection 841.045(G).
 6. Subsection 841.045(G) does not apply to any marijuana retailer that obtained full, unconditional approval of a registration from the OHA on or before March 31, 2015, that is operating in a building space where marijuana retailing activities approved by the OHA have been continuously occurring in

that building space since May 31, 2014, except during the effective dates of the Medical Marijuana Facility Moratorium adopted pursuant to Clackamas County Ordinance 01-2014.

7. In case of a conflict under Subsection 841.045(G)(2) or (3), any person who has received approval of a Type I land use permit for marijuana retailing, shall be deemed to have established marijuana retailing at the approved location, so long as the marijuana retailer begins operation within one year of the date of the County's final decision on the Type I land use permit application. If more than one Type I application is in process with the County at one time, the County shall issue decisions in the order in which complete applications were filed.

841.056 APPROVAL PERIOD

- A. Approval of a permit under Subsection 841.023 or 841.034 is valid for four years from the date of the final decision. If the County's final decision is appealed, the approval period shall commence on the date of the final appellate decision. During this four-year period, the approval shall be implemented, or the approval will become void.
 1. Implemented means all major development permits shall be obtained and maintained for the approved marijuana production or marijuana processing, or if no major development permits are required to complete the development contemplated by the approved marijuana production or marijuana processing, implemented means all other necessary County development permits (e.g., grading permit, building permit for an accessory structure) shall be obtained and maintained. A major development permit is:
 - a. A building permit for a new primary structure that was part of the approved development; or
 - b. A permit issued by the County for parking lot or road improvements required by the approved development.
- B. Approval of a permit under Subsection 841.045 is valid for one year from the date of the County's final decision. During this one-year period, the approval shall be implemented, or the approval will become void. Implemented means that the marijuana retailer has begun operation. Notwithstanding this one-year implementation period, a complete application for a marijuana retailing license shall be filed with the OLCC, or a complete application for a medical marijuana dispensary registration shall be filed with the OHA, within three months of the date of the County's final decision, or the approval will become void.



DAN JOHNSON
DIRECTOR

DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT
DEVELOPMENT SERVICES BUILDING
150 BEAVERCREEK ROAD OREGON CITY, OR 97045

February 28, 2019

Board of Commissioners
Clackamas County

Members of the Board:

A Public Hearing Related to the Vacation of McNary Road

Purpose/Outcomes	To hold a public hearing, pursuant to ORS 368.346 and Clackamas County Code Section 7.03.095, to receive testimony pertaining to the Vacation of a portion of McNary Road, County Road No.2132.
Dollar Amount and Fiscal Impact	Application and processing fee received.
Funding Source	N/A
Duration	N/A
Previous Board Contact	October 16, 2018 Policy Session;
Strategic Plan Alignment	Build public trust through good government.
Contact Person	Doug Cutshall, Engineering Technician, 503-742-4669

BACKGROUND

McNary Road, (Tourtellotte Road) County Road No. 2132, is situated in the SW1/4 of Section 8, T.2 S., R.2 E., W.M. The petitioner wishes to vacate an unimproved and unused portion of McNary Road that lies northeasterly of its intersection with Norma Road and adjoining the petitioner's northwest property line.

The petitioner has not acquired 100% of the adjoining property owner's signatures required to allow the Board to vacate the right of way without a hearing. In this case, ORS 368.346 requires the Board to hold a hearing to determine if the road vacation is in the public interest. As required by statute, attached to these materials is a map of the proposed vacated area and a report from the County Road Official describing the ownership, uses of the property to be vacated, and an assessment as to whether the vacation is in the public interest.

Clackamas County Code Section 7.03.095(4) provides that the Board shall consider the following criteria when determining whether a vacation is in the public interest:

- 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;
- b. Whether it is physically possible to build a road that meets contemporary standards over the existing terrain or right of way;
- c. Whether it is economically feasible to build a road that meets contemporary standards over the

existing terrain or 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;

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;

f. Whether there are 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;

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

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.

Notice of this public hearing has been provided as required by ORS 368.346(3) by posting the property to be vacated, service directly to affected parties, as well as publication in the Oregonian consistent with the requirements in ORS 368.426.

Once the Board renders its decision, staff will draft findings memorializing the decision, and the Board shall enter an order or resolution granting or denying the vacation at a later Business Meeting.

RECOMMENDATION

Staff respectfully recommends that the Board hold a public hearing to determine whether the vacation of a portion of McNary Road, County Road No. 2132, is in the public interest.

Sincerely,

Douglas Cutshall
Engineering Technician D.T.D.

MEMORANDUM

TO: Board of Commissioners

FROM: Dan Johnson, Director D.T.D.

DATE: February 20, 2019

SUBJ: **ROAD OFFICIAL'S REPORT FOR THE VACATION OF MCNARY ROAD**

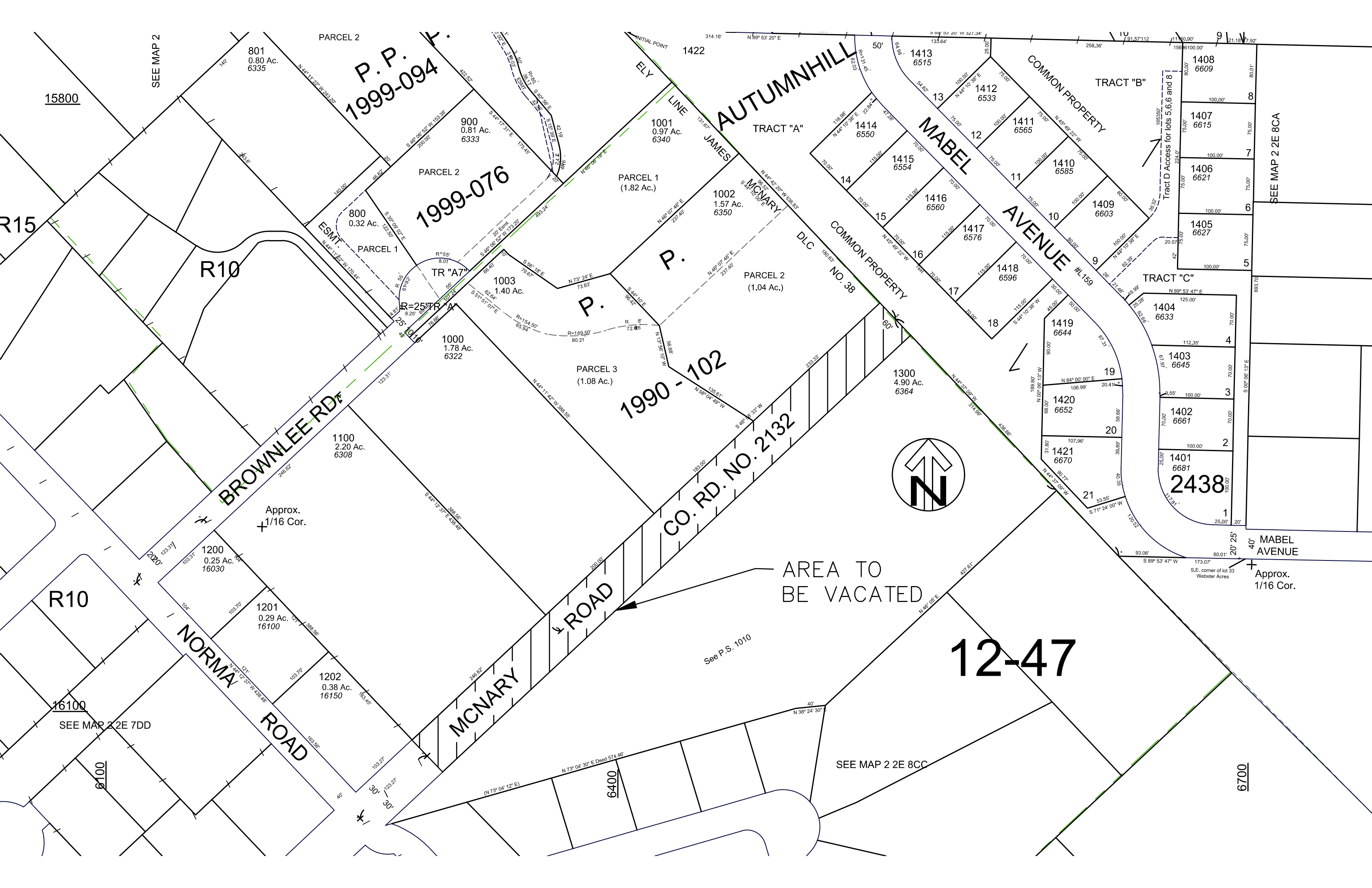
LOCATION: McNary Road, (Tourtellotte Road) County Road No. 2132 is situated in the SW1/4 of Section 8, T.2 S., R.2 E., W.M.

FACTS AND FINDINGS: The petitioner wishes to vacate an unimproved and unused portion of McNary Road that lies northeasterly of its intersection Norma Road and, northwesterly of and adjoining the petitioners property. McNary Road was dedicated to the public through deeds from several property owners which were then accepted by the Court, July 6th 1939, to be used for a county road. This unused and unconstructed portion of McNary Road right of way is a dead end road, provides no connectivity to any through streets, and is not used to access adjoining property. Vacating this 60 foot wide, 960 foot long portion of McNary Road will not deprive public access to adjoining properties and will not affect area traffic flow.

The Petition to Vacate under ORS 368.341 has been filed with the determined fee and, pursuant to ORS 368.346(1)(c) allows the Board to request additional information be added to this report, and (4) The county governing body shall establish a time and place for a hearing to consider whether the proposed vacation is in the public interest.

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).

It is my assessment that the proposed vacation is in the public interest.



P. P. 1999-094 K.

1999-076

1990-102

CO. RD. NO. 2132

See P.S. 1010

AREA TO BE VACATED

12-47

SEE MAP 2 2E 8CC

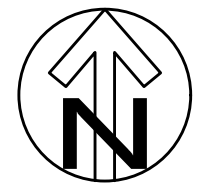
SEE MAP 2

SEE MAP 2 2E 8CA

Tract D Access for lots 5, 6, 6 and 8

Approx. 1/16 Cor.

Approx. 1/16 Cor.



15800

R10

16100

SEE MAP 2 2E 7DD

6100

R10

NORMA ROAD

ROAD

MCNARY ROAD

ROAD

6400

6700

BROWNLEE RD

LINE JAMES ELY

AUTUMNHILL

MABEL AVENUE

MABEL AVENUE

801
0.80 Ac.
6335

900
0.81 Ac.
6333

1001
0.97 Ac.
6340

1413
6515

1412
6533

1411
6565

1408
6609

1407
6615

1406
6621

1405
6627

800
0.32 Ac.
6322

1003
1.40 Ac.
6322

1000
1.78 Ac.
6322

1002
1.57 Ac.
6350

1001
1.57 Ac.
6350

1002
1.57 Ac.
6350

1300
4.90 Ac.
6364

1419
6644

1404
6633

1403
6645

1402
6661

1401
6681

2438

1200
0.25 Ac.
16030

1201
0.29 Ac.
16100

1202
0.38 Ac.
16150

6400

COPY

February 28, 2019

Board of Commissioners
 Clackamas County

Members of the Board:

Approval of Subrecipient Agreement with Quest Center for Integrative Health
for W.I.S.H. Program Services

Purpose/Outcomes	Provides Wellness, Integrity, and Sustainable Health Pain Management Program (W.I.S.H. Program) services to eligible individuals
Dollar Amount and Fiscal Impact	Maximum contract value is \$287,500
Funding Source	No County General Funds involved State of Oregon, Community Mental Health Program (CMHP) funds
Duration	Effective April 1, 2019 through June 30, 2020.
Previous Board Action	No previous Board action
Strategic Plan Alignment	1. Provide coordination, assessment, outreach, and recovery services to Clackamas County residents experiencing mental health and addiction distress so they can achieve their own recovery goals. 2. Ensure safe, healthy and secure communities.
Contact Person	Mary Rumbaugh, Director – Behavioral Health Division (503) 742-5305
Contract No.	#9152

BACKGROUND:

The Behavioral Health Division of the Health, Housing & Human Services Department (H3S) requests the approval of a Subrecipient Agreement with Quest Center for Integrative Health for W.I.S.H. Program services. Quest Center’s Wellness, Integrity, and Sustainable Health or W.I.S.H. Program is an integrated medical and behavioral health program designed to treat chronic pain through the use of non-opioid interventions. The Program integrates acupuncture, yoga, mental health, medication management, treatment for substance abuse disorder, nutrition and peer support in a community setting.

The funding provided for Quest Center’s W.I.S.H. Program addresses two of the five major priorities identified by the U.S. Department of Health and Human Services in response to the national opioid crisis:

- Improving access to treatment and recovery services, and
- Advancing better practices for pain management.

This Agreement, effective April 1, 2019 through June 30, 2020, has a maximum value of \$287,500.

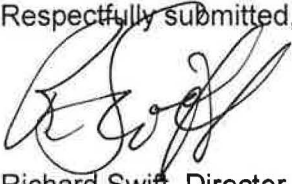
County Council reviewed and approved this Subrecipient Agreement on February 11, 2019.

Healthy Families. Strong Communities.

RECOMMENDATION:

Staff recommends Board approval of this contract and authorization for Richard Swift to sign on behalf of Clackamas County.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "R. Swift", written over the text "Respectfully submitted,".

Richard Swift, Director
Health, Housing & Human Services Department

CLACKAMAS COUNTY, OREGON LOCAL SUBRECIPIENT GRANT AGREEMENT	
Program Name: Wellness, Integrity, and Sustainable Health Pain Management Program (W.I.S.H Program)	
Program/Project Number: 36035 – Community Mental Health Program, A&D 66 Services	
This Agreement is between Clackamas County, Oregon , acting by and through its Health, Housing and Human Services Department, Behavioral Health Division (COUNTY) and Quest Center for Integrative Health (SUBRECIPIENT) , an Oregon Non-profit Organization.	
COUNTY Data	
Grant Accountant: Keala Adolpho	Program Manager: Mary Rumbaugh
Clackamas County – Finance 2051 Kaen Road, Suite #154 Oregon City, OR 97045 503-742-5410 kadolpho@clackamas.us	Clackamas County Behavioral Health 2051 Kaen Road, Suite #154 Oregon City, OR 97045 503-742-3505 MaryRum@clackamas.us
SUBRECIPIENT Data	
Finance/Fiscal Representative: Janet Brandt	Program Representative: David Eisen
Quest Center for Integrative Health 2901 E Burnside Portland, OR 97214 503-238-5203 janet@quest-center.org	Quest Center for Integrative Health 2901 E Burnside Portland, OR 97214 503-238-5203 david@quest-center.org
DUNS: 80-8704506	

RECITALS

1. Following two decades that saw a rapid increase in the use of prescription and non-prescription opioids, along with the increase of opioid-related overdose deaths, on October 27, 2017, a national health emergency was declared. The Opioid Crisis or Epidemic, as it has become known is the result of erroneous claims and effective marketing by pharmaceutical companies and the wide availability of opioids.

Opioids, a class of moderately strong to very strong painkillers, are highly addictive. While prescribed opioids are considered safe when used properly for short periods of time, issues of overuse and misuse have increased in the last decade among those utilizing the drug for chronic pain.

- Between 21% and 29% of individuals prescribed opioids for chronic pain misuse them.
- In 2016, an estimated two million Americans suffered from substance use disorders related to the misuse of prescription opioid pain relievers.
- 4% to 6% of individuals who misuse prescription opioids transition to heroin, which is cheaper and more accessible on the black market.
- 80% of heroin users were prescribed opioids at one time.

Quest Center for Integrative Health

Local Grant Agreement – #9152

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2. The COUNTY through this Agreement is awarding grant funds to Quest Center for Integrative Health (SUBRECIPIENT) in support of Quest Center's *Wellness, Integrity, and Sustainable Health Pain Management Program* or *W.I.S.H Program*. The W.I.S.H. Program is an integrated medical and behavioral health program designed to treat chronic pain through the use of non-opioid interventions. The treatment program integrates acupuncture, yoga, mental health, medication management, treatment for substance use disorder, nutrition, and peer support in a community setting.
3. Funding for the W.I.S.H. Program address two of the five major priorities identified by the U.S. Department of Health and Human Services in response to the national opioid crisis:
 - Improving access to treatment and recovery services, and
 - Advancing better practices for pain management.
4. This Grant Agreement of financial assistance sets forth the terms and conditions pursuant to which SUBRECIPIENT agrees on delivery of the Program.

NOW THEREFORE, according to the terms of this Local Grant Agreement the COUNTY and SUBRECIPIENT agree as follows:

AGREEMENT

1. **Term and Effective Date.** This Agreement shall become effective on the date it is fully executed and approved as required by applicable law. Funds issued under this Agreement may be used to reimburse SUBRECIPIENT for expenses approved in writing by COUNTY relating to the project incurred no earlier than **April 1, 2019** and not later than **June 30, 2020**, unless this Agreement is sooner terminated or extended pursuant to the terms hereof. No grant funds are available for expenditures after the expiration date of this Agreement.
2. **Program.** The Program is described in **Exhibit A, Scope of Work**. SUBRECIPIENT agrees to perform the Program in accordance with the terms and conditions of this Agreement.
3. **Standards of Performance.** SUBRECIPIENT shall perform all activities and programs in accordance with the requirements set forth in this Agreement and all applicable laws and regulations. Furthermore, SUBRECIPIENT shall comply with the requirements of the Community Mental Health Program (CMHP) Intergovernmental Agreement that is the source of the grant funding.
4. **Grant Funds.** The COUNTY'S funding for this Agreement is the **Community Mental Health Program (CMHP) Intergovernmental Agreement** issued to the COUNTY by the Oregon Health Authority. The maximum, not to exceed, grant amount that the COUNTY will pay is **\$287,500**.
5. **Disbursements.** Disbursements will be made according to the following schedule:
 - 5.1. \$37,500 immediately upon execution of this Agreement.
 - 5.2. \$250,000 to be paid at a case rate amount through monthly invoicing. See **Exhibit B, Budget, Compensation & Invoice** for further detail.

Failure to comply with the terms of this Agreement may result in withholding of payment.

6. **Amendments.** The terms of this Agreement shall not be waived, altered, modified, supplemented, or amended, in any manner whatsoever, except by written instrument signed by both parties. **SUBRECIPIENT must submit a written request including a justification for any amendment to the COUNTY in writing at least forty five (45) calendar days before this Agreement expires.** No payment will be made for any services performed before the beginning date or after the expiration date of this Agreement. If the maximum compensation amount is increased by amendment, the

Quest Center for Integrative Health

Local Grant Agreement – #9152

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amendment must be fully effective before SUBRECIPIENT performs work subject to the amendment.

7. **Termination.** This Agreement may be terminated by the mutual consent of both parties or by a party upon written notice from one to the other. This notice may be transmitted in person, by mail, facsimile, or by email, with confirming record of delivery confirmation through electronic mail return-receipt, or by confirmation that the electronic mail was accessed, downloaded, or printed. .
8. **Funds Available and Authorized.** The COUNTY certifies that it has been awarded funds sufficient to finance the costs of this Agreement. SUBRECIPIENT understands and agrees that payment of amounts under this Agreement is contingent on the COUNTY receiving appropriations or other expenditure authority sufficient to allow the COUNTY, in the exercise of its reasonable administrative discretion, to continue to make payments under this Agreement.
9. **Future Support.** COUNTY makes no commitment of future support and assumes no obligation for future support for the activity contracted herein except as set forth in this agreement.
10. **Administrative Requirements.** SUBRECIPIENT agrees to its status as a SUBRECIPIENT, and accepts among its duties and responsibilities the following:
 - a) **Financial Management.** SUBRECIPIENT shall comply with Generally Accepted Accounting Principles (GAAP) or another equally accepted basis of accounting, use adequate internal controls, and maintain necessary sources documentation for all costs incurred.
 - b) **Revenue Accounting.** Grant revenue and expenses generated under this Agreement should be recorded in compliance with generally accepted accounting principles and/or governmental accounting standards. This requires that the revenues are treated as unearned income or "deferred" until the compliance requirements and objectives of the grant have been met. Revenue may be recognized throughout the life cycle of the grant as the funds are "earned". All grant revenues not fully earned and expended in compliance with the requirements and objectives at the end of the period of performance must be returned to the County within 15 days.
 - c) **Budget.** SUBRECIPIENT use of funds may not exceed the amounts specified in the Exhibit B: SUBRECIPIENT Program Budget. SUBRECIPIENT may not transfer grant funds between budget lines without the prior written approval of the COUNTY. At no time may budget modifications change the scope of the original grant application or agreement.
 - d) **Allowable Uses of Funds.** SUBRECIPIENT shall use funds only for those purposes authorized in this Agreement.
 - e) **Period of Availability.** SUBRECIPIENT may charge to the award only allowable costs resulting from obligations incurred during the term and effective date. Cost incurred prior or after this date will be disallowed.
 - f) **Match.** Matching funds are not required for this Agreement.
 - g) **Payment.** Routine requests for reimbursement should be submitted monthly using the invoice provided and instructions in **Exhibit B: Budget, Compensation & Invoice**.
 - h) **Performance Reporting.** SUBRECIPIENT must submit Performance Reports according to the schedule specified in **Exhibit A: Scope of Work**. All reports must be submitted on SUBRECIPIENT letterhead, must reference this Agreement number, and be signed and dated by an authorized official of SUBRECIPIENT.
 - i) **Lobbying.** See **Exhibit E, CMHP Required Federal Terms & Conditions, Section 5**.

Quest Center for Integrative Health

Local Grant Agreement – #9152

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- j) **Audit.** SUBRECIPIENT shall comply with the audit requirements prescribed by State and Federal law.
- k) **Monitoring.** SUBRECIPIENT agrees to allow access to conduct site visits and inspections of financial and programmatic records for the purpose of monitoring. COUNTY, the Oregon Health Authority, the Secretary of the State of Oregon, and their duly authorized representatives shall have access to such records and other books, documents, papers, plans, records of shipments and payments and writings of SUBRECIPIENT that are pertinent to this Agreement, whether in paper, electronic or other form, to perform examinations and audits and make excerpts, copies and transcripts. Monitoring may be performed onsite or offsite, at the COUNTY'S discretion.
- l) **Record Retention.** SUBRECIPIENT will retain and keep accessible all such financial records, books, documents, papers, plans, records of shipments and payments and writings for a minimum of six (6) years following the Project End Date (June 30, 2020), or such longer period as may be required by applicable law, or until the conclusion of any audit, controversy or litigation arising out of or related to this Agreement, whichever date is later.
- m) **Failure to Comply.** SUBRECIPIENT acknowledges and agrees that this agreement and the terms and conditions therein are essential terms in allowing the relationship between COUNTY and SUBRECIPIENT to continue, and that failure to comply with such terms and conditions represents a material breach of the original contract and this agreement. Such material breach shall give rise to the COUNTY'S right, but not obligation, to withhold SUBRECIPIENT grant funds until compliance is met, reclaim grant funds in the case of omissions or misrepresentations in financial or programmatic reporting, or to terminate this relationship including the original contract and all associated amendments.

11. Compliance with Applicable Laws

- a) **Public Policy.** SUBRECIPIENT expressly agrees to comply with all public policy requirements, laws, regulations, and executive orders issued by the Federal government, to the extent they are applicable to the Agreement: (i) Titles VI and VII of the Civil Rights Act of 1964, as amended; (ii) Sections 503 and 504 of the Rehabilitation Act of 1973, as amended; (iii) the Americans with Disabilities Act of 1990, as amended; (iv) Executive Order 11246, as amended; (v) the Health Insurance Portability and Accountability Act of 1996; (vi) the Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended; (vii) the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended; (viii) all regulations and administrative rules established pursuant to the foregoing laws; and (ix) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations; and as applicable to SUBRECIPIENT.
- b) **State Statutes.** SUBRECIPIENT expressly agrees to comply with all statutory requirements, laws, rules, and regulations issued by the State of Oregon, to the extent they are applicable to this Agreement.
- c) **Conflict Resolution.** If conflicts are discovered among federal, state and local statutes, regulations, administrative rules, executive orders, ordinances and other laws applicable to the Services under the Agreement, SUBRECIPIENT shall in writing request COUNTY resolve the conflict. SUBRECIPIENT shall specify if the conflict(s) create a problem for the design or other Services required under this Agreement.

12. State Procurement Standards

- a) COUNTY'S performance under this Agreement is conditioned upon SUBRECIPIENT'S compliance with, and SUBRECIPIENT shall comply with, the obligations applicable to public

contracts under the Local Contract Review Board (“LCRB”) regulations (Appendix C of Clackamas County Code, located at <http://www.clackamas.us/code/>), which are incorporated by reference herein.

- b) Procurements for goods and services under this award shall use processes as outlined below:

\$0-\$5,000	Direct procurement	One vendor contact
\$5,000-\$50,000	Intermediate procurement	Obtain & document three quotes, award on best value
\$50,000-\$150,000	Intermediate Plus procurement	Issue request for quotes or other appropriate form of solicitation, award on best value
+\$150,000	Formal	Formal solicitation process following written procurement policies

- c) All procurement transactions, whether negotiated or competitively bid and without regard to dollar value, shall be conducted in a manner so as to provide maximum open and free competition. All sole-source procurements in excess of \$5,000 must receive prior written approval from COUNTY in addition to any other approvals required by law applicable to the SUBRECIPIENT. Justification for sole-source procurement in excess of \$5,000 should include a description of the project and what is being contracted for, an explanation of why it is necessary to contract noncompetitively, time constraints and any other pertinent information. Intergovernmental agreements are excluded from this provision.
- d) SUBRECIPIENT shall be alert to organizational conflicts of interest or non-competitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade. SUBRECIPIENT shall follow chapter 244 of the Oregon Government Ethics Law relating to conflicts of interest. Contractors that develop or draft specifications, requirements, statements of work, and/or solicitations for proposals for a proposed procurement shall be excluded from bidding or submitting a proposal to compete for the award of such procurement. Any request for exemption must be submitted in writing to COUNTY.
- e) SUBRECIPIENT agrees that, to the extent they use contractors or subcontractors, SUBRECIPIENT shall use small, minority-owned, and/or women-owned businesses when possible.

13. General Agreement Provisions.

- a) **Indemnification.** SUBRECIPIENT agrees to indemnify and hold COUNTY harmless with respect to any claim, cause, damage, action, penalty or other cost (including attorney’s and expert fees) arising from or related to SUBRECIPIENT’S negligent or willful acts or those of its employees, agents or those under SUBRECIPIENT’S control. SUBRECIPIENT is responsible for the actions of its own agents and employees, and COUNTY assumes no liability or responsibility with respect to SUBRECIPIENT’S actions, employees, agents or otherwise with respect to those under its control.
- b) **Insurance.** During the term of this Agreement, SUBRECIPIENT shall maintain in force, at its own expense, each insurance required in **Exhibit C, Insurance**.
- c) **Assignment.** SUBRECIPIENT shall not enter into any subcontracts or subawards for any of the Program activities required by this Agreement without prior written approval. This Agreement may not be assigned in whole or in part with the express written approval of the COUNTY.

- d) **Independent Status.** SUBRECIPIENT is independent of the COUNTY and will be responsible for any federal, state, or local taxes and fees applicable to payments hereunder. SUBRECIPIENT is not an agent of the COUNTY and undertakes this work independent from the control and direction of the COUNTY excepting as set forth herein. SUBRECIPIENT shall not seek or have the power to bind the COUNTY in any transaction or activity.
- e) **Notices.** Any notice provided for under this Agreement shall be effective if in writing and (1) delivered personally to the addressee or deposited in the United States mail, postage paid, certified mail, return receipt requested, (2) sent by overnight or commercial air courier (such as Federal Express), (3) sent by facsimile transmission, with the original to follow by regular mail; or, (4) sent by electronic mail with confirming record of delivery confirmation through electronic mail return-receipt, or by confirmation that the electronic mail was accessed, downloaded, or printed. Notice will be deemed to have been adequately given three days following the date of mailing, or immediately if personally served. For service by facsimile or by electronic mail, service will be deemed effective at the beginning of the next working day.
- f) **Governing Law.** This Agreement is made in the State of Oregon, and shall be governed by and construed in accordance with the laws of that state. Any litigation between the COUNTY and SUBRECIPIENT arising under this Agreement or out of work performed under this Agreement shall occur, if in the state courts, in the Clackamas County court having jurisdiction thereof, and if in the federal courts, in the United States District Court for the State of Oregon.
- g) **Severability.** If any provision of this Agreement is found to be illegal or unenforceable, this Agreement nevertheless shall remain in full force and effect and the provision shall be stricken.
- h) **Counterparts.** This Agreement may be executed in any number of counterparts, all of which together will constitute one and the same agreement. Facsimile copy or electronic signatures shall be valid as original signatures.
- i) **Third Party Beneficiaries.** Except as expressly provided in this Agreement, there are no third party beneficiaries to this Agreement. The terms and conditions of this Agreement may only be enforced by the parties.
- j) **Binding Effect.** This Agreement shall be binding on all parties hereto, their heirs, administrators, executors, successors and assigns.
- k) **Integration.** This Agreement contains the entire agreement between COUNTY and SUBRECIPIENT and supersedes all prior written or oral discussions or agreements.

This Agreement consists of thirteen (13) sections plus the following exhibits by this reference is incorporated herein.

- Exhibit A Scope of Work
- Exhibit B Budget, Compensation & Invoice
- Exhibit C Insurance
- Exhibit D CMHP Required Provider Agreement Provisions
- Exhibit E CMHP Required Federal Terms and Conditions
- Exhibit F CMHP Service Element
- Exhibit G Qualified Service Organization Business Associate Agreement
- Exhibit H Performance Standards

(Signature Page Attached)

SIGNATURE PAGE TO SUBRECIPIENT AGREEMENT

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

QUEST CENTER FOR INTEGRATIVE HEALTH

CLACKAMAS COUNTY BOARD OF COMMISSIONERS

 Authorized Signature

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

 Printed Name Date

Signing on behalf of the Board:

353246-80

 Oregon Business Registry #

 Richard Swift, Director Date
 Health, Housing and Human Services

 Domestic Nonprofit Corporation / Oregon
 Entity Type / State of Formation

Approved as to form:

 Kathleen Rastetter via email February 11, 2019
 County Counsel Date

February 28, 2019

Board of Commissioners
Clackamas County

Members of the Board:

Approval of Amendment #1 to an Agency Service Agreement with
Clackamas Women's Services for
System Diversion, Homelessness Prevention and Rapid Re-Housing

Purpose/Outcomes	Contractor will provide mobile rapid re-housing services to families who are literally homeless.
Dollar Amount and Fiscal Impact	Amendment #1 increases the agreement by \$160,000 to a new total of \$320,000.
Funding Source	State of Oregon Housing and Community Services, Emergency Housing Assistance (EHA) funds, including EHA Expansion.
Duration	January 1, 2019 through June 30, 2019
Previous Board Action	None.
Strategic Plan Alignment	<ol style="list-style-type: none"> 1. This funding aligns with the Social Services Division's strategic priority to provide housing stabilization and supportive services to people who are homeless or at risk of becoming homeless so they can obtain and maintain permanent housing. 2. This funding aligns with the County's strategic priority to ensure safe, healthy and secure communities.
Contact Person	Brenda Durbin, Director – Social Services Division – (503) 655-8641
Contract No.	8697

BACKGROUND:

The Social Services Division of the Health, Housing and Human Services Department requests approval of an Amendment to an Agency Service Agreement with Clackamas Women's Services (CWS). Additional funding is available from Oregon Housing and Community Services (OHCS) for system diversion, homelessness prevention, and mobile Rapid Re-Housing services to families who are literally homeless. The Notice of Funding Opportunity for the original agreement allows additional funding that becomes available during the grant period to be allocated to providers, and the allocation has been approved by OHCS. It does not affect the start or end date of the original agreement, however it does add a term of January 1, 2019 to June 30, 2019. Amendment #1 will increase the agreement by \$160,000 to a new total of \$320,000.

The funding source for this agreement is Emergency Housing Assistance (EHA) funds from OHCS. There are no County General Funds required.

Healthy Families. Strong Communities.

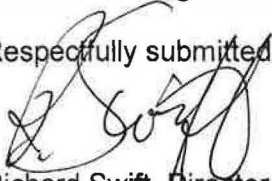
2051 Kaen Road, Oregon City, OR 97045 • Phone (503) 650-5697 • Fax (503) 655-8677

www.clackamas.us

RECOMMENDATION:

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

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'R. Swift', is written over the text 'Respectfully submitted,'.

Richard Swift, Director
Health, Housing and Human Services Department

Contract Amendment
Health, Housing and Human Services Department

H3S Contract Number 8697 Board Agenda Number TBD

and Date February 28, 2019

Division Social Services Amendment No. 1

Contractor Clackamas Women's Services

Amendment Requested By Brenda Durbin, Director

Changes: Scope of Services Contract Budget
 Contract Time Other _____

Justification for Amendment:

Additional funding is available from Oregon Housing and Community Services (OHCS) for Rapid Re-Housing services. The Notice of Funding Opportunity for the original agreement allows additional funding that becomes available during the grant period to be allocated to providers, and the allocation has been approved by OHCS. Amendment #1 adds additional EHA funding for system diversion, homelessness prevention, and rapid re-housing (mobile housing) services.

It does not affect the start or end date of the original agreement, however it does add a term of January 1, 2019 to June 30, 2019 for system diversion, homelessness prevention, and rapid re-housing services – mobile housing. Maximum compensation is increased by \$160,000 for a maximum contract value of \$320,000.

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

AMEND: Section II. COMPENSATION AND RECORDS, paragraph A:

A. Compensation. COUNTY shall compensate the AGENCY for satisfactorily performing the services identified in Section I.

- a. For financial assistance on a cost reimbursement basis for all eligible costs up to a maximum compensation of **\$160,000** as described in Exhibit C: Budget & Output.

Total maximum compensation under this contract shall not exceed **\$160,000**.

TO READ:

A. Compensation. COUNTY shall compensate the AGENCY for satisfactorily performing the services identified in Section I.

- a. For financial assistance on a cost reimbursement basis for all eligible costs up to a maximum compensation of **\$320,000** as described in Exhibit C: Budget & Output.

Total maximum compensation under this contract shall not exceed **\$320,000**.

AMEND EXHIBIT A, SCOPE OF WORK AND PERFORMANCE STANDARDS, Section A. General Scope of Services, 2. Eligibility, TO INCLUDE:

Rapid Re-Housing Mobile Housing Team funding under Amendment #1 to this agreement requires that all households must include at least one person under 18, and be Category 1: Literally homeless. A mobile model must be used, not requiring people to travel into a specific location for intake or services.

AMEND EXHIBIT B, REPORTING REQUIREMENTS, Section A. Program Specific Reporting:

A. PROGRAM SPECIFIC REPORTING

1. AGENCY shall comply with current HMIS Policy and Procedures and adhere to all HMIS reporting requirements. AGENCY must perform their own HMIS data entry.
2. AGENCY shall comply with tracking the programs funded through this agreement through separate and distinct providers in HMIS as directed by COUNTY. The name(s) of provider(s) to be used for this agreement will be provided by COUNTY to AGENCY at contract execution. Each funding stream may have its own provider group(s) and AGENCY shall not enter HMIS data from more than one funding stream into one provider group.

2 PROVIDER GROUPS IN HMIS		
HMIS Provider Name	AT RISK	HOMELESS
State EHA Homeless Categories	2, 3, 4, 5	1, 2, 3
Description	Prevention + Problem Solving	Diversion + Rapid Re-Housing
Questions when determining which provider group to enter client	Direct questions on determining which provider group to enter to COUNTY Program Manager: Erika Silver, esilver@clackamas.us	
Entry/Exit	AGENCY shall Enter and Exit clients if moving between categories when condition/situation changes to demonstrate length of time client has used each provider groups.	
6 month follow-up report	A follow-up assessment will be completed by AGENCY which will report where the client is 6 months after they exit a program. AGENCY will not be required to conduct the 6 month follow-up if client exit dates occur after January 1, 2019.	

3. AGENCY shall ensure that data on all persons served and all activities assisted under this agreement are entered into the applicable community-wide HMIS in the area in which those persons and activities are located, or a comparable database, in accordance with HUD's standards on participation, data collection, and reporting under a local HMIS. If AGENCY is a victim service provider or a legal services provider, it may use a comparable database that collects client-level data over time (i.e., longitudinal data) and generates unduplicated aggregate reports based on the data. Information entered into a comparable database must not be entered directly into or provided to an HMIS
4. AGENCY shall assure that data entry into HMIS occurs in an accurate and timely manner.

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Agency Service Contract # 8697– Amendment # 1

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5. AGENCY shall maintain and provide to COUNTY as requested information as required by state and federal funding sources for reporting purposes.
6. Supporting documentation must be retained on-site, e.g., service records and sign-in logs.

B. INVOICING

AGENCY, through designated staff, shall submit to COUNTY a monthly invoice that specifies all expenditures for each month and the total amount requested based on Exhibit C. The invoice is to include copies of receipts to substantiate the rents, deposits paid and other eligible client assistance. The invoice shall include the contract number. AGENCY may use the invoice template provided in Exhibit E or COUNTY-approved equivalent produced by AGENCY.

Total amount billed for Homelessness Prevention, Rapid Re-Housing, and System Diversion shall not exceed **\$160,000** based on **Exhibit C**.

Invoices and required reports may be submitted electronically via e-mail as an attachment and shall be received by COUNTY on or before the 15th of each month preceding the reporting period.

Invoices and reporting shall be submitted to:

Clackamas County Social Services Division
Attn: Jessica Diridoni
PO Box 2950
Oregon City, Oregon 97045

Or electronically to: jdiridoni@clackamas.us

Within thirty (30) days after receipt of a correct invoice, provided COUNTY has approved the service specified on the invoice, COUNTY shall pay the amount requested to AGENCY.

TO READ:

A. PROGRAM SPECIFIC REPORTING

1. AGENCY shall comply with current HMIS Policy and Procedures and adhere to all HMIS reporting requirements. AGENCY must perform their own HMIS data entry.
2. AGENCY shall comply with tracking the programs funded through this agreement through separate and distinct providers in HMIS as directed by COUNTY. The name(s) of provider(s) to be used for this agreement will be provided by COUNTY to AGENCY at contract execution. Each funding stream may have its own provider group(s) and AGENCY shall not enter HMIS data from more than one funding stream into one provider group.

3 PROVIDER GROUPS IN HMIS			
HMIS Provider Name	AT RISK	HOMELESS	MOBILE HOUSING TEAM
State EHA Homeless Categories	2, 3, 4, 5	1, 2, 3	1
Description	Prevention + Problem Solving	Diversion + Rapid Re-Housing	Mobile Housing Team (RRH & Motel)
Questions when determining which provider group to enter client	Direct questions on determining which provider group to enter to COUNTY Program Manager: Erika Silver, esilver@clackamas.us		
Entry/Exit	AGENCY shall Enter and Exit clients if moving between categories when condition/situation changes to demonstrate length of time client has used each provider groups.		
6 month follow-up report	A follow-up assessment will be completed by AGENCY which will report where the client is 6 months after they exit a program. AGENCY will not be required to conduct the 6 month follow-up if client exit dates occur after January 1, 2019.		
Quarterly & Annual Reports	Quarterly reports are due to COUNTY on all providers on or before the 10th of the month for the preceding quarter. Other reports, including annual de-duplicated reports on all providers are due as requested by COUNTY as specified by Oregon Housing & Community Services (OHCS). COUNTY to provide report formats and parameters as specified by OHCS.		

3. AGENCY shall ensure that data on all persons served and all activities assisted under this agreement are entered into the applicable community-wide HMIS in the area in which those persons and activities are located, or a comparable database, in accordance with HUD's standards on participation, data collection, and reporting under a local HMIS. If AGENCY is a victim service provider or a legal services provider, it may use a comparable database that collects client-level data over time (i.e., longitudinal data) and generates unduplicated aggregate reports based on the data. Information entered into a comparable database must not be entered directly into or provided to an HMIS.
4. AGENCY shall assure that data entry into HMIS occurs in an accurate and timely manner, within 3 days of program entry date.
5. AGENCY shall maintain and provide to COUNTY as requested information as required by state and federal funding sources for reporting purposes.
6. Supporting documentation must be retained on-site, e.g., service records and sign-in logs.

B. INVOICING

AGENCY, through designated staff, shall submit to COUNTY **2 monthly invoices that specify** all expenditures for each month and the total amount requested based on Exhibit C. The **invoices are** to include copies of receipts to substantiate the rents, deposits paid and other eligible client assistance. The **invoices** shall include the contract number **and list System Diversion, Homelessness Prevention, and Rapid Re-Housing, or System Diversion, Homelessness Prevention, and Rapid Re-Housing Mobile Housing Team, whichever is appropriate.** AGENCY may use the invoice **templates** provided in Exhibit E or COUNTY-approved equivalent produced by AGENCY.

Total amount billed for Homelessness Prevention, Rapid Re-Housing, and System Diversion shall not exceed **\$320,000** based on Exhibit C.

Invoices and required reports may be submitted electronically via e-mail as an attachment and shall be received by COUNTY on or before the 15th of each month preceding the reporting period.

Invoices and reporting shall be submitted to:
Clackamas County Social Services Division
Attn: Jessica Diridoni
PO Box 2950
Oregon City, Oregon 97045

Or electronically to: jdiridoni@clackamas.us

Within thirty (30) days after receipt of a correct invoice, provided COUNTY has approved the service specified on the invoice, COUNTY shall pay the amount requested to AGENCY.

AMEND EXHIBIT C BUDGET:

A. BUDGET

Total maximum compensation under this contract shall not exceed **\$160,000**.

COUNTY will pay AGENCY on a cost-reimbursement basis for all eligible costs with payments to be made as outlined in **Exhibit A, B & C**, up to a maximum compensation of **\$160,000** EHA funds.

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

B. ELIGIBLE COSTS

Eligible costs include items below and as listed/amended for EHA in **Exhibit F**.

- Participant rent
- Participant move-in costs
- Rental application fees
- Utility deposits necessary to establish service
- Other one-time expenditures such as identification that will remove barriers to permanent housing placement or housing stability when no other resources are available.

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- Expenditures related to employment or employment training that will support participants to increase their incomes. Examples include work clothes and textbooks for vocational training courses when no other resources are available.
- Personnel salaries, taxes and benefits proportional to time needed to deliver the proposed services, not to exceed the maximum percentage for the corresponding service element.
- Mileage reimbursement at organization's standard rate, not to exceed federal rate, for direct service personnel travel directly related to delivering services in this project, and not to exceed the maximum percentage for the corresponding service element.

Administrative and/or overhead expenses are NOT eligible costs.

C. OUTCOMES/PERFORMANCE MEASURES

Homeless System Diversion – At least 50 households or 20% of households requesting shelter or homeless housing through the Coordinated Housing Access system, whichever is smaller, are diverted from entering the system.

Homelessness Prevention – At least 80% of households served are permanently housed at exit and of those, 80% retain permanent housing for at least 90 days after the end of subsidy.*

Rapid Re-Housing – At least 60% of households exit to permanent housing and of those, 80% retain permanent housing for at least 90 days after the end of subsidy.*

COUNTY acknowledges that some households may enter services later in the project period and that it may not be possible to complete this measure for all households. The measure applies to those households whose subsidy ends on or before March 31, 2019.

Budget and Output Template
System Diversion, Homelessness Prevention and Rapid Re-Housing

Applicant:	Clackamas Women's Services
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Budget Summary

Homeless System Diversion Proposed Amount (20%)	\$ 32,000.00
Homelessness Prevention Proposed Project Amount (40%)	\$ 64,000.00
Rapid Re-Housing Proposed Amount (40%)	\$ 64,000.00
Total	\$ 160,000.00

Proposed Project Budget and Output Detail (do not fill in the shaded cells)

Allowable Costs by Element	Amount Requested	Projected Total Households	Projected Total Persons
Homeless System Diversion		7.00	21.00
Participant rent and deposits	\$ 14,040.00		
Other eligible client assistance	\$ 1,960.00		
Personnel & mileage (up to 50% of total)	\$ 16,000.00		
Personnel FTE - enter number of full-time employees	0.65		
Homelessness Prevention		18.00	35.00
Participant rent and deposits	\$ 37,600.00		
Other eligible client assistance	\$ 10,400.00		
Personnel & mileage (up to 25% of total)	\$ 16,000.00		
Personnel FTE - enter number of full-time employees	0.65		
Rapid Re-Housing		13.00	32.00
Participant rent and deposits	\$ 46,000.00		
Other eligible client assistance	\$ 2,000.00		
Personnel & mileage (up to 25% of total)	\$ 16,000.00		
Personnel FTE - enter number of full time employees	0.65		
Grand Total	\$ 160,000.00	38.00	88.00

(Optional) Additional Resources Committed to Project

Service	Value	Source	Cash or In-Kind
Homeless System Diversion	\$ 5,500.00	Grants, Donations,	
Client services & assistance	\$ 6,000.00	Grants, Donations,	cash
Interpretation & Translation	\$ 1,833.00	Grants, Donations,	cash
Homelessness Prevention	\$ 5,500.00	Grants, Donations,	cash
Client services & assistance	\$ 6,000.00	Grants, Donations,	cash
Interpretation & Translation	\$ 1,833.00	Grants, Donations,	cash
Rapid Re-Housing	\$ 5,500.00	Grants, Donations,	cash
Client services & assistance	\$ 6,000.00	Grants, Donations,	cash
Interpretation & Translation	\$ 1,834.00	Grants, Donations,	cash
Total	\$ 40,000.00		

Clackamas Women's Services

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TO READ:

A. BUDGET

Total maximum compensation under this contract shall not exceed **\$320,000**.

COUNTY will pay AGENCY on a cost-reimbursement basis for all eligible costs with payments to be made as outlined in *Exhibit A, B & C*, up to a maximum compensation of **\$320,000** EHA funds as follows:

Total amount billed for Homelessness Prevention, Rapid Re-Housing, and System Diversion shall not exceed **\$160,000**.

Total amount billed under Amendment #1 funds for System Diversion shall not exceed \$40,000.

Total amount billed under Amendment #1 funds for Homelessness Prevention shall not exceed \$60,000.

Total amount billed under Amendment #1 funds for Rapid Re-Housing Mobile Housing Team shall not exceed \$60,000.

Eligible costs applied to Amendment #1 funds for System Diversion, Homelessness Prevention, and Rapid Re-Housing Mobile Housing Team shall be from January 1, 2019 to June 30, 2019.

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

B. ELIGIBLE COSTS

Eligible costs include items below and as listed/amended for EHA in Exhibit F.

- Participant rent
- Participant move-in costs
- Rental application fees
- Utility deposits necessary to establish service
- Other one-time expenditures such as identification that will remove barriers to permanent housing placement or housing stability when no other resources are available.
- Expenditures related to employment or employment training that will support participants to increase their incomes. Examples include work clothes and textbooks for vocational training courses when no other resources are available.
- Personnel salaries, taxes and benefits proportional to time needed to deliver the proposed services, not to exceed the maximum percentage for the corresponding service element.
- Mileage reimbursement at organization's standard rate, not to exceed federal rate, for direct service personnel travel directly related to delivering services in this project, and not to exceed the maximum percentage for the corresponding service element.
- ***Program expenses***
- ***Client assistance/support (including motel vouchers, supportive services, agency mileage and rental subsidy***

Administrative and/or overhead expenses are NOT eligible costs.

C. OUTCOMES/PERFORMANCE MEASURES

Homeless System Diversion – At least 50 households or 20% of households requesting shelter or homeless housing through the Coordinated Housing Access system, whichever is smaller, are diverted from entering the system.

Homelessness Prevention – At least 80% of households served are permanently housed at exit and of those, 80% retain permanent housing for at least 90 days after the end of subsidy.*

Rapid Re-Housing – At least 60% of households exit to permanent housing and of those, 80% retain permanent housing for at least 90 days after the end of subsidy.*

COUNTY acknowledges that some households may enter services later in the project period and that it may not be possible to complete this measure for all households. The measure applies to those households whose subsidy ends on or before March 31, 2019.

3-29-18 to 6-30-19

Budget and Output Template
System Diversion, Homelessness Prevention and Rapid Re-Housing

Applicant:	Clackamas Women's Services
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Budget Summary

Homeless System Diversion Proposed Amount (20%)	\$ 32,000.00
Homelessness Prevention Proposed Project Amount (40%)	\$ 64,000.00
Rapid Re-Housing Proposed Amount (40%)	\$ 64,000.00
Total	\$ 160,000.00

Proposed Project Budget and Output Detail (do not fill in the shaded cells)

Allowable Costs by Element	Amount Requested	Projected Total Households	Projected Total Persons
Homeless System Diversion		7.00	21.00
Participant rent and deposits	\$ 14,040.00		
Other eligible client assistance	\$ 1,960.00		
Personnel & mileage (up to 50% of total)	\$ 16,000.00		
Personnel FTE - enter number of full-time employees	0.65		
Homelessness Prevention		18.00	35.00
Participant rent and deposits	\$ 37,600.00		
Other eligible client assistance	\$ 10,400.00		
Personnel & mileage (up to 25% of total)	\$ 16,000.00		
Personnel FTE - enter number of full-time employees	0.65		
Rapid Re-Housing		13.00	32.00
Participant rent and deposits	\$ 46,000.00		
Other eligible client assistance	\$ 2,000.00		
Personnel & mileage (up to 25% of total)	\$ 16,000.00		
Personnel FTE - enter number of full time employees	0.65		
Grand Total	\$ 160,000.00	38.00	88.00

(Optional) Additional Resources Committed to Project

Service	Value	Source	Cash or In-Kind
Homeless System Diversion	\$ 5,500.00	Grants, Donations,	
Client services & assistance	\$ 6,000.00	Grants, Donations,	cash
Interpretation & Translation	\$ 1,833.00	Grants, Donations,	cash
Homelessness Prevention	\$ 5,500.00	Grants, Donations,	cash
Client services & assistance	\$ 6,000.00	Grants, Donations,	cash
Interpretation & Translation	\$ 1,833.00	Grants, Donations,	cash
Rapid Re-Housing	\$ 5,500.00	Grants, Donations,	cash
Client services & assistance	\$ 6,000.00	Grants, Donations,	cash
Interpretation & Translation	\$ 1,834.00	Grants, Donations,	cash
Total	\$ 40,000.00		

1-1-19 to 6-30-19

Budget and Output Template

**System Diversion, Homelessness Prevention and Rapid Re-Housing,
 Mobile Housing Team, Amendment #1**

Applicant:	Clackamas Women's Services
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Estimated Project Period: 01/01/2019-6/30/2019

Budget Summary - adjustment to percentages below approved

Homeless System Diversion Proposed Amount (20%)	\$	40,000
Homelessness Prevention Proposed Project Amount (40%)	\$	60,000
Rapid Re-Housing Proposed Amount (40%)	\$	60,000
Total	\$	160,000

Proposed Project Budget and Output Detail (do not fill in the shaded cells)

Allowable Costs by Element	Amount Requested	Projected Total Households	Projected Total Persons
Homeless System Diversion		10	27
Participant rent and deposits	\$ 20,000		
Other eligible client assistance	\$ 4,000		
Personnel & mileage (up to 50% of total) - approved at \$16,000	\$ 16,000		
Personnel FTE - enter number of full-time employees	0.3		
Homelessness Prevention		18	35
Participant rent and deposits	\$ 37,600		
Other eligible client assistance	\$ 10,400		
Personnel & mileage (up to 25% of total)	\$ 12,000		
Personnel FTE - enter number of full-time employees	0.2		
Rapid Re-Housing		12	29
Personnel	\$ 12,106		
Participant rent and deposits	\$ 36,517		
Client Assistance:			
Motel Vouchers	\$ 2,904		
Supprt Services	\$ 6,301		
Program Expense	\$ 1,712		
Agency Mileage	\$ 460		
Grand Total	\$ 160,000	40	91

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- ***For the Rapid Re-Housing Mobile Housing Team category Amendment #1, personnel, agency mileage, and program expenses are fixed categories. Flexibility between motel vouchers, support services, and participant rent and deposits categories are allowed with Program Manager approval.***

AMEND EXHIBIT D: SPECIAL REQUIREMENTS, TO INCLUDE:

9. Confidentiality. Any and all information regarding any individual serviced by the AGENCY is strictly confidential. All AGENCY provider and project staff members are expected to comply with the most current local, state and federal laws regarding confidentiality. Information in any form, including in aggregate, shall not be released to any party without the authorization of the individual and/or COUNTY. Client information (including identifying the person as a client) should not be released without written authorization from the client. AGENCY is required to have a signed agency Release of Information (ROI) form for all clients authorizing the release of information pertinent to determining program eligibility, providing assistance/service, HMIS reporting, and other relevant needs for sharing information. Overnight warming center programs are permitted to obtain a Verbal ROI on the Warming Center HMIS Data Entry Form. Release forms must be time-limited and specific as to with whom and what information will be shared. ROI's must be obtained from all participants to AGENCY and COUNTY (Social Services Division). Oregon Housing & Community Services Department (OHCS) must be routinely listed as an entity with which client information will be shared as it pertains to data collection and monitoring (including third-party adults and reviews).
10. AGENCY agrees that this agreement is subject to termination upon such a directive to COUNTY by OHCS and that OHCS shall not be liable to any of the parties of that agreement or to other persons for directing that such agreement be terminated.
11. CLIENT & FISCAL RECORDS. AGENCY shall retain all program records pertinent to client services and expenditures incurred in a manner consistent with the requirements of state and federal law. This includes, but is not limited to, those requirements listed in Administrative Rule, Operations Manual and Special Schedules. Find the OHCS Special Schedule at the Oregon State Archives: (<http://arcweb.sos.state.or.us/pages/recmgmt/sched/state.html>); Find the State Agency General Records Retention Schedules at the Oregon State Archives: (http://arcweb.sos.state.or.us/pages/rules/oars_100/oar_166/166_300.html).

AGENCY shall retain and keep accessible all such fiscal records, books, documents, papers, plans, and writings for a minimum of (6) six years, or such longer period as may be required by applicable law, whichever date is later. Applicable law includes the following final payment and termination of EHA, SHAP and/or LIRHF funding, or until the conclusion of any audit, controversy or litigation arising out of, or relating to, EHA, SHAP, and LIRHF. AGENCY shall retain and keep accessible all such program records, client records, books, documents, papers, plans, and writing for a minimum of five (5) years after final payment to client.

AGENCY shall allow OHCS access to, or furnish, whatever information and/or documentation is necessary for OHCS to conduct reviews, audits, and compliance monitoring as it deems appropriate. AGENCY shall permit representatives of OHCS to visit its sites and to review and audit all records pertinent to program funding at any reasonable time, with or without benefit of prior notification.

12. Religious and Political Activities: AGENCY will not request or assign guests, clients, volunteers, or staff to conduct or engage in religious proselytization, sectarian, or political activities, such as: electoral activities, voter registration, voter transportation to polls, and efforts to influence legislation.
13. AGENCY shall administer program in a manner satisfactory to COUNTY & OHCS and in compliance with all program requirements, including, but not limited to the following terms and conditions:

Clackamas Women's Services

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- (a) Ensure funds are expended within the time limitations set by COUNTY & OHCS.
 - (b) Provide program services to eligible households who are homeless.
 - (c) Meet OHCS and COUNTY recordkeeping requirements, including HMIS data collection, reporting and error fixing described in Exhibit B.
 - (d) May terminate services to participants who violate program requirements. Termination, denial, and grievance procedures shall be clearly communicated to and easily understood by participants and readily available upon request or posted in a public location.
14. Written policy and procedures must be established and outlined in local documentation (staff policy/procedure manuals) inclusive of, but not exclusive to the following areas:
- (a) Establishment and maintenance of clear policy for cases where there may be a conflict of interest. This includes procedures for staff when employees, board members, friends or family members apply for services.
 - (b) Establishment and maintenance of clear procedures for dealing with program applicants and participants who may have committed fraud and for dealing with public complaints regarding potential fraud. All incidents of fraud must be reported to OHCS & COUNTY.

AMEND EXHIBIT E, INVOICE TEMPLATE, TO INCLUDE:

INVOICE

System Diversion, Homelessness Prevention and Rapid Re-Housing Mobile Housing Amendment #1

Contractor: Clackamas Women's Services
Address: 256 Warner Milne Rd.
Address: Oregon City, OR 97045
Phone: 505-655-8600

Invoice Date: _____
Invoice Number: _____
Service Period: _____
Contract #: 8697, Amend. #1

Submit Invoice to: Clackamas County Social Services Division, Jessica Diridoni, jdiridoni@clackamas.us

Budget Summary			Projected HH For Amendment Term	Projected Persons For Amendment Term
Homeless System Diversion Amount		\$ 40,000	10	27
Homelessness Prevention Amount		\$ 60,000	18	35
Rapid Re Housing - Mobile Housing Total		\$ 60,000	12	29

Budget and Output Detail				Cumulative Total	
Allowable Costs by Element	Budget	Year to Date Charges	Current Invoice Charges	Complete yellow cells only. Do not fill in shaded cells.	
				Number of Households Served	Number of Persons Served
Homeless System Diversion					
Participant rent and deposits	\$ 20,000				
Other eligible client assistance	\$ 4,000				
Personnel & mileage (up to 50% of total)	\$ 16,000				
HSD Total	\$ 40,000	\$ -	\$ -		
Homelessness Prevention					
Participant rent and deposits	\$ 37,600				
Other eligible client assistance	\$ 10,400				
Personnel & mileage (up to 25% of total)	\$ 12,000				
HP Total	\$ 60,000	\$ -	\$ -		
Rapid Re-Housing - Mobile					
Personnel	\$ 12,106				
Participant rent and deposits	\$ 36,517				
Client assistance:					
Motel vouchers	\$ 2,904				
Support services	\$ 6,301				
Program expense	\$ 1,712				
Agency Mileage	\$ 460				
RRH Total	\$ 60,000	\$ -	\$ -		
Grand Total	\$ 160,000	\$ -	\$ -		

Invoice Total: \$ -

CERTIFICATION

By signing this report, I certify to the best of my knowledge and belief that the report is true, complete, and accurate, and the expenditures, disbursements and cash receipts are for the purposes and objectives set forth in the terms and conditions of this contract. I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise. (U.S. Code Title 18, Section 1001 and Title 31, Sections 3729-3730 and 3801-3812).

Prepared by: _____ **E-mail:** _____
Phone: _____ **Date:** _____
Authorized Signer: _____

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

AGENCY

CLACKAMAS WOMEN'S SERVICES

By: 
Melissa Erlbaum, Executive Director


Date

256 Warner Milne Road
Street Address
Oregon City, Oregon 97045
City / State / Zip
(503) 655-8600 /
Phone / Fax

CLACKAMAS COUNTY

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

Signing on Behalf of the Board:

Richard Swift, Director
Health, Housing and Human Services Department

Date

February 28, 2019

Board of Commissioners
 Clackamas County

Members of the Board:

Approval of Amendment #1 to an Agency Service Agreement with
 Northwest Housing Alternatives, Inc. for
Rapid Re-Housing Services

Purpose/Outcomes	Contractor will provide mobile rapid re-housing services to families who are literally homeless.
Dollar Amount and Fiscal Impact	Amendment #1 increases the agreement by \$60,000 to a new total of \$300,000.
Funding Source	State of Oregon Housing and Community Services, Emergency Housing Assistance (EHA) funds, including EHA Expansion.
Duration	January 1, 2019 through June 30, 2019
Previous Board Action	None.
Strategic Plan Alignment	<ol style="list-style-type: none"> 1. This funding aligns with the Social Services Division's strategic priority to provide housing stabilization and supportive services to people who are homeless or at risk of becoming homeless so they can obtain and maintain permanent housing. 2. This funding aligns with the County's strategic priority to ensure safe, healthy and secure communities.
Contact Person	Brenda Durbin, Director – Social Services Division – (503) 655-8641
Contract No.	8696

BACKGROUND:

The Social Services Division of the Health, Housing and Human Services Department requests approval of an Amendment to an Agency Service Agreement with Northwest Housing Alternatives, Inc. (NHA). Additional funding is available from Oregon Housing and Community Services (OHCS) for mobile Rapid Re-Housing services to families who are literally homeless. The Notice of Funding Opportunity for the original agreement allows additional funding that becomes available during the grant period to be allocated to providers, and the allocation has been approved by OHCS. It does not affect the start or end date of the original agreement, however it does add a term of January 1, 2019 to June 30, 2019. Amendment #1 will increase the agreement by \$60,000 to a new total of \$300,000.

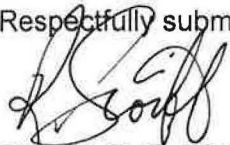
The funding source for this agreement is Emergency Housing Assistance (EHA) funds from OHCS. There are no County General Funds required.

Healthy Families. Strong Communities.

RECOMMENDATION:

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

Respectfully submitted,

A handwritten signature in black ink, appearing to read "R. Swift", written over the text "Respectfully submitted,".

Richard Swift, Director
Health, Housing and Human Services Department

Contract Amendment
Health, Housing and Human Services Department

H3S Contract Number 8696 Board Agenda Number TBD
and Date February 28, 2019

Division Social Services Amendment No. 1

Contractor **Northwest Housing Alternatives, Inc.**

Amendment Requested By Brenda Durbin, Director

Changes: Scope of Services Contract Budget
 Contract Time Other _____

Justification for Amendment:

Additional funding is available from Oregon Housing and Community Services (OHCS) for Rapid Re-Housing services. The Notice of Funding Opportunity for the original agreement allows additional funding that becomes available during the grant period to be allocated to providers, and the allocation has been approved by OHCS. Amendment #1 adds additional EHA funding for rapid re-housing services.

It does not affect the start or end date of the original agreement, however it does add a term of January 1, 2019 to June 30, 2019 for rapid re-housing services – mobile housing. Maximum compensation is increased by \$60,000 for a maximum contract value of \$300,000.

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

AMEND: Section II. COMPENSATION AND RECORDS, paragraph A:

A. Compensation. COUNTY shall compensate the AGENCY for satisfactorily performing the services identified in Section I.

a. For financial assistance on a cost reimbursement basis for all eligible costs up to a maximum compensation of **\$240,000** as described in Exhibit C: Budget & Output.

Total maximum compensation under this contract shall not exceed **\$240,000**.

TO READ:

A. Compensation. COUNTY shall compensate the AGENCY for satisfactorily performing the services identified in Section I.

a. For financial assistance on a cost reimbursement basis for all eligible costs up to a maximum compensation of **\$300,000** as described in Exhibit C: Budget & Output.

Total maximum compensation under this contract shall not exceed **\$300,000**.

AMEND EXHIBIT A, SCOPE OF WORK AND PERFORMANCE STANDARDS, Section A. General Scope of Services, 2. Eligibility, TO INCLUDE:

Rapid Re-Housing, Mobile Housing Team funding under Amendment #1 to this agreement requires that all households must include at least one person under 18, and be Category 1: Literally homeless. A mobile model must be used, not requiring people to travel into a specific location for intake or services.

AMEND EXHIBIT B, REPORTING REQUIREMENTS, Section A. Program Specific Reporting:

A. PROGRAM SPECIFIC REPORTING

1. AGENCY shall comply with current HMIS Policy and Procedures and adhere to all HMIS reporting requirements. AGENCY must perform their own HMIS data entry.
2. AGENCY shall comply with tracking the programs funded through this agreement through separate and distinct providers in HMIS as directed by COUNTY. The name(s) of provider(s) to be used for this agreement will be provided by COUNTY to AGENCY at contract execution. Each funding stream may have its own provider group(s) and AGENCY shall not enter HMIS data from more than one funding stream into one provider group.

2 PROVIDER GROUPS IN HMIS		
HMIS Provider Name	AT RISK	HOMELESS
State EHA Homeless Categories	2, 3, 4, 5	1, 2, 3
Description	Prevention + Problem Solving	Diversion + Rapid Re-Housing
Questions when determining which provider group to enter client	Direct questions on determining which provider group to enter to COUNTY Program Manager: Erika Silver, esilver@clackamas.us	
Entry/Exit	AGENCY shall Enter and Exit clients if moving between categories when condition/situation changes to demonstrate length of time client has used each provider groups.	
6 month follow-up report	A follow-up assessment will be completed by AGENCY which will report where the client is 6 months after they exit a program. AGENCY will not be required to conduct the 6 month follow-up if client exit dates occur after January 1, 2019.	

3. AGENCY shall ensure that data on all persons served and all activities assisted under this agreement are entered into the applicable community-wide HMIS in the area in which those persons and activities are located, or a comparable database, in accordance with HUD's standards on participation, data collection, and reporting under a local HMIS. If AGENCY is a victim service provider or a legal services provider, it may use a comparable database that collects client-level data over time (i.e., longitudinal data) and generates unduplicated aggregate reports based on the data. Information entered into a comparable database must not be entered directly into or provided to an HMIS
4. AGENCY shall assure that data entry into HMIS occurs in an accurate and timely manner.
5. AGENCY shall maintain and provide to COUNTY as requested information as required by state and federal funding sources for reporting purposes.

6. Supporting documentation must be retained on-site, e.g., service records and sign-in logs.

B. INVOICING

AGENCY, through designated staff, shall submit to COUNTY a monthly invoice that specifies all expenditures for each month and the total amount requested based on **Exhibit C**. The invoice is to include copies of receipts to substantiate the rents, deposits paid and other eligible client assistance. The invoice shall include the contract number. AGENCY may use the invoice template provided in **Exhibit E** or COUNTY-approved equivalent produced by AGENCY.

Total amount billed for Homelessness Prevention, Rapid Re-Housing, and System Diversion shall not exceed **\$160,000** based on **Exhibit C**.

Invoices and required reports may be submitted electronically via e-mail as an attachment and shall be received by COUNTY on or before the 15th of each month preceding the reporting period.

Invoices and reporting shall be submitted to:
Clackamas County Social Services Division
Attn: Jessica Diridoni
PO Box 2950
Oregon City, Oregon 97045

Or electronically to: jdiridoni@clackamas.us

Within thirty (30) days after receipt of a correct invoice, provided COUNTY has approved the service specified on the invoice, COUNTY shall pay the amount requested to AGENCY.

TO READ:

A. PROGRAM SPECIFIC REPORTING

1. AGENCY shall comply with current HMIS Policy and Procedures and adhere to all HMIS reporting requirements. AGENCY must perform their own HMIS data entry.
2. AGENCY shall comply with tracking the programs funded through this agreement through separate and distinct providers in HMIS as directed by COUNTY. The name(s) of provider(s) to be used for this agreement will be provided by COUNTY to AGENCY at contract execution. Each funding stream may have its own provider group(s) and AGENCY shall not enter HMIS data from more than one funding stream into one provider group.

3 PROVIDER GROUPS IN HMIS			
HMIS Provider Name	AT RISK	HOMELESS	NHA CHA Mobile Housing Team
State EHA Homeless Categories	2, 3, 4, 5	1, 2, 3	1
Description	Prevention + Problem Solving	Diversion + Rapid Re-Housing	Mobile Housing Team (RRH & Motel)
Questions when determining which provider group to enter client	Direct questions on determining which provider group to enter to COUNTY Program Manager: Erika Silver, esilver@clackamas.us		
Entry/Exit	AGENCY shall Enter and Exit clients if moving between categories when condition/situation changes to demonstrate length of time client has used each provider groups.		
6 month follow-up report	A follow-up assessment will be completed by AGENCY which will report where the client is 6 months after they exit a program. AGENCY will not be required to conduct the 6 month follow-up if client exit dates occur after January 1, 2019.		

3. AGENCY shall ensure that data on all persons served and all activities assisted under this agreement are entered into the applicable community-wide HMIS in the area in which those persons and activities are located, or a comparable database, in accordance with HUD's standards on participation, data collection, and reporting under a local HMIS. If AGENCY is a victim service provider or a legal services provider, it may use a comparable database that collects client-level data over time (i.e., longitudinal data) and generates unduplicated aggregate reports based on the data. Information entered into a comparable database must not be entered directly into or provided to an HMIS
4. AGENCY shall assure that data entry into HMIS occurs in an accurate and timely manner, within 3 days of program entry date.
5. AGENCY shall maintain and provide to COUNTY as requested information as required by state and federal funding sources for reporting purposes.
6. Supporting documentation must be retained on-site, e.g., service records and sign-in logs.
7. **Data Quality. AGENCY must correct data quality, missing information, and null data errors as specified by COUNTY and/or OHCS on or before the 10th of each month, for the preceding month.**

B. INVOICING

AGENCY, through designated staff, shall submit to COUNTY **2 monthly invoices that specify** all expenditures for each month and the total amount requested based on Exhibit C. The **invoices** are to include copies of receipts to substantiate the rents, deposits paid and other eligible client assistance. The **invoices** shall include the contract number **and list 'System Diversion, Homelessness Prevention, and Rapid Re-Housing' or 'Rapid-Re-Housing Mobile Housing,' whichever is appropriate.** AGENCY may use the invoice templates provided in Exhibit E or COUNTY-approved equivalent produced by AGENCY.

Total amount billed for Homelessness Prevention, Rapid Re-Housing, and System Diversion shall not exceed \$240,000 based on Exhibit C.

Total amount billed for Rapid Re-Housing Mobile Housing Team shall not exceed \$60,000 based on Exhibit C.

Invoices and required reports may be submitted electronically via e-mail as an attachment and shall be received by COUNTY on or before the 15th of each month preceding the reporting period.

Invoices and reporting shall be submitted to:
Clackamas County Social Services Division
Attn: Jessica Diridoni
PO Box 2950
Oregon City, Oregon 97045

Or electronically to: jdiridoni@clackamas.us

Within thirty (30) days after receipt of a correct invoice, provided COUNTY has approved the service specified on the invoice, COUNTY shall pay the amount requested to AGENCY.

AMEND EXHIBIT C BUDGET & OUTPUT:

A. BUDGET

Total maximum compensation under this contract shall not exceed **\$240,000**.

COUNTY will pay AGENCY on a cost-reimbursement basis for all eligible costs with payments to be made as outlined in **Exhibit A, B & C**, up to a maximum compensation of **\$240,000** EHA funds.

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

B. ELIGIBLE COSTS

Eligible costs include items below and as listed/amended for EHA in **Exhibit F**.

- Participant rent
- Participant move-in costs
- Rental application fees
- Utility deposits necessary to establish service
- Other one-time expenditures such as identification that will remove barriers to permanent housing placement or housing stability when no other resources are available.
- Expenditures related to employment or employment training that will support participants to increase their incomes. Examples include work clothes and textbooks for vocational training courses when no other resources are available.
- Personnel salaries, taxes and benefits proportional to time needed to deliver the proposed services, not to exceed the maximum percentage for the corresponding service element.
- Mileage reimbursement at organization's standard rate, not to exceed federal rate, for direct service personnel travel directly related to delivering services in this project, and not to exceed the maximum percentage for the corresponding service element.

Administrative and/or overhead expenses are NOT eligible costs.

C. OUTCOMES/PERFORMANCE MEASURES

Homeless System Diversion – At least 50 households or 20% of households requesting shelter or homeless housing through the Coordinated Housing Access system, whichever is smaller, are diverted from entering the system.

Homelessness Prevention – At least 80% of households served are permanently housed at exit and of those, 80% retain permanent housing for at least 90 days after the end of subsidy.*

Rapid Re-Housing – At least 60% of households exit to permanent housing and of those, 80% retain permanent housing for at least 90 days after the end of subsidy.*

COUNTY acknowledges that some households may enter services later in the project period and that it may not be possible to complete this measure for all households. The measure applies to those households whose subsidy ends on or before March 31, 2019.

Budget and Output Template
System Diversion, Homelessness Prevention and Rapid Re-Housing

Applicant:	Northwest Housing Alternatives
-------------------	--------------------------------

Budget Summary

Homeless System Diversion Proposed Amount (20%)	\$ 48,000.00
Homelessness Prevention Proposed Project Amount (40%)	\$ 144,300.00
Rapid Re-Housing Proposed Amount (40%)	\$ 47,700.00
Total	\$ 240,000.00

HP adjusted to 60%
 RRH adjusted to 20%

Proposed Project Budget and Output Detail (do not fill in the shaded cells)

Allowable Costs by Element	Amount Requested	Projected Total Households	Projected Total Persons
Homeless System Diversion		26.00	79.00
Participant rent and deposits	\$ 20,400.00		
Other eligible client assistance	\$ 3,600.00		
Personnel & mileage (up to 50% of total)	\$ 24,000.00		
Personnel FTE - enter number of full-time employees	0.24		
Homelessness Prevention		34.00	103.00
Participant rent and deposits	\$ 103,300.00		
Other eligible client assistance	\$ 5,000.00		
Personnel & mileage (up to 25% of total)	\$ 36,000.00		
Personnel FTE - enter number of full-time employees	0.24		
Rapid Re-Housing		9.00	27.00
Participant rent and deposits	\$ 34,500.00		
Other eligible client assistance	\$ 1,200.00		
Personnel & mileage (up to 25% of total)	\$ 12,000.00		
Personnel FTE - enter number of full time employees	0.12		
Grand Total	\$ 240,000.00	69.00	209.00

(Optional) Additional Resources Committed to Project

Service	Value	Source	Cash or In-Kind
Homeless System Diversion	\$ 119,592.00		
Please see Budget Narrative			
Homelessness Prevention	\$ 418,320.00		
Please see Budget Narrative			
Rapid Re-Housing	\$ 655,210.00		
Please see Budget Narrative			
Total	\$ 1,193,122.0		

TO READ:

A. BUDGET

Total maximum compensation under this contract shall not exceed **\$300,000**.

COUNTY will pay AGENCY on a cost-reimbursement basis for all eligible costs with payments to be made as outlined in *Exhibit A, B & C*, up to a maximum compensation of **\$300,000** EHA funds.

Eligible costs applied to Amendment #1 funds for Rapid Re-Housing Mobile Housing Team shall be from January 1, 2019 to June 30, 2019. Payment shall be full compensation for work performed, for services rendered, and for all labor, materials, supplies, equipment, travel expenses, mileage, and incidentals necessary to perform the work and services.

B. ELIGIBLE COSTS

Eligible costs include items below and as listed/amended for EHA in Exhibit F.

- Participant rent
- Participant move-in costs
- Rental application fees
- Utility deposits necessary to establish service
- Other one-time expenditures such as identification that will remove barriers to permanent housing placement or housing stability when no other resources are available.
- Expenditures related to employment or employment training that will support participants to increase their incomes. Examples include work clothes and textbooks for vocational training courses when no other resources are available.
- Personnel salaries, taxes and benefits proportional to time needed to deliver the proposed services, not to exceed the maximum percentage for the corresponding service element.
- Mileage reimbursement at organization's standard rate, not to exceed federal rate, for direct service personnel travel directly related to delivering services in this project, and not to exceed the maximum percentage for the corresponding service element.
- ***Program expenses***
- ***Client assistance/support (including motel vouchers, supportive services, agency mileage and rental subsidy)***

Administrative and/or overhead expenses are NOT eligible costs.

C. OUTCOMES/PERFORMANCE MEASURES

Homeless System Diversion – At least 50 households or 20% of households requesting shelter or homeless housing through the Coordinated Housing Access system, whichever is smaller, are diverted from entering the system.

Homelessness Prevention – At least 80% of households served are permanently housed at exit and of those, 80% retain permanent housing for at least 90 days after the end of subsidy.*

Rapid Re-Housing – At least 60% of households exit to permanent housing and of those, 80% retain permanent housing for at least 90 days after the end of subsidy.*

COUNTY acknowledges that some households may enter services later in the project period and that it may not be possible to complete this measure for all households. The measure applies to those households whose subsidy ends on or before March 31, 2019.

Budget and Output Template
System Diversion, Homelessness Prevention and Rapid Re-Housing

Applicant:	Northwest Housing Alternatives
-------------------	--------------------------------

Budget Summary

Homeless System Diversion Proposed Amount (20%)	\$ 48,000.00
Homelessness Prevention Proposed Project Amount (40%)	\$ 144,300.00
Rapid Re-Housing Proposed Amount (40%)	\$ 47,700.00
Total	\$ 240,000.00

HP adjusted to 60%
 RRRH adjusted to 20%

Proposed Project Budget and Output Detail (do not fill in the shaded cells)

Allowable Costs by Element	Amount Requested	Projected Total Households	Projected Total Persons
Homeless System Diversion		26.00	79.00
Participant rent and deposits	\$ 20,400.00		
Other eligible client assistance	\$ 3,600.00		
Personnel & mileage (up to 50% of total)	\$ 24,000.00		
Personnel FTE - enter number of full-time employees	0.24		
Homelessness Prevention		34.00	103.00
Participant rent and deposits	\$ 103,300.00		
Other eligible client assistance	\$ 5,000.00		
Personnel & mileage (up to 25% of total)	\$ 36,000.00		
Personnel FTE - enter number of full-time employees	0.24		
Rapid Re-Housing		9.00	27.00
Participant rent and deposits	\$ 34,500.00		
Other eligible client assistance	\$ 1,200.00		
Personnel & mileage (up to 25% of total)	\$ 12,000.00		
Personnel FTE - enter number of full time employees	0.12		
Grand Total	\$ 240,000.00	69.00	209.00

(Optional) Additional Resources Committed to Project

Service	Value	Source	Cash or In-Kind
Homeless System Diversion	\$ 119,592.00		
Please see Budget Narrative			
Homelessness Prevention	\$ 418,320.00		
Please see Budget Narrative			
Rapid Re-Housing	\$ 655,210.00		
Please see Budget Narrative			
Total	\$ 1,193,122.0		

Budget and Output Template: Rapid Re-Housing, Mobile Housing Team, Amendment #1	Budget
Personnel	\$ 12,106
Participant rent and deposits	\$ 38,421
Client assistance:	
Motel vouchers	\$ 5,000
Support services	\$ 2,301
Program expense	\$ 1,712
Agency Mileage	\$ 460
Total	\$ 60,000
Projected Total Households Served	9
Projected Total Persons Served	27

- *Personnel, agency mileage, and program expenses are fixed categories. Flexibility between motel vouchers, support services, and participant rent and deposits categories are allowed with Program Manager approval.*

AMEND EXHIBIT D: SPECIAL REQUIREMENTS, TO INCLUDE:

9. Confidentiality. Any and all information regarding any individual serviced by the AGENCY is strictly confidential. All AGENCY provider and project staff members are expected to comply with the most current local, state and federal laws regarding confidentiality. Information in any form, including in aggregate, shall not be released to any party without the authorization of the individual and/or COUNTY. Client information (including identifying the person as a client) should not be released without written authorization from the client. AGENCY is required to have a signed agency Release of Information (ROI) form for all clients authorizing the release of information pertinent to determining program eligibility, providing assistance/service, HMIS reporting, and other relevant needs for sharing information. Overnight warming center programs are permitted to obtain a Verbal ROI on the Warming Center HMIS Data Entry Form. Release forms must be time-limited and specific as to with whom and what information will be shared. ROI's must be obtained from all participants to AGENCY and COUNTY (Social Services Division). Oregon Housing & Community Services Department (OHCS) must be routinely listed as an entity with which client information will be shared as it pertains to data collection and monitoring (including third-party adults and reviews).
10. AGENCY agrees that this agreement is subject to termination upon such a directive to COUNTY by OHCS and that OHCS shall not be liable to any of the parties of that agreement or to other persons for directing that such agreement be terminated.
11. CLIENT & FISCAL RECORDS. AGENCY shall retain all program records pertinent to client services and expenditures incurred in a manner consistent with the requirements of state and federal law. This includes, but is not limited to, those requirements listed in Administrative Rule, Operations Manual and Special Schedules. Find the OHCS Special Schedule at the Oregon State Archives: (<http://arcweb.sos.state.or.us/pages/recmgmt/sched/state.html>); Find the State Agency General Records Retention Schedules at the Oregon State Archives: (http://arcweb.sos.state.or.us/pages/rules/oars_100/oar_166/166_300.html).

Northwest Housing Alternatives, Inc.

Agency Service Contract # 8696– Amendment # 1

Page 11 of 13

AGENCY shall retain and keep accessible all such fiscal records, books, documents, papers, plans, and writings for a minimum of (6) six years, or such longer period as may be required by applicable law, whichever date is later. Applicable law includes the following final payment and termination of EHA, SHAP and/or LIRHF funding, or until the conclusion of any audit, controversy or litigation arising out of, or relating to, EHA, SHAP, and LIRHF. AGENCY shall retain and keep accessible all such program records, client records, books, documents, papers, plans, and writing for a minimum of five (5) years after final payment to client.

AGENCY shall allow OHCS access to, or furnish, whatever information and/or documentation is necessary for OHCS to conduct reviews, audits, and compliance monitoring as it deems appropriate. AGENCY shall permit representatives of OHCS to visit its sites and to review and audit all records pertinent to program funding at any reasonable time, with or without benefit of prior notification.

12. Religious and Political Activities: AGENCY will not request or assign guests, clients, volunteers, or staff to conduct or engage in religious proselytization, sectarian, or political activities, such as: electoral activities, voter registration, voter transportation to polls, and efforts to influence legislation.
13. AGENCY shall administer program in a manner satisfactory to COUNTY & OHCS and in compliance with all program requirements, including, but not limited to the following terms and conditions:
 - (a) Ensure funds are expended within the time limitations set by COUNTY & OHCS.
 - (b) Provide program services to eligible households who are homeless.
 - (c) Meet OHCS and COUNTY recordkeeping requirements, including HMIS data collection, reporting and error fixing described in Exhibit B.
 - (d) May terminate services to participants who violate program requirements. Termination, denial, and grievance procedures shall be clearly communicated to and easily understood by participants and readily available upon request or posted in a public location.
14. Written policy and procedures must be established and outlined in local documentation (staff policy/procedure manuals) inclusive of, but not exclusive to the following areas:
 - (a) Establishment and maintenance of clear policy for cases where there may be a conflict of interest. This includes procedures for staff when employees, board members, friends or family members apply for services.
 - (b) Establishment and maintenance of clear procedures for dealing with program applicants and participants who may have committed fraud and for dealing with public complaints regarding potential fraud. All incidents of fraud must be reported to OHCS & COUNTY.

AMEND EXHIBIT E, INVOICE TEMPLATE, TO INCLUDE:

INVOICE
System Diversion, Homelessness Prevention and Rapid Re-Housing
Rapid Re-Housing, Mobile Housing Amendment

Contractor: Northwest Housing Alternatives
Address: 13819 SE McLoughlin
Address: Milwaukie, OR 97222
Phone: (503)654-1007

Invoice Date: _____
Invoice Number: _____
Service Period: _____
Contract #: 8696, Amend #1

Submit invoice to: Clackamas County Social Services Division, Jessica Diridoni, jdiridoni@clackamas.us

Budget Summary		Projected HH For Contract Term	Projected Persons For Contract Term
Rapid Re-Housing Proposed Amount - Mobile Housing	\$ 60,000		

Budget and Output Detail				Cumulative Total		
	Complete yellow cells only. Do not fill in shaded cells.					
Allowable Costs by Element	Budget	Year to Date Charges	Current Invoice Charges	Number of Households Served	Number of Persons Served	
Rapid Re-Housing						
Personnel	\$ 12,106					
Participant rent and deposits	38,421					
Client assistance:						
Motel vouchers	\$5,000					
Support services	\$2,301					
Program expense	\$1,712					
Agency Mileage	\$460					
RRH Total	\$ 60,000.00	\$ -	\$ -	0	0	
Invoice Total:		\$ -				

CERTIFICATION

By signing this report, I certify to the best of my knowledge and belief that the report is true, complete, and accurate, and the expenditures, disbursements and cash receipts are for the purposes and objectives set forth in the terms and conditions of this contract. I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise. (U.S. Code Title 18, Section 1001 and Title 31, Sections 3729-3730 and 3801-3812).

Prepared by: _____ **E-mail:** _____
Phone: _____ **Date:** _____
Authorized Signer: _____

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

AGENCY

NORTHWEST HOUSING ALTERNATIVES, INC.

By: Trell Anderson
Trell Anderson, Executive Director

Date 2/19/19

13819 SE McLoughlin
Street Address
Milwaukie OR 97222
City / State / Zip
503.654.1007 ext. 107 /
Phone / Fax

CLACKAMAS COUNTY

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

Signing on Behalf of the Board:

Richard Swift, Director
Health, Housing and Human Services Department

Date _____



DAN JOHNSON
DIRECTOR

DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT
DEVELOPMENT SERVICES BUILDING
150 BEAVERCREEK ROAD OREGON CITY, OR 97045

February 28, 2019

Board of Commissioners
Clackamas County

Members of the Board:

**Approval of a Grant Agreement and Grant Award Acceptance for the
Safe Routes to Schools Infrastructure Grant
for crossing improvements at SE Fuller Rd and SE Causey Ave**

Purpose/ Outcomes	Approval of a Grant Agreement and Grant Award Acceptance from the Oregon Department of Transportation (ODOT) under the Safe Routes to Schools infrastructure program to construct a new crosswalk for Whitcomb Elementary School at Fuller Rd and SE Causey Ave.
Dollar Amount and Fiscal Impact	Total cost of the project is \$185,588. ODOT Grant award is \$148,470. 20% match of \$37,118 is required
Funding Source	The Road Fund is the funding source for the 20% match.
Duration	Construction sometime between 2019-2024
Previous Board Action	October 11 Business Meeting the Board authorized DTD to apply for the Safe Routes to School grant.
Strategic Plan Alignment	<ul style="list-style-type: none">• Build a strong infrastructure
Contact Person	Scott Hoelscher, Senior Transportation Planner - 742-4533
Contract No.	Grant IGA No. 33116

BACKGROUND:

This project involves construction of the following Safe Routes to Schools infrastructure project: New crosswalk serving Whitcomb Elementary School at intersection of SE Fuller Rd and SE Causey Ave. consisting of rectangular rapid flashing beacons (RRFB); center lane pedestrian refuge and ADA curb ramps. This project will improve safety for children walking and biking to Whitcomb Elementary Schools.

RECOMMENDATION:

Staff respectfully requests the board to accept the grant award by signing the attached Grant Agreement with ODOT.

Respectfully submitted,

Scott Hoelscher, Senior Transportation Planner
Transportation and Development

From: SRTS Program Mailbox [<mailto:SRTSProgramMailbox@odot.state.or.us>]
Sent: Friday, January 25, 2019 9:27 AM
To: Hoelscher, Scott <ScottHoe@co.clackamas.or.us>
Cc: SRTS Program Mailbox <SRTSProgramMailbox@odot.state.or.us>; FERGASON LeeAnne <LeeAnne.FERGASON@odot.state.or.us>
Subject: Safe Routes to School - 33116 Clackamas County

Hi Scott,

I'm pleased to inform you that the Oregon Transportation Commission has selected your Safe Routes to Schools project for funding. Attached is the Safe Routes to Schools agreement. The agreement is the instrument ODOT uses to codify the funding for your project between ODOT and your entity. Please review and have the appropriate party sign page eleven of the agreement, and return a signed copy of the signature page to me by email.

Please note: Only work performed after the agreement is fully signed by your agency and ODOT will be eligible for reimbursement. We will let you know when that occurs and will send you a fully-signed copy of the agreement at that time.

Please let either of us know if you have any questions. LeeAnne can be reached at 503-986-5805; Tami can be reached at 503-986-3345.

LeeAnne Ferguson
Safe Routes to School Program Manager
(503) 986-5805

Tami Weil
Safe Routes to School Coordinator
(503) 986-3345

GRANT AGREEMENT
SAFE ROUTES TO SCHOOL PROGRAM (SRTS)
OREGON DEPARTMENT OF TRANSPORTATION
Project Name SE Fuller Rd and Causey Ave: Crosswalk Construction
(Oregon Governmental Entity)

This Agreement is made and entered into between the **State of Oregon**, acting by and through its Department of Transportation, (“ODOT”), and **Clackamas County**, acting by and through its Governing Body, (“Recipient”), both referred to in this Agreement individually as “Party” and collectively as “Parties.”

Agreement Documents. This Agreement consists of this document and the following documents:

- a. Exhibit A: **Project Description, Key Milestones, Schedule and Budget**
- b. Exhibit B: **Recipient Requirements**
- c. Exhibit C: **Subcontractor Insurance**
- d. Exhibit D: **Application and documents provided by Recipient to ODOT before execution of the Agreement**

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

BACKGROUND

1. The State of Oregon has established the Safe Routes to Schools Fund (the “SRTS Fund”) and the Safe Routes to School Program (the “Program”) pursuant to ORS 184.740 *et seq.*
2. The purpose of the Program is to assist Oregon communities in identifying and reducing barriers and hazards to children walking or bicycling to and from school.
3. Moneys in the SRTS Fund are continuously appropriated to ODOT to implement the Program and provide certain matching grants for safety improvement projects near schools.
4. Recipient applied for a grant through the Program to undertake the project described in Exhibit A, attached and incorporated by this reference (the “Project”).
5. ODOT approved a grant in the maximum amount of **\$148,470** and is willing to provide the grant to Recipient for the Project on the terms and conditions of this Agreement.
6. Recipient desires to receive the grant on the terms and condition of this Agreement,
7. ODOT and Recipient desire to enter into this Agreement to implement the grant.

NOW, THEREFORE, in consideration of the above premises and other good and valuable consideration, the receipt and sufficiency of which the Parties acknowledge, the Parties agree as follows:

AGREEMENT

1. Effective Date and Availability of Grant Funds. This Agreement is effective on the date that it is fully executed and approved as required by applicable law (the “Effective Date”). The availability of Grant Funds (as defined in section 2) and ODOT’s obligation to disburse Grant Funds shall end on the earlier of the following dates (the “Availability Termination Date”):

(i) Five (5) years after the Effective Date; or

(ii) 45 days after the Final Payment Conditions are satisfied pursuant to section 6.a.

No Grant Funds are available after the Availability Termination Date.

2. Grant. In accordance with the terms and conditions of this Agreement, ODOT shall provide Recipient with a maximum of **\$148,470** (the “Grant Funds”) from the SRTS Fund to support and assist Recipient’s implementation of the Project.

3. Estimated Project Cost, Scope and Schedule; Recipient Match. The total Project cost is estimated at \$185,588, which is subject to change. The Project’s scope and schedule are set forth in Exhibit A. While the total Project cost may change, ODOT will reimburse Eligible Costs (as that term is defined in section 4.b) only up to the maximum Grant Funds amount stated in section 2. ODOT’s reimbursement of Eligible Costs under section 6.a. is subject to, and calculated based upon, Recipient’s cash match requirement as set forth in paragraph V of Exhibit B. Recipient will be responsible for all Project costs, whether Eligible Costs or otherwise, not covered by the Grant Funds.

4. Project:

a. Use of Grant Funds. The Grant Funds shall be used solely for the Project described in Exhibit A and shall not be used for any other purpose. No Grant Funds will be disbursed for any changes to the Project unless such changes are approved by ODOT by amendment pursuant to Section 11.c.

b. Eligible Costs.

Recipient may seek reimbursement for its actual costs to develop the Project, consistent with the terms of this Agreement (“Eligible Costs”).

i. Eligible Costs are actual costs of Recipient to the extent those costs are:

(A) reasonable, necessary and directly used to develop and construct the Project;

(B) permitted by generally accepted accounting principles established by the Governmental Accounting Standards Board, as reasonably interpreted by ODOT;

(C) incurred no earlier than 24 months before the application deadline for this grant; and

(D) eligible or permitted uses of the Grant Funds under the Oregon Constitution Article IX Section 3a, the statutes and laws of the state of Oregon, and this Agreement.

ii. Eligible costs do NOT include:

- (A) operating and working capital or operating expenditures charged to the Project by Recipient or payments made to related parties;
- (B) loans or grants to be made to third parties;
- (C) any expenditures incurred after this Agreement's termination or expiration; or
- (D) costs associated with a Project that substantially deviate from the Application submission, identified in Exhibit D, unless such changes are approved by ODOT by amendment of this Agreement.

c. Project Change Procedures.

- i. If Recipient anticipates a change in the Project's scope or the Project's completion date identified in Exhibit A (the "Project Completion Date"), Recipient shall submit a request for change to SRTSProgramMailbox@odot.state.or.us. The request for change must be submitted before the change occurs.
- ii. Recipient shall not proceed with any changes to the Project's scope or the Project Completion Date without first executing an amendment to this Agreement that documents ODOT's approval of Recipient's request for such a change. A request for a change in the Project's scope or the Project Completion Date may be rejected at ODOT's sole discretion.

5. Progress Reports.

- a. Quarterly Reports.** Recipient shall submit quarterly progress reports to ODOT using a format that ODOT provides. Recipient must submit the reports to SRTSProgramMailbox@odot.state.or.us by the first Wednesday of March, June, September, and December.
- b. Final Report.** Recipient shall submit a final written report (the "Final Report") to SRTSProgramMailbox@odot.state.or.us that identifies how hazards have been reduced to children walking or bicycling to and from school as a direct result of this Project. Recipient must submit the Final Report within six (6) months after the Project Completion Date. Recipient's obligation to provide the Final Report will survive this Agreement's expiration or termination.

6. Reimbursement Process for Eligible Costs.

- a.** ODOT shall reimburse Recipient 80% of Eligible Costs (the "Reimbursement Rate") in a total amount not to exceed the amount of Grant Funds under section 2. ODOT shall reimburse Eligible Costs at the Reimbursement Rate within forty-five (45) days of ODOT's receipt and approval of a request for reimbursement from Recipient. Recipient must pay its contractors, consultants and vendors before submitting invoices to ODOT for reimbursement. Recipient must submit to ODOT its first invoice within two (2) years of the Effective Date and must submit its final invoice (the "Final Invoice") within six (6) months of the Project Completion Date. Upon ODOT's receipt of the Final Invoice, ODOT will conduct a final on-site review of the Project. ODOT will withhold payment of the Final Invoice until both (i) its SRTS Program Manager, or designee, has completed the final inspection and accepted the Project as complete and (ii) Recipient has submitted the Final Report required by section 5.b (collectively, the "Final Payment Conditions").

- b. Recipient shall present monthly invoices for the Eligible Costs directly to SRTSProgramMailbox@odot.state.or.us for review and approval. Such invoices shall include the Agreement number, invoice number, total Grant Funds amount, total amount of previously reimbursed invoices, the start and end date of billing period, and itemize all expenses for which reimbursement is claimed. Invoices shall include supporting documentation, e.g., labor hours should be supported by timesheets/work logs, proof of payment to vendors (if applicable), receipts, etc. Invoices must be based on actual expenses incurred and clearly specify the percentage of Project completion. Invoices shall not be presented for period of less than one month. Recipient shall also include with the invoice a summary describing the work invoiced for the period being invoiced and work expected for the next invoicing period.
- c. **Conditions Precedent to Reimbursement of Eligible Costs.** ODOT's obligation to reimburse Recipient for Eligible Costs is subject to satisfaction, with respect to each reimbursement, of each of the following conditions precedent:
- i. ODOT has received funding, appropriations, limitations, allotments, or other expenditure authority sufficient to allow ODOT, in the exercise of its reasonable administrative discretion, to make the reimbursement;
 - ii. Recipient is in compliance with the terms of this Agreement;
 - iii. Recipient's representations and warranties set forth in Section 7 below are true and correct on the date of reimbursement with the same effect as though made on the date of the request for the reimbursement, and
 - iv. Recipient has provided to ODOT a request for reimbursement in accordance with Section 6.b.
- d. **Recovery of Funds.** Any funds disbursed to Recipient under this Agreement that are expended in violation of one or more of the provisions of this Agreement, including falsifying information contained in the application, ("Misexpended Funds") must be returned to ODOT. Overstatement of the match requirement in the application is a violation of this Agreement. Recipient shall return all Misexpended Funds to ODOT promptly after ODOT's written demand and no later than fifteen (15) days after ODOT's written demand. If Recipient fails to reimburse ODOT, ODOT may withhold Recipient's proportional share of State Highway Fund distribution necessary to reimburse ODOT for costs incurred by such Recipient breach. Recipient shall pay back all of the funds to ODOT if Project is not completed or if funds are Misexpended.

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

- a. **Organization and Authority.** Recipient is duly organized and validly existing under the laws of the State of Oregon and is eligible to receive the Grant Funds. Recipient has full power, authority and legal right to make this Agreement and to incur and perform its obligations hereunder, and the making and performance by Recipient of this Agreement (1) have been duly authorized by all necessary action of Recipient and (2) do not and will not violate any provision of any applicable law, rule, regulation, or order of any court, regulatory commission, board, or other administrative agency or any provision of Recipient's Articles of Incorporation or Bylaws, if applicable, (3) do not and will not result in the breach of, or constitute a default or require any consent under any other agreement or instrument to which Recipient is a party or by which Recipient or any of its properties may be bound or affected. No authorization, consent, license, approval of, filing or registration with or notification to any governmental body or regulatory or

supervisory authority is required for the execution, delivery or performance by Recipient of this Agreement.

- b. Binding Obligation.** This Agreement has been duly executed and delivered by Recipient and constitutes a legal, valid and binding obligation of Recipient, enforceable in accordance with its terms subject to the laws of bankruptcy, insolvency, or other similar laws affecting the enforcement of creditors' rights generally.
- c. No Solicitation.** Recipient's officers, employees, and agents shall neither solicit nor accept gratuities, favors, or any item of monetary value from contractors, potential contractors, or parties to subagreements. No member or delegate to the Congress of the United States or State of Oregon employee shall be admitted to any share or part of this Agreement or any of its benefits.
- d. No Debarment.** Neither Recipient nor its principals is presently debarred, suspended, or voluntarily excluded from any federally-assisted transaction, or proposed for debarment, declared ineligible or voluntarily excluded from participating in this Agreement by any state or federal agency. Recipient agrees to notify ODOT immediately if it is debarred, suspended or otherwise excluded from any federally assisted transaction for any reason or if circumstances change that may affect this status, including, without limitation, any relevant criminal indictments or convictions.
- e. Compliance with Oregon Taxes, Fees and Assessments.** Recipient is, to the best of the undersigned(s) knowledge, and for the useful life of the Project will remain, current on all applicable state and local taxes, fees and assessments.
- f.** The warranties set forth in this Section 7 are in addition to, and not in lieu of, any other warranties set forth in this Agreement or implied by law.

8. Records Maintenance and Access; Audit.

- a. Records, Access to Records and Facilities.** Recipient shall make and retain proper and complete books of record and account and maintain all fiscal records related to this Agreement and the Project in accordance with all applicable generally accepted accounting principles, generally accepted governmental auditing standards and state minimum standards for audits of municipal corporations. Recipient shall ensure that each of its subrecipients and subcontractors complies with these requirements. ODOT, the Secretary of State of the State of Oregon ("Secretary") and their duly authorized representatives shall have access to the books, documents, papers and records of Recipient that are directly related to this Agreement, the funds provided hereunder, or the Project for the purpose of making audits and examinations. In addition, ODOT, the Secretary and their duly authorized representatives may make and retain excerpts, copies, and transcriptions of the foregoing books, documents, papers, and records. Recipient shall permit authorized representatives of ODOT or the Secretary to perform site reviews of the Project, and to examine all real property and facilities purchased by Recipient as part of the Project, and any transportation services rendered by Recipient.
- b. Retention of Records.** Recipient shall retain and keep all books, documents, papers, and records that are directly related to this Agreement, the Grant Funds or the Project for a period of six (6) years after final payment. Recipient should consult with the State of Oregon before final destruction of Project records. If there are unresolved audit questions at the end of the period described in this section, Recipient shall retain the records until the questions are resolved.

- c. **Expenditure Records.** Recipient shall document the expenditure of all Grant Funds disbursed by ODOT under this Agreement. Recipient shall create and maintain all expenditure records in accordance with generally accepted accounting principles and in sufficient detail to permit ODOT to verify how the Grant Funds were expended.
- d. **Survival.** This Section 8 shall survive any expiration or termination of this Agreement.

9. Recipient Subagreements and Procurements

- a. **Subagreements.** Recipient may enter into agreements with sub-recipients, contractors or subcontractors (collectively, “subagreements”) for performance of the Project.
 - i. All subagreements must be in writing, executed by Recipient and must incorporate and pass through all of the applicable requirements of this Agreement to the other party or parties to the subagreement(s). Use of a subagreement does not relieve Recipient of its responsibilities under this Agreement.
 - ii. Recipient shall require all of its contractors performing work under this Agreement to name ODOT as a third party beneficiary of Recipient’s subagreement with the Contractor and to name ODOT as an additional obligee on contractors’ bonds.
 - iii. Recipient agrees to provide ODOT with a copy of any signed subagreement upon ODOT’s request. Recipient must report to ODOT any substantial breach of a term or condition of a subagreement relating to this Agreement within ten (10) days of Recipient discovering the breach.
- b. **Subagreement indemnity; insurance.**
 - i. *Recipient shall require its contractor(s) and subcontractor(s) that are not units of local government as defined in Oregon Revised Statute (ORS) 190.003, if any, to indemnify, defend, save and hold harmless the State of Oregon, Oregon Transportation Commission and its members, the Oregon Department of Transportation and its officers, employees and agents from and against any and all claims, actions, liabilities, damages, losses, or expenses, including attorneys’ fees, arising from a tort, as now or hereafter defined in ORS 30.260 (“Claims”), to the extent such Claims are caused, or alleged to be caused by the negligent or willful acts or omissions of Recipient’s contractor or any of the officers, agents, employees or subcontractors of the contractor. It is the specific intention of the Parties that ODOT shall, in all instances, except to the extent Claims arise from the negligent or willful acts or omissions of ODOT, be indemnified for all Claims caused or alleged to be caused by the contractor or subcontractor.*
 - ii. Any such indemnification shall also provide that neither Recipient’s contractor or subcontractor, nor any attorney engaged by Recipient’s contractor or subcontractor, shall defend any claim in the name the State of Oregon or any agency of the State of Oregon, nor purport to act as legal representative of the State of Oregon or any of its agencies, without the prior written consent of the Oregon Attorney General. The State of Oregon may, at any time at its election, assume its own defense and settlement in the event that it determines that Recipient’s contractor is prohibited from defending the State of Oregon, or that Recipient’s contractor is not adequately defending the State of Oregon’s interests, or that an important governmental principle is at issue or that it is in the best interests of the State of

Oregon to do so. The State of Oregon reserves all rights to pursue claims it may have against Recipient's contractor if the State of Oregon elects to assume its own defense.

iii. Recipient shall require the other party, or parties, to each of its subagreements that are not units of local government as defined in ORS 190.003 to obtain and maintain insurance of the types and in the amounts provided in Exhibit C to this Agreement.

- c. **Procurements.** Recipient shall make purchases of any equipment, materials, or services for the Project under procedures that comply with Oregon law, including all applicable provisions of the Oregon Public Contracting Code and rules, ensuring that:
- i. all applicable clauses required by federal statute, executive orders and their implementing regulations are included in each competitive procurement;
 - ii. all procurement transactions are conducted in a manner providing full and open competition; and
 - iii. procurements exclude the use of statutorily or administratively imposed in-state or geographic preference in the evaluation of bids or proposals (with exception of locally controlled licensing requirements).

10. Termination

- a. **Termination by ODOT.** ODOT may terminate this Agreement effective upon delivery of written notice of termination to Recipient, or at such later date as may be established by ODOT in such written notice, if:
- i. Recipient fails to perform the Project within the time specified in this Agreement or any extension of the Agreement or commencement, continuation or timely completion of the Project by Recipient is, for any reason, rendered improbable, impossible, or illegal; or
 - ii. ODOT fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow ODOT, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement; or
 - iii. Federal or state laws, rules, regulations or guidelines are modified or interpreted in such a way that the Project is no longer allowable or no longer eligible for funding under this Agreement; or
 - iv. The Project would not produce results commensurate with the further expenditure of funds; or
 - v. Recipient takes any action pertaining to this Agreement without the approval of ODOT and which under the provisions of this Agreement would have required the approval of ODOT.
- b. **Termination by Recipient.** Recipient may terminate this Agreement effective upon delivery of written notice of termination to ODOT, or at such later date as may be established by Recipient in such written notice, if:
- i. The requisite local funding to continue the Project becomes unavailable to Recipient;

- ii. Federal or state laws, rules, regulations or guidelines are modified or interpreted in such a way that the Project is no longer allowable or no longer eligible for funding under this Agreement.
- iii. ODOT fails to make payments due in accordance with this Agreement.
- c. **Termination by Either Party.** Either Party may terminate this Agreement upon at least ten (10) days' notice to the other Party and failure of the other Party to cure within the period provided in the notice, if the other Party fails to comply with any of the terms of this Agreement.
- d. **Rights upon Termination; Remedies.** Any termination of this Agreement shall not prejudice any rights or obligations accrued before termination. The remedies set forth in this Agreement are cumulative and are in addition to any other rights or remedies available at law or in equity.

11. GENERAL PROVISIONS

a. Contribution.

- i. If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 ("Third Party Claim") against ODOT or Recipient with respect to which the other Party may have liability, the notified Party must promptly notify the other Party in writing of the Third Party Claim and deliver to the other Party a copy of the claim, process, and all legal pleadings with respect to the Third Party Claim. Each Party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with counsel of its own choosing. Receipt by a Party of the notice and copies required in this paragraph and meaningful opportunity for the Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to that Party's liability with respect to the Third Party Claim.
- ii. With respect to a Third Party Claim for which ODOT is jointly liable with Recipient (or would be if joined in the Third Party Claim), ODOT shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by Recipient in such proportion as is appropriate to reflect the relative fault of ODOT on the one hand and of the Recipient on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of ODOT on the one hand and of Recipient on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. ODOT's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if ODOT had sole liability in the proceeding.
- iii. With respect to a Third Party Claim for which Recipient is jointly liable with ODOT (or would be if joined in the Third Party Claim), Recipient shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by ODOT in such proportion as is appropriate to reflect the relative fault of Recipient on the one hand and of ODOT on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of Recipient on the one hand and of ODOT on the other hand shall

be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. Recipient's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if it had sole liability in the proceeding.

- b. Dispute Resolution.** The Parties shall attempt in good faith to resolve any dispute arising out of this Agreement. In addition, the Parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation.
- c. Amendments.** This Agreement may be amended or extended only by a written instrument signed by both Parties and approved as required by applicable law.
- d. Duplicate Payment.** Recipient is not entitled to compensation or any other form of duplicate, overlapping or multiple payments for the same work performed under this Agreement from any agency of the State of Oregon or the United States of America or any other party, organization or individual.
- e. No Third Party Beneficiaries.** ODOT and Recipient are the only Parties to this Agreement and are the only Parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly or indirectly, to a third person unless such a third person is individually identified by name in this Agreement and expressly described as an intended beneficiary of the terms of this Agreement.
- f. Notices.** Except as otherwise expressly provided in this Agreement, any communications between the Parties or notices to be given under this Agreement shall be given in writing by personal delivery, facsimile, email or mailing the same, postage prepaid, to Recipient Contact or ODOT Contact at the address or number set forth on the signature page of this Agreement, or to such other addresses or numbers as either Party may hereafter indicate pursuant to this Section 11.f. Any communication or notice personally delivered shall be deemed to be given when actually delivered. Any communication or notice delivered by facsimile shall be deemed to be given when receipt of the transmission is generated by the transmitting machine, and to be effective against ODOT, such facsimile transmission must be confirmed by telephone notice to ODOT Contact. Any communication by email shall be deemed to be given when the recipient of the email acknowledges receipt of the email. Any communication or notice mailed shall be deemed to be given when received.
- g. Governing Law, Consent to Jurisdiction.** This Agreement shall be governed by, construed in accordance with, and enforced under the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively, "Claim") between ODOT (or any other agency or department of the State of Oregon) and Recipient that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Marion County in the State of Oregon. In no event shall this section be construed as a waiver by the State of Oregon of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the eleventh amendment to the Constitution of the United States or otherwise, from any Claim or from the jurisdiction of any court. Each party consents to the exclusive jurisdiction of the Circuit Court of Marion County in the State of Oregon court, waives any objection to venue, and waives any claim that such forum is an inconvenient forum.

- h. Compliance with Law.** Recipient shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to the Agreement or to the implementation of the Project, including without limitation as described in Exhibit B. Without limiting the generality of the foregoing, Recipient expressly agrees to comply with (i) Title VI of Civil Rights Act of 1964; (ii) Title V and Section 504 of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 and ORS 659A.142; (iv) all regulations and administrative rules established pursuant to the foregoing laws; and (v) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.
- i. Insurance; Workers' Compensation.** All employers, including Recipient, that employ subject workers who provide services in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. Employer's liability insurance with coverage limits of not less than \$500,000 must be included. Recipient shall ensure that each of its subrecipient(s), contractor(s), and subcontractor(s) complies with these requirements.
- j. Independent Contractor.** Recipient shall perform the Project as an independent contractor and not as an agent or employee of ODOT. Recipient has no right or authority to incur or create any obligation for or legally bind ODOT in any way. ODOT cannot and will not control the means or manner by which Recipient performs the Project, except as specifically set forth in this Agreement. Recipient is responsible for determining the appropriate means and manner of performing the Project. Recipient acknowledges and agrees that Recipient is not an "officer", "employee", or "agent" of ODOT, as those terms are used in ORS 30.265, and shall not make representations to third parties to the contrary.
- k. Severability.** If any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if this Agreement did not contain the particular term or provision held to be invalid.
- l. Counterparts.** This Agreement may be executed in two or more counterparts (by facsimile or otherwise), each of which is an original and all of which together are deemed one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart.
- m. Integration and Waiver.** This Agreement, including all Exhibits, constitutes the entire agreement between the Parties on the Agreement's subject matter. There are no other understandings, agreements, or representations, oral or written, not specified in this Agreement regarding its subject matter. The delay or failure of either Party to enforce any provision of this Agreement shall not constitute a waiver by that Party of that or any other provision. Recipient, by the signature below of its authorized representative, acknowledges that it has read this Agreement, understands it, and agrees to be bound by its terms and conditions.

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

The Oregon Transportation Commission at its January 17, 2019 meeting approved the Safe Routes to School project application list and directed the Transportation Development Division Administrator to enter into project agreements.

Clackamas County, by and through its **STATE OF OREGON**, by and through its
Governing Body Department of Transportation

By _____
(Legally designated representative) Transportation Development Division Administrator

Name _____ Date _____
(printed)

APPROVAL RECOMMENDED

Date _____
By _____
SRTS Program Manager

By _____
Date _____

Name _____
(printed) BY _____
State Traffic-Roadway Engineer

Date _____
Date _____

**LEGAL REVIEW APPROVAL (If required
in Recipient's process)**

**APPROVED AS TO LEGAL SUFFICIENCY
(For funding over \$150,000)**

By _____
Recipient's Legal Counsel

By N/A
Assistant Attorney General

Date _____

SRTS Program Manager:

Recipient Contact:

Scott Hoelscher, Senior Transportation Planner
150 Beaver Creek Rd
Oregon City, OR 97045
503-742-4533
scotthoe@clackamas.us

LeeAnne Ferguson
555 13th Street NE
Salem, OR 97301-4178
Phone: 503-986-5805
Leeanne.fergason@odot.state.or.us

EXHIBIT A
Project Description, Key Milestones, Schedule and Budget
Agreement No. 33116
Application Number: 11-116

Project Name: SE Fuller Rd and Causey Ave: Crosswalk Construction

A. PROJECT DESCRIPTION

The project will construct a crosswalk at the intersection of SE Fuller Rd and SE Causey Ave/SE Harmony Dr. and will consist of advance warning signs, rectangular rapid flashing beacons, a center lane pedestrian refuge and curb ramps on the east and west side of SE Fuller Rd.

Recipient acknowledges that such Project improvements funded under this Agreement may trigger other Recipient responsibilities under the Americans with Disabilities Act. Recipient agrees that it is solely responsible for ensuring Americans with Disabilities Act compliance pursuant to Exhibit B, Recipient Requirements, #10.

B. PROJECT KEY MILESTONES AND SCHEDULE

The Project has six (6) Key Milestone(s). Key Milestones are used for evaluating performance on the Project as described in the Agreement. Neither Key Milestone 1, Scoping and planning, nor Key Milestone 6, Project completion, can be changed without an amendment to the Agreement.

If Recipient anticipates either that Key Milestone 1 will require material changes or that Key Milestone 6 will be delayed by more than ninety (90) days, Recipient shall submit a Request for Change Order, as described in Section 4(c) of the Agreement, to SRTSPProgramMailbox@odot.state.or.us as soon as Recipient becomes aware of any possible change or delay. Recipient must submit the Request for Change Order before materially changing the project scope (Key Milestone 1) or delaying the Project completion more than 90 days (Key Milestone 6), as the case may be. Adjustments to all milestone dates must be noted in the quarterly reports.

Table 1: Key Milestones

Key Milestone	Description	Estimated Due Date
1	Scoping and planning	2 weeks from Agreement Execution
2	Community Outreach	24 weeks from Agreement Execution
3	Right of way and land acquisition	82 weeks from Agreement Execution
4	Permits	78 weeks from Agreement Execution
5	Final plans/bidding engineering documents	104 weeks from Agreement Execution

6	Construction contract award	104 weeks from Agreement Execution
7	Utilities Relocation	78 weeks from Agreement Execution
8	Project completion (Project must be completed within 5 years of agreement execution.)	2/18/2022

Table 2 – Funding Breakdown

1	SRTS Grant Funds.	\$148,470
2	Recipient Match (minimum 20% of Total Project Cost and any portion of the Project which is not covered by SRTS Grant Funds. \$0 in prior expenditures are included in the Recipient Match.)	20%
3	TOTAL PROJECT COST	\$185,588

EXHIBIT B
Recipient Requirements

1. Recipient shall comply with all applicable requirements of ORS 184.740 to 184.742 and Oregon Administrative Rule (OAR) 737-025-0010 through 737-025-0093.
2. Recipient shall comply with all applicable provisions of ORS 279C.800 to 279C.870 pertaining to prevailing wage rates and including, without limitation, that workers on the Project shall be paid not less than rates in accordance with ORS 279C.838 and 279C.840 pertaining to wage rates and ORS 279C.836 pertaining to having a public works bond filed with the Construction Contractors' Board.
3. Recipient acknowledges and agrees that, whenever OAR 839-025-0230(4) requires ODOT as the public agency providing public funds for a project that is a public work under ORS 279C.800(6)(a)(B) to pay the fee required under ORS 279C.825, ODOT will calculate and pay the fee and deduct the amount of the fee from Recipient's Grant Funds under this Agreement.
4. Recipient shall notify ODOT's SRTS Program Manager in writing when any contact information changes during the term of this Agreement.
5. Recipient must provide a "cash match," as that term is defined in OAR 737-025-0010, in an amount equal to 20% of the Eligible Costs. ODOT will reimburse Recipient pursuant to section 6.a of the Agreement. Recipient is responsible for all Project costs, whether Eligible Costs or otherwise, in excess of the Grant Funds.
6. Recipient shall pay back all of the Grant Funds to ODOT if Project is not completed in accordance with, or consistent with Exhibit A and Exhibit D, as each may be amended. Recipient obligations for Recovery of Grant Funds are provided in Section 6.d of this Agreement.
7. Recipient and ODOT's SRTS Program Manager, or designee, shall, upon completion of all on-site work for the Project, perform a final on-site review. Once the review is completed, the ODOT SRTS Program Manager may recommend acceptance of the Project by providing written documentation affirming that the Project is complete.
8. Recipient shall, at its own expense, maintain and operate Project upon completion and throughout the useful life of Project at a minimum level that is consistent with normal depreciation or service demand or both. ODOT and Recipient agree that the useful life of Project is defined as twenty (20) years. Recipient has, by submitting its application for this grant, represented and certified to sufficient funds and to its ability to operate and maintain Project. Recipient may not transfer, convey, sell or lease the property and assets of the Project during the useful life of the Project without the prior written approval of ODOT. Such approval shall not be unreasonably withheld. Recipient agrees to require any successor owner of the Project property to comply with this requirement. Failure to comply with this requirement may be remedied by Recipient or its successor in interest by (a) restoring the property to the uses(s) required by this Agreement or (b) repaying expended funds. In the event repaying expended funds is required, the amount determined using the Straight Line Depreciation (SLD) method must be repaid to ODOT. The SLD is calculated by taking the grant amount divided by twenty years. ODOT may conduct site reviews of the Project as provided in Section 8.a of this Agreement throughout the useful life of the Project. This paragraph shall survive any expiration or termination of this Agreement.

9. Recipient shall provide pre-construction Project photographs within thirty (30) days of the execution of this Agreement. Recipient shall provide Project photographs thirty (30) days after Project is completed.

10. **Americans with Disabilities Act Compliance:**

- a. **State Highway:** For portions of the Project located on or along the State Highway System or a State-owned facility (“state highway”):
- i. Recipient shall utilize ODOT standards to assess and ensure Project compliance with Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990 as amended (together, “ADA”), including ensuring that all sidewalks, curb ramps, and pedestrian-activated signals meet current ODOT Highway Design Manual standards;
 - ii. Recipient shall follow ODOT’s processes for design, modification, upgrade, or construction of sidewalks, curb ramps, and pedestrian-activated signals, including using the ODOT Highway Design Manual, ODOT Design Exception process, ODOT Standard Drawings, ODOT Construction Specifications, providing a temporary pedestrian accessible route plan and current ODOT Curb Ramp Inspection form;
 - iii. At Project completion, Recipient shall send a completed ODOT Curb Ramp Inspection Form 734-5020 to the address on the form and to State’s Project Manager for each curb ramp constructed, modified, upgraded, or improved as part of the Project. The completed form is the documentation required to show that each curb ramp meets ODOT standards and is ADA compliant. ODOT’s fillable Curb Ramp Inspection Form and instructions are available at the following address:

<http://www.oregon.gov/ODOT/CONSTRUCTION/Pages/Forms.aspx>
 - iv. Recipient shall promptly notify ODOT of Project completion and allow ODOT to inspect Project sidewalks, curb ramps, and pedestrian-activated signals located on or along a state highway prior to acceptance of Project by Recipient and prior to release of any Recipient contractor.
 - v. Recipient shall ensure that temporary pedestrian routes are provided through or around any Project work zone. Any such temporary pedestrian route shall include directional and informational signs, comply with ODOT standards, and include accessibility features equal to or better than the features present in the existing pedestrian facility. Recipient shall also ensure that advance notice of any temporary pedestrian route is provided in accessible format to the public, people with disabilities, and disability organizations at least 10 days prior to the start of construction, to the greatest extent possible.
- b. **Local Roads:** For portions of the Project located on **Recipient** roads or facilities that are not on or along a state highway:
- i. Recipient shall ensure that the Project, including all sidewalks, curb ramps, and pedestrian-activated signals, is designed, constructed and maintained in compliance with the ADA.
 - ii. Recipient may follow its own processes or may use ODOT’s processes for design, modification, upgrade, or construction of Project sidewalks, curb ramps, and pedestrian-activated signals, including using the ODOT Highway Design Manual, ODOT Design Exception process, ODOT

Standard Drawings, ODOT Construction Specifications, providing a temporary pedestrian accessible route plan and current Curb Ramp Inspection form, available at:
<http://www.oregon.gov/ODOT/CONSTRUCTION/Pages/Forms.aspx>;

Additional ODOT resources are available at:
<http://www.oregon.gov/ODOT/Engineering/Pages/Accessibility.aspx>

ODOT has made its forms, processes, and resources available for Recipient's use and convenience.

- iii. Recipient assumes sole responsibility for ensuring that the Project complies with the ADA, including when Recipient uses ODOT forms and processes. Recipient acknowledges and agrees that ODOT is under no obligation to review or approve Project plans or inspect the completed Project to confirm ADA compliance.
 - iv. Recipient shall ensure that temporary pedestrian routes are provided through or around any Project work zone. Any such temporary pedestrian route shall include directional and informational signs and include accessibility features equal to or better than the features present in the existing pedestrian route. Recipient shall also ensure that advance notice of any temporary pedestrian route is provided in accessible format to the public, people with disabilities, and disability organizations prior to the start of construction, to the greatest extent possible.
- c. Recipient shall ensure that any portions of the Project under Recipient's maintenance jurisdiction are maintained in compliance with the ADA throughout the useful life of the Project. This includes, but is not limited to, Recipient ensuring that:
- i. Pedestrian access is maintained as required by the ADA,
 - ii. Any complaints received by Recipient identifying sidewalk, curb ramp, or pedestrian-activated signal safety or access issues are promptly evaluated and addressed,
 - iii. Any repairs or removal of obstructions needed to maintain Project features in compliance with the ADA requirements that were in effect at the time of Project construction are completed by Recipient or abutting property owner pursuant to applicable local code provisions,
 - iv. Any future alteration work on Project or Project features during the useful life of the Project complies with the ADA requirements in effect at the time the future alteration work is performed, and
 - v. Applicable permitting and regulatory actions are consistent with ADA requirements.
- d. Maintenance obligations in this section shall survive termination of this Agreement.

11. Additional requirements

General Standards. The Project shall be completed within industry standards and best practices to ensure that the functionality and serviceability of the Program's investment meets the intent of the application and the Program.

EXHIBIT C
Subcontractor Insurance Requirements

GENERAL.

Recipient shall require its first tier contractor(s) that are not units of local government as defined in ORS 190.003, if any, to: i) obtain insurance specified under TYPES AND AMOUNTS and meeting the requirements under ADDITIONAL INSURED, "TAIL" COVERAGE, NOTICE OF CANCELLATION OR CHANGE, and CERTIFICATES OF INSURANCE before the contractors perform under contracts between Recipient and the contractors (the "Subcontracts"), and ii) maintain the insurance in full force throughout the duration of the Subcontracts. The insurance must be provided by insurance companies or entities that are authorized to transact the business of insurance and issue coverage in the State of Oregon and that are acceptable to Recipient. Recipient shall not authorize contractors to begin work under the Subcontracts until the insurance is in full force. Thereafter, Recipient shall monitor continued compliance with the insurance requirements on an annual or more frequent basis. Recipient shall incorporate appropriate provisions in the Subcontracts permitting it to enforce contractor compliance with the insurance requirements and shall take all reasonable steps to enforce such compliance. Examples of "reasonable steps" include issuing stop work orders (or the equivalent) until the insurance is in full force or terminating the Subcontracts as permitted by the Subcontracts, or pursuing legal action to enforce the insurance requirements. In no event shall Recipient permit a contractor to work under a Subcontract when the Recipient is aware that the contractor is not in compliance with the insurance requirements. As used in this section, a "first tier" contractor is a contractor with which the Recipient directly enters into a contract. It does not include a subcontractor with which the contractor enters into a contract.

TYPES AND AMOUNTS.

1. **WORKERS COMPENSATION.** Insurance in compliance with ORS 656.017, which requires all employers that employ subject workers, as defined in ORS 656.027, to provide workers' compensation coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). Employers liability insurance with coverage limits of not less than \$500,000 must be included.
2. **COMMERCIAL GENERAL LIABILITY.** Commercial General Liability Insurance covering bodily injury, death, and property damage in a form and with coverages that are satisfactory to ODOT. This insurance shall include personal injury liability, products and completed operations. Coverage shall be written on an occurrence form basis, with not less than the following amounts as determined by ODOT:

Bodily Injury, Death and Property Damage:

Not less than \$2,000,000 per occurrence (for all claimants for claims arising out of a single accident or occurrence). Annual aggregate limit shall not be less than \$4,000,000.

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

Bodily Injury, Death and Property Damage:

Not less than \$2,000,000 per occurrence (for all claimants for claims arising out of a single accident or occurrence).

4. **ADDITIONAL INSURED.** The Commercial General Liability Insurance and Automobile Liability insurance must include the State of Oregon, ODOT, its officers, employees and agents as Additional Insureds, but only with respect to the contractor's activities to be performed under the Subcontract. Coverage must be primary and non-contributory with any other insurance and self-insurance.
5. **"TAIL" COVERAGE.** If any of the required insurance policies is on a "claims made" basis, such as professional liability insurance, the contractor shall maintain either "tail" coverage or continuous "claims made" liability coverage, provided the effective date of the continuous "claims made" coverage is on or before the effective date of the Subcontract, for a minimum of twenty-four (24) months following the later of : (i) the contractor's completion and Sponsor's acceptance of all Services required under the Subcontract or, (ii) the expiration of all warranty periods provided under the Subcontract. Notwithstanding the foregoing twenty-four (24) month requirement, if the contractor elects to maintain "tail" coverage and if the maximum time period "tail" coverage reasonably available in the marketplace is less than the twenty-four (24) month period described above, then the contractor may request and ODOT may grant approval of the maximum "tail " coverage period reasonably available in the marketplace. If ODOT approval is granted, the contractor shall maintain "tail" coverage for the maximum time period that "tail" coverage is reasonably available in the marketplace.
6. **NOTICE OF CANCELLATION OR CHANGE.** The contractor or its insurer must provide thirty (30) days' written notice to Recipient before cancellation of, material change to, potential exhaustion of aggregate limits of, or non-renewal of the required insurance coverage(s). Any failure to comply with the reporting provisions of this clause shall constitute a material breach of this Agreement and shall be grounds for immediate termination of this Agreement.
7. **CERTIFICATE(S) OF INSURANCE.** Recipient shall obtain from the contractor a certificate(s) of insurance for all required insurance before the contractor performs under the Subcontract. The certificate(s) or an attached endorsement must specify: i) all entities and individuals who are endorsed on the policy as Additional Insured (or Loss Payees) and ii) for insurance on a "claims made" basis, the extended reporting period applicable to "tail" or continuous "claims made" coverage. Required insurance coverages shall be obtained from insurance companies acceptable to ODOT and the contractor shall pay for all deductibles, self-insured retention or self-insurance.
8. **INSURANCE REQUIREMENT REVIEW.** Recipient agrees to periodic review of insurance requirements by ODOT under this Agreement and to provide updated requirements as mutually agreed upon by ODOT and Recipient.
9. **ODOT ACCEPTANCE.** All insurance providers are subject to ODOT acceptance. If requested by ODOT, Recipient shall provide complete copies of its Contractors' insurance policies, endorsements, self-insurance documents and related insurance documents to ODOT's representatives responsible for verification of the insurance coverages required under this Exhibit C.

The Recipient shall immediately notify ODOT of any change in insurance coverage.



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 David Evans and Associates for
Trolley Trail Bridge: Gladstone to Oregon City Feasibility Study**

Purpose/Outcomes	This project will perform a feasibility study for replacing a bridge crossing the Clackamas River to connect the City of Gladstone and the City of Oregon City.
Dollar Amount and Fiscal Impact	Contract value is \$208,959.32 Surface Transportation Program funds: \$187,499.20 City of Gladstone match (10.27%): \$21,460.12
Funding Source	Federal Surface Transportation Program Funds matched by City of Gladstone Funds.
Duration	Contract execution through December 31, 2019
Previous Board Action	None
Strategic Plan Alignment	This project will "Build a strong infrastructure".
Contact Person	Joel Howie, Civil Engineering Supervisor 503-742-4658

Background:

The City of Gladstone obtained Surface Transportation Program funds from the Regional Flexible Funds Allocation to study the feasibility of replacing an abandoned railroad bridge crossing the Clackamas River. The new bridge would be intended to be a shared-use path for bicycles and pedestrians and extend the existing Trolley Trail to Oregon City. Clackamas County (the "County") is helping the City of Gladstone implement the project through the County's certification with ODOT.

The study will evaluate structural alternatives including new bridge types, the possibility of the bridge carrying utilities (i.e., sewer main, storm water conveyance and outfall), and the bridge being used as emergency access to create lifeline and redundancy in crossing the Clackamas River. Additionally, the study will perform a geotechnical investigation to evaluate foundation alternatives, identify environmental permitting requirements, evaluate river hydraulics and scour potential, develop bridge cost estimates, and develop trail concept plans for connections to City of Gladstone and City of Oregon City trails.

The project work is anticipated to begin immediately following contract signing and be completed by December 31, 2019.

Procurement Process:

This project advertised in accordance with ORS and LCRB Rules on July 12, 2018. Proposals were opened on August 7, 2018. The County received three (3) Proposals: David Evans and Associates; Harper Houf Peterson Righellis; and KPFF, Inc. After final review, scoring, and Evaluation Committee discussions, it was determined that David Evans and Associates was the highest scoring Proposer.

This contract has been reviewed and approved by County Counsel.

Recommendation:

Staff respectfully recommends that the Board approve and sign this construction services contract with David Evans and Associates for the Trolley Trail Bridge: Gladstone to Oregon City Feasibility Study.

Sincerely,

Joel Howie,
Civil Engineering Supervisor

Placed on the BCC Agenda _____ by Procurement

RFP 22265-01

ENGINEERING AND RELATED SERVICES CONTRACT

Contract Number: 2018-63

Project Title: Trolley Trail Bridge: Gladstone to Oregon City Feasibility Study	County Project Number: 22265
Project Location: Clackamas County	Associated RFP Number: 01
Federal Aid Number: 19278	DBE Goal: 8.5% (see Exhibit E)
Total Not-to-Exceed ("NTE") amount for this Contract. This total includes: a) all allowable costs and expenses, profit, and fixed-fee amount, if any; and b) \$9,031.66 for contingency tasks, each of which must be separately authorized by the County.	\$ 208,959.32

This Contract is between Clackamas County, hereafter called "County" or "Agency" and **David Evans and Associates, Inc.**, an Oregon corporation, hereafter called "Consultant." County and Consultant together are also referred to as "Parties" and individually referred to as "Party." The primary contacts for this Contract are identified in Exhibit J, Contact Information and Key Persons.

This Contract includes Federal Highway Administration ("FHWA") funding coordinated through the Oregon Department of Transportation ("ODOT"). See Section 18 - Compliance with Applicable Law.

For purposes of this Contract:

- a) "business days" means calendar days, excluding Saturdays, Sundays and all State of Oregon recognized holidays;
- b) "calendar days" means any day appearing on the calendar, whether a weekday, weekend day, national holiday, State of Oregon holiday or other day;
- c) "Engineering" Services means architectural, engineering, photogrammetric mapping, transportation planning or land surveying services that must be procured using qualifications based selection procedures [see ORS 279C.100 and ORS 279C.110]; and
- d) "Related Services" has the meaning provided in ORS 279C.100.

TERMS AND CONDITIONS

Contract Effective Date and Term. This Contract is effective on the date it has been signed by the parties and all required approvals have been obtained. No work or compensation under the Contract is authorized until notice to proceed has been issued in writing (email acceptable) by the County. Unless otherwise amended or terminated, this Contract shall expire June 30, 2019.

2. Statement of Work. Consultant shall perform all Services and deliver all deliverables as described in Exhibit A, Statement of Work (the "Services"). The required schedule for performance under the Contract is specified in the Statement of Work.

3. Compensation. The maximum NTE amount, which includes the total of all allowable and reimbursable costs and expenses (and contingency tasks, if any) payable to Consultant under this Contract, is set forth in the table above and detailed further in Exhibit B, Compensation. County reserves the right, in its sole discretion, to amend this Contract to increase this amount for additional Services within the scope of the procurement. If this Contract was awarded as a Direct Appointment, amendments to increase the maximum amount payable are subject to limitations and additional requirements as set forth in applicable Federal, State and local laws. The payment methodology and basis for payment to Consultant is described in Exhibit B, Compensation. Consultant and any subconsultants are subject to the requirements and limitations of 48 CFR Part 31 - Contract Cost Principles and Procedures.

4. **Contract Exhibits.** This Contract includes the following exhibits, each of which is incorporated into this Contract as though fully set forth herein:

- Exhibit A - Statement of Work
- Exhibit B - Compensation
- Exhibit C - Insurance
- Exhibit D - Title VI Non-Discrimination Provisions
- Exhibit E - Disadvantaged Business Enterprise (“DBE”) Provisions
- Exhibit F - Special Terms & Conditions
- Exhibit G - RESERVED
- Exhibit H - RESERVED
- Exhibit I - Errors & Omissions (“E&O”) Claims Process
- Exhibit J - Contact Information and Key Persons

5. **Order of Precedence.** Unless a different order is required by law, this Contract shall be interpreted in the following order of precedence: this Contract (including all amendments, if any) less all Exhibits, attachments and other documents/information incorporated into this Contract, then the Statement of Work and Payment Schedule, then all other Exhibits, then any other attachments or documents/information incorporated into this Contract by reference.

6. **Independent Contractor; Conflict of Interest; Responsibility for Taxes and Withholding; Consultant Oversight.**

- a. Consultant, by its signature on the Contract, certifies that it is an independent contractor as defined in ORS 670.600 and as described in IRS Publication 1779, which is available at the following link: <https://www.irs.gov/pub/irs-pdf/p1779.pdf>. Consultant shall perform all required Services as an independent contractor. Although County reserves the right (i) to determine the delivery schedule (as mutually acceptable to County and Consultant) for the Services to be performed and (ii) to evaluate the quality of the completed performance, County cannot and will not control the means or manner of Consultant's performance. Consultant is responsible for determining the appropriate means and manner of performing the Services. Consultant is not an "officer", "employee", or "agent" of County, as those terms are used in ORS 30.265.
- b. Consultant, by its signature on the Contract, certifies that: (i) Consultant and, to the best of its information, knowledge and belief, its Associates have made any disclosures required under the COI Disclosure Form (available at: https://www.oregon.gov/ODOT/Business/Procurement/DocsLPA/COI_LPA.docx) or any applicable law; and (ii) if a conflict of interest is discovered during the term of the Contract, Consultant shall timely submit a COI Disclosure Form to County disclosing the conflict(s).
- c. Consultant shall be responsible for all Federal or State of Oregon (“State”) taxes applicable to compensation or payments paid to Consultant under the Contract and, unless Consultant is subject to backup withholding, County will not withhold from such compensation or payments any amount(s) to cover Consultant's Federal or State tax obligations. Throughout the duration of the Contract, Consultant shall submit an updated W-9 form (<https://www.irs.gov/pub/irs-pdf/fw9.pdf>) to County whenever Consultant’s backup withholding status or any other information changes. Consultant is not eligible for any social security, unemployment insurance or workers' compensation benefits from compensation or payments paid to Consultant under the Contract, except as a self-employed individual.
- d. Consultant shall not be responsible for or have control over the means, manner, methods or techniques required of or used by other consultants or contractors under contract with County, unless otherwise expressly agreed to in writing by the Parties. The Parties agree, however, that these Section 6.d. provisions do not in any way revise or adjust Consultant’s professional responsibility to report to County any information that comes to Consultant’s attention (during performance of this Contract) pertaining to a project, or to performance by other consultants or contractors on a project, that would adversely affect County or a particular project.

7. Subcontracts and Assignment; Successors and Assigns

- a. Consultant shall obtain County's written consent prior to entering into any subcontracts for any of the Services required by the Contract, or in any manner assigning, selling or transferring any of its rights or interest under the Contract or delegate any of its duties or performance under the Contract. In addition to any other provisions County may require, Consultant shall include, in any permitted subcontract under the Contract, contractual provisions that shall require any subcontractor (which may also be referred to as "subconsultant") to comply with Sections 9, 10, 11, 12, 13, 16, 17, 18, 19, 23, 27 and 29 of these Contract provisions, the limitations of **Exhibit B - Compensation**, **Exhibit D - Title VI Nondiscrimination Provisions**, and the requirements and sanctions of ORS Chapter 656, **Workers' Compensation**, in the performance of the subcontractor's Services on the project that is the subject of the Contract, as if the subcontractor were the Consultant. County's consent to any subcontract shall not relieve Consultant of any of its duties or obligations under the Contract, including with respect to any Services, whether performed or to be performed by Consultant or a subcontractor.
- b. The provisions of the Contract shall be binding upon and shall inure to the benefit of the Parties hereto, and their respective successors and permitted assigns, if any.
- c. Any purported assignment, delegation or disposition in violation of subsection "a." above is void.

8. Third Party Beneficiaries. The State of Oregon, the Oregon Transportation Commission (OTC) and ODOT, are intended third-party beneficiaries of the Contract with express independent authority to enforce the terms and conditions of the Contract. Otherwise, there are no third-party beneficiaries of the Contract.

9. Representations and Warranties. Consultant represents and warrants to County that (i) Consultant has the power and authority to enter into and perform the Contract, (ii) the Contract, when executed and delivered is a valid and binding obligation of Consultant, enforceable in accordance with its terms, (iii) the Services under the Contract will be performed in accordance with the professional standard of care set forth in Section 10 below; (iv) Consultant is duly licensed to perform the Services, and if there is no licensing requirement for the profession or Services, is duly qualified and professionally competent to perform the Services; and (v) Consultant is an experienced firm having the skill, legal capacity, professional ability and resources necessary to perform all the Services required under the Contract. The warranties set forth in this Section are in addition to, and not in lieu of, any other warranties provided.

10. Professional Standard of Care; Responsibility of Consultant; Design Within Funding Limit

a. Professional Standard of Care.

Consultant shall perform all Services under the Contract in accordance with the degree of skill and care ordinarily used by competent practitioners of the same professional discipline when performing similar services under similar circumstances, taking into consideration the contemporary state of the practice and the project conditions.

b. Responsibility of Consultant.

- (i) Consultant shall be responsible for the professional quality, technical accuracy, and coordination of all designs, drawings, specifications, and other Services furnished by Consultant under the Contract. Consultant shall, without additional compensation, correct or revise any errors or deficiencies in its designs, drawings, specifications and other Services.
- (ii) County's review, approval or acceptance of, or payment for, the Services required under the Contract shall not be construed to operate as a waiver of any rights under the Contract or of any cause of action arising out of the performance of the Contract, and Consultant shall be and remain liable to County in accordance with applicable law for all damages to County caused by Consultant's negligent performance of any of the Services furnished under the Contract or negligent failure to perform any of the Services under the Contract.
- (iii) The rights and remedies of County provided for under the Contract are in addition to any other rights and remedies provided by law.
- (iv) If Consultant is comprised of more than one legal entity (for example, a joint-venture or partnership), each such entity shall be jointly and severally liable under the Contract.

c. Design Within Funding Limit.

When the Services under the Contract include preparation of design plans for the project:

- (i) Consultant shall accomplish the design Services required under the Contract so as to permit construction of the project within County's budget for construction. **County's budget for construction of the project is** to be determined. Consultant shall promptly advise County's Contract Administrator if it finds that the project being designed will exceed or is likely to exceed the funding limitations and it is unable to design a usable project within these limitations. Upon receipt of such information, the Contract Administrator will review Consultant's revised estimate of construction cost. County may, if it determines that the estimated construction contract price set forth in this Section is so low that award of a construction contract not in excess of such estimate is improbable, authorize a change in scope or materials as required to reduce the estimated construction cost to an amount within the estimated construction contract price set forth in this Section, or County may adjust such estimated construction contract price.
- (ii) Prior to releasing the bid for the construction contract, County will prepare an estimate of constructing the design submitted. If County's estimator(s) determines Consultant's design exceeds County's budget for the construction contract as set forth in Section (i) above {and as may be revised per Section (i) above}, then Consultant shall perform such redesign and other Services as are necessary to permit contract award within the funding limitation. These additional Services shall be performed at no increase in the price of the Contract. However, Consultant shall not be required to perform such additional Services at no cost to County if Consultant's design exceeds County's budget {as set forth in Section (i) above} as a result of conditions beyond Consultant's reasonable control.

11. Ownership of Work Product

a. Definitions. The following terms have the meanings set forth below:

- (i) "Consultant Intellectual Property" means any intellectual property owned by Consultant and developed independently from the Contract.
- (ii) "Third Party Intellectual Property" means any intellectual property owned by parties other than County or Consultant.
- (iii) "Work Product" means every invention, discovery, work of authorship, trade secret or other tangible or intangible item, and all intellectual property rights therein, that Consultant is required to deliver to County pursuant to the Contract.

b. Work Product. All Work Product created by Consultant pursuant to the Contract, including derivative works and compilations, and whether or not such Work Product is considered a "work made for hire," shall be the exclusive property of County. County and Consultant agree that Work Product that constitutes original works of authorship (the "Original Work Product") is "work made for hire" of which County is the author within the meaning of the United States Copyright Act. If for any reason Original Work Product created pursuant to the Contract is not "work made for hire," Consultant hereby irrevocably assigns to County any and all of its rights, title, and interest in all Original Work Product created pursuant to the Contract, whether arising from copyright, patent, trademark, trade secret, or any other State or Federal intellectual property law or doctrine. Upon County's reasonable request, Consultant shall execute such further documents and instruments necessary to fully vest such rights in Original Work Product in County. Consultant forever waives any and all rights relating to Original Work Product created pursuant to the Contract, 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. However, see Sections 11.c and 11.d immediately below, for provisions applicable to Consultant Intellectual Property, Third Party Intellectual Property, Consultant Intellectual Property derivative works and Third Party Intellectual Property derivative works.

c. Consultant and Third Party Intellectual Property. In the event that any Work Product is Consultant Intellectual Property or Third Party Intellectual Property (Consultant Intellectual Property or Third Party Intellectual Property that is applicable to the Services being performed by Consultant under the Contract or included in Work Product deliverable to County under the Contract), or in the event any Consultant Intellectual Property or Third Party Intellectual Property is needed by County to

reasonably enjoy and use any Work Product, Consultant hereby agrees that it will grant to, or obtain for, the County an irrevocable, non-exclusive, non-transferable, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display Consultant Intellectual Property and or Third Party Intellectual Property, including the right of County to authorize contractors, consultants and others to do the same on County's behalf. This obligation of the Consultant does not apply to a situation involving a third party who enters a license agreement directly with the County. At the request of Consultant, County shall take reasonable steps to protect the confidentiality and proprietary interests of Consultant in any Consultant Intellectual Property licensed under this Section, within the limits of the Oregon Public Records Law (ORS 192.410 through 192.505) and the Oregon Uniform Trade Secrets Act (ORS 646.461 to 646.475).

- d. **Consultant and Third Party Intellectual Property-Derivative Work.** In the event that Work Product created by Consultant under the Contract is a derivative work based on Consultant Intellectual Property or Third Party Intellectual Property, or is a compilation that includes Consultant Intellectual Property or Third Party Intellectual Property, Consultant hereby agrees to grant to, or obtain for, County an irrevocable, non-exclusive, non-transferable, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the pre-existing elements of Consultant Intellectual Property or Third Party Intellectual Property employed in the Work Product, including the right of County to authorize others to do the same on County's behalf.
- e. **Consultant Use of Work Product.** Notwithstanding anything to the contrary in this Section 11, Consultant may refer to the Work Product in its brochures or other literature that Consultant utilizes for advertising purposes and, unless specified otherwise in Exhibit A - Statement of Work, County hereby grants to Consultant a non-exclusive, non-transferable, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display County-owned Work Product on other unrelated projects, except for any "Confidential Information" protected from disclosure under the provisions of Section 12 below, pertaining to Confidentiality and Non-Disclosure.

12. Confidentiality and Non-Disclosure. Consultant and its subcontractors, and their respective employees and agents, shall keep confidential all information, in whatever form, produced, prepared, observed or received to the extent that such information is designated as confidential by the County, by law, or by this Contract. In the event Consultant is required to disclose Confidential Information pursuant to a subpoena or other legal process, Consultant shall immediately notify County of such subpoena or other legal process, provide County with copies of any subpoena, other legal process and any other written materials supporting the subpoena or other legal process, and otherwise cooperate with County in the event County decides to oppose the disclosure of the Confidential Information. In the event County decides not to oppose such subpoena or other legal process or County's decision to oppose the subpoena or legal process has not been successful, Consultant shall be excused from the confidentiality provisions of this Section, to the extent necessary to meet the requirements of the subpoena or other legal process controlling the required disclosure.

13. Indemnity

- a. **Claims for Other Than Professional Liability.** Consultant shall indemnify, defend, save, and hold harmless the County, State of Oregon, the OTC and ODOT, and their respective officers, members, agents and employees from any and all claims, suits, actions, losses, liabilities, damages, costs and expenses, including attorney fees, of whatsoever nature, resulting from or arising out of the acts or omissions of Consultant or its subcontractors, or their respective agents or employees, under the Contract.
- b. **Claims for Professional Liability.** Consultant shall indemnify, defend, save, and hold harmless the County, State of Oregon, the OTC and ODOT, and their respective officers, members, agents and employees from any and all claims, suits, actions, losses, liabilities, damages, costs and expenses, including attorney fees, of whatsoever nature, resulting from or arising out of the professionally negligent acts, errors or omissions of Consultant or its subcontractors, or their

respective agents or employees, in the performance of Consultant's professional services under the Contract.

- c. **Indemnity for Infringement Claims.** Without limiting the generality of section 13(a) or 13(b), Consultant expressly agrees to indemnify, defend, save and hold harmless the County, State of Oregon, the OTC and ODOT, and their respective officers, members and their agencies, subdivisions, officers, directors, agents, and employees from any and all claims, suits, actions, losses, liabilities, damages, costs and expenses, including attorney fees, arising out of or relating to any claims that Consultant's services, the Work Product or any other tangible or intangible items delivered to the County by Consultant that may be the subject of protection under any state or federal intellectual property law or doctrine, or the County's use thereof, infringes any patent, copyright, trade secret, trademark, trade dress, mask work, utility design, or other proprietary right of any third party; provided, County shall provide Consultant with prompt written notice of any infringement claim. Provided, however, Consultant shall not be obligated to indemnify, defend, save and hold harmless the County (or other entities identified above) under this section 13(c), based solely on the following: Consultant's compliance with County specifications or requirements, including, but not limited to the required use of tangible or intangible items provided by County.
- d. **Defense Qualification.** Neither Consultant nor any attorney engaged by Consultant shall defend or purport to defend a claim in the name of the County, the State of Oregon, the OTC or ODOT without first receiving from the applicable entity, authority to act as legal counsel, nor shall Consultant settle any claim on behalf of the foregoing entities without the approval of these entities. The County, the State of Oregon, the OTC or ODOT may, at their election and expense, assume their own defense and settlement.
- e. **County's Acts or Omissions.** This section 13 does not include indemnification by Consultant of the County, the State of Oregon, the OTC and ODOT, and their respective officers, members, agents and employees, for the acts or omissions of these entities and their respective officers, members, agents and employees, whether within the scope of the Contract or otherwise.

14. **Insurance.** Consultant shall carry insurance as required on **Exhibit C**.

15. **Termination**

- a. **Termination by Mutual Consent.** The Contract may be terminated at any time, in whole or in part, by mutual written consent of the Parties.
- b. **County's Right to Terminate for Convenience.** County may, at its sole discretion, terminate the Contract, in whole or in part, upon 30 calendar day's prior written notice to Consultant.
- c. **County's Right to Terminate for Cause.** County may terminate the Contract, in whole or in part, immediately upon written notice to Consultant or at such later date as County may establish in such notice, upon the occurrence of any of the following events:
 - (i) County fails to receive appropriations, limitations or other expenditure authority sufficient to allow County, in the exercise of its reasonable administrative discretion, to continue to make payments for Consultant's Services. Payments under this Contract and continuation of this Contract beyond the current biennium are subject to and contingent upon sufficient funds being appropriated, budgeted, and otherwise made available from current funding sources. The County may terminate this Contract, and Consultant waives any and all claims for damages, effective immediately upon receipt of written notice, or any date specified therein, if for any reason the County's funding from local, state and/or federal sources is not appropriated or is withdrawn, limited or impaired;
 - (ii) Federal, State or local laws, regulations or guidelines are modified or interpreted in such a way that either the Services under the Contract are prohibited or County is prohibited from paying for such Services from the planned funding source;
 - (iii) Consultant no longer holds any license or certificate that is required to perform the Services; or
 - (iv) Consultant commits any material breach or default of any covenant, warranty, obligation or agreement under the Contract, fails to perform the Services under the Contract within the time specified or any extension thereof, or so fails to perform the Services as to endanger Consultant's performance under the Contract in accordance with its terms, and such breach,

default or failure is not cured within 14 calendar days after County's notice to Consultant, or such longer period as County may specify in such notice.

d. Consultant's Right to Terminate for Cause.

- (i) Consultant may terminate the Contract by giving written notice to County if County fails to pay Consultant pursuant to the terms of the Contract and if County fails to cure within 14 calendar days after receipt of Consultant's written notice, or such longer period of cure as Consultant may specify in such notice.
- (ii) Consultant may terminate the Contract, for reasons other than nonpayment, if County commits any material breach or default of any covenant, warranty, obligation or agreement under the Contract, fails to perform under the Contract within the times specified, or so fails to perform as to endanger Consultant's performance under the Contract, and such breach, default or failure is not cured within 14 calendar days after Consultant's notice to County, or such longer period as Consultant may specify in such notice.

e. Remedies.

- (i) In the event of termination pursuant to Sections 15(a), 15(b), 15(c)(i), 15(c)(ii) or 15(d), Consultant's sole remedy (except as otherwise required by applicable State or Federal law) shall be a claim for payment of the satisfactory Services actually rendered up to the time of termination, less previous amounts paid and any claim(s) which State has against Consultant, except in the event of a termination under Section 15(c)(i) where no payment will be due and payable for Services performed or costs incurred after the last day of the current biennium. If previous amounts paid to Consultant exceed the amount due to Consultant under this subsection, Consultant shall pay all excess to County upon demand.
- (ii) In the event of termination pursuant to Section 15(c)(iii) or 15(c)(iv), County shall have any remedy available to it in law or equity. If it is determined for any reason that Consultant was not in default under Section 15(c)(iii) or 15(c)(iv), the rights and obligations of the Parties shall be the same as if the Contract was terminated pursuant to Section 15(b).

f. Consultant's Tender Upon Termination/Retained Remedies of County. Upon receiving a notice of termination of the Contract, Consultant shall immediately cease all activities under the Contract, unless County expressly directs otherwise in such notice of termination. Upon termination of the Contract, Consultant shall deliver to County all documents, information, works-in-progress and other property that are or would be deliverables had the Contract been completed. Upon County's request, Consultant shall surrender to anyone County designates, all documents, information, research, works-in-progress, Work Product and other property, that are deliverables or would be deliverables had the Contract been completed, that are in Consultant's possession or control and may be needed by County to complete the Services.

16. Records Maintenance; Access. Consultant, and its subconsultants, shall maintain all fiscal records relating to the Contract in accordance with generally accepted accounting principles. In addition, Consultant shall maintain all other records pertinent to the Contract and the project and shall do so in such a manner as to clearly document Consultant's performance. The County, ODOT, the Oregon Secretary of State's Office (OSS), FHWA and the Comptroller General of the United States (CGUS) and their respective, duly authorized representatives shall have access, and Consultant shall permit the aforementioned entities and individuals access, to such fiscal records and other books, documents, papers, plans and writings of Consultant that are pertinent to the Contract to perform examinations and audits and make excerpts and transcripts. Consultant shall retain and keep accessible all such fiscal records, books, documents, papers, plans, and writings for a minimum of 6 years, or such longer period as may be required by applicable law, following final payment and expiration or termination of the Contract, or until the conclusion of any audit, controversy or litigation arising out of or related to the Contract, whichever date is later. Any cost data submitted by Consultant pursuant to this Contract may be shared with ODOT, FHWA, OSS and CGUS, as necessary, for audit purposes. County, ODOT and FHWA shall have the right to review or examine the work in progress for any Services performed under the Contract.

17. Performance Evaluations. County will conduct performance evaluation(s) on the Consultant and its subconsultants during the term of the Contract, which will be compiled and maintained by

County, and become a written record of Consultant's performance. Generally, the performance evaluations will include criteria related to, but not limited to, quality and technical performance, adherence to contract scope and budget, schedule performance, and business relations (including communications and negotiations performance). County will provide a copy of the performance evaluation results to Consultant within 14 calendar days following completion. Consultant may respond, in writing, or may request a meeting to address any or all findings contained in the completed performance evaluation within 30 calendar days following receipt. County may adjust evaluation score(s) upon County's finding of good cause. County may provide copies of any performance evaluation documentation to ODOT, FHWA, and other parties unless lawfully exempt from disclosure. County may use performance evaluation findings and conclusions in any way deemed necessary, including, but not limited to, corrective action, requiring submittal of performance improvement plan by Consultant and withholding of retainage. County and ODOT may use Consultant performance under previous contracts as a selection criterion for future contracts.

18. Compliance with Applicable Law. Consultant shall comply with all Federal, State and local statutes, regulations, administrative rules, executive orders, ordinances and other laws applicable to the Services under the Contract, in effect at the time the Contract is executed and as may be amended, revised, enacted or adopted thereafter. Changes in these legal requirements after the execution of the Contract may or may not be the basis for modifications to Consultant's schedule, scope and fee, depending on a reasonable assessment of the nature of the change, the extent to which the change was anticipated by Consultant or the Parties, and other circumstances then existing. Without limiting the generality of the foregoing, Consultant expressly agrees to comply with: (i) Title VI of the Civil Rights Act of 1964; (ii) Section V of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 and ORS 659a.142; (iv) the Clean Air Act (42 U.S.C. 7401-7671q); (v) the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387); (vi) Executive Order 11738; (vii) Environmental Protection Agency regulations (40 CFR part 15); (viii) and all applicable standards, orders, regulations and administrative rules established pursuant to the foregoing laws. County's performance under the Contract is conditioned upon Consultant's compliance with, and Consultant shall comply with, the obligations applicable to public contracts and intended for contractors under ORS 279C.520 and 279C.530, which are incorporated by reference herein. All rights and remedies available to County under applicable federal, state and local laws are also incorporated by reference herein and are cumulative with all rights and remedies under the Contract. If Consultant discovers a conflict among Federal, State and local statutes, regulations, administrative rules, executive orders, ordinances and other laws applicable to the Services under the Contract, Consultant shall in writing request County to resolve the conflict (in collaboration with ODOT and FHWA as applicable). Consultant shall specify if the conflict(s) create a problem for the design or other Services required under the Contract. If County concludes there is a conflict among the applicable laws, Federal laws shall govern among the others; State laws shall govern over the others except Federal. The resolution of the conflict of the applicable laws by County shall be final and not subject to further review or challenge.

19. Permits and Licenses

- a. **Permits and licenses to conduct business.** Unless otherwise specified in **Exhibit A**, Statement of Work, Consultant shall obtain, hold, maintain and fully pay for during the term of the Contract all permits and licenses required by law for Consultant to conduct its business and perform the Services under the Contract.
- b. **Permits and licenses required for the project.** Unless otherwise specified in **Exhibit A**, Statement of Work, Consultant shall obtain, hold and maintain during the term of the Contract all permits and licenses required for the project (for example, permits from regulatory authorities and use permits or licenses from owners of real and personal property), but County shall pay for such permits and licenses. Consultant shall review the project site, if applicable, and the nature of the Services that Consultant shall perform under the Contract. Consultant shall advise County throughout the course of the project as to the necessity of obtaining all project permits and licenses, the status of the issuance of any such permits and licenses, and any issues or impediments related to the issuance or continuation of any such permits and licenses.

- 20. Foreign Contractor.** If Consultant is not domiciled in or registered to do business in the State of Oregon, Consultant shall promptly provide to the Oregon Department of Revenue and the Secretary of State Corporation Division all information required by those agencies relative to the Contract.
- 21. Force Majeure.** Neither County nor Consultant shall be held responsible for delay or default in the performance of its obligations due to a cause beyond its reasonable control, including, but not limited to, fire, riot, acts of God, terrorist acts or other acts of political sabotage, or war where such cause was beyond the reasonable control of County or Consultant, respectively. Consultant shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall, upon the cessation of the cause, diligently pursue performance of its obligations under the Contract.
- 22. Survival.** All rights and obligations shall cease upon termination or expiration of the Contract, except for the rights and obligations set forth in Sections 5, 9, 10, 11, 12, 13, 15(e), 15(f), 16, 22, 23, 26, 27 and 29 and all other rights and obligations which by their context are intended to survive.
- 23. Time is of the Essence.** Consultant agrees that time is of the essence in Consultant's performance of its obligations under the Contract.
- 24. Notice.** Except as otherwise expressly provided in the Contract, any communications between the Parties hereto or notices to be given hereunder shall be given in writing by e-mail, by personal delivery, facsimile, or mailing the same, postage prepaid, to Consultant or County at the e-mail address, the delivery address or facsimile number set forth in the Contract, or to such other addresses or numbers as either Party may hereafter indicate in writing to the other. Any notice or day-to-day communication sent by e-mail shall be deemed received when it is sent. **The recipient of any notice sent by e-mail shall reply by e-mail to confirm receipt of such notice.** Any communication or notice made by personal delivery shall be deemed to be received when actually delivered. Any communication or notice properly addressed and mailed shall be deemed received 5 calendar days after the date of mailing. Any communication or notice delivered by facsimile shall be deemed received on the date of the notice of successful transmission generated by the transmitting machine. To be effective, such facsimile transmission must be confirmed by telephone notice to County's Contract Administrator or Consultant's representative, as applicable.
- 25. Severability.** The Parties agree that if any term or provision of the 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.
- 26. Dispute Resolution and Errors & Omissions Claims Process.** In the event of a dispute between the Parties regarding any aspect of the Contract or performance under the Contract, the Parties agree to attempt in good faith to investigate and resolve any such dispute through direct communications and negotiations.
- a. Errors & Omissions Related.** In the event those good faith efforts do not resolve disputes related to potential Errors and Omissions, the Parties agree to make good faith efforts to resolve the matter pursuant to **Exhibit I, Errors & Omissions Claims Process.**
 - b. Other Disputes.** In the event good faith efforts do not resolve disputes unrelated to Errors & Omissions, the Parties agree to make a good faith effort to resolve any such dispute through fact finding and non-binding mediation prior to resorting to litigation. The mediator shall be selected by mutual agreement of the Parties. If the Parties fail to agree on a mediator, each Party shall select a mediator and those two persons shall agree on a third-party, who will be the sole mediator. The cost of the mediator shall be split equally between the Parties.
 - c. Notification to ODOT.** County shall immediately notify ODOT of any disputes that seek resolution with the Errors & Omissions Claims Process or mediation.
- 27. Governing Law; Venue; Consent to Jurisdiction.** The Contract shall be governed by, and construed and enforced in accordance with, the laws of the State of Oregon, without regard to principles of conflicts

of law. Any claim, action, suit or proceeding (collectively, "Claim") between County (or any agency or department of the State of Oregon) and Consultant that arises from or relates to the Contract shall be brought and conducted solely and exclusively within the Circuit Court located in the County in which the Project is located; 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 or State of Oregon of any form or defense or immunity, whether based on sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the United States Constitution, or otherwise. **CONSULTANT, BY EXECUTION OF THE CONTRACT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS.**

28. Amendments. County may amend the Contract to the extent permitted by applicable statutes, administrative rules and ordinances and as mutually agreed upon by County and Consultant. County may agree to appropriate increases in the maximum compensation payable under the Contract, should any County-approved increase occur in the scope, character, schedule or complexity of Services as outlined in the Statement of Work. Consultant shall not commence any Services authorized under an amendment, and the amendment is not effective, unless it is in writing, signed by the Parties and all approvals required by applicable law have been obtained.

29. False Claims

- a. Consultant understands and acknowledges it is subject to the Oregon False Claims Act ([ORS 180.750 to 180.785](#)) and to any liabilities or penalties associated with the making of a false claim under that Act. By its execution of the Contract, Consultant certifies the truthfulness, completeness, and accuracy of any statement or claim it has made, it makes, it may make, or cause to be made that pertains to the Contract or the Project for which the Services are being performed, including but not limited to Consultant's statement of proposal and any invoices, reports, or other deliverables.
- b. Consultant shall immediately disclose (in writing) to County whenever, in connection with the award, performance or closeout of the Contract, or any subcontract thereunder, Consultant has credible evidence that a principal, employee, agent, or subcontractor of Consultant has committed—
 - (i) A violation of the Oregon False Claims Act; or
 - (ii) A violation of State or Federal criminal or civil law involving fraud, conflict of interest, bribery, gratuity or similar misconduct.
- c. Consultant must include subsections (a) and (b) of this section in each subcontract Consultant may award in connection with the performance of the Contract. In doing so, Consultant may not modify the terms of those subsections, except to identify the subcontractors or sub grantee that will be subject to those provisions.

30. Certified Small Businesses. Respecting certification as a disadvantaged business enterprise, minority-owned business, woman-owned business, business that a service-disabled veteran owns or an emerging small business under ORS 200.055, as and when applicable, the Consultant shall maintain the certifications, and require in its subcontracts that subcontractors maintain the certifications required by Section 2, Chapter 325, Oregon Laws 2015, as amended by Section 26, Chapter 565, Oregon Laws 2015 as a material condition of the Contract. If the Consultant or subcontractor was awarded the Contract or subcontract, as applicable, in the course of County carrying out an affirmative action goal, policy or program under ORS 279A.100, and fails to maintain the required certification, County may terminate the Contract, require the Consultant to terminate the subcontractor, or exercise any of remedies reserved for breach of the Contract.

31. Merger Clause; Waiver; Interpretation. The Contract, including everything incorporated by reference, constitutes the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding the Contract. No waiver, consent, modification or change of terms of the Contract shall bind either Party, unless such waiver, consent, modification or change of terms is in writing and signed by the Parties, and

all necessary State of Oregon governmental approvals have been obtained. Such a waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. Either Party's failure to enforce any provision of the Contract shall not constitute a waiver by that Party of that or any other provision. The characterization of provisions of the Contract as material provisions or the failure to comply with certain provisions as a material breach of the Contract shall in no way be construed to mean that any other provisions of the Contract are not material or that failure to comply with any other provisions is not a material breach of the Contract.

CONSULTANT CERTIFICATIONS

A. Any individual signing on behalf of Consultant hereby certifies under penalty of perjury:

- (1) Consultant has provided its correct TIN to County;
- (2) Consultant is not subject to backup withholding because (a) Consultant is exempt from backup withholding, (b) Consultant has not been notified by the IRS that Consultant is subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified Consultant that Consultant is no longer subject to backup withholding; and
- (3) s/he is authorized to act on behalf of Consultant, s/he has authority and knowledge regarding Consultant's payment of taxes, and to the best of her/his knowledge, Consultant is not in violation of any Oregon Tax Laws. For purposes of this certification, "Oregon Tax Laws" means a State tax imposed by ORS 320.005 to 320.150 and 403.200 to 403.250, ORS Chapters 118, 314, 316, 317, 318, 321, and 323; and local taxes administered by the Department of Revenue under ORS 305.620.

B. Any individual signing on behalf of Consultant hereby certifies they are authorized to sign this Contract and that:

- (1) **Consultant has read this Contract, understands it, and agrees to be bound by its terms and conditions.**
- (2) Consultant understands and agrees that various documents are not physically attached, but are incorporated by reference and have the same force and effect as if fully set forth herein.
- (3) Consultant understands and has provided to all Associates the COI Disclosure Form available at: <https://www.oregon.gov/ODOT/Business/Procurement/Pages/LPA.aspx>. Consultant and (to the best of the undersigned's information, knowledge and belief) Consultant's Associates are in compliance with the disclosure requirements of the COI Disclosure Form and have no conflicts of interest to disclose. If disclosures regarding this Contract or the related Project are required per the COI Disclosure Form, Consultant has made such disclosures to County on a properly prepared and submitted form and, if determined necessary by County or ODOT, a mitigation plan has been approved by County and ODOT.
- (4) (a) No Federal appropriated funds have been paid or will be paid, by or on behalf of Consultant, 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 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, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
(c) 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.

(d) Consultant shall require that the language of this certification be included in all subcontracts in excess of \$100,000 at all tiers and that all such subcontractors shall certify and disclose accordingly.

(5) Consultant is an independent contractor as defined in ORS 670.600 and as described in IRS Publication 1779.

(6) In the event that Consultant is a general partnership or joint venture, Consultant signature(s) on this Contract constitutes certifications to the above statements pertaining to the partnership or joint venture, as well as certifications of the above statements as to any general partner or joint venturer signing this Contract.

No Payment shall be made for Services that are performed before all necessary governmental approvals have been obtained, the Contract is fully executed, and Notice-To-Proceed has been issued by County.

Counterparts: The Contract may be executed in several counterparts, all of which when taken together shall constitute one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of the Contract so executed shall constitute an original.

CONSULTANT SIGNATURE(s)

Signature: _____ Date: _____

Name: _____ Title: _____

CLACKAMAS COUNTY BOARD OF COUNTY COMMISSIONERS

Chair: _____

Date: _____

Recording Secretary: _____

COUNTY LEGAL REVIEW (Approved as to Form):

Signature: _____ Date: _____

EXHIBIT A - STATEMENT OF WORK

EXHIBIT B - COMPENSATION

Definitions:

CPFF - Cost Plus Fixed Fee

FCCM - Facilities Capital Cost of Money

NBR - Negotiated Billing Rates. NBRs are fully loaded billing rates used by firms that do not have an audited, approved overhead rate. NBRs are inclusive of direct salary, indirect expenses and profit.

NTE - Not to Exceed Amount

T&M - Time and Materials

A. METHOD of COMPENSATION

Payment will be made for completion of, or acceptable monthly progress on, tasks and deliverables in conformance with Contract requirements and all applicable standards. Consultant shall complete all Services and provide all deliverables as defined in the Contract. If the applicable compensation is exhausted, but Services and deliverables are not complete, Consultant shall complete the Services and provide the deliverables to County's satisfaction without additional compensation.

The amount payable under the Contract may be adjusted by County or renegotiated to:

- Reduce the NTE, Fixed-Price or Fixed-Fee amount associated with Tasks/Deliverables that were not authorized by County or not performed by Consultant;
- Reduce the NTE, Fixed-Price or Fixed-Fee amount commensurate with deductive amendments to reduce the risk associated with the project or to reduce the scope of work required under the Contract;
- Increase the NTE, Fixed-Price or Fixed-Fee amount for additional Tasks/Deliverables added to the scope of work via amendment to the Contract.

1. Time and Materials with Not-To-Exceed (T&M)

County will pay Consultant for completion of Services required under the Contract on the basis of T&M, up to the NTE amount established in the Contract. Billable items include:

- **Loaded Costs**- the NBR (which is inclusive of profit and overhead costs); or the actual direct salary rate paid to the specific employee(s) (up to the maximum rate approved in the Contract for the employee's classification) productively engaged in work to complete the Services required under the Contract, plus profit and the approved overhead.
- **Direct Non-Labor Costs** (without mark-up) - Approved travel costs (up to the rates established in Section B of this Exhibit) and other approved direct-non labor expenses that are not included in overhead.
- **Subcontractor Costs** (without mark-up, unless County notifies Consultant otherwise in writing) - the hourly labor rates and direct non-labor costs (as described above) that have been billed to Consultant and recognized by Consultant as valid, undisputed and payable.

The dollar amount for T&M Services is: \$ 208,959.32
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B. PAYMENT OPTIONS

Payments will occur only after County has determined that Consultant has completed, and County has accepted, the required Services (including defined deliverables) for which payment is sought via a properly submitted and correct invoice.

(For CPFF and T&M) - Progress Payments for Acceptable Progress. County will pay Consultant monthly progress payments for actual costs, up to the Contract NTE amount, for Consultant's acceptable (and verifiable) progress on tasks and deliverables included in the invoice.

(For Fixed-Price) - Progress Payments for Percentage of Services Completed. County will pay Consultant monthly progress payments based on a percentage of the total agreed fixed price. Monthly progress payments shall be limited to an amount commensurate with the percentage of the total Services and deliverables that were completed in the month invoiced.

Payment upon Milestone (or other Unit) Completion. County will pay Consultant the fixed price per milestone amount(s), or all amounts due as actual costs up to the Contract NTE amount per milestone, but only after Consultant completes and County accepts all Services and deliverables required under the Contract for a given milestone (or other unit) as listed below:

Payment upon Full Completion. County will pay Consultant the fixed price amount, or all amounts due as actual costs up to the Contract NTE amount, but only after Consultant completes and County's accepts all Services and deliverables required under the Contract.

C. TRAVEL

The Fixed Price amount(s) in this Contract includes all travel, lodging, per diem, and mileage expenses. County will not reimburse Consultant separately for travel, lodging, per diem, or mileage expenses.

Travel costs are allowable only if they are authorized under the Contract and if the travel is essential to the normal discharge of County's responsibilities and is related to official County business. **All travel shall be conducted in the most efficient and cost-effective manner that results in the best value for the State.** Personal expenses shall not be authorized at any time. The following guidelines shall apply to the Contract:

- The travel, lodging, and per diem rates referenced in this Section C are the maximums that Consultant's estimate (or reimbursement, if applicable) may be based on. Travel rates other than those referenced in this Section C may be negotiated in the Contract, however, under no circumstance shall travel, lodging and per diem rates exceed the maximums set forth by the State Controller at <https://www.oregon.gov/DAS/SCD/SARS/policies/oam/40.10.00.PO.pdf> .
- Mileage - For compensation based on Cost-Plus-Fixed-Fee or Time and Materials (or Fixed Price or Price Per Unit when travel reimbursement is approved and mileage is compensated separately), all mileage approved by County will be reimbursed according to the rates set forth by the State Controller at <https://www.oregon.gov/DAS/SCD/SARS/policies/oam/40.10.00.PO.pdf> that are in effect on the date when the travel occurs.
- For compensation based on Cost-Plus-Fixed-Fee or Time and Materials, Consultant shall submit receipts for travel-related expenses billed to County, such as but not limited to, lodging, rental vehicles, and air fare. If lodging is shared by two or more travelers, the lodging receipt must indicate the names of any travelers on official State business who shared the room.

D. INVOICES

Consultant shall submit invoices in the format required by County (and with supporting documentation to substantiate charges on the invoice, including a detailed line-item breakdown of labor and direct non-labor costs by task/subtask) no more frequently than once per month. The address for invoice submittal is set forth in Exhibit J. In addition to all other applicable invoice requirements in this section D, each invoice must include the following information:

- The County's Contract number
- The County's project number

Progress Reports: Each monthly invoice must include a progress report. The monthly progress report must cover the period invoiced and, at minimum, must:

- Describe the previous month's project activities and the planned activities for the next month;
- For each task/deliverable identify the percentage completed during the month and the cumulative percentage completed;
- Reconcile progress of each task/deliverable with the schedule identified for each.
- Identify issues/concerns that may affect the project Statement of Work, schedule or budget.

"Paid Summary Report"

Consultant shall complete and submit to APM [Paid Summary Report\(s\)](#) [form 734-2882] per the instructions on the form. Consultant must report payment information for all subcontractors and suppliers used under the Contract throughout the period of performance. **This reporting is required for all Contracts that include subs, regardless of funding or whether or not a DBE goal or Certified Small Business Aspirational Target is assigned.**

CPFF and T&M Compensation:

- Consultant shall prepare invoices based on the actual hourly rates, up to the maximums for each respective classification approved in the Contract, of the employees (or subconsultants) that performed the Services.
- Consultant shall provide documentation in each invoice to itemize all reimbursable actual labor costs and direct non-labor expenses for which Consultant seeks reimbursement, including a breakdown by task of the number of labor hours for each employee, employee names and classifications. Include copies of all invoices, similarly detailed, from authorized subconsultants.
- County will reimburse Consultant for approved travel expenses incurred in accordance with **Exhibit B**, Section C of the Contract, if County has agreed to reimburse Consultant for travel expenses.

Fixed-Price Compensation. Consultant shall prepare invoice(s) based on the payment option identified in Section B of this Exhibit:

- For Contracts using "Payment upon Full Completion" payment option, Consultant shall submit a single invoice requesting payment for the full Fixed-Price amount after all Services have been completed and all Deliverables have been accepted by County.
- For Contracts using "Progress Payments for Percentage of Services Completed" payment option, Consultant invoices shall be limited to an amount commensurate with the percentage of the total Services (including Deliverables) that were completed in the month invoiced.

County may request a full written itemization of and receipts for, but not limited to, any or all labor and direct costs billed by Consultant. Consultant shall provide written itemization and receipts to County within 5 business days of County's request. County will not make payment to Consultant under the applicable invoice until County has received all requested supporting documentation from Consultant and County has approved the invoiced amounts. Any overdue payments to Consultant by County for an approved invoice are subject to ORS 293.462.

E. PAYMENT TERMS

Payment will be made to Consultant no later than 45 calendar days from receipt of invoice completed in conformance with all contractual requirements. County will endeavor to notify Consultant within 10 business days of receipt of invoice regarding any necessary revisions or corrections to the invoice. If revisions are necessary, payment will be made no later than 45 calendar days from receipt of the revised invoice. Any interest for overdue payment will be in conformance with Oregon law.

F. CORRECTIVE WORK

Consultant shall complete all Services, including Deliverables, as required in the Contract to County's satisfaction. If County, using reasonable discretion, determines that the Services or associated deliverables, or both, are unacceptable, County shall notify Consultant in writing of the deficiency.

Within 7 calendar days (unless a different timeframe is agreed to by the Parties) of receipt of the deficiency notification Consultant shall respond to County outlining how the deficiency shall be corrected. Consultant shall correct any deficiencies in the Services and Deliverables to County's satisfaction without further compensation. County will not unreasonably withhold payment.

G. WITHHOLDING/RETAINAGE

County reserves the right to initiate, at any time during the Contract, withholding of payment equal to 5% of the amount of each invoice submitted to County under the Contract. County will make final payment of any balance due to Consultant promptly upon verification of completion and acceptance of all Services by County and will pay interest as required on retainage.

H. PAYMENT REDUCTION

County, or its duly authorized agents, may audit Consultant's fiscal records, including certified payroll and overhead records at any time. If County finds previously undisclosed inaccurate or improper costs have been invoiced and paid, County will notify Consultant and seek clarification. County, in its sole discretion, may reduce the payment for Services by withholding the inaccurate or improper amounts from any future payment to Consultant, withhold the inaccurate or improper amounts from final payment to Consultant, or may use any other means to seek recovery of already paid but improperly calculated amounts.

I. SPECIFIC LIMITATIONS and UNALLOWABLE CHARGES

Specific Limitations

For cost reimbursement compensation such as CPFF or T&M, Consultant shall invoice County only for actual productive time Consultant personnel spend on Services by any level of Consultant's staff (up to the established not-to-exceed amount). Consultant's general supervisors or personnel who are responsible for more than one County project shall charge only for actual productive time spent directly on the project identified in the Contract.

County will pay Consultant only up to the hourly rates set forth in the Contract that are commensurate with the type of Services performed regardless of the classification, title, or level of experience of the individual performing those Services. However, under no circumstances shall Consultant invoice County based on higher direct salary rates than the actual amount paid to its employees.

Discriminatory Pricing. Direct and indirect costs as applied to work performed under County contracts and subcontracts may not be discriminatory against the County. It is discriminatory against the County if employee (or owner/sole proprietor) compensation (in whatever form or name) is in excess of that being paid for similar non-County work under comparable circumstances.

Discriminatory Wage Rates. Pursuant to ORS 279C.520, Consultant shall comply with the prohibitions set forth in ORS 652.220. Failure to comply is a breach that entitles the County to terminate the Contract for cause.

Employee Discussions Regarding Compensation. Consultant shall not prohibit any of its employees from discussing the employee's rate of wage, salary, benefits or other compensation with another employee or another person and may not retaliate against an employee who discusses the employee's rate of wage, salary, benefits or other compensation with another employee or another person {see ORS 279C.520(1)}.

Unallowable Charges

County will not pay for direct or indirect costs that are unallowable under the provisions of [48 CFR Part 31](#).

Costs or direct charges for, but not limited to, the following are not reimbursable:

- Costs for negotiation of the Contract or Contract amendments, including but not limited to proposal preparation, BOC preparation, preparation for negotiations, and negotiation of level of effort/budget.

- Costs related to disputes or E&O Claims, including but not limited to discussions, meetings and preparation of any dispute or claim related documentation.
- Mark-up on subcontractors or direct non-labor costs.
- Transfer of knowledge and information related to Key Person replacements.
- Correcting or making adjustments to incorrect or improper invoices.
- Direct compensation for items included in firm's indirect costs (unless properly credited back to indirect cost).
- Premium costs incurred as a result of working overtime or holidays. (Premium time should normally be charged to overhead. In accordance with ORS 279C.520, employees shall be paid at not less than time and one-half for all overtime worked and for work on legal holidays, except for individuals who are excluded from receiving overtime under personal services contracts pursuant to ORS 653.010 to 653.261 or under 29 U.S.C. 201 to 209.)

J. INDIRECT COSTS; SALARY and BILLING RATE SCHEDULES

1. Approved cost data on file with ODOT - If Consultant or its subconsultants have current, approved overhead, salary, or NBR rate schedules on file at ODOT, Consultant and its subconsultants will submit those approved rate schedules and any required certifications (or County may obtain rate schedules from ODOT) as required in subsections 2 and 3 below for use under the Contract.

2. Overhead Schedule - If Consultant or subconsultants calculate overhead as part of their normal business practice, the overhead schedules shall be prepared and submitted in accordance with ODOT's Billing Rate Policy (as may be revised from time to time by ODOT) available at: <https://www.oregon.gov/ODOT/Business/Procurement/DocsPSK/brPolicy.pdf>. Consultant Certification of compliance with Federal Cost Principles is required per FHWA directive 4470.1a: <https://www.fhwa.dot.gov/legsregs/directives/orders/44701a.htm>. A signed [Certification of Final Indirect Costs form](#) must be submitted with the overhead schedule.

In order to assess the adequacy of an audited overhead rate for use in fair and reasonable price negotiation, County and/or ODOT may evaluate a firm's financial capability, internal control structure, and overhead schedule. This includes a determination as to the applicability of historical overhead rates to the anticipated future contract period, performing financial ratio analysis, evaluating overhead account trends and utilization rates for reasonableness.

3. Salary and Billing Rate Schedules

Consultant shall, and shall cause all of its subconsultants to submit electronically to County the applicable rate schedules described below.

Direct Salary Rate Schedule - includes the name, classification and actual direct salary rate as approved for each employee that may be used under the Contract. This schedule is required for firms that calculate an overhead rate. This schedule will not be included in the Contract but will be retained by County.

Negotiated Billing Rate Schedule - may be required for Consultants or subconsultants that do not have a cognizant or acceptable independent audit for overhead rates (or do not calculate overhead as part of their normal accounting practice) and County determines it is in the public's best interest to negotiate specific billing rates. Instead of calculating a billing rate using a formula that applies overhead, profit, and FCCM to the direct salary rate, this schedule lists negotiated rates that are fully inclusive of profit, overhead and any cost of living or merit raises. The billing rates invoiced under the Contract must not exceed the rates per classifications listed in the schedule and may be no greater than the lowest rates charged to other public or private clients.

Direct Non-Labor Rate Schedule - is an optional schedule used to list actual costs of reimbursable items that are not included in the firm's overhead rate (or that are properly applied as a credit in overhead calculation).

Approved Rate Schedules - The rate schedules approved for the Contract and the BOC are incorporated into this Contract. Prior to approval of additional subconsultants, Consultant shall provide to County any requested documentation of qualifications and experience of the prospective subconsultant and its staff.

K. RATE REVISIONS

The hourly rates (including escalations, if any) approved for use under this Contract shall remain in effect throughout the duration of the Contract unless revisions are approved by County. Any approved revisions to the hourly rates allowable under the Contract shall not cause an increase in the Contract NTE amount (exceptions may be approved by County on a case by case basis).

L. BREAKDOWN OF COSTS (BOC)

Prior to execution of the Contract or any amendments that add Services, Consultant shall prepare and submit a BOC based on the approved overhead and actual direct salary rates (and approved NBRs as applicable) for each classification to be used under the Contract. Consultant shall include names of proposed staffing in the BOC.

The BOC must include a detailed breakdown of the costs for each element of the work regardless of compensation method. The BOC must identify:

- a) the proposed staff assignments (classifications and names) and hours per task and sub-task;
- b) an itemization with documentation (estimates from vendors shall be provided upon request) to support rental equipment, flaggers, travel and other direct non-labor expenses; and
- c) the estimate for Services as provided by each subconsultant that shows the assigned staff and hours per task and sub-task and itemized direct non-labor costs. County may ask for qualifications of any staff assigned to work on a project if they were not included in Statement of Proposal originally submitted for solicitation.
- d) the certification status of any disadvantaged business enterprise, minority-owned business, woman-owned business, service-disabled veteran-owned business or emerging small business subcontractors included in the BOC.
- e) **Contingency Tasks.** Amounts for any contingency tasks must be shown as a separate line-item for each task. The amount for a contingency task must include all labor, overhead, profit, and expenses for the task. Expenses for contingency tasks must not be included in an overall amount for direct non-labor expenses applied to the budget for the non-contingency tasks. Enter the agreed to unit and extended amounts for contingency tasks in the Contingency Task Summary table.

The final BOC agreed to by the Parties is incorporated by this reference

EXHIBIT C - INSURANCE

All insurance required by this Contract shall be maintained with insurers with an A.M. Best Financial Strength Rating of no less than A-. Insurers must be legally authorized to transact the business of insurance and issue coverage in the State of Oregon. Consultant shall be financially responsible for all pertinent deductibles, self-insured retentions and self-insurance. Prior to beginning work and during the term of this Contract, including any extensions or warranty period, Consultant shall maintain in force at its own expense each insurance set forth below:

1. **Workers' Compensation** insurance in compliance with ORS 656.017, which requires subject employers to provide Oregon workers' compensation coverage for all their subject workers (Consultants with one or more employees, unless exempt under ORS 656.027).
2. **Required by County** **Not required by County.**
Professional Liability insurance with a per claim, incident or occurrence limit, or the equivalent, of not less than **\$1,000,000**, or **\$2,000,000**. Any annual aggregate limits must not be less than **\$1,000,000**, or **\$2,000,000**. This insurance must cover damages caused by negligent acts, errors or omissions of Consultant and Consultant's subcontractors, agents, officers or employees related to the professional Services to be provided under the Contract. If this insurance is provided on a "claims made" basis, Consultant shall continue the same coverage for **2 years**, **3 years**, or **6 years** after completion of the Services or acquire "tail" coverage or an Extended Reporting Period endorsement for the foregoing extended period beyond Contract expiration or termination. Evidence of any required extended period coverage will be a condition of final payment under the Contract.
3. **Required by County** **Not required by County.**
Commercial General Liability insurance must be issued on an occurrence basis with per occurrence limit, or the equivalent, of not less than \$1,000,000 covering "bodily injury" and "property damage." Any annual aggregate limits shall not be less than \$2,000,000.
4. **Required by County** **Not required by County.**
Automobile Liability insurance covering Consultant's business-related automobile use, with a combined single limit, or the equivalent, of not less than \$1,000,000 each occurrence for "bodily injury" and "property damage," including coverage for all owned, non-owned, rented or hired vehicles.
5. **Notice of change or cancellation.** There shall be no cancellation, material change (one that would adversely impact the protection of County provided through the insurance coverages required in this **Exhibit C**), reduction of limits or intent not to renew the insurance coverage(s) without 30 calendar days prior written notice from Consultant or its insurer(s) to County. **All policies and certificates of insurance, including Workers' Compensation, must include a notice of cancellation or nonrenewal clause as required under ORS 742.700 to 742.710.**
6. **Certificates of Insurance.** As evidence of the insurance coverages required by this Contract, Consultant shall furnish acceptable insurance certificates to County prior to Contract execution. Throughout the life of this Contract, Consultant shall submit updated certificates of insurance prior to the policy expiration date(s) indicated for the required coverages. If requested by County, Consultant shall either: a) provide complete copies of insurance policies, endorsements, self-insurance documents and related insurance documents to County; or b) make such insurance policies, endorsements, self-insurance documents and related insurance documents available for inspection by County's representatives at a location in the State of Oregon that is reasonably convenient for County's representatives responsible for verification of the insurance coverages required under the Contract.
7. **Additional Insureds.** Insurance certificates for Automobile and Commercial General Liability must include an endorsement physically attached to the certificate specifying the County, the State of Oregon, the OTC, the Oregon Department of Transportation, and their respective officers, members, agents and employees as Additional Insureds and must expressly provide that the interest of the Additional Insureds shall not be affected by Consultant's breach of policy provisions.
8. **Subcontractors.** Consultant shall: (i) obtain proof of the above insurance coverages, as applicable, from any subcontractor providing Services related to this Contract, or (ii) include subcontractors within Consultant's coverage for the duration of the subcontractor's Services related to this Contract.

EXHIBIT D - TITLE VI NON-DISCRIMINATION PROVISIONS

During the performance of this Contract, Consultant, for itself, its assignees and successors in interest (hereinafter referred to as the "Consultant") agrees as follows:

- a. **Compliance with Regulations:** Consultant shall comply with the Regulations relative to nondiscrimination in Federally-assisted programs of the Department of Transportation Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this Contract.
- b. **Nondiscrimination:** Consultant, with regard to the work performed by it during the Contract, shall not discriminate on the grounds or race, color, sex, or national origin in the selection and retention of subconsultants, including procurements of materials and leases of equipment. Consultant shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the Contract covers a program set forth in Appendix B of the Regulations.
- c. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations either by competitive bidding or negotiation made by Consultant for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subconsultant or supplier shall be notified by Consultant of Consultant's obligations under this Contract and the Regulations relative to nondiscrimination on the grounds of race, color, sex, or national origin.
- d. **Information and Reports:** Consultant shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the County, ODOT, FHWA or the Federal Transit Administration (FTA) as appropriate, to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of Consultant is in the exclusive possession of another who fails or refuses to furnish this information, Consultant shall so certify to County, ODOT, FHWA or FTA as appropriate, and shall set forth what efforts it has made to obtain the information.
- e. **Sanctions for Noncompliance:** In the event of Consultant's noncompliance with the nondiscrimination provisions of this Contract, County shall impose such Contract sanctions as it, ODOT, FHWA or FTA may determine to be appropriate, including, but not limited to:
 - (i) Withholding of payments to Consultant under the Contract until Consultant complies, and/or
 - (ii) Cancellation, termination or suspension of the Contract, in whole or in part.
- f. **Incorporation of Provisions:** Consultant shall include the provisions of paragraphs (a) through (e) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. Consultant shall take such action with respect to any subcontract or procurement as County, ODOT, FHWA or FTA may direct as a means of enforcing such provisions including sanctions for non-compliance: Provided, however, that, in the event Consultant becomes involved in, or is threatened with, litigation with a subconsultant or supplier as a result of such direction, Consultant may request County, ODOT, and, in addition, Consultant may request the United States to enter into such litigation to protect the interests of the United States.

EXHIBIT E - DISADVANTAGED BUSINESS ENTERPRISE (“DBE”) PROVISIONS (Goal)

The DBE program is administered by the ODOT Office of Civil Rights (“OCR”). As the County is entering into this Contract under authority granted by ODOT, the DBE Provisions apply the same as if ODOT were the contracting agency.

“Consultant” and “Contractor” are hereinafter referred to as “Contractor”. **See sections d and i for specific documentation and reporting requirements of Contractor.**

- a. **Policy and Program Authorities:** ODOT and Contractor agree to abide by and take all necessary and reasonable steps to comply with these DBE Provisions and the following, which are incorporated in this Contract with the same force and effect as though fully set forth in this Contract:

- o [ODOT DBE Policy Statement](#)
- o [ODOT DBE Program Plan](#), and
- o Requirements of [Title 49, Code of Federal Regulations, Part 26](#) - Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs.

ODOT’s DBE Program authorities are set forth in the ODOT DBE Program Plan.

- b. **DBE Goals:** ODOT’s overall goal for DBE participation is 11.6% for FHWA funded contracting and 6% (proposed) for FTA funded contracting. For FHWA funded contracting, ODOT may assign DBE Contract goals to increase participation by DBEs. For any Contract with an assigned DBE goal, Contractor shall select a portion of work available under the Contract for DBE participation. Contractor may use DBE subcontractors, suppliers, manufacturers, or Professional Services and Related Services providers to fulfill the assigned DBE Contract goal as long as the DBE is certified in the types of work selected. The assigned DBE Contract goal remains in effect throughout the life of the Contract. Dollar values of participation shall be credited toward meeting the assigned DBE Contract goal based on DBE gross earnings.

- **A separate DBE Contract goal, as set forth on page 1 of the WOC or project-specific Contract (as applicable), has been assigned for this procurement.**

- c. **Nondiscrimination Requirement:** Contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted Contract. Failure by Contractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as ODOT deems appropriate. Each subcontract the Contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR § 26.13(b)).

- d. **Documentation of Proposed Participation:** Contractor shall document sufficient DBE participation to meet an assigned Contract goal or, alternatively, document adequate good faith efforts to do so (see 49 CFR § 26.53). All work committed to a DBE firm toward meeting the assigned participation goal must be performed under a written subcontract. The subcontract must fully describe any work committed to be performed by the DBE and shall include all required flow-down provisions of the primary Contract. Contractor must complete and submit the following documentation, as applicable:

1. **Subcontractor Solicitation and Utilization Report (SSUR)** - submitted with proposal in response to formal and informal Requests for Proposals (RFPs).
2. **Breakdown of Costs (“BOC”) or (“BOC-NBR”), as applicable** - submitted prior to negotiation and execution of the Contract and each amendment that changes the scope of work and costs under the Contract. The BOC forms and BOC Requirements are available from the Internet at:

<https://www.oregon.gov/ODOT/Business/Procurement/Pages/PSK.aspx>. The BOC or BOC-NBR must clearly list any tasks or subtasks to be performed by subcontractors (DBEs and non-DBEs), each subcontractor's Federal Tax ID and identification of any required personnel. Include in the Expense Detail tab any required equipment and supplies furnished by the DBE, any of the prime contractor's resources that will be provided for the DBE's use, and identification of any second or lower tier subcontractors with the dollar amounts for each.

3. **Committed DBE Breakdown and Certification Form(s)-AE.** Required for all Contracts with assigned goals and completed prior to Contract execution and any proposed substitution. See submittal instructions on the Instructions tab of the form.
 4. **Subcontractor Reporting:** Complete and submit an initial **Paid Summary Report** [form 734-2882] per the instructions on the form.
- e. **Good Faith Efforts:** Contractor shall make good faith efforts, as set forth in 49 CFR § 26.53, Appendix A to Part 26, and ODOT DBE Program Plan, to obtain and support DBE participation that could reasonably be expected to produce and maintain a level of DBE participation sufficient to meet the Contract goal. Good faith efforts are required during solicitation, upon Contract award, and continue throughout the performance of the Contract to maximize DBE participation. The Agency (or local agency when applicable) Project Manager ("APM") may request Contractor to submit evidence of good faith efforts prior to Contract execution or at any time during the course of the Contract and Contractor shall promptly submit such evidence. Contractor shall use the specific DBEs listed in the Committed DBE Breakdown and Certification form(s) to perform the work and supply the materials for which each is listed unless the contractor obtains ODOT's prior written consent to terminate and replace a DBE as provided in section j. below. Contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBEs as required by this provision.
- f. **Commercially Useful Function ("CUF"):** Contractor is responsible to ensure the DBE performs a commercially useful function on the Contract. A DBE performs a CUF when it is responsible for execution of the work of the Contract/subcontract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. Additional detail regarding CUF requirements and other conditions for counting participation by DBE contractors is set forth in 49CFR § 26.55. The APM will review the proposed DBE participation and may provide written comments as to whether the activities and type of work identified for DBEs complies with program regulations. In those instances where proposed activity and type of work violates applicable regulations, written comments will be offered as to corrective action required in order to comply with the regulations. ODOT may perform a CUF review at any time during the performance of the Contract.
- g. **Changes in Work Committed to DBE:** ODOT will consider the impact on DBE participation in instances where the prime Contract is amended to reduce, or delete work committed to the DBE. In such instances, Contractor shall not be required to replace the work but is encouraged to do so to the maximum extent practicable.
- h. **Prompt Payment and Retainage:** Contractor shall pay each subcontractor for satisfactory performance under its contract no later than 10 calendar days from receipt of each payment Contractor receives from ODOT (or local agency when applicable) for the subcontracted work. In addition, within 10 calendar days of receipt of retainage from ODOT (or local agency when applicable), Contractor shall pay to each subcontractor the retainage that pertains to the work of that subcontractor.
- i. **Reporting Requirements:** Contractor must report payment information for all subcontractors and suppliers used under the Contract throughout the period of performance. Contractor shall complete and submit initial, interim and final Paid Summary Report(s) [form 734-2882] per the instructions included on the form.
- j. **Termination of DBE Notification Requirement:** Contractor shall comply with all requirements set forth in 49 CFR § 26.53 regarding termination of DBEs including, without limitation, documentation of good cause, 5-day notice to the DBE subcontractor and ODOT, DBE

responses, ODOT's prior written consent of DBE termination, and replacement of DBEs. ODOT will provide such written consent only if it agrees the prime contractor has good cause to terminate the DBE in accordance with 49 CFR 26.53(f)(3).

- k. **Remedies:** Contractor's failure to comply with these DBE Provisions and the requirements of 49 CFR Part 26 may result in one or more of the following administrative actions as deemed appropriate by ODOT: non-compliance documented in ODOT evaluation of Contractor performance, a corrective action plan prepared by Contractor, ODOT (or local agency when applicable) withholding of retainage, suspension of work, reporting of non-compliance to the federal System for Award Management ("SAM") available at <https://sam.gov>, any other remedies provided under the Contract.
- l. **Information/Questions:** The DBE program is administered by the ODOT Office of Civil Rights ("OCR"). Questions related to the DBE Program may be sent via email to ocrinforequest@odot.state.or.us or otherwise directed to: Oregon Department of Transportation Office of Civil Rights 3930 Fairview Industrial Drive SE (MS 23), Salem, OR 97302; Phone: 503-986-4350 Fax: 503-986-6382.
- m. **Directory of Certified Firms:** A searchable database for active certified firms (by NAICS code, NIGP code, ODOT code, certification type, location or project ethnicity goals) is available on line at: <https://oregon4biz.diversitysoftware.com/FrontEnd/VendorSearchPublic.asp>.

Related Web Sites:

All forms, documents and CFR citations referenced or linked in these DBE Provisions are available on line at:

- o **Forms:** <https://www.oregon.gov/ODOT/Business/OCR/Pages/Forms.aspx>
- o **Documents:** <https://www.oregon.gov/ODOT/Business/OCR/Pages/Disadvantaged-Business-Enterprise.aspx>
- o **49 CFR Part 26:** <https://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&SID=34ea04c7ed3d45b0e41f82a5646f1c15&rgn=div5&view=text&node=49:1.0.1.1.20&idno=49>

Acronyms & Definitions Applicable to Exhibit E

APM	ODOT's or local agency's Project Manager
BOC	Breakdown of Costs
BOC-NBR	Breakdown of Costs for Negotiated Billing Rates
CFR	Code of Federal Regulations
CUF	Commercially useful function
DBE	Disadvantaged Business Enterprise
OCR	ODOT Office of Civil Rights
ODOT	Oregon Dept. of Transportation
RFP	Request for Proposals
SSUR	Subcontractor Solicitation and Utilization Report
USDOT	United States Department of Transportation

EXHIBIT F - SPECIAL TERMS & CONDITIONS

Provisions in this Exhibit F are in addition to and do not supersede the terms and conditions set forth in the Contract.

1. NEPA Decision Documents and Final Design. Agency is not obligated to proceed with final design for any alternative; all reasonable alternatives will be evaluated and given appropriate consideration, and the Consultant under the Contract may not proceed with final design until the relevant NEPA decision documents have been issued.

EXHIBIT G - RESERVED

EXHIBIT H - RESERVED

EXHIBIT I - ERRORS & OMISSIONS ("E&O") CLAIMS PROCESS

Exhibit I is not physically attached but is incorporated into this Contract with the same force and effect as though fully set forth herein. For purposes of this Contract, the term "Agency", as used in the E&O Claims Process, means "local public agency". The E&O Claims Process (as may be revised from time to time by ODOT) is available at the following Web address as Exhibit I:

<http://www.oregon.gov/ODOT/Business/Procurement/DocsPSK/xbti.pdf>

EXHIBIT J - CONTACT INFORMATION and KEY PERSONS

1. Party Contact Information.

a.1 * County's Project Manager (APM) Name:	Joel Howie
Ph:	503-742-4658
E-mail:	jhowie@clackamas.us

a.2 *: County Contract Administrator for contractual matters:

Name:	
Ph:	
E-mail:	

a.3 County's address for invoicing:

Mailing Address:	150 Beaver Creek Road, Oregon City, OR 97045
E-mail:	jhowie@clackamas.us

b. **Consultant's Project Manager (PM) for this Contract is:

Name:	Doug Johnson, PE
Ph:	503-361-8635
E-mail:	dmj@deainc.com

c. Consultant's remit address for payments and contact for billings:

Name:	David Evans and Associates, Inc.
Address:	2100 SW River Parkway Portland, Oregon 97201
Ph:	503-222-6663
E-mail:	dmj@deainc.com

* County may change the Contract Administrator or Project Manager designation by promptly sending written notice (e-mail acceptable) to Consultant, with a copy to ODOT Procurement Office.

**Any changes to Consultant's Project Manager must be approved in writing (e-mail acceptable) by County.

2. Key Persons

Consultant acknowledges and agrees that County selected Consultant, and is entering into the Contract because of the special qualifications of Consultant's key personnel ("Key Persons" or "Key Personnel"), which may include specific staff agreed to during Contract negotiations. In particular, County, through the Contract is engaging the expertise, experience, judgment and personal attention of the Key Persons identified in the Contract.

Each Key Person shall not delegate performance of any management powers or other responsibilities he or she is required to provide under the Contract to another of Consultant's or subconsultant's personnel without first obtaining the written consent of County. Further, Consultant shall not re-assign or transfer any Key Person to other duties or positions such that the Key Person is no longer available to provide County with his or her expertise, experience, judgment, and personal attention according to any schedule established under the Contract without first obtaining County's prior written consent to such re-assignment or transfer. Notification of request to change a Key Person shall be in writing (via e-mail or other form as may be required by County.) Throughout the term of the Contract, Consultant shall provide updated information (if requested by County) to demonstrate the continuing qualifications of any staff working on County projects, including those approved as Key Persons.

In particular, County, through the Contract is engaging the expertise, experience, judgment and personal attention of the following Key Persons:

Name	Role
Doug Johnson, PE	Project Manager & Bridge Lead
Joe Tubbs, PE, SE	Principal-in-Charge
Andy Kutansky, PE	Civil/Trail Lead
Loren Stucker	Environmental Lead

3. Reassignment or Transfer of Key Person

In the event Consultant requests that County approve a reassignment or transfer of a Key Person:

- Consultant shall provide a resume for the proposed substitute demonstrating that the proposed replacement has qualifications that are equal to or better than the qualifications of the person being replaced.
- County shall have the right to interview, review the qualifications of, and approve or disapprove the proposed replacement(s) for the Key Person.
- Any substitute or replacement for a Key Person must be approved in writing (e-mail acceptable) and shall be deemed to be a Key Person under the Contract.

Consultant agrees that the time/costs associated with the transfer of knowledge and information for a Key Person replacement is not a cost borne by County and shall not be billed to County. This includes labor hours spent reviewing project documentation, participation in meetings with personnel associated with the Contract/project, and participating in site visits to become familiar with the project.



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 Nutter Corporation for the
Bridge Approach Repair: Clackamas River Bridge and Clear Creek Bridge**

Purpose/Outcomes	Completing the bridge approaches for both Clackamas River Bridge and Clear Creek Bridge.
Dollar Amount and Fiscal Impact	Contract value is \$1,361,493.22
Funding Source	215-7432-02105-481200-22085 DTD Funds 215-7432-02101-481200-22260 DTD Funds
Duration	Contract execution through December 31, 2019
Previous Board Action	
Strategic Plan Alignment	Build a strong infrastructure. Ensure safe, healthy and secure communities.
Contact Person	Jonathan Hangartner, Project Manager 503-742-4649

Background:

The Clackamas County Department of Transportation completed construction of the Clackamas River (Springwater Rd) Bridge in 2015, except for the roadway approaches to the bridge, minor sidewalk construction and final striping.

The focus of this project will be on completing the bridge approaches for both Clackamas River Bridge and Clear Creek Bridge. The majority of the work will consist of excavation, asphalt, cold plane pavement removal, curb/sidewalk and ramps installation, thermoplastic striping and minor storm sewer construction.

Road improvements will also include mobilization, temporary traffic control, construction survey, drainage work, permanent traffic control, base work, shoulder construction, grading, permanent seeding, guardrail installation and asphalt and concrete wearing surfaces.

The project work is anticipated to begin immediately following contract signing. Substantial completion will be not later than May 30, 2018, with final completion no later than December 31, 2018.

Procurement Process:

This project was advertised in accordance with ORS and LCRB Rules on November 27, 2018. Bids were opened on January 15, 2019. The County received one (1) bid: Nutter Corporation, \$1,361,493.22. Nutter Corporation was determined to be the lowest responsive bidder.

This contract has been reviewed and approved by County Counsel.

Recommendation:

Staff respectfully recommends that the Board approves and signs this Public Improvement Contract with Nutter Corporation for the Bridge Approach Repair: Clackamas River Bridge and Clear Creek Bridge.

Sincerely,

Jonathan Hangartner, Project Manager

Placed on the BCC Agenda _____ by Procurement



CLACKAMAS COUNTY PUBLIC IMPROVEMENT CONTRACT

This Public Improvement Contract (the "Contract"), is made by and between the Clackamas County, a political subdivision of the State of Oregon, hereinafter called "Owner," and **Nutter Corporation**, hereinafter called the "Contractor" (collectively the "Parties"), shall become effective on the date this Contract has been signed by all the Parties and all County approvals have been obtained, whichever is later.

Project Name: # 2018-119 Bridge Approach Repair: Clackamas River Bridge and Clear Creek Bridge

1. Contract Price, Contract Documents and Work.

The Contractor, in consideration of the sum of **one million three hundred sixty-one thousand four hundred ninety-three dollars and twenty-two cents (\$1,361,493.22)** (the "Contract Price"), to be paid to the Contractor by Owner in the manner and at the time hereinafter provided, and subject to the terms and conditions provided for in the Instructions to Bidders and other Contract Documents (as defined in the project specifications) referenced within the Instructions to Bidders), all of which are incorporated herein by reference, hereby agrees to perform all Work described and reasonably inferred from the Contract Documents. The Contract Price is the amount contemplated by the Base Bid.

Also, the following documents are incorporated by reference in this Contract and made a part hereof:

- Notice of Contract Opportunity
- Supplemental Instructions to Bidders
- Public Improvement Contract Form
- Prevailing Wage Rates
- Plans, Specifications and Drawings
- Instructions to Bidders
- Bid Bond
- Performance Bond and Payment Bond
- Payroll and Certified Statement Form
- Addenda #1 and #2

The Plans, Specifications and Drawings expressly incorporated by reference into this Contract includes, but is not limited to, the Special Provisions for Highway Construction (the "Specifications"), together with the provisions of the Oregon Standard Specifications for Construction (2015) referenced therein.

2. Representatives.

Contractor has named Jeff Deringer as its Authorized Representative to act on its behalf. Owner designates, or shall designate, its Authorized Representative as indicted below (check one):

Unless otherwise specified in the Contract Documents, the Owner designates Johnathan Hangartner as its Authorized Representative in the administration of this Contract. The above-named individual shall be the initial point of contact for matters related to Contract performance, payment, authorization, and to carry out the responsibilities of the Owner.

Name of Owner's Authorized Representative shall be submitted by Owner in a separate writing.

3. Key Persons.

The Contractor's personnel identified below shall be considered Key Persons and shall not be replaced during the project without the written permission of Owner, which shall not be unreasonably withheld. If the Contractor intends to substitute personnel, a request must be given to Owner at least 30 days prior to the intended time of substitution. When replacements have been approved by Owner, the Contractor shall provide a transition period of at least 10 working days during which the original and replacement personnel shall be working on the project concurrently. Once a replacement for any of these staff members is authorized, further

replacement shall not occur without the written permission of Owner. The Contractor's project staff shall consist of the following personnel:

Project Executive: Jeff Deringer shall be the Contractor's project executive, and will provide oversight and guidance throughout the project term.

Project Manager: John Kelley shall be the Contractor's project manager and will participate in all meetings throughout the project term.

4. Contract Dates.

COMMENCEMENT DATE: Upon Issuance of Notice to Proceed ("NTP")

SUBSTANTIAL COMPLETION DATE: May 20, 2019

FINAL COMPLETION DATE: December 31, 2019

Time is of the essence for this Contract. It is imperative that the Work in this Contract reach Substantial Completion and Final Completion by the above specified dates.

5. Insurance Certificates and Required Performance and Payment Bonds.

5.1 In accordance with Section 00170.70 of the Specifications, Contractor shall furnish proof of the required insurance naming Clackamas County as an additional insured. Insurance certificates may be returned with the signed Contract or may be emailed to Procurement@clackamas.us.

5.2 Primary Coverage: Insurance carried by Contractor under the Contract shall be the primary coverage. The coverages indicated are minimums unless otherwise specified in the Contract Documents.

5.2.1 Workers' Compensation: All employers, including Contractor, that employ subject workers who work under the Contract in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. This shall include Employer's Liability Insurance with coverage limits of not less than the minimum amount required by statute for each accident. Contractors who perform the Work without the assistance or labor of any employee need not obtain such coverage if the Contractor certifies so in writing. Contractor shall ensure that each of its Subcontractors complies with these requirements. The Contractor shall require proof of such Workers' Compensation coverage by receiving and keeping on file a certificate of insurance from each Subcontractor or anyone else directly employed by either the Contractor or its Subcontractors.

5.3 Builder's Risk Insurance: During the term of the Contract, for new construction the Contractor shall obtain and keep in effect Builder's Risk insurance on all risk forms, including earthquake and flood, for an amount equal to the full amount of the Contract, plus any changes in values due to modifications, Change Orders and loss of materials added. Such Builder's Risk shall include, in addition to earthquake and flood, theft, vandalism, mischief, collapse, transit, debris removal, and architect's fees "soft costs" associated with delay of Project due to insured peril. Any deductible shall not exceed \$50,000 for each loss, except the earthquake and flood deductible which shall not exceed 2 percent of each loss or \$50,000, whichever is greater. The deductible shall be paid by Contractor. The policy will include as loss payees Owner, the Contractor and its Subcontractors as their interests may appear.

5.4 Builder's Risk Installation Floater: For Work other than new construction, Contractor shall obtain and keep in effect during the term of the Contract, a Builder's Risk Installation Floater for coverage of the Contractor's labor, materials and equipment to be used for completion of the Work performed under the Contract. The minimum amount of coverage to be carried shall be equal to the full amount

of the Contract. The policy will include as loss payees Owner, the Contractor and its Subcontractors as their interests may appear. Owner may waive this requirement at its sole and absolute discretion.

5.4.1 Such insurance shall be maintained until Owner has occupied the facility.

5.4.2 A loss insured under the Builder's Risk insurance shall be adjusted by the Owner and made payable to the Owner as loss payee. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner. The Owner shall have power to adjust and settle a loss with insurers.

5.5 "Tail" Coverage: If any of the required liability insurance is arranged on a "claims made" basis, "tail" coverage will be required at the completion of the Contract for a duration of 36 months or the maximum time period available in the marketplace if less than 36 months. Contractor shall furnish certification of "tail" coverage as described or continuous "claims made" liability coverage for 36 months following Final Completion. Continuous "claims made" coverage will be acceptable in lieu of "tail" coverage, provided its retroactive date is on or before the effective date of the Contract. Owner's receipt of the policy endorsement evidencing such coverage shall be a condition precedent to Owner's obligation to make final payment and to Owner's final acceptance of Work or services and related warranty (if any).

5.6 Notice of Cancellation or Change: If the Contractor receives a non-renewal or cancellation notice from an insurance carrier affording coverage required herein, or receives notice that coverage no longer complies with the insurance requirements herein, Contractor agrees to notify Owner by fax within five (5) business days with a copy of the non-renewal or cancellation notice, or written specifics as to which coverage is no longer in compliance. When notified by Owner, the Contractor agrees to stop Work pursuant to the Contract at Contractor's expense, unless all required insurance remain in effect. Any failure to comply with the reporting provisions of this insurance, except for the potential exhaustion of aggregate limits, shall not affect the coverages provided to the Owner and its institutions, divisions, officers, and employees.

Owner shall have the right, but not the obligation, of prohibiting Contractor from entering the Project Site until a new certificate(s) of insurance is provided to Owner evidencing the replacement coverage. The Contractor agrees that Owner reserves the right to withhold payment to Contractor until evidence of reinstated or replacement coverage is provided to Owner.

5.7 Before execution of the Contract, the Contractor shall file with the Construction Contractors Board, and maintain in full force and effect, the separate public works bond required by Oregon Revised Statutes, Chapter 279C.830 and 279C.836, unless otherwise exempt under those provisions. The Contractor shall also include in every subcontract a provision requiring the Subcontractor to have a public works bond filed with the Construction Contractors Board before starting Work, unless otherwise exempt, and shall verify that the Subcontractor has filed a public works bond before permitting any Subcontractor to start Work.

5.8 When the Contract Price is \$50,000 or more, the Contractor shall furnish and maintain in effect at all times during the Contract Period a performance bond in a sum equal to the Contract Price and a separate payment bond also in a sum equal to the Contract Price. Contractor shall furnish such bonds even if the Contract Price is less than the above thresholds if otherwise required by the Contract Documents.

5.9 Bond forms furnished by the Owner and notarized by Contractor's surety company authorized to do business in Oregon are the only acceptable forms of performance and payment security, unless otherwise specified in the Contract Documents.

6. Responsibility for Damages/Indemnity.

6.1 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.

6.2 To the fullest extent permitted by law, Contractor shall indemnify, defend (with counsel approved by Owner) and hold harmless the Owner 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 Section 6.1; (b) any accident or occurrence which happens or is alleged to have happened in or about the Project Site or any place where the Work is being performed, or in the vicinity of either, at any time prior to the time the Work is fully completed in all respects; (c) any failure of the Contractor to observe or perform any duty or obligation under the Contract Documents which is to be observed or performed by the Contractor, or any breach of any agreement, representation or warranty of the Contractor contained in the Contract Documents or in any subcontract; (d) the negligent acts or omissions of the Contractor, a Subcontractor or anyone directly or indirectly employed by them or any one of them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder (except to the extent otherwise void under ORS 30.140); and (e) any lien filed upon the Project or bond claim in connection with the Work. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section 6.2.

6.3 In claims against any person or entity indemnified under Section 6.2 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 Section 6.2 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.

7. Tax Compliance.

Contractor must, throughout the duration of this Contract and any extensions, comply with all tax laws of this state and all applicable tax laws of any political subdivision of this state. Any violation of this section shall constitute a material breach of this Contract. Further, any violation of Contractor's warranty in this Contract that Contractor has complied with the tax laws of this state and the applicable tax laws of any political subdivision of this state also shall constitute a material breach of this Contract. Any violation shall entitle County to terminate this Contract, to pursue and recover any and all damages that arise from the breach and the termination of this Contract, and to pursue any or all of the remedies available under this Contract, at law, or in equity, including but not limited to: (A) Termination of this Contract, in whole or in part; (B) Exercise of the right of setoff, and withholding of amounts otherwise due and owing to Contractor, in an amount equal to County's setoff right, without penalty; and (C) Initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief. County shall be entitled to recover any and all damages suffered as the result of Contractor's breach of this Contract, including but not limited to direct, indirect, incidental and consequential damages, costs of cure, and costs incurred in securing replacement performance. These remedies are cumulative to the extent the remedies are not inconsistent, and County may pursue any remedy or remedies singly, collectively, successively, or in any order whatsoever.

The Contractor represents and warrants that, for a period of no fewer than six calendar years preceding the effective date of this Contract, has faithfully complied with: (A) All tax laws of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318; (B) Any tax provisions imposed by a political subdivision of this state that applied to Contractor, to Contractor's property, operations, receipts, or income, or to Contractor's performance of or compensation for any work performed by Contractor; (C) Any tax provisions imposed by a political subdivision of this state that applied to Contractor, or to goods, services, or property, whether tangible or intangible, provided by Contractor; and (D) Any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions.

8. Confidential Information.

Contractor acknowledges that it and its employees or agents may, in the course of performing their responsibilities under this Contract, be exposed to or acquire information that is confidential to Owner. Any and all information of any form obtained by Contractor or its employees or agents in the performance of this Contract shall be deemed confidential information of Owner ("Confidential Information"). Contractor agrees to hold Confidential Information in strict confidence, using at least the same degree of care that Contractor uses in maintaining the confidentiality of its own confidential information, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties or use Confidential Information for any purpose unless specifically authorized in writing under this Contract.

9. Counterparts.

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

10. Integration.

All provisions of state law required to be part of this Contract, whether listed in the General or Special Conditions or otherwise, are hereby integrated and adopted herein. Contractor acknowledges the obligations thereunder and that failure to comply with such terms is a material breach of this Contract.

The Contract Documents constitute the entire agreement between the parties. There are no other understandings, agreements or representations, oral or written, not specified herein regarding this Contract. Contractor, by the signature below of its authorized representative, hereby acknowledges that it has read this Contract, understands it, and agrees to be bound by its terms and conditions.

11. Liquidated Damages

The Contractor acknowledges that the Owner will sustain damages as a result of the Contractor's failure to substantially complete the Project in accordance with the Contract Documents. These damages may include, but are not limited to delays in completion, use of the Project, and costs associated with Contract administration and use of temporary facilities.

11.1 Liquidated Damages shall be as follows if the actual Substantial Completion exceeds the required date of Substantial Completion:

11.1.1. \$ 1100.00 per Calendar day past the Substantial Completion date as identified in section 00180.85 (b).

Signature page to follow.

In witness whereof, Clackamas County executes this Contract and the Contractor does execute the same as of the day and year first above written.

Contractor DATA:
Nutter Corporation
7211 A NE 43rd Avenue
Vancouver, WA 98661

Contractor CCB # 87697 Expiration Date: 12/4/2020
Oregon Business Registry # 322639-80 Entity Type: FBC State of Formation: Washington

Payment information will be reported to the IRS under the name and taxpayer ID# provided by the Contractor. Information must be provided prior to contract approval. Information not matching IRS records could subject Contractor to 28 percent backup withholding.

Nutter Corporation

Clackamas County Board of County Commissioners

Authorized Signature Date

Chair Date

Name / Title Printed

Recording Secretary

APPROVED AS TO FORM

County Counsel Date



Nancy S. Bush
Director

Department of Disaster Management
Communications and Emergency Operations Center
2200 Kaen Road | Oregon City, OR 97045

February 28, 2019

Board of Commissioners
Clackamas County

Members of the Board:

Approval of a Sub-Recipient Grant Agreement for Local Emergency Planning Committee
(LEPC) Planning and Exercise

Purpose/ Outcomes	The purpose of the grant is to plan with facilities that have the hazardous materials that fall under the “Right to Know Act” and to provide an exercise for the general County planning document. This grant agreement is between Clackamas County Disaster Management (CCDM) and the Office of State Fire Marshal (OSFM).
Dollar Amount and Fiscal Impact	The grant agreement is for \$20000 with a \$5000 match bring the grant total to \$25000.
Funding Source	Clackamas County Disaster Management – The \$5000 match is a soft match, therefore, staff time will be used for the match.
Duration	Effective through September 30, 2019.
Previous Board Action	The grant was approved by the County Administrator in April 2018.
Strategic Plan Alignment	1. Ensure safe, healthy and secure communities.
Contact Person	Nancy Bush, Director, CCDM – 503-655-8665
Contract No.	N/A

BACKGROUND:

Clackamas County Disaster Management is key is a functional Clackamas LEPC and the grants available are critical to planning, exercises, and response to hazardous materials spills. The grant agreement is federal dollars passed through the OSFM to assist with local emergency response planning through the training and support of an appropriate local hazardous materials emergency response capability at the local level.

County Counsel has reviewed the grant agreement and agreed to form.

RECOMMENDATION:

Staff recommends the Board approval of this grant.

Respectfully submitted,

Nancy Bush, Director
Disaster Management



Nancy S. Bush
Director

Department of Disaster Management
Communications and Emergency Operations Center
2200 Kaen Road | Oregon City, OR 97045

February 28, 2019

Board of Commissioners
Clackamas County

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County Counsel has reviewed the grant agreement and agreed to form.

RECOMMENDATION:

Staff recommends the Board approval of this grant.

Respectfully submitted,

Nancy Bush, Director
Disaster Management

SUB-RECIPIENT GRANT AGREEMENT

This Sub-recipient Grant Agreement (this "Agreement") is entered into by and between the State of Oregon acting by and through its Department of State Police, for the benefit of its Office of State Fire Marshal ("OSFM") and Clackamas County Disaster Management, ("Sub-recipient").

RECITALS

- A. By authority granted under ORS 190.110, a state agency or unit of local government of this state may cooperate by agreement or otherwise, with a state agency or unit of local government of this or another state in performing a duty imposed upon it or in exercising a power conferred upon it.
- B. In order to ensure a swift response to a hazardous substance accident and to minimize damage to people, property, and wildlife, OSFM is authorized under ORS 453.347 to assist with emergency response planning by appropriate agencies of local and state government, and may apply for funds to train, equip, and maintain an appropriate response capability at the state and local level.
- C. The parties desire to engage in this Agreement for the mutual benefit of the parties. OSFM desires to enter into this Agreement to assist with local emergency response planning through the training and support of an appropriate local hazardous materials emergency response capability. Sub-recipient desires to receive financial assistance from OSFM to carry out the local hazardous materials emergency preparedness training(s) or project(s) as further described in Exhibit A attached hereto (the "Project").
- D. The parties acknowledge and agree that this Agreement is a sub-award of certain grant funds from OSFM to Sub-recipient (the "Grant Funds"). The Grant Funds are from the United States Department of Transportation. The Catalog of Federal Domestic Assistance (CFDA) number for the United States Department of Transportation, Pipeline and Hazardous Materials Safety Administration, Office of Hazardous Materials Safety, Hazardous Materials Emergency Preparedness program is 20.703.

TERMS OF SUB-RECIPIENT GRANT AGREEMENT

1. PURPOSE.

- 1.1 Purpose. The purpose of this Agreement is to establish the terms and conditions of the distribution of the Grant Funds and implementation of the Project, as a part of state and local hazardous materials emergency planning and preparedness measures.

2. TERM / EFFECTIVE DATE.

- 2.1 This Agreement terminates on September 30, 2019, unless sooner terminated or extended pursuant to other provisions of this Agreement.

3. SUB-RECIPIENT OBLIGATIONS.

- 3.1 Sub-recipient agrees to comply with all Project details as set forth in Exhibit A, the Application for Funds, and with the requirements of the Pipeline and Hazardous Materials Safety Administration, Hazardous Materials Emergency Preparedness Grant Program, Terms and Conditions attached hereto as Exhibit B ("HMEP Terms and Conditions"). For the purposes of this Agreement, Sub-recipient will comply with only those sections applicable to its role as a sub-recipient with an exception, as provided in Section 16 of the HMEP Terms and Conditions for "Flow-down of Requirements under Sub-awards".
- 3.2 Sub-recipient agrees to provide 25% of the total project cost in cash (hard match) or as an in-kind (soft match) contribution, or a combination of both ("Sub-recipient Match"). Sub-recipient agrees to provide documentation showing how it satisfied the Sub-recipient Match requirement. Match validation

documentation shall be provided with the Request for Reimbursement. OSFM reserves the right to determine if the Sub-recipient Match requirement is satisfied. The minimum amount of match required for the Grant Funds under this Agreement is **\$5,000.00** ("Sub-recipient Match Amount").

- 3.3 Sub-recipient agrees to use Oregon Department of Public Safety Standards and Training (DPSST) approved instructors, when applicable for the Project. Sub-recipient shall submit:
- 3.3.1 The application required for DPSST to certify the course and the instructor(s) before the classes are held.
- 3.3.2 A student roster and course evaluations to DPSST's Fire Training Section with copies to the OSFM at the completion of the class.
- 3.4 Sub-recipient agrees to provide OSFM with copies of all sub-awards and invoices.
- 3.5 Sub-recipient agrees to submit to OSFM a Request for Reimbursement in the form attached hereto as Exhibit C ("Request for Reimbursement") of applicable charges for verification and approval of expenditures before payment is made by OSFM. All Requests for Reimbursements must be submitted to OSFM no later than thirty (30) days following the termination of this Agreement and must include the following information:
- 3.5.1 For projects:
- a. the project title,
 - b. training or exercise scenario agenda,
 - c. rosters, and
 - d. evaluation forms.
- 3.5.2 For exercises:
- a. an exercise timeline,
 - b. pre-exercise packages, and
 - c. the after action report.
- 3.6 Sub-recipient agrees to submit performance and financial reports as required in Section 13 of the HMEP Terms and Conditions to the OSFM Grant Project Manager identified in Section 5.

4. OSFM's OBLIGATIONS.

- 4.1 OSFM agrees to provide direction and support, on an "as needed" basis when reasonable, to Sub-recipient.
- 4.2 OSFM agrees to work with Sub-recipient to distribute announcements to public safety agencies across Oregon that may be interested in participating in the training or exercise.
- 4.3 OSFM agrees to reimburse Sub-recipient for actual incurred expenditures related to the completion of the Project, excluding the Sub-recipient Match Amount, with the Grant Funds up to an amount not to exceed **\$20,000.00**, ("Grant Amount") for performance of the obligations set forth in Section 3. Any and all expenses not covered by the Grant Amount and Match Amount are the sole responsibility of Sub-recipient. Questions regarding eligible costs should be addressed to the OSFM Grant Project Manager identified in Section 5 of this Agreement, who will have final decision-making authority. Any Grant Funds disbursed to Sub-recipient under this Agreement that are used in violation or contravention of one or more of the provisions of this Agreement or the laws pertaining to public funds ("Misexpended

Funds”) must be returned to OSFM by Sub-recipient, no later than ten (10) days after OSFM’s written demand therefor.

5. NOTIFICATIONS.

5.1 OSFM CONTACT.

Notifications required for the administration of this Agreement shall be sent to:

Terry Wolfe, Grant Project Manager
Office of State Fire Marshal
3565 Trelstad Ave. SE
Salem, OR 97317
Ph: 503-934-8245
Email: terry.wolfe@state.or.us

5.2 NAME OF OTHER PARTY CONTACT.

Notifications required for the administration of this Agreement shall be sent to:

Nancy Bush, Director
Clackamas County Disaster Management
2200 Kaen Rd
Oregon City, Oregon 97045
Ph: 503-665-8665
Email: nbush@clackamas.or.us

5.3 ANNOUNCEMENTS; PUBLICATIONS.

5.3.1 Sub-recipient agrees that all training, planning, and exercise announcements or publications created with any Grant Funds shall contain the following announcements: *“This (choose one of the following) (training, exercise, or publication) was funded by the U.S. Department of Transportation, Pipeline and Hazardous Materials Safety Administration, Hazardous Materials Emergency Preparedness grant program through the Oregon State Police, Office of State Fire Marshal and (insert name) Local Emergency Planning Committee (or if not an LEPC then insert the Name of Other Party).”*

5.3.2 Sub-recipient agrees to include the following language in all publications related to the Project: *“The opinions, findings, and conclusions or recommendations expressed in this publication are those of the author and do not necessarily reflect views of the U.S. Department of Transportation or Oregon State Police, Office of State Fire Marshal.”*

6. TERMINATION.

6.1 This Agreement may be terminated prior to the Termination Date at any time by mutual written consent of the parties.

6.2 OSFM may unilaterally terminate this Agreement effective ten (10) days after delivery of written notice to Sub-recipient, or at such later date as may be established by OSFM, under any condition including, but not limited to, the following:

6.2.1 If Sub-recipient fails to perform any of the provisions of this Agreement, or so fails to pursue the Project as to endanger performance of obligations as required under this Agreement, and after receipt of written notice from OSFM, fails to correct such failures within ten (10) days, or such longer period as OSFM may authorize.

- 6.2.3 If OSFM fails to receive funding, appropriations, limitations, or other expenditure authority at levels sufficient to allow OSFM, in the exercise of its reasonable administrative discretion, to continue to make the payments provided for in this Agreement.
- 6.2.4 If federal or state laws, regulations, or guidelines are modified, or interpreted in such a way that the Project under this Agreement is prohibited, or if OSFM is prohibited from paying for such Project from the planned funding source.
- 6.2.5 If Sub-recipient fails to provide the Sub-recipient Match for the Project.
- 6.3 Termination of this Agreement shall not prejudice any rights or obligations accrued to the parties prior to termination.

7. NON-APPROPRIATION

The State of Oregon's payment obligations under this Agreement are conditioned upon OSFM receiving funding, appropriations, limitations, allotments, or other expenditure authority sufficient to allow OSFM, in the exercise of its reasonable administrative discretion, to meet its payment obligations under this Agreement. Sub-recipient is not entitled to receive payment under this Agreement from any part of Oregon state government other than OSFM. Nothing in this Agreement is to be construed as permitting any violation of Article XI, Section 7 of the Oregon Constitution or any other law regulating liabilities or monetary obligations of the State of Oregon. OSFM certifies, at the time this Agreement is executed, that sufficient funds are available and authorized for expenditure to finance costs of this Agreement within OSFM's current appropriation or limitation of the current biennial budget.

8. GOVERNING LAW; VENUE; CONSENT TO JURISDICTION.

This Agreement shall be governed and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of laws. Any claim, action, suit or proceeding (collectively, "Claim") between OSFM (and any other agency or department of the State of Oregon) and Sub-recipient that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Marion County for the State of Oregon; provided, however, if a Claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this section be construed as a waiver by the State of Oregon of any form of defense or immunity, whether it is sovereign immunity or 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. SUB-RECIPIENT, BY EXECUTION OF THIS AGREEMENT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS.

9. COMPLIANCE WITH GOVERNMENT REGULATIONS.

- 9.1 Sub-recipient agrees to comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to the work under this Agreement, including, without limitation, the provisions of ORS 279B.220, 279C.515, 279B.235, 279B.230, and 279B.270, which are hereby incorporated by reference. Without limiting the generality of the foregoing, Sub-recipient expressly agrees to comply with (i) Title VI of the Civil Rights Act of 1964; (ii) Section V of the Rehabilitation act of 1973; (iii) the Americans with Disabilities Act of 1990 and ORS 659.425; (iv) all regulations and administrative rules established pursuant to the foregoing laws; and (v) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.
- 9.2 Sub-recipient shall comply with the Assurance of Compliance with Title VI of the Civil Rights Act of 1964, Department of Transportation, attached hereto as Exhibit D.

- 9.3 Sub-recipient shall insert the following notification in all solicitations for bids for work or material subject to the Title 49, Code of Federal Regulations and, in adapted form, in all proposals for negotiated agreements related to this Agreement.

“The Sub-recipient, in accordance with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. 2000d-4 and Title 49 Code of Federal Regulations, Department of Transportation, Subtitle A, Office of Secretary, Part 21, Nondiscrimination in Federally-assisted Programs of the Department of Transportation issued pursuant to such Act, hereby notifies all bidders that it will affirmatively insure that in regard to any contract entered into pursuant to this advertisement, minority business enterprises will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, sex or national origin in consideration for an award.”

10. CONTRIBUTION.

- 10.1 If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 ("Third Party Claim") against a party (the "Notified Party") with respect to which the other party ("Other Party") may have liability, the Notified Party must promptly notify the Other Party in writing of the Third Party Claim and deliver to the Other Party a copy of the claim, process, and all legal pleadings with respect to the Third Party Claim. Either party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with counsel of its own choosing. Receipt by the Other Party of the notice and copies required in this paragraph and meaningful opportunity for the Other Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to the Other Party's liability with respect to the Third Party Claim.
- 10.2 With respect to a Third Party Claim for which the State is jointly liable with Sub-recipient (or would be if joined in the Third Party Claim), the State shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by Sub-recipient in such proportion as is appropriate to reflect the relative fault of the State on the one hand and of Sub-recipient on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of the State on the one hand and of Sub-recipient on the other hand shall be determined by reference to, among other things, the parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. The State's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law if the State had sole liability in the proceeding.
- 10.3 With respect to a Third Party Claim for which Sub-recipient is jointly liable with the State (or would be if joined in the Third Party Claim), Sub-recipient shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by the State in such proportion as is appropriate to reflect the relative fault of Sub-recipient on the one hand and of the State on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of Sub-recipient on the one hand and of the State on the other hand shall be determined by reference to, among other things, the parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. Sub-recipient's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law if it had sole liability in the proceeding.

10.4 Notwithstanding any other provision of this section 10, Sub-recipient, as the recipient of grant funds, pursuant to this agreement with the State of Oregon, shall assume sole liability for Sub-recipient's breach of the conditions of the grant, and shall, upon Sub-recipient's breach of grant conditions that causes or requires the State of Oregon to return funds to the grantor, hold harmless and indemnify the State of Oregon for an amount equal to the funds which the State of Oregon is required to pay grantor.

11. REMEDIES.

In the event that Sub-recipient violates any term or condition under this Agreement, OSFM shall have all remedies available to it under law, in equity, and under this Agreement.

12. INSURANCE REQUIREMENTS.

12.1 The parties acknowledge and agree Sub-recipient is a unit of local government as defined in ORS 190.003, and in order to meet the requirements of ORS 30.272 and ORS 30.273 may be commercially insured or self-insured.

12.2 Sub-recipient shall obtain, and at all times keep in effect, comprehensive liability insurance and property damage insurance covering its own acts and omissions under this Agreement. With the exception of obligation set forth in section 10.4, Sub-recipient may satisfy these requirements in any manner allowed by ORS 30.282. Such liability insurance, whatever the form, shall be in an amount not less than the limits of public body tort liability specified in ORS 30.271. In the event of unilateral cancellation or restriction by the insurance company of Sub-recipient's insurance policy referred to in this paragraph, Sub-recipient, as applicable, shall immediately notify OSFM verbally and in writing. Sub-recipient's coverage limits shall not be less than \$2,000,000 for any single claimant and \$4,000,000 for multiple claimants.

12.3 All employers, including Sub-recipient, that employ subject workers who work under this Agreement in the State of Oregon shall comply with ORS 656.017 and provide the required Worker's Compensation coverage, unless such employers are exempt under ORS 656.126.

12.4 If Sub-recipient uses a subcontractor to perform the Project, or portions thereof, the subcontractor shall meet the Subcontractor Insurance Requirements set forth on Exhibit E attached hereto.

13. THIRD PARTY BENEFICIARY.

OSFM and Sub-recipient are the only parties to this Agreement and are the only parties entitled to enforce the terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly or indirectly 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.

14. FORCE MAJEURE.

The parties shall not be held responsible for delay or default caused by fire, riot, acts of God and war, which are beyond the parties' reasonable control. The parties shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall, upon the cessation of the cause, diligently pursue performance of the obligations under this Agreement.

15. ENTIRE AGREEMENT/WAIVER/MERGER.

This Agreement and attached exhibits constitute the entire Agreement between the parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind the parties unless in writing and signed by both parties and all necessary State 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 OSFM to enforce any provision of this Agreement shall not constitute a waiver by OSFM of that or any other provision.

16. AMENDMENTS.

This Agreement may be amended by mutual agreement of the parties, but only to the extent permitted by applicable statutes and administrative rules. No amendment to this Agreement shall be effective unless it is in writing signed by the parties, and all approvals required by applicable law have been obtained.

17. RECORDS MAINTENANCE; ACCESS.

Sub-recipient shall maintain all financial records relating to this Agreement in accordance with generally accepted accounting principles. If Sub-recipient expends \$500,000 or more of federal funds (from all sources) in its fiscal year beginning prior to December 26, 2014, Sub-recipient shall have a single organization-wide audit conducted in accordance with the Single Audit Act. If Sub-recipient expends \$750,000 or more in federal funds (from all sources) in a fiscal year beginning on or after December 26, 2014, Sub-recipient shall have a single organization-wide audit conducted in accordance with the provisions of 2 C.F.R. Subtitle B, with guidance at 2 C.F.R. part 200. Copies of all audits must be submitted to OSFM within 30 days of completion. If Sub-recipient expends less than \$500,000 in federal funds in a fiscal year beginning prior to December 26, 2014, or less than \$750,000 in a fiscal year beginning on or after that date, Sub-recipient is exempt from federal audit requirements for that year. In addition, Sub-recipient shall maintain any other records pertinent to this Agreement in such a manner as to clearly document Sub-recipient's performance. Sub-recipient acknowledges and agrees that OSFM and the Oregon Secretary of State's Office and the federal government and their duly authorized representatives shall have access to such financial records and other books, documents, papers, plans, records of shipments and payments and writings of Name of Other Party that are pertinent to this Agreement, whether in paper, electronic or other form, to perform examinations and audits and make excerpts and transcripts. Sub-recipient shall retain and keep accessible all such financial records, books, documents, papers, plans, records of shipments and payments and writings 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 Agreement, or until the conclusion of any audit, controversy or litigation arising out of or related to this Agreement, whichever date is later.

18. SEVERABILITY.

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

19. COUNTERPARTS.

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

EACH PARTY, BY EXECUTION OF THIS AGREEMENT, HEREBY ACKNOWLEDGES THAT HE/SHE HAS READ THIS AGREEMENT, UNDERSTANDS IT, HAS THE AUTHORITY TO SIGN AND BIND THEIR RESPECTIVE AGENCIES, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

CLACKAMAS COUNTY DISASTER MANAGEMENT _____ Nancy Bush Director	DATE: _____
OREGON OFFICE OF STATE FIRE MARSHAL: _____ James L. Walker State Fire Marshal	DATE: _____

EXHIBIT A

STATEMENT OF WORK

The purpose of the Project is to continue to add subject facilities to the Clackamas County LEPC ERP (\$15,000) and to conduct a Table Top Exercise on the existing ERP (\$5,000).

THE PROJECT

APPLICATION FOR FUNDS

NOTE: The Grant Application is paginated with an "A" preceding the page number. The following page numbers constitute Exhibit A, Application for Funds: A-1 – A-7.

**FY 2018 – 2019 Hazardous Materials Emergency Preparedness
Grant Program**

COVERSHEET

Project Title: Clackamas LEPC TTX Exercise

Project Period: October 1, 2018 - September 30, 2019

Applicant Agency: Clackamas County Disaster Management

Mailing Address: 2200 Kaen Road

Oregon City, OR 97045

Federal Tax Identification Number: 93-6002286

Data Universal Numbering System (DUNS) Number: 96992656

Project Contact: Nancy Bush **Title:** Director

Phone: 503-655-8665 **Email:** nbush@clackamas.us

Local Emergency Planning Committee

Are you applying on behalf of a Local Emergency Planning Committee (LEPC)? Yes

If yes, what LEPC: Clackamas County

Total Project Funding

Refer to Calculating the Match on page 6 of the Budget Summary Worksheet.

The Match is **25%** of the **Requested** Amount. The Match is also equal to **20%** of the **Total Project**

Total Federal HMEP Grant Funds Requested	\$20000
Total Matching Funds Required	\$5000
Total Project:	\$25000

Agency Authorized Official: Nancy Bush **Title:** Director

Signature:  **Date:** 2/27/18

Application Due Date: 5:00 PM, Wednesday, February 28, 2018

A-1

FY 2018-19 Hazardous Materials Emergency Preparedness Grant Program BUDGET SUMMARY

	A	B			C
	Budget Category	Planning/Description of Activities - Expense			Grant Request
1	Travel				\$
2	Equipment				\$
3	Supplies				\$
4	Contractual				\$
5	Other				\$
6	Other				\$
7		Planning Subtotal			\$
	Budget Category	Training Course Activities	Item/Expense	Estimated # Training	Grant Request
8	Travel				\$
9	Equipment				\$
10	Supplies				\$
11	Contractual/Trainer				\$
12	Other				\$
13	Other				\$
14		Training Subtotal			\$
	Budget Category	Exercise/Description of Activities - Expense			Grant Request
15	Travel				\$
16	Equipment				\$
17	Supplies				\$
18	Contractual	TTX Design and Facilitation in Clackamas County & Continuation of General Plan			\$ 20000
19	Other				\$
20	Other				\$
21		Exercise Subtotal			\$ 20000
22	Total Federal HMEP Grant Funds Requested = the sum of Column C, Rows 7, 14, and 21				TOTAL GRANT REQUEST \$ 20000
23	Total Matching Funds Required = the Total Grant Request x .25				MATCH \$ 5000
24	Total Project = the sum of the Total Grant Request + the Match				TOTAL PROJECT \$ 25000

A-2

**FY 2018-2019 Hazardous Materials Emergency Preparedness
Grant Program**

PROJECT BUDGET DETAIL

Project 1	Clackamas Tabletop Exercise	
Expenditure	Description	Amount
Travel		
Equipment		
Supplies		
Contractual	Tabletop design and facilitation	\$ 5,000.00
Other		
Total		\$ 5,000.00

Project 2		
Expenditure	Description	Amount
Travel		
Equipment		
Supplies		
Contractual	Plan continuation to add more facilities	\$ 15,000.00
Other		
Total		

Project 3		
Expenditure	Description	Amount
Travel		
Equipment		
Supplies		
Contractual		
Other		
Total		

FY 2018-2019 Hazardous Materials Emergency Preparedness Grant Program

PROJECT NARRATIVE

Project Type (select one or more)

Planning Training Exercise Commodity Flow Study Other

Project Description

Who – Who will be performing the task or activity?

What – What task or activity is being performed?

Why – Why is the task or activity being performed?

Where – Where will the task or activity take place?

When – When is the task or activity projected to be performed?

How Many – What is the projected number of participants involved in the task or activity?

Project 1: Clackamas Tabletop Exercise for \$5000. It is expected that the contractor will provide a tabletop design, facilitation, and an After Action Report. The exercise will be held in Clackamas County in conjunction with fire districts and one or more incorporated cities. The exercise is planned for the spring of 2019.

Project 2: Continuation of the general LEPC plan for \$15000. It is expected that the contractor will continue to provide planning for the 90 plus facilities in Clackamas County. It is critical that the planning document continue with grant dollars in order to provide facilities the opportunity to participate in the Clackamas LEPC plan.

Collaboration - Area of Benefit and Partners

List the cities, counties, response disciplines, public and private entities, etc. that will benefit by the proposed project.

Indicate who you will partner with to conduct this project.

Project 1: Participants for this exercise will include law enforcement, fire districts, disaster management, public works at the county and city jurisdictions, public health, hospitals, etc. The exercise is not fully developed at this point since we are just now working on the LEPC plan, however, we do hope to have the exercise target an area of the county that is at high risk.

Project 2: Participants for the planning document will include right to know facilities, appropriate law enforcement and fire districts, public health, disaster management, water providers, public works, and other disciplines related to the facility and the hazardous materials they store.

Both projects will benefit all incorporated cities (see below) and unincorporated Clackamas County. The planning process will benefit utility providers, private industry and business, such as manufacturing, Union Pacific, and retail stores.

Cities: Barlow, Canby, Estacada, Gladstone, Happy Valley, Johnson City, Lake Oswego, Milwaukie, Molalla, Oregon City, Rivergrove, Sandy, Tualatin (section in Clackamas), West Linn, Wilsonville (section in Clackamas).

Overall Contribution

How does the project contribute to the overall effort of addressing and/or enhancement of local hazardous materials planning and training?

How does the activity address a need or provide a solution to the problem (e.g. long-range plans, etc.)?

Project 1: Multiagency exercises are a core element in effective response. Allowing response personnel and industry to train in no-fault learning environments benefits the communities we serve. This is the first of several exercises we plan to have for the Clackamas LEPC on an annual basis.

Project 2: The Clackamas LEPC is just now getting underway. Without continued funds the planning effort will be narrow without the needed planning for more of the 90 plus right to know facilities. The planning effort will assist the LEPC with a foundation in which to build and provides the needed project to continue assembling the committee members and provide them with the opportunity of input as we move forward. In the long term the plan will be key in the continued development of the Clackamas LEPC including the planning for rail transportation and other needed annexes specific to areas of need in the LEPC's jurisdiction.

Project Management - Itemize the Tasks and Include a Timetable

Who is supervising the project?

Who is responsible for managing the grant?

Who will do the work?

What is the proposed timeline for completion of the project?

How will you make sure timelines and tasks are being met?

What plans, strategies, or practices are you using to reach the project objectives?

Have all pertinent parties agreed to these plans, strategies, and practices?

Project 1: Nancy Bush, Director of the Clackamas County Disaster Management Department (CCDM) is providing grant management and Nora Yotsov, Training and Exercise Coordinator (CCDM) will be supervising the project with the contractor.

The proposed timeline completion is expected to be no later than August 31, 2019. As the coordinator of the exercise Ms. Yotsov will provide the contractor with a timetable and work toward meeting goals.

We are just now developing the LEPC Plan, which should be in place by September 30, 2018 with all parties in agreement.

Project 2: The grant and the project will be managed by the Director of Clackamas County Disaster Management (CCDM). The work will be completed by the qualified contractor and the members of the Clackamas LEPC. As a check on the planning effort and to keep it on target, the contractor will be required to submit monthly reports. The invoice(s) may be submitted monthly or quarterly, which will be negotiated at the time of the contract award.

A-#5

Objectives, Project Outcomes, Results, and Evaluation

List and prioritize the specific measurable and obtainable objectives.

Discuss project objectives to be accomplished.

What capabilities will be created or enhanced?

Project 1: The objective is to hire a contractor to design, facilitate and evaluate a tabletop exercise with a hazardous substance in Clackamas County.

Project 2: Objective: Develop a Clackamas LEPC Emergency Plan that includes all required elements as presented in the "Oregon Local Emergency Planning Committee Member Manual" and to add planning for right to know facilities in Clackamas County.

This project has only one objective (above). The capabilities that the plan will create are many including stronger LEPC membership, understanding of the LEPC and why it is important, guidance and assistance with the LEPC by-laws, and the ability to move forward with the "Emergency Planning and Community Right to Know Act" and identification on how to educate and inform residents.

Match Requirement

Please indicate how you intend to meet the required match.

The Clackamas LEPC will be involved with the contractor providing guidance and review of the planning document and the exercise as well as participation in the exercise. Over the course of the grant period the committee will be coming together two to three times to work on the document. The \$4000 soft match will be the staff time of those individuals making up the LEPC membership and their time in the meetings and for the exercise. Each LEPC meeting will require a sign-in and minutes will be taken.

Proposed HMEP Projects and Estimated Costs for FY 2019-2020

If you currently have plans to submit additional projects, or additional phases of a current project in FY 2019-2020 of the HMEP FY 2019-2022 grant performance period, please provide a brief summary of those projects and estimated cost.

Plan to request additional assistance in moving the Clackamas LEPC forward. Since we are just now getting started we are unsure of the projects and estimated dollar amounts.

A-5

Justification, Comments, and Additional Information

Provide any additional information regarding why the review committee should approve your project request. Explain if, or how this proposal addresses hazardous materials or the community's right to know.

The tabletop exercise is needed in order to get the required partners involved in the process and to help them to understand the importance of appropriate planning for hazardous materials in Clackamas County. Clackamas County is vulnerable for hazardous material spills through private industry, rail, and roadways.

Questions?

Contact Terry Wolfe, HMEP Grants Coordinator
503-934-8245 or terry.wolfe@state.or.us

A-27

EXHIBIT B

HMEP TERMS AND CONDITIONS

(aka Pipeline and Hazardous Materials Safety Administration
“Hazardous Materials Emergency Preparedness Grant Program,
Terms and Conditions”)

NOTE: The Hazardous Materials Emergency Preparedness Grant Program Terms and Conditions is paginated with an “B” preceding the page number. The following page numbers constitute Exhibit B, Hazardous Materials Emergency Preparedness Grant Program Terms and Conditions:
B-1 – B-15

Department of Transportation
Pipeline and Hazardous Materials Safety Administration (PHMSA)
Hazardous Materials Grants

Grant and Cooperative Agreement
Terms and Conditions

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B-1

1. Definitions

- a) **Recipient** – A non-Federal entity that receives a Federal award directly from a Federal awarding agency to carry out an activity under a Federal program. The term “recipient” does not include subrecipients.
- b) **Program Authorizing Official (PAO)** – The PAO is the delegated authority to execute the grant agreement. Should any changes to the scope, budget, schedule, or any other terms become necessary, the PAO in coordination with the AO has the authority to amend the award agreement.
- c) **Agreement Officer (AO)** – The AO has the authority to obligate the Government to the expenditures of Federal funds under this award.
- d) **Grant Specialist (GS)** – The GS is responsible for the daily administration of the award. The GS is NOT AUTHORIZED to change the scope, budget, specifications, and terms and conditions as stated in the award, to make any commitments that otherwise obligates the Government or authorize changes which affect the award budget, delivery schedule, period of performance, or other terms and conditions.
- e) **Recipient Authorized Grantee Official** – The individual with the Recipient organization who has authority to legally and financially bind the organization. It is the Recipient’s responsibility to follow their agency’s policies and procedures for ensuring that authorized officials are up to date, sign the grant agreement, and endorse any prior approval actions.
- f) **Recipient Project Director** – The individual designated by the recipient who is responsible for the technical direction of the program or project.

2. Recipient Responsibilities

In accepting a PHMSA financial assistance award (grant or cooperative agreement), the Recipient assumes legal, financial, administrative, and programmatic responsibility for administering the award in accordance with the laws, rules, regulations, and Executive Orders governing grants and cooperative agreements, and these Award Terms and Conditions, including responsibility for complying with any provisions included in the award.

3. Compliance with Award Terms and Conditions

Submission of a signed Request for Reimbursement (payment request) form constitutes the Recipient’s agreement to comply with and spend funds consistent with all the terms and conditions of this award. If PHMSA determines that noncompliance by the Recipient cannot be remedied by imposing additional conditions, PHMSA may take one or more of the following actions, as appropriate in the circumstances:

- a) Temporarily withhold cash payments pending correction of the deficiency by the Recipient.
- b) Disallow all, or part of, the cost of the activity or action not in compliance.
- c) Wholly or partly suspend or terminate the Federal award.
- d) Initiate suspension or debarment proceedings as authorized under 2 CFR part 180.
- e) Withhold further Federal awards for the project or program.
- f) Take other remedies that may be legally available.

4. Order of Precedence

Any inconsistency or conflict in the terms and conditions specified in this award will be resolved according to the following order of precedence:

- a) The Federal statute authorizing this award or any other Federal statutes, laws, regulations or directives directly affecting performance of this award.
- b) Terms and Conditions of this award.

5. Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR 200)

The recipient (and any subrecipients) must comply with these requirements including the cost principles which apply to the recipient, and the audit requirements the recipient must follow. A recipient which expends \$750,000 or more of federal funds, in the recipient's fiscal year, must have an audit conducted.

2 CFR 200 is incorporated by reference into this award

6. Restrictions on Use of Funds for Lobbying, Support of Litigation, or Direct Advocacy

The Recipient and its contractors may not use grant funds for lobbying in direct support of litigation, or in direct advocacy for, or against, a pipeline construction or expansion project.

The Recipient and its contractors may not conduct political lobbying, as defined in the statutes, regulations, and 2 CFR 200.450—“Lobbying,” within the Federally-supported project. The Recipient and its contractors may not use Federal funds for lobbying specifically to obtain grants and cooperative agreements. The Recipient and its contractors must comply with 49 CFR 20, U.S. Department of Transportation “New Restrictions on Lobbying.”

49 CFR 20 is incorporated by reference into this award.

7. Nondiscrimination

The Recipient must comply with Title VI of the Civil Right Act of 1964, which provides that no person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied benefits of, be subject to discrimination under any program or activity receiving Federal financial assistance. The Recipient must comply with 49 CFR 21, “Nondiscrimination in Federally-Assisted Programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964”

49 CFR 21 is incorporated by reference into this award.

In an effort to ensure that all Recipients of PHMSA funds are aware of their responsibilities under the various civil rights laws and regulations, the PHMSA Office of Civil Rights has developed an information tool and training. These documents are found on the PHMSA website at <https://www.phmsa.dot.gov/about-phmsa/civil-rights/grant-recipient-information>. If you should have any questions concerning your responsibilities under the External Civil Rights Program, please contact Rosanne Goodwill, Civil Rights Director, at 202-366-9638 or by e-mail at rosanne.goodwill@dot.gov.

8. Government-wide Debarment and Suspension (Non-procurement)

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The Recipient must review the “list of parties excluded from federal procurement or non-procurement programs” located on the System for Award Management (SAM) website before entering into a sub-award. <https://www.sam.gov> No sub-award may be issued to an entity or person identified in the “list of parties excluded from federal procurement or non-procurement programs.”

2 CFR 1200 “Non-procurement Suspension and Debarment” is incorporated by reference into this award.

The Recipient must inform the PAO if the recipient suspends or debars a sub-awardee.

9. Drug-Free Workplace

The Recipient must comply with the provisions of Public Law 100-690, Title V, Subtitle D, “Drug-Free Workplace Act of 1988,” which require the Recipient to take steps to provide a drug-free workplace. The Recipient must comply with **49 CFR 32**, “Government-wide Requirements for Drug Free Workplace (Financial Assistance)” which is incorporated by reference into this award.

10. eInvoicing (PHMSA June 2018)

Recipients of PHMSA grants and cooperative agreements must use the DOT Delphi eInvoicing System.

a) Recipients’ Requirements:

Recipients must:

- i. have internet access to register and submit payment requests through the Delphi eInvoicing system.
- ii. submit payment requests electronically, and receive payment electronically.

b) System User Requirements:

- i. Contact the assigned grant specialist directly to sign up for the system. PHMSA will provide the recipient’s name and email address to the DOT Financial Management Office. The DOT Financial Management Office will then invite the recipient to sign up for the system.
- ii. DOT will send the recipient a User Account Application form to verify identity. The recipient must complete the form, and present it to a Notary Public for verification. The recipient will return the notarized form as follows:

Via U.S. Postal Service (certified):

DOT Enterprise Services Center
FAA Accounts Payable, AMZ-100
PO Box 25710
Oklahoma City, OK 73125

Via FedEx or UPS:

DOT Enterprise Services Center
MMAC-FAA/ESC/AMZ-150
6500 S. MacArthur Blvd.
Oklahoma City, OK 73169

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Note: Additional information, including training materials, and helpdesk support can be found on the DOT Delphi eInvoicing website (<http://www.transportation.gov/cfo/delphi-einvoicing-system.html>)

c) Waivers

DOT Financial Management officials may, on a case by case basis, waive the requirement to register, and use, the electronic payment system. Waiver request forms can be obtained on the DOT eInvoicing website (<http://www.transportation.gov/cfo/delphi-einvoicing-system.html>) or by contacting the PHMSA Agreement Officer. Recipients must explain why they are unable to use or access the internet to submit payment requests.

11. Payments

Reimbursement payments will be made after the electronic receipt via the DOTeInvoicing System of "Request for Advance or Reimbursement" (Standard Form SF-270).

- a) Method of payment
- i) The Government will make all payments under this agreement by electronic funds transfer (EFT), except as provided by paragraph (a)(ii) of this clause. As used in this clause, the term "EFT" refers to the funds transfer and may also include the payment information transfer.
 - ii) If the Government is unable to release one or more payments by EFT, the Recipient agrees either to –
 - i) Accept payment by check or some other mutually agreeable method of payment; or
 - ii) Request the Government to extend the payment due date until such time as the Government can make payment by EFT (but see paragraph d. of this clause).
- b) Recipient's EFT information. The Government will make payment to the Recipient using the EFT information contained in the System for Award Management (SAM) database. If the EFT information changes, the Recipient is responsible for providing the updated information into the System for Award Management (SAM) at: <https://www.sam.gov>
- c) Mechanisms for EFT payment. The Government may make payment by EFT through either the Automated Clearing House (ACH) network, subject to the rules of the National Automated Clearing House Association, or the Fedwire Transfer System. The rules governing Federal payments through the ACH are contained in 31 CFR Part 210.
- d) Suspension of payment. If the Recipient's EFT information in the SAM database is incorrect, the Government is not obligated to make payment to the Recipient under this agreement until the correct EFT information is entered into the SAM database. An invoice or agreement-financing request is not a proper invoice for the purpose of prompt payment under this agreement.
- e) Recipient EFT arrangements. If the Recipient has identified multiple payment receiving points (i.e., more than one remittance address and/or EFT information set) in the SAM database, and the Recipient has not notified the Government of the payment receiving point applicable to this agreement, the Government will make

payment to the first payment receiving point (EFT information set or remittance address as applicable) listed in the SAM database.

- f) Liability for uncompleted or erroneous transfers.
 - i) If an uncompleted or erroneous transfer occurs because the Government used the Recipient's EFT information incorrectly, the Government remains responsible for –
 - i) Making a correct payment;
 - ii) Paying any prompt payment penalty due; and
 - iii) Recovering any erroneously directed funds.
 - ii) If an uncompleted or erroneous transfer occurs because the Recipient's EFT information was incorrect, or was revised within 30 days of Government release of the EFT payment transaction instruction to the Federal Reserve System, and –
 - i) If the funds are no longer under the control of the payment office, the Government is deemed to have made payment and the Recipient is responsible for recovery of any erroneously directed funds; or
 - ii) If the funds remain under the control of the payment office, the Government will not make payment, and the provisions of paragraph d. of this clause apply.
- g) EFT and prompt payment. A payment will have been made in a timely manner in accordance with the prompt payment terms of this agreement if, in the EFT payment transaction instruction released to the Federal Reserve System, the date specified for settlement of the payment is on or before the prompt payment due date, provided the specified payment date is a valid date under the rules of the Federal Reserve System.
- h) EFT and assignment of claims. If the Recipient assigns the proceeds of this agreement, the Recipient must require, as a condition of any such assignment, that the assignee register in the SAM database and be paid by EFT in accordance with the terms of this clause. In all respects, the requirements of this clause will apply to the assignee as if it were the Recipient. EFT information that shows the ultimate recipient of the transfer to be other than the Recipient, in the absence of a proper assignment of claims acceptable to the Government, is incorrect EFT information within the meaning of paragraph d. of this clause.
- i) Liability for change of EFT information by financial agent. The Government is not liable for errors resulting from changes to EFT information made by the Recipient's financial agent.
- j) Payment information. The payment or disbursing office will forward to the Recipient available payment information that is suitable for transmission as of the date of release of the EFT instruction to the Federal Reserve System. The Government may request the Recipient to designate a desired format and method(s) for delivery of payment information from a list of formats and methods the payment office is capable of executing. However, the Government does not guarantee that any particular format or method of delivery is available at any particular payment office and retains the latitude to use the format and delivery method most convenient to the Government. If the Government makes payment by check in accordance with paragraph a. of this clause, the Government will mail the payment information to the remittance address contained in the SAM database.

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12. Adherence to Original Project Objectives and Budget Estimates

- a) The Recipient is responsible for any commitments or expenditures it incurs in excess of the funds provided by an award. Pre-award costs are those incurred prior to the effective date of the Federal award directly pursuant to the negotiation and in anticipation of the Federal award where such costs are necessary for efficient and timely performance of the scope of work. Such costs are allowable only to the extent that they would have been allowable if incurred after the date of the Federal award, *and only with the written approval of the Program Authorizing Official or delegate.*
- b) The Recipient must submit any proposed change, that requires PHMSA's written approval, 30 days prior to the requested effective date of the proposed change. PHMSA will not approve any change to the award during the last 30 days of the award period.

13. Prior Approvals

- a) The following expenditures require the PAO's advance written approval:
 - i) Changes in the scope, objective, or key personnel referenced in the Recipient's proposal.
 - ii) Change in the project period. PHMSA must receive this request no later than 30 calendar days prior to the end of the project period. The Recipient must submit a revised budget indicating the planned use of all unexpended funds during the extension period.
- b) The Recipient must submit a revised financial estimate and plan for i) and ii) above.
- c) The PHMSA will notify the Recipient in writing within 30 calendar days after receipt of the request for revision or adjustment whether the request has been approved.

14. Contracting with Small Businesses, Small Minority-Disadvantaged Businesses, and Small Businesses which are Women-Owned, Veteran-Owned, Disabled Veteran-Owned or located in HubZone Areas

- a) It is the Department of Transportation (DOT) policy to award a fair share of contracts to small businesses, small minority-disadvantaged business, and small businesses which are women-owned, veteran-owned, disabled veteran-owned or located in a HubZone. DOT is strongly committed to the objectives of this policy and encourages all Recipients of its Grants and Cooperative Agreements to take affirmative steps to ensure such fairness on the awarding of any subcontracts.
- b) The Recipient and any Sub-recipients are encouraged to take all necessary affirmative steps to assure that small businesses, small minority-disadvantaged businesses, and small businesses which are women-owned, veteran-owned, disabled veteran-owned, or located in a HUBZone are used when possible.
- c) Affirmative steps include:
 - i) Placing qualified small businesses, small minority-disadvantaged businesses, and small businesses which are women owned, veteran-owned, disabled veteran-owned, or located in a HUBZone on solicitation lists;
 - ii) Assuring that small businesses, small minority-disadvantaged businesses, and small businesses which are women-owned, veteran-owned, disabled veteran-owned or located in a HUBZone are solicited whenever they are potential sources;
 - iii) Dividing total requirements, when economically feasible, into small tasks or quantities to permit maximum participation by small businesses, small

- minority-disadvantaged businesses, and small businesses which are women-owned, veteran-owned, disabled veteran-owned, or located in a HUBZone;
- iv) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises; and Using the services and assistance of the U.S. Small Business Administration and the Office of the Small and Disadvantaged Business Utilization of the Department of Transportation, as appropriate.

15. Seat Belt Use Policies and Programs

In accordance with Executive Order 13043, the Recipient is encouraged to adopt on-the-job seat belt use policies and programs for its employees when operating company-owned, rented, or personally-owned vehicles. The National Highway Traffic Safety Administration (NHTSA) is responsible for providing leadership and guidance in support of this presidential initiative. For information on how to implement such a program or for statistics on the potential benefits and cost-savings to your company or organization, please visit the Buckle Up America section on NHTSA's website at www.nhtsa.dot.gov. Additional resources are available from the Network of Employers for Traffic Safety (NETS), a public-private partnership headquartered in Washington, D.C. dedicated to improving the traffic safety practices of employers and employees. NETS is prepared to help with technical assistance, a simple, user-friendly program kit, and an award for achieving the President's goal of 85 percent seat belt use. NETS can be contacted at 1-888-221-0045 or visit its website at www.trafficsafety.org.

16. Ban on Text Messaging While Driving

a) *Definitions.* The following definitions are intended to be consistent with the definitions in DOT Order 3902.10 and the E.O. For clarification purposes, they may expand upon the definitions in the E.O.

"Driving"-

- i) Means operating a motor vehicle on a roadway, including while temporarily stationary because of traffic, a traffic light, stop sign, or otherwise.
- ii) It does not include being in your vehicle (with or without the motor running) in a location off the roadway where it is safe and legal to remain stationary.

"Text messaging" --- means reading from or entering data into any handheld or other electronic device, including for the purpose of short message service texting, e-mailing, instant messaging, obtaining navigational information, or engaging in any other form of electronic data retrieval or electronic data communication. The term does not include the use of a cell phone or other electronic device for the limited purpose of entering a telephone number to make an outgoing call or answer an incoming call, unless the practice is prohibited by State or local law.

b) In accordance with Executive Order 13513, Federal Leadership on Reducing Text Messaging While Driving, October 1, 2009, and DOT Order 3902.10, Text Messaging While Driving, December 30, 2009, financial assistance recipients and subrecipients of grants and cooperative agreements are encouraged to:

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- 1) Adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers including policies to ban text messaging while driving--
 - i) Company-owned or -rented vehicles or Government-owned, leased or rented vehicles; or
 - ii) Privately-owned vehicles when on official Government business or when performing any work for or on behalf of the Government.
- 2) Conduct workplace safety initiatives in a manner commensurate with the size of the business, such as--
 - i) Establishment of new rules and programs or re-evaluation of existing programs to prohibit text messaging while driving; and
 - ii) Education, awareness, and other outreach to employees about the safety risks associated with texting while driving.

c) *Assistance Awards.* All recipients and subrecipients of financial assistance to include: grants, cooperative agreements, loans and other types of assistance, shall insert the substance of this clause, including this paragraph (c), in all assistance awards.

17. Rights in Technical Data

Rights to intangible property under this agreement are governed in accordance with 2 CFR 200.315 - "Intangible Property."

18. Notice of News Releases, Public Announcements, and Presentations

The Recipient must have the PAO's prior approval for all press releases, formal announcements, or other planned written issuance containing news or information concerning this Agreement before issuance.

19. Violation of Award Terms

If the Recipient has materially failed to comply with any term of the award, the PAO may suspend, terminate, or take other remedies as may be legally available and appropriate in the circumstances.

20. Reporting Fraud, Waste, or Abuse

The DOT Inspector General maintains a toll-free hotline for receiving information concerning fraud, waste, or abuse under grants and cooperative agreements. Such reports are kept confidential and callers may decline to give their names if they choose to remain anonymous. The number is: (800) 424-9071.

The mailing address is:
DOT Inspector General Hotline
1200 New Jersey Ave SE
West Bldg 7th Floor
Washington, DC 20590
Email: hotline@oig.dot.gov
Web: <http://www.oig.dot.gov/Hotline>

21. Reporting Grantee Executive Compensation/First Tier Sub-Awards (PHMSA Oct, 2010)

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a) **Definitions.** As used in this provision:

“Executive” means an officer or any other employee in a management position.

“First-tier sub-award” means an award issued directly by the prime Awardee to a sub-awardee to provide support for the performance of any portion of the substantive project or program for which the award was received. A sub-award includes an agreement that the prime Awardee or a sub-awardee considers a contract.

“Total compensation” means the cash and noncash dollar value earned by the executive during the Awardee’s preceding fiscal year and includes the following:

- i) Salary and bonus.
- ii) Awards of stock, stock options, and stock appreciation rights.
- iii) Earnings for services under non-equity incentive plans. This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.
- iv) Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.
- v) Above-market earnings on deferred compensation which is not tax-qualified.
- vi) Other compensation, if the aggregate value of all such other compensation (*e.g.*, severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.

b) **System for Award Management (SAM).** As a recipient of a Federal award you are required to register in the System for Award Management (SAM) at: <https://www.sam.gov>

c) **Notification to Sub-Awardees.** Awardees are required to report information on sub-awards. The law requires all reported information be made public; therefore, the Awardee is responsible for notifying its sub-awardees that the required information will be made public.

d) **Reporting of First-Tier Sub-Awards.** By the end of the month following the month of award of a first-tier sub-award with a value of \$25,000 or more, the Awardee shall report the information below at <http://www.fsrs.gov> for each first-tier sub-award. (The Awardee shall follow the instructions at <http://www.fsrs.gov> to report the data.) If the Awardee, in the previous tax year, had gross income from all sources under \$300,000, the Awardee is exempt from the requirement to report subcontractor awards. If a sub-awardee, in the previous tax year had gross income from all sources under \$300,000, the Awardee does not need to report awards made to that sub-awardee.

- i) Unique identifier (9-digit Data Universal Numbering System (DUNS) number) for the sub-awardee receiving the award, and for the sub-awardee’s parent company, if the sub-awardee has a parent company.

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- ii) Name of the sub-awardee.
- iii) Amount of the sub-award.
- iv) Date of the sub-award.
- v) A description of the effort being provided under the sub-award, including the overall purpose and expected outcome or result of the sub-award.
- vi) Sub-award number (assigned by the Awardee).
- vii) Sub-awardee's physical address including street address, city, state, country, 9-digit zip code, and congressional district.
- viii) Sub-awardee's primary performance location including street address, city, state, country, 9-digit zip code, and congressional district.
- ix) The prime award number (assigned by PHMSA)
- x) Awarding agency name. (PHMSA)
- xi) Funding agency name. (PHMSA)
- xii) Government awarding office code. (56)
- xiii) Treasury account symbol (TAS) as reported in Federal Assistance Award Data System.
- xiv) The applicable North American Industry Classification System (NAICS) code.

e) Reporting Executive Compensation of Awardee. If the Awardee, in the previous tax year, had gross income from all sources under \$300,000, the Awardee is exempt from the requirement to its executive compensation.

By the end of the month following the month of receipt of a prime award, and annually thereafter, the Awardee shall report the names and total compensation of each of the five most highly compensated executives for the Awardee's preceding completed fiscal year at <https://www.sam.gov> if, in the Awardee's preceding fiscal year, the Awardee received:

- i) 80 percent or more of its annual gross revenues from Federal contracts (and subcontracts), loans, grants (and sub-awards), cooperative agreements, other transaction agreements; and
- ii) \$25,000,000 or more in annual gross revenues from Federal contracts (and subcontracts), loans, grants (and sub-awards), cooperative agreements, other transaction agreements; and
- iii) The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)

f) Reporting Executive Compensation of Sub-Awardees. If the Awardee, in the previous tax year, had gross income from all sources under \$300,000, the Awardee is exempt from the requirement to report the executive compensation of sub-awardees. If a sub-awardee, in the previous tax year had gross income from all sources under \$300,000, the Awardee does not need to report the executive compensation of that sub-awardee.

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By the end of the month following the month of a first-tier sub-award with a value of \$25,000 or more, and annually thereafter, the Awardee shall report the names and total compensation of each of the five most highly compensated executives for each first-tier sub-awardee for the sub-awardee's preceding completed fiscal year at <http://www.fsrs.gov>, if in the sub-awardee's preceding fiscal year, the sub-awardee received:

- i) 80 percent or more of its annual gross revenues from Federal contracts (and subcontracts), loans, grants (and sub-awards), cooperative agreements, other transaction agreements; and
- ii) \$25,000,000 or more in annual gross revenues from Federal contracts (and subcontracts), loans, grants (and sub-awards), cooperative agreements, other transaction agreements; and
- iii) The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)

22. 811, Call Before You Dig Program (PHMSA June 2014)

Damage to pipelines during excavation is a leading cause of accidents resulting in serious injuries and fatalities, but these accidents are preventable, and you can help in preventing them.

811 is designated as the national call-before-you-dig number. Every state has a one-call law requiring excavators to have underground utilities marked before digging.

There are five steps to safer digging:

- 1) Make a free call to 811 a few days before digging.
- 2) Wait the required time – which is prescribed in state law but generally two to three days.
- 3) Locate/mark the utilities accurately. (This step applies to underground facility/utility owners.)
- 4) Respect the marks.
- 5) Dig with care.

The recipient is encouraged to adopt the “811, Call Before You Dig” program for its employees when digging on company-owned, leased, or personally-owned property. For information on how to implement such a program please visit the *811 – Call Before You Dig* section of Pipeline and Hazardous Materials Safety Administration's (PHMSA's) website at www.phmsa.dot.gov.

23. Access to Electronic and Information Technology (PHMSA DEC 2013)

Each Electronic and Information Technology (EIT) product or service, furnished under this award, must be in compliance with the Electronic and Information Technology Accessibility Standard (36 CFR 1194), which implements Section 508 of the Rehabilitation Act of 1973, codified at 29 U.S.C. § 794d. The PHMSA Office of Civil Rights will respond to any questions, and will certify Section 508 compliance for the requirement. You can reach the PHMSA Office of Civil Rights at phmsa.civilrights@dot.gov, or 202-366-9638.

24. Combating Trafficking in Persons (PHMSA JULY 2016)

PHMSA may terminate grants, cooperative agreements, or take any of the other remedial actions authorized under 22 U.S.C. 7104(g), without penalty, if the grantee or any subgrantee, engages in, or uses labor recruiters, brokers, or other agents who engage in-

- a) severe forms of trafficking in persons;
- b) the procurement of a commercial sex act during the period of time that the grant, or cooperative agreement is in effect;
- c) the use of forced labor in the performance of the grant or cooperative agreement; or
- d) acts that directly support or advance trafficking in persons, including the following acts:
 - i) Destroying, concealing, removing, confiscating, or otherwise denying an employee access to that employee's identity or immigration documents.
 - ii) Failing to provide return transportation or pay for return transportation costs to an employee from a country outside the United States to the country from which the employee was recruited upon the end of employment if requested by the employee, unless-
 - 1) exempted from the requirement to provide or pay for such return transportation by the Federal department or agency providing or entering into the grant, or cooperative agreement; or
 - 2) the employee is a victim of human trafficking seeking victim services or legal redress in the country of employment or a witness in a human trafficking enforcement action.
 - iii) Soliciting a person for the purpose of employment, or offering employment, by means of materially false or fraudulent pretenses, representations, or promises regarding that employment.
 - iv) Charging recruited employees unreasonable placement or recruitment fees, such as fees equal to or greater than the employee's monthly salary, or recruitment fees that violate the laws of the country from which an employee is recruited.
 - v) Providing or arranging housing that fails to meet the host country housing and safety standards.

25. Prohibition on Awarding to Entities that Require Certain Internal Confidentiality Agreements (PHMSA FEB 2015)

- a) The Recipient shall not require employees or subcontractors seeking to report fraud, waste, or abuse to sign or comply with internal confidentiality agreements

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or statements prohibiting or otherwise restricting such employees or subcontractors from lawfully reporting such waste, fraud or abuse to a designated investigative or law enforcement representative of a federal department or agency authorized to receive such information.

- b) The Recipient shall notify employees that the prohibitions and restrictions of any internal confidentiality agreements covered herein are no longer in effect.
- c) The prohibition in paragraph (a) above does not contravene requirements applicable to Standard Form 312, Form 4414, or any other form issued by a Federal department or agency governing the nondisclosure of classified information.
- d) In accordance with section 743 of Division E, Title VII, of the Consolidated and Further Continuing Resolution Appropriations Act, 2015 (P.L. 113-235), use of funds appropriated (or otherwise made available) under that or any other Act may be prohibited, if the Government determines that the Recipient is not in compliance with the provisions herein.

The Government may seek any available remedies in the event the Recipient fails to comply with the provisions herein.

26. Copyrights

PHMSA reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for Federal government purposes:

- a) The copyright in any work developed under a grant, sub award, or contract under a grant or sub award; and
- b) Any rights of copyright to which a Recipient, sub recipient or a contractor purchases ownership with grant support.

27. Reporting

- a) *Mid-year Federal Financial Report (FFR) (SF-425)* – The mid-year FFR provides an update on the status of funds for the first half of the performance period. This report is cumulative. The mid-year FFR is due no later than 5pm Eastern Standard Time (EST), April 30th of the performance year.
- b) *Mid-Year Performance Report* – The mid-year performance report (form OMB Control Number: 2137-0586) provides the status of the activities performed during the first half of the performance period. The mid-year

performance report is due no later than 5pm Eastern Standard Time (EST), April 30th of the performance year.

- c) *End of year financial report* – The end of year FFR closes-out the financial reporting for the performance period. An end of year FFR is due no later than 5pm Eastern Standard Time (EST), December 30th, 90 days after the end of the performance period.
- d) *End of year performance report* – The final performance report (form OMB Control Number: 2137-0586) provides the status of the activities performed during the entire performance period. The end of year performance report is due no is due no later than 5pm Eastern Standard Time (EST), December 30th, 90 days after the end of the performance period.

A request for extension of the due date for a mid and end of year reports must be made in writing to PHMSA no later than 30 days before the end of the reporting period. The request must include the reason for the request and the requested due date.

(End of provision)

EXHIBIT C
REQUEST FOR REIMBURSEMENT (RFR)

HAZARDOUS MATERIALS EMERGENCY PREPAREDNESS GRANT REQUEST FOR REIMBURSEMENT

Agency: _____

Address: _____

Contact: _____

Phone: _____ Email: _____

Fed. Tax ID #: _____ IGA #: _____

Project Title: _____

Period Covering: _____

Budget Category	Expenses Paid This Period	Cumulative Expenses to Date	Project Budget
Travel	\$	\$	\$
Equipment	\$	\$	\$
Supplies	\$	\$	\$
Contractual	\$	\$	\$
Other:	\$	\$	\$
Other:	\$	\$	\$
Total Expenditures	\$	\$	\$
	\$	\$	\$
Grant Funds Requested	\$	\$	\$

Prepared by: _____ Title: _____

Signature of Authorized Signer: _____ Title: _____

Note: Please refer to the budget submitted in the original grant application.

All expenditures must have adequate supporting documentation.

Mail to: Oregon State Police, Office of State Fire Marshal, Attn: Terry Wolfe, 3565 Trelstad Ave SE Salem, OR 97317
For questions, contact Terry Wolfe at terry.wolfe@state.or.us or 503-934-8245

EXHIBIT D

ASSURANCE OF COMPLIANCE WITH TITLE VI OF THE CIVIL RIGHTS ACT OF 1964 DEPARTMENT OF TRANSPORTATION

During the performance of this Agreement, the Sub-recipient, for itself, its assignees and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

1. Compliance with Regulations:

The Sub-recipient shall comply with the Regulations relative to nondiscrimination in Federally assisted programs of the Department of Transportation (hereinafter, "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this Agreement.

2. Nondiscrimination:

The Sub-recipient, with regard to the work performed by it during the Agreement, shall not discriminate on the grounds of race, color, sex, or national origin in the selection and retention of contractors, including procurements of materials and leases of equipment. The Sub-recipient shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the Agreement covers a program set forth in Appendix D of the Regulations.

3. Solicitation for contractors, including procurements of Materials and Equipment:

In all solicitations either by competitive bidding or negotiation made by the Sub-recipient for work to be performed under a contract, including procurements of materials or leases of equipment, each potential contractor or supplier shall be notified by the Sub-recipient of the contractor's obligations under this Agreement and the Regulations relative to nondiscrimination on the grounds of race, color, sex, or national origin.

4. Information and Reports:

The Sub-recipient shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the State of Oregon or the Pipeline and Hazardous Materials Safety Administration (PHMSA) to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a Sub-recipient is in the exclusive possession of another who fails or refuses to furnish this information the Sub-recipient shall so certify to the State of Oregon or the Pipeline and Hazardous Materials Safety Administration as appropriate, and shall set forth what efforts it has made to obtain the information.

5. Sanctions for Noncompliance:

In the event of the Sub-recipient's noncompliance with nondiscrimination provisions of this Agreement, the State of Oregon shall impose sanctions as it or the Pipeline and Hazardous Materials Safety Administration may determine to be appropriate, including but not limited to:

- (a) Withholding of payments to the Sub-recipient under the Agreement until the Sub-recipient complies; and/or,
- (b) Cancellation, termination, or suspension of the Agreement, in whole or in part.

6. Incorporation of Provisions:

The Sub-recipient shall include the provisions of paragraphs (1) through (6) in every contract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The Sub-recipient shall take such action with respect to any contract or procurements as the State of Oregon or the Pipeline and Hazardous Materials Safety Administration may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event a Sub-recipient becomes involved in, or is threatened with, litigation with a contract or supplier as a result of such direction, the Sub-recipient may request the State of Oregon to enter into such litigation to protect the interests of the State of Oregon, and in addition, the Sub-recipient may request the United States to enter into such litigation to protect the interest of the United States.

EXHIBIT E

SUBCONTRACTOR INSURANCE REQUIREMENTS.

General.

Sub-recipient shall require its first tier contractor(s) that are not units of local government as defined in ORS 190.003, if any, to: i) obtain insurance specified under TYPES AND AMOUNTS and meeting the requirements under ADDITIONAL INSURED, "TAIL" COVERAGE, NOTICE OF CANCELLATION OR CHANGE, and CERTIFICATES OF INSURANCE before the contractors perform under contracts between Sub-recipient and the contractors (the "Subcontracts"), and ii) maintain the insurance in full force throughout the duration of the Subcontracts. The insurance must be provided by insurance companies or entities that are authorized to transact the business of insurance and issue coverage in the State of Oregon and that are acceptable to Agency. Sub-recipient shall not authorize contractors to begin work under the Subcontracts until the insurance is in full force. Thereafter, Sub-recipient shall monitor continued compliance with the insurance requirements on an annual or more frequent basis. Sub-recipient shall incorporate appropriate provisions in the Subcontracts permitting it to enforce contractor compliance with the insurance requirements and shall take all reasonable steps to enforce such compliance. Examples of "reasonable steps" include issuing stop work orders (or the equivalent) until the insurance is in full force or terminating the Subcontracts as permitted by the Subcontracts, or pursuing legal action to enforce the insurance requirements. In no event shall Sub-recipient permit a contractor to work under a Subcontract when Sub-recipient is aware that the contractor is not in compliance with the insurance requirements. As used in this section, a "first tier" contractor is a contractor with which Sub-recipient directly enters into a contract. It does not include a subcontractor with which the contractor enters into a contract.

Types and Amounts.

1. WORKERS' COMPENSATION & EMPLOYERS' LIABILITY

All employers, including Contractor, that employ subject workers, as defined in ORS 656.027, shall comply with ORS 656.017 and provide workers' compensation insurance coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). Contractor shall require and ensure that each of its subcontractors complies with these requirements. If Contractor is a subject employer, as defined in ORS 656.023, Contractor shall also obtain employers' liability insurance coverage with limits not less than \$500,000 each accident. If contractor is an employer subject to any other state's workers' compensation law, Contractor shall provide workers' compensation insurance coverage for its employees as required by applicable workers' compensation laws including employers' liability insurance coverage with limits not less than \$500,000 and shall require and ensure that each of its out-of-state subcontractors complies with these requirements.

2. PROFESSIONAL LIABILITY. Not required.

3. COMMERCIAL GENERAL LIABILITY.

Required Not required

Commercial General Liability Insurance covering bodily injury and property damage in a form and with coverage that is satisfactory to the State. This insurance shall include personal and advertising injury liability, products and completed operations, contractual liability coverage for the indemnity provided under this contract, and have no limitation of coverage to designated premises, project or operation. Coverage shall be written on an occurrence basis in an amount of not less than \$1,000,000 per occurrence. Annual aggregate limit shall not be less than \$2,000,000.

4. AUTOMOBILE LIABILITY INSURANCE.

Required Not required

Automobile Liability Insurance covering Contractor's business use including coverage for all owned, non-owned, or hired vehicles with a combined single limit of not less than \$1,000,000 for bodily injury and property damage. This coverage may be written in combination with the Commercial General Liability Insurance (with separate limits for Commercial General Liability and Automobile Liability). Use of personal automobile liability insurance coverage may be acceptable if evidence that the policy includes a business use endorsement is provided.

5. POLLUTION LIABILITY. Not required by OSFM.
6. ADDITIONAL INSURED. The Commercial General Liability insurance and Automobile Liability insurance must include the State of Oregon, its officers, employees and agents as Additional Insureds but only with respect to the contractor's activities to be performed under the Subcontract. Coverage must be primary and non-contributory with any other insurance and self-insurance.
7. "TAIL" COVERAGE. If any of the required insurance policies is on a "claims made" basis, such as professional liability insurance, the contractor shall maintain either "tail" coverage or continuous "claims made" liability coverage, provided the effective date of the continuous "claims made" coverage is on or before the effective date of the Subcontract, for a minimum of 24 months following the later of : (i) the contractor's completion and Sub-recipient's acceptance of all Services required under the Subcontract or, (ii) the expiration of all warranty periods provided under the Subcontract. Notwithstanding the foregoing 24-month requirement, if the contractor elects to maintain "tail" coverage and if the maximum time period "tail" coverage reasonably available in the marketplace is less than the 24-month period described above, then the contractor may request and Agency may grant approval of the maximum "tail" coverage period reasonably available in the marketplace. If Agency approval is granted, the contractor shall maintain "tail" coverage for the maximum time period that "tail" coverage is reasonably available in the marketplace.
8. NOTICE OF CANCELLATION OR CHANGE. The contractor or its insurer must provide 30 days' written notice to Sub-recipient before cancellation of, material change to, potential exhaustion of aggregate limits of, or non-renewal of the required insurance coverage(s).
9. CERTIFICATE(S) OF INSURANCE. Sub-recipient shall obtain from the contractor a certificate(s) of insurance for all required insurance before the contractor performs under the Subcontract. The certificate(s) or an attached endorsement must specify:
- i) all entities and individuals who are endorsed on the policy as Additional Insured and
 - ii) for insurance on a "claims made" basis, the extended reporting period applicable to "tail" or continuous "claims made" coverage.

APPENDIX I**Information required by 2 CFR § 200.331(a)(1)**

Federal Award Identification:

- (i) Sub-recipient name (which must match registered name in DUNS): Clackamas County Disaster Management
- (ii) Sub-recipient's DUNS number: 96992656
- (iii) Federal Award Identification Number (FAIN): HM-HMP-0529-16-01-00
- (iv) Federal Award Date: 9/30/2016
- (v) Sub-award Period of Performance Start and End Date: From October 1, 2018 to September 30, 2019
- (vi) Total Amount of Federal Funds Obligated by this Agreement: \$20,000
- (vii) Total Amount of Federal Funds Obligated to the Sub-recipient by the pass-through entity including this Agreement: \$20,000
- (viii) Total Amount of Federal Award committed to the Sub-recipient by the pass-through entity: \$20,000
- (ix) Federal award project description: Clackamas County LEPC Plan Enhancement and TTX
- (x) Name of Federal awarding agency, pass-through entity, and contact information for awarding official of the Pass-through entity:
 - (a) Name of Federal awarding agency: USDOT – Pipeline and Hazardous Material Safety Administration
 - (b) Name of pass-through entity: Oregon State Police, Office of State Fire Marshal
 - (c) Contact information for awarding official of the pass-through entity: terry.wolfe@state.or.us
- (xi) CFDA Number and Name: 20.703 Interagency Hazardous Materials Public Sector Training and Planning Grants
Amount: \$251,696
- (xii) Is Award R&D? No
- (xiii) Indirect cost rate for the Federal award: 0%



Evelyn Minor-Lawrence
Director

DEPARTMENT OF HUMAN RESOURCES
PUBLIC SERVICES BUILDING
2051 Kaen Road | Oregon City, OR 97045

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of Contract between the Clackamas County, Department of Human Resources and Mercer Health & Benefits LLC to provide Benefits Consulting Services.

Purpose/Outcomes	Approval of Contract
Dollar Amount and Fiscal Impact	\$163,300.00
Funding Source	760 0119 431000
Duration	1 year (July 1, 2018 through June 30, 2019)
Previous Board Action	N/A
Strategic Plan Alignment	Benefits and Wellness Strategic Plan: Provide cost-effective, responsive and comprehensive benefit services to County departments, current and retired employees and their family members so they can better serve the residents of Clackamas County. County Strategic Plan Area of Focus: Provide financial stability and leadership.
Contact Person	Kristi Durham, 503-742-5470

BACKGROUND:

Mercer Health & Benefits LLC is a national benefits consultant that consults with Clackamas County to set strategy, shop the marketplace, negotiate with vendors for best value, and participate in key roles such as providing and interpreting data for the Benefits Review Committee (BRC). This is a contract to provide these critical services while a longer-term contract is being procured.

County Counsel has reviewed and approved this contract as to form.

RECOMMENDATION:

Staff respectfully recommends the Board of County Commissioners approve the contract with Mercer Health & Benefits LLC to provide Benefits Consulting Services.

Respectfully submitted,

Evelyn Minor-Lawrence, Director

Placed on the Agenda of _____ by the Procurement Division



**CLACKAMAS COUNTY
PERSONAL/PROFESSIONALSERVICES CONTRACT**

This Personal/Professional Services Contract (this "Contract") is entered into between **Mercer Health & Benefits LLC** ("Contractor"), and Clackamas County, a political subdivision of the State of Oregon ("County") on behalf of Human Resources/Benefits and Wellness Division.

ARTICLE I.

1. Effective Date and Duration. This Contract shall be effective as of July 1, 2018 upon signature of both parties. Unless earlier terminated or extended, this Contract shall expire on **June 30, 2019**. 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.

2. Scope of Work. Contractor will provide the following personal/professional services: To provide consultation services for Human Resources/Benefits and Wellness Division ("Work"), further described in **Exhibits A and D** ("SOW").

3. Consideration. The County agrees to pay Contractor its professional fee, from available and authorized funds, a sum not to exceed **one hundred sixty-three thousand three hundred dollars (\$163,300.00)**, for accomplishing the Work required by this Contract. If any interim payments to Contractor are made, such payments shall be made only in accordance with the schedule and requirements in Exhibit A. County and Contractor acknowledge that Work has been performed prior to execution of this Contract and hereby affirm and ratify that Work, subject to the terms and conditions of this Contract.

If any invoice remains unpaid for longer than ninety (90) days from the date of the invoice, Contractor may either suspend the provision of the Work until payment is received, or terminate this Contract and/or any SOW with immediate effect.

4. Travel and Other Expense. Authorized: X Yes No

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

5. 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, Exhibits A, B, C, D and E.

6. Contractor Data.

Name: Mercer Health & Benefits LLC

Address: 111 SW Columbia Street, Suite 500, Portland , OR 97201

Contractor Contract Administrator: Keith Storie

Phone No.: 503-273-5920

Email: Keith.Storie@mercerc.com

MWESB Certification: DBE #

MBE #

WBE #

ESB #

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 could subject Contractor to backup withholding.

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ARTICLE II.

- 1. ACCESS TO RECORDS.** Contractor shall maintain books, records, documents, and other evidence and accounting procedures and practices sufficient to reflect properly all costs of whatever nature claimed to have been incurred and anticipated to be incurred in the performance of this Contract. County and their duly authorized representatives shall have access to the books, documents, papers, and records of Contractor which are directly pertinent to this Contract for the purpose of making audit, examination, excerpts, and transcripts. Such books and records shall be maintained by Contractor for a minimum of three (3) years, or such longer period as may be required by applicable law, following final payment and termination of this Contract, or until the conclusion of any audit, controversy or litigation arising out of or related to this Contract, whichever date is later. Any audit or inspection shall be conducted at the County's expense, made upon reasonable prior written notice, during normal business hours and shall be subject to the execution of a confidentiality agreement reasonably satisfactory to Contractor.
- 2. AVAILABILITY OF FUNDS.** County certifies that sufficient funds are available and authorized for expenditure to finance costs of this Contract within its current annual appropriation or expenditure limitation, provided, however, that continuation of this Contract, or any extension, after the end of the fiscal period in which it is written, is contingent on a new appropriation or limitation for each succeeding fiscal period sufficient in amount, in the exercise of the County's reasonable administrative discretion, to continue to make payments under this Contract.
- 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 federal, state, county, and local laws, ordinances, and regulations applicable to the Work to be done under this Contract. Contractor specifically agrees to comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules, and regulations. Contractor shall also comply with the Americans with Disabilities Act of 1990 (Pub. L. No. 101-336), Title VI of the Civil Rights Act of 1964, Section V of the Rehabilitation Act of 1973, ORS 659A.142, and all regulations and administrative rules established pursuant to those laws. If applicable, Contractor further agrees to make payments promptly when due, to all persons supplying to such Contractor, labor or materials for the prosecution of the Work provided in this Contract; pay all contributions or amounts due the Industrial Accident Funds from such Contractor responsibilities incurred in the performance of this Contract; not permit any lien or claim to be filed or prosecuted against the County on account of any labor or material furnished; pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167. If Contractor fails or refuses to make any such payments required herein, the appropriate County official may pay such claim. Any payment of a claim in the manner authorized in this section shall not relieve the Contractor or Contractor's surety from obligation with respect to unpaid claims. Contractor shall promptly pay any person or entity that furnishes medical care to Contractor's employees those sums which Contractor agreed to pay for such services and all money Contractor collected or deducted from employee's wages to provide such services.
- 5. EXECUTION AND COUNTERPARTS.** This Contract may be executed in several counterparts, each of which shall be an original, all of which shall constitute but one and the same instrument.
- 6. GOVERNING LAW.** This Contract shall be governed and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, or

suit between 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.

- 7. HAZARD COMMUNICATION.** Contractor shall notify County prior to using products containing hazardous chemicals to which County employees may be exposed. Products containing hazardous chemicals are those products defined by Oregon Administrative Rules, Chapter 437. Upon County's request, Contractor shall immediately provide Material Safety Data Sheets for the products subject to this provision.
- 8. INDEMNITY, RESPONSIBILITY FOR DAMAGES.** Contractor shall be responsible for all damage to property, injury to persons, and loss, expense, inconvenience, and delay which may be caused by, or directly result from, the negligent conduct of Work, or from any negligent act or omission of Contractor, its subcontractors, agents, or employees in their performance under this Contract. The Contractor agrees to indemnify, hold harmless and defend the County, and its officers, elected officials, and employees from and against all claims and actions, and all expenses incidental to the investigation and defense thereof, arising out of or based upon damage or injuries to persons or property caused by the errors, omissions, fault or negligence of the Contractor or the Contractor's employees, subcontractors, or agents.
- 9. 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; (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 (except insofar as benefits are otherwise required by law if the Contractor is presently a member of the Oregon Public Employees Retirement System); and (C) If the Contractor has the assistance of other persons in the performance of this Contract, and the Contractor is a subject employer, the Contractor shall qualify and remain qualified for the term of this Contract as an insured employer under ORS Chapter 656. (Also see Exhibit C)

At present, the Contractor certifies that he or she, if an individual is not a program, County or Federal employee. The Contractor, if an individual, certifies that he or she is not a member of the Oregon Public Employees Retirement System.

- 10. INSURANCE.** Contractor shall provide insurance as indicated on **Exhibit B**, attached hereto and by this reference made a part hereof.
- 11. LIMITATION OF LIABILITIES.** Except for liability arising under Section 14 (A), (B), (D) or 21(B), 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. 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.

The aggregate liability of Contractor or its affiliates or any officer, director, or employee of Contractor's or Contractor's affiliates ("Contractor Party") to County, its officers, directors or employees and any third party (including any benefit plan, its fiduciaries or any plan sponsor) for any and all Losses arising out of or relating to the provision of any Work at any time by any of the Contractor Parties shall not exceed the greater of one times the compensation for the Work giving rise to such Loss and \$100,000.00. Contractor shall have no liability for the acts or omissions of any third party (other than its subcontractors). Nothing in this Section 11 limiting the liability of a party shall apply to any liability that has been finally determined by a court to have arisen from the fraud on the part of such party. As used herein, "Loss" means damages, claims, liabilities, losses, awards, judgments, penalties, third party claims, interest, costs and expenses, including reasonable attorneys' fees, whether arising under any legal theory including, but not limited to claims sounding in tort (such as for negligence, misrepresentation or otherwise), contract (whether express or implied), by statute, or otherwise, claims seeking any kind of damages and claims seeking to apply any standard of liability such as negligence, statutory violation or otherwise. For the avoidance of doubt, multiple claims arising out of or based upon the same act, error or omission, or series of continuous, interrelated or repeated acts, errors or omissions shall be considered a single Loss. Any provisions herein which would conflict with law are deemed inoperative to that extent.

12. NOTICES. Except as otherwise expressly provided in this Contract, any communications between the parties hereto or notices to be given hereunder shall be given in writing by personal delivery, email, or mailing the same, postage prepaid, to the County at: Clackamas County Procurement, 2051 Kaen Road, Oregon City, OR 97045, or procurement@clackamas.us, or to Contractor with a copy to: Mercer Health & Benefits LLC, 1166 Avenue of the Americas, New York, NY 10036, Attn: Legal Department, or to such other addresses or numbers as either party may hereafter indicate. Any communication or notice so addressed and mailed shall be deemed to be given five (5) days after mailing. Any communication or notice by personal delivery shall be deemed to be given when actually delivered.

13. OWNERSHIP OF WORK PRODUCT. All work product prepared by Contractor specifically and exclusively for County 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. At County's expense, 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 foregoing or anything to the contrary set forth herein, Contractor will retain all copyright, patent and other intellectual property rights in the methodologies, methods of analysis, ideas, concepts, know-how, models, tools, techniques, skills, knowledge and experience owned or possessed by Contractor before the commencement of, or developed or acquired by Contractor during or after, the performance of the Work, including without limitation, all systems, software, web applications (including without limitation text, software, music, sound,

photographs, graphics, videos or other images, the structure, all technical and graphical materials, and all technical information and the look and feel thereof and any modifications or enhancements), specifications, documentation (including formats of reports, standard materials and derivatives thereof) and other materials created, owned or licensed and used by Contractor or its affiliates or subcontractors in the course of providing the Work (the "Intellectual Property") and the foregoing shall not be deemed Work Product and Contractor shall not be restricted in any way with respect thereto. It is understood and agreed that the Work Product will inherently contain and/or embed Intellectual Property. Contractor hereby grants County a non-exclusive, non-transferable right to use such Intellectual Property solely for purposes of utilizing the Work Product for its internal business purposes and otherwise in accordance with the terms of this Contract and the applicable SOW.

Unless Contractor provides its prior written consent, County will not use, in a manner other than as mutually contemplated when Contractor was first retained by County to perform the applicable Work, or disclose to any third party, other than its attorneys, accountants or financial advisors with a need to know and who are bound by confidentiality obligations at least as restrictive as those contained in this Contract, any Work Product or Intellectual Property or other material supplied by Contractor under this Contract, and County shall be responsible for, and Contractor shall have no liability with respect to, modifications made by any person other than Contractor to the Work Product, Intellectual Property or other Work provided to County by Contractor.

- 14. 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) the Work under this Contract shall be performed in a professional manner and in accordance with the prevailing professional standards; and (D) Contractor shall at all times during the term of this Contract, be qualified, professionally competent, and duly licensed to perform the Work. The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.

Except as expressly set forth in this Contract, Contractor expressly disclaims any warranty, express or implied, including but not limited to any implied warranty of merchantability and fitness for a particular purpose.

- 15. 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, Paragraphs 1, 6, 8, 11, 13, 14, 15, 16, 21, 28, 29, 31, 32 and 33.
- 16. SEVERABILITY.** If any term, word, phrase, clause, sentence or provision of this Contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, such term, word, phrase, clause or sentence shall be modified or deleted in such a manner so as to afford the party for whose benefit it was intended the fullest benefit commensurate with making this Contract as modified, enforceable and the validity of the remaining terms and provisions shall not be affected, and the balance being construed as severable and independent.
- 17. 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, except that Contractor may subcontract any Work to its affiliates or assign or transfer any of its interest in this Contract to its affiliates upon written notice to County. In addition to any provisions the County may require, Contractor shall require its permitted subcontractor under this Contract to comply with this Article II, Paragraphs I, 8, 13, 15, and 27 as if the subcontractor were the Contractor and Contractor shall be responsible for its subcontractor's compliance

herewith. County's consent to any subcontract shall not relieve Contractor of any of its duties or obligations under this Contract.

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

19. TAX COMPLIANCE CERTIFICATION. Contractor must, throughout the duration of this Contract and any extensions, comply with all tax laws of this state and all applicable tax laws of any political subdivision of this state. Any violation of this section shall constitute a material breach of this Contract. Further, any violation of Contractor's warranty in this Contract that Contractor has complied with the tax laws of this state and the applicable tax laws of any political subdivision of this state also shall constitute a material breach of this Contract. Any violation shall entitle County to terminate this Contract, to pursue any and all damages that arise from the breach and the termination of this Contract, and to pursue any or all of the remedies available under this Contract, at law, or in equity, including but not limited to: (A) Termination of this Contract, in whole or in part; (B) Exercise of the right of setoff, and withholding of amounts otherwise due and owing to Contractor, in an amount equal to County's setoff right, without penalty; and (C) Initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief. These remedies are cumulative to the extent the remedies are not inconsistent, and County may pursue any remedy or remedies singly, collectively, successively, or in any order whatsoever.

The Contractor represents and warrants that, for a period of no fewer than six calendar years preceding the effective date of this Contract, Contractor 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.

20. TERMINATIONS. This Contract and, except as may be provided otherwise in a SOW, any SOW hereunder may be terminated for the following reasons: (A) This Contract and/or SOW may be terminated at any time by mutual consent of the parties, or by either party for convenience upon ninety (90) days' written notice to the other party; (B) County may terminate this Contract effective upon delivery of written notice to Contractor, or at such later date as may be established by the County, if (i) federal or state laws, rules, or regulations are modified, changed, or interpreted in such a way that either the Work under this Contract is prohibited or the County is prohibited from paying for such Work from the planned funding source; or (ii) any license or certificate required by law or regulation to be held by the Contractor to provide the services required by this Contract is for any reason denied, revoked, or not renewed; (C) This Contract may also be immediately terminated by the County and/or SOW for default (including breach of Contract or SOW) if (i) Contractor fails to provide services or materials called for by this Contract or SOW within the time specified herein or any extension thereof, and after receipt of notice from the County, fails to correct such failure within thirty (30) business days; or (ii) Contractor fails to perform any of the other provisions of this Contract or SOW or so fails to pursue the Work as to endanger performance of this Contract or SOW in accordance with its terms, and after receipt of notice from the County, fails to correct such failure within thirty (30)

business days; or (D) If sufficient funds are not provided in future approved budgets of the County (or from applicable federal, state, or other sources) to permit the County in the exercise of its reasonable administrative discretion to continue this Contract, or if the program for which this Contract was executed is abolished, County may terminate this Contract without further liability by giving Contractor not less than thirty (30) days' notice. This Contract may be terminated for the following reasons: by Contractor upon breach by the County which breach is not cured within thirty (30) days after receipt of written notice thereof. Any termination of this Contract shall not relieve County of its obligations to pay for Work rendered and expenses incurred by Contractor or its affiliates up to and including the effective date of such termination.

21. REMEDIES. (A) In the event of termination pursuant to Article II Section 20(A), (B)(i), or (D), Contractor's sole remedy shall be a claim for the sum designated for accomplishing the Work multiplied by the percentage of Work completed and accepted by the County, less previous amounts paid and any claim(s) which the County has against Contractor. If previous amounts paid to Contractor exceed the amount due to Contractor under Section 21(A), Contractor shall pay any excess to County on demand. (B) In the event of termination pursuant to Sections 20(B)(ii) or 20(C), the County shall have any remedy available to it in law or equity. If it is determined for any reason that Contractor was not in default under Sections 20(B)(ii) or 20(C), the rights and obligations of the parties shall be the same as if the Contract was terminated pursuant to Section 20(A). (C) Upon receiving a notice of termination of this Contract, Contractor shall immediately cease all activities under this Contract, unless County expressly directs otherwise in such notice of termination. Upon termination of this Contract, Contractor shall deliver to County all documents, information, works-in-progress and other property that are or would be deliverables had the Contract Work been completed. All Work will be provided on an "AS IS" basis without any warranties of any nature whatsoever and Contractor shall have no liability from the use of any such unfinished Work.

22. 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.

23. TIME IS OF THE ESSENCE. Contractor agrees that time is of the essence in the performance this Contract.

24. FOREIGN CONTRACTOR. If the Contractor is not domiciled in or registered to do business in the State of Oregon, Contractor shall promptly provide to the Oregon Department of Revenue and the Secretary of State, Corporate Division, all information required by those agencies relative to this Contract. The Contractor shall demonstrate its legal capacity to perform these services in the State of Oregon prior to entering into this Contract.

25. FORCE MAJEURE. Neither County nor Contractor shall be held responsible for delay or default caused by fire, terrorism, riot, acts of God, or war where such cause was beyond, respectively, County's or Contractor's reasonable control. The party affected by a force majeure shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall upon the cessation of the cause, diligently pursue performance of its obligations under this Contract.

26. WAIVER. The failure of a party to enforce any provision of this Contract shall not constitute a waiver by such party of that or any other provision.

27. COMPLIANCE. Pursuant to the requirements of ORS 279B.020 and 279B.220 through 279B.235 and Article XI, Section 10, of the Oregon Constitution, the following terms and conditions are made a part of this Contract:

(A) Contractor shall: (i) Make payments promptly, as due, to all persons supplying to the Contractor labor or materials for the prosecution of the Work provided for in this Contract; (ii) Pay all contributions or amounts due the Industrial Accident Fund from such Contractor or subcontractor incurred in the performance of this Contract; (iii) Not permit any lien or claim to be filed or prosecuted against the County on account of any labor or material furnished.

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

(C) The Contractor shall pay employees for Work in accordance with ORS 279B.020 and ORS 279B.235, which is incorporated herein by this reference. All subject employers working under the contract are either employers that will comply with ORS 656.017 or employers that are exempt under ORS 656.126.

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

28. CONFIDENTIALITY. Each party acknowledges that it and its employees and agents may, in the course of performing their obligations under this Contract, be exposed to or acquire information that the other party desires or is required to maintain as confidential ("Disclosing Party"). Any and all information of any form obtained by a party or its employees or agents in the performance of this Contract ("Receiving Party"), which is marked or designated as confidential or proprietary at or prior to disclosure or which would appear to a reasonably prudent person to be confidential and/or proprietary in nature, including but not limited to Personal Information (as "Personal Information" is defined in ORS 646A.602(1)), shall be deemed to be confidential information of the Disclosing Party ("Confidential Information"). Any reports or other documents or items containing Confidential Information which result from the use of the Confidential Information to provide the Work by Contractor shall be treated with respect to confidentiality in the same manner as the Confidential Information.

Receiving Party agrees to hold Confidential Information in confidence, using at least the same degree of care that Receiving Party uses in maintaining the confidentiality of its own confidential information, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give or disclose Confidential Information to third parties or use Confidential Information for any purposes whatsoever except in the performance of this Contract or as otherwise directed/permitted by the Disclosing Party, and to advise each of its employees and agents of their obligations to keep Confidential Information confidential. This restriction does not apply to information which (i) the Receiving Party must by law or legal process disclose, (ii) is either already in the public domain or enters the public domain through no fault of the Receiving Party, (iii) is available to the Receiving Party from a third party who, to the Receiving Party's knowledge, is not under any non-disclosure obligation to the Disclosing Party, or (iv) is

independently developed by the Receiving Party without reference to any Confidential Information of the Disclosing Party.

Notwithstanding the foregoing, and solely to the extent authorized under applicable law, County agrees that Contractor will be entitled to disclose information, including Confidential Information, relating to the Work or County to regulators having jurisdiction over Contractor's business,. County also agrees that, notwithstanding any other provision in this Contract, and solely to the extent authorized under applicable law, Contractor may include the identities of those persons who are identified by County as contact persons for County and information about the terms of this Contract, the Work and the Compensation in Contractor's internal client management, financial and conflict checking databases.

County agrees that during and after the term of the Contract, Contractor may use any information it collects and uses in connection with the Work, together with information from its other clients, for data analytics purposes, including to create insights, reports and other analytics to improve the quality of and market Contractor's advice, products and services. The output of such analytics will not identify particular clients or individuals.

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

Receiving Party agrees to comply with all reasonable requests by the Disclosing Party to ensure the confidentiality and nondisclosure of the Confidential Information, including if requested and without limitation: (a) obtaining nondisclosure agreements from each of Receiving Party's agents or subcontractors who are performing services and have access to Confidential Information.

Notwithstanding anything to the contrary in this Contract, but subject to the confidentiality terms and conditions hereof, Contractor may (i) retain copies of Confidential Information that is required to be retained by law or regulation, (ii) retain copies of its work product that contain Confidential Information for archival purposes or to defend its work product and (iii) in accordance with legal, disaster recovery and records retention requirements, store such copies and derivative works in an archival format (e.g. tape backups), which may not be returned or destroyed upon County's request. Contractor may retain County's information in paper or imaged format and Contractor may destroy paper copies if Contractor retains digital images thereof.

29. PERSONAL INFORMATION. Each party agrees that it and its affiliates have complied and will continue to comply with their respective obligations arising from data protection and privacy laws in force from time to time to the extent applicable to this Contract and the services (including any obligation of County to obtain any required consent(s) in respect of the transfer of Personal Information by County or any third party to Contractor, the creation or collection of additional Personal Information by Contractor, and the use, disclosure and transfer by Contractor of Personal Information as necessary to perform the services hereunder or as expressly permitted

under Section 28). The parties acknowledge that any use or processing by Contractor of Personal Information supplied by or on behalf of County in connection with the Work shall be done solely on behalf of County. Contractor shall deal with such Personal Information in accordance with such reasonable instructions as County may from time to time provide or as reasonably necessary for the purpose of providing the Work and shall not deal with such Personal Information in a manner inconsistent with the terms of this Contract. Contractor also confirms that it has taken appropriate technical and organizational measures against unauthorized or unlawful processing of personal data and against accidental loss or destruction of, or damage to, Personal Information in accordance with applicable law.

Contractor shall report, either orally or in writing, to the County within a reasonable time upon learning of Security Incidents, as required by applicable law or regulation. As used herein, "Security Incident" shall mean the actual unauthorized access to, acquisition, or use of unencrypted Personal Information (or encrypted Personal Information where unauthorized decryption has or is likely to occur) that has the potential to cause identity theft or financial harm to the County's employees or participants. Notification shall be provided in the manner, and contain the information, as required by applicable law including, but not limited to, such information as may be necessary for the County to comply with its reporting and notification requirements to the designated County account contact(s). Contractor agrees to keep County informed of progress and actions taken to resolve the Security Incident.

In the event of a Security Incident, Contractor shall: (a) reasonably cooperate with County in connection with the investigation of such Security Incident and not make any public announcements relating to such Security Incident without County's prior written approval unless required by applicable law; (b) take any necessary and appropriate corrective action as required under the circumstances and where reasonable, shall consult with County prior to taking such action; and (c) at the reasonable expense of Contractor, provide notice to all persons whose Personal Information has been affected by a Security Incident that is caused by Contractor in accordance with applicable law.

In the event of a Security Incident, Contractor will be responsible for two years of credit monitoring and identity restoration services to affected individuals if required by applicable law. In case of a Security Incident caused by Contractor, Contractor will investigate such incident and take reasonable actions to prevent further disclosure of Personal Information to unauthorized third parties, and at the reasonable expense of Contractor, provide notice to all persons whose Personal Information has been affected by a Security Incident in accordance with applicable law. Contractor's obligations under this Section shall survive the expiration or termination of the Contract.

30. CRIMINAL BACKGROUND CHECK REQUIREMENTS. To the extent permitted by applicable law, subject to employee consent (which Contractor shall take commercially reasonable efforts to obtain), Contractor shall use reasonable efforts to have criminal background checks performed on all employees that perform services under this Contract who will require access to the County facilities on an unescorted basis for a period of more than three (3) consecutive business days or who will require access to the County computer networks, operating systems, electronic storage media, application programs, databases or interface systems and devices contained on such.

31. Dispute Resolution.

- (A) Before commencing any action or proceeding with respect to any dispute between the Parties arising out of or relating to any Work, the Parties shall first attempt to settle the dispute through consultation and negotiation in good faith and in a spirit of mutual cooperation. If the dispute is not resolved within five (5) business days, either Party may elect to escalate the resolution of such dispute by submitting the dispute in writing to senior executives from each Party who will promptly meet and confer in an effort to resolve the dispute. Each Party will identify such senior executive by notice to the other Party, and each Party may change its senior executive at any time thereafter by notice. In the event the senior executives are unable to resolve any dispute within thirty (30) days after submission to them, either Party may then refer such dispute to mediation by a mutually acceptable mediator to be chosen by both Parties within forty-five (45) days after written notice by either Party demanding mediation. Neither Party may unreasonably withhold, delay or condition consent to the selection of a mediator. All communications and discussions in furtherance of this paragraph shall be treated as confidential settlement negotiations that are not subject to disclosure to any third party. The costs of the mediator shall be shared equally, but each Party shall pay its own attorney's fees.
- (B) Any dispute that is not resolved within six (6) months of the date of the initial demand for mediation by one of the Parties may then be submitted to a court of competent jurisdiction in accordance with the provisions of Section 6. Nothing in this Section 30 will prevent either Party from resorting to judicial proceedings at any time if interim relief from a court is necessary to prevent serious and irreparable injury or damage to that Party or to others.

32. WAIVER OF JURY TRIAL. EACH PARTY, ON BEHALF OF ITSELF AND ITS AFFILIATES, TO THE FULLEST EXTENT PERMITTED BYLAW, KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVES ITS RIGHT TO A TRIAL BY JURY IN ANY ACTION OR OTHER LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY SERVICES PROVIDED BY CONTRACTOR OR ITS AFFILIATES. THE WAIYER APPLIES TO ANY ACTION OR LEGAL PROCEEDING, WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE.

33. No Publicity. County agrees not to refer to Contractor or attribute any information to Contractor in the press (including for the purpose of advertising or promotion, or for the purpose of informing or influencing any other party, including the investment community), without Contractor's prior written consent. Contractor agrees not to refer to County in the press or for promotional purposes without County's prior written consent; provided, that Contractor may include County's name in its representative client listing.

34. Instructions; Provision of Information and Assistance: County will provide all necessary and requested information, direction and cooperation to enable Contractor to provide the Work, and any direction (whether verbal or written) shall be effective if contained expressly in the applicable SOW or if received (whether verbally or in writing) from a person known to Contractor or reasonably believed by Contractor to be authorized to act on County's behalf. County agrees that Contractor shall use all information and data supplied by or on behalf of County without having independently verified the accuracy or completeness of it. If any documentation or information supplied to Contractor at any time is incomplete, inaccurate or not up-to-date, or its provision is unreasonably delayed, or if adequate access to employees of County and other individuals (including third parties such as County's other advisers) is not provided, then Contractor will not be responsible for any delays or liability arising therefrom; and, if additional work is needed and appropriate but County does not approve such work, Contractor shall have no liability for the

Work to the extent any Loss arises from or is related to the failure to perform such additional work..

Contractor is not engaged in the practice of law, and the Work provided hereunder is not intended as a substitute for legal advice. Accordingly, Contractor recommends that County secure the advice of competent legal counsel with respect to any legal matters related to the Work.

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

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

Mercer Health & Benefits LLC

Clackamas County:

Authorized Signature Date

Chair

Name / Title (Printed)

Recording Secretary

Oregon Business Registry #

Date

Entity Type / State of Formation

Approved as to Form:

County Counsel

Date

EXHIBIT A
PERSONAL/PROFESSIONAL SERVICES CONTRACT

SCOPE OF WORK

Contractor shall provide consultation services for conducting strategic planning sessions, strategize healthcare trends, changes and benchmark health plan costs and employee contributions to industry size, and region on annual basis as further described in **Exhibit D**, hereby attached and incorporated by reference.

The County Contract administrator for this Contract is: Kristi Durham

CONSIDERATION

a. Consideration Rates- As further described in Exhibit D, hereby attached and incorporated by reference.

b. Payment by County of Contractor's professional fees for Work performed under this Contract shall be subject to the provisions of ORS 293.462 and shall not exceed a monthly sum not to exceed **thirteen thousand six hundred eight dollars and thirty-three cents (\$13,608.33)** with a total maximum sum not to exceed **one hundred sixty-three thousand three hundred dollars (\$163,300.00)**. Invoices shall be submitted to: Kristi Durham, 2051 Kaen Road, Oregon City, OR 97045, or via email at KDurham@clackamas.us.

c. Unless otherwise specified, Contractor shall submit monthly invoices for Work performed. Payments shall be made 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 pay, any amount in excess of the maximum compensation amount, if specified. 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. The billings shall also include the total amount billed to date by Contractor prior to the current invoice.

d. 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.

ADDITIONAL TERMS AND CONDITIONS

Additional terms and conditions applicable to the Work are as further described in Exhibit D, hereby attached and incorporated by reference.

**EXHIBIT B
INSURANCE**

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

1. Required by County of Contractor with one or more workers, as defined by ORS 656.027. Contractor, its subcontractors, if any, and all employers providing work, labor, or materials under this Contract are subject employers under the Oregon Workers' Compensation Law, and shall either comply with ORS 656.017, which requires said employers to provide workers' compensation coverage that satisfies Oregon law for all their subject workers, or shall comply with the exemption set out in ORS 656.126. Contractor shall require its subcontractors, if any, providing services under this Contract to maintain appropriate insurance coverage.

2. X Required by County Not required by County

Professional Liability insurance with a limit of \$2,000,000 for each claim and aggregate. This is to cover damages caused by error, omission or negligent acts related to the professional services to be provided under this Contract. The Contractor shall endeavor to maintain such coverage for a period of at least two years after the contract is completed or exercise an extended reporting period of at least one year after cancellation of said policy.

3. X Required by County Not required by County

General Liability insurance with a combined single limit, or the equivalent, of \$1,000,000 for each claim, incident, or occurrence, with an aggregate limit of \$2,000,000 for Bodily Injury and Property Damage. It shall include contractual liability coverage for the indemnity provided under this Contract subject to the policy's terms, conditions and exclusions.

4. X Required by County Not required by County

Automobile Liability insurance with a combined single limit, or the equivalent, of \$1,000,000 for each accident for Bodily Injury and Property Damage, including coverage for owned, hired, or non-owned vehicles, as applicable.

5. Certificates of Insurance. Contractor shall furnish evidence of the insurance required in this Contract. The insurance for general liability and automobile liability must include an endorsement including the County, its officers, elected officials, and employees as additional insureds with respect to County's vicarious liability arising from Contractor's provision of the Work under this Contract. The Contractor shall be financially responsible for all pertinent deductibles, self-insured retentions and/or self-insurance.

6. Notice of cancellation or non-renewal. Contractor shall endeavor to provide at least thirty (30) days written notice to the County prior to cancellation or non-renewal at the following address: Clackamas County Procurement Division, 2051 Kaen Road, Oregon City, OR 97045 or procurement@clackamas.us.

EXHIBIT C
CERTIFICATION STATEMENT FOR INDEPENDENT CONTRACTOR

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

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

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

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

- ___ A. Maintains a business location that is: (a) Separate from the business or work of the County; or (b) that is in a portion of their own residence that is used primarily for business.
- B. Bears the risk of loss, shown by factors such as: (a) Entering into fixed price contracts; (b) Being required to correct defective work; (c) Warranting the services provided; or (d) Negotiating indemnification agreements or purchasing liability insurance, performance bonds, or errors and omissions insurance.
- ___ C. Provides contracted services for two or more different persons within a 12-month period, or routinely engages in business advertising, solicitation or other marketing efforts reasonably calculated to obtain new contracts to provide similar services.
- ___ D. Makes significant investment in the business through means such as: (a) Purchasing tools or equipment necessary to provide the services; (b) Paying for the premises or facilities where the services are provided; or (c) Paying for licenses, certificates or specialized training required to provide the services.
- ___ E. Has the authority to hire and fire other persons to provide assistance in performing the services.

Additional provisions:

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

Contractor Signature _____ Date _____

EXHIBIT D
Contractor Agreement

Scope of Work for Clackamas County ("Client", "you" or "your") Health and Welfare Plans Consulting Services

The objective of this Scope of Work ("SOW") is to confirm the scope of work Mercer Health & Benefits LLC ("Mercer", "our" or "we") will provide and the compensation for this engagement. All capitalized terms not defined in this SOW shall have the meanings ascribed to them in the Contract.

Service Details

I. Description of Mercer responsibilities: See attached Description of Work.

Additional projects requested by you that individually are not expected to exceed \$10,000 will be billed (i) at time and expense (based on our hourly billing rate in effect at the time the work is performed), (ii) on a fixed fee basis or (iii) as otherwise mutually agreed in writing and will in each case, be subject to the terms of this Contract.

II. Description of Client's responsibilities:

You agree to furnish to Mercer's representatives all information they may request as it pertains to your insurance contracts, rates, rating schedules, surveys, reserves, retentions and all other financial data they may request for their study of your present and future requirements in connection with the insurance program to which this SOW applies.

You understand that the failure to provide, or cause to provide, complete, accurate, up-to-date, and timely documentation and information to us, an insurer, or other service provider, whether intentional or by error, could result in impairment or voiding of coverage or service. You agree to review all policies endorsements and program agreements delivered to you by us and will advise us of anything which you believe is not in accordance with the negotiated coverage and terms within thirty (30) days following receipt.

3. The Work under this SOW shall be provided from July 1, 2018 through June 30, 2019 ("Initial Term").

4. Compensation/fees: We will be compensated for the Work described herein in consideration of your payment of our professional fees of \$163,300.

Mercer will make a good-faith effort to identify for Clackamas County any services that are considered out-of-scope prior to starting this Work. Mercer will bill for these services at our current billing rates unless otherwise agreed upon by project.

We will bill you monthly in the amount of \$13,608.33, with such invoices due within thirty (30) days of your receipt of an undisputed invoice. If any invoice remains unpaid for longer than ninety (90) days from the date of the invoice, we may either suspend the provision of the services until payment is received or terminate this SOW with immediate effect.

In the event Client terminates this SOW/Contract prior to the expiration of the Initial Term or Renewal Term, any unpaid compensation with respect to such Term (or the current year in the event

of a multiple year term) shall be accelerated and shall be due and payable to Mercer within 30 days of the effective date of termination.

In addition, we will receive the following compensation remitted by a third party (i.e., carrier) for Work performed under this SOW and set forth on our annual Transparency Form.

Line(s) of Coverage/Work	Policy Period	Amount/Rate of Compensation
Voluntary Unum Long Term Care	January through December	15% of premium
Optmn Stop Loss	January through December	1% of premium

In addition to other compensation listed, we also bill for necessary travel and other expenses related to the services requested.

In the event Client terminates this SOW /Contract prior to the expiration of the Initial Term, the parties agree that Mercer will not have received full compensation for Work performed and that further compensation is due Mercer. For purposes of determining compensation owed to Mercer, the parties further agree that Mercer will be deemed to have earned, for the performance of its annual Work, 100% of its annual compensation.

Client shall pay any outstanding compensation due Mercer in the event the Client is unable to cause its carrier or replacement broker to pay Mercer a portion of future commissions to fully compensate Mercer for Work performed based on the schedule above. In such event Mercer will calculate the outstanding compensation based on commissions paid to Mercer for the final full month that Mercer served as broker of record.

5. Subcontractors

We may need to utilize various subcontractors (Subcontractors) in the course of our provision of the Work to assist us in such tasks as printing and mailing, development of interactive tools, graphic design, etc. You consent to our use of the Subcontractors and further acknowledge and agree that we may provide such Subcontractors with your Confidential Information, including Work, on a confidential and a need to know basis for the purposes contemplated by this SOW.

6. Use of Name and Logo

The parties agree and acknowledge that Mercer may need to use your name, logo, tradename and/or mark in connection with the performance of the Work. You consent to such use, and grant to Mercer and its agents, vendors and subcontractors of a non-exclusive, royalty-free, limited license to use your name, logo and any tradename or mark only in connection performance of the Work. The parties further agree that such use will be subject to your instruction, direction or prior written approval as to style, form, context and general content. You will not unreasonably delay or withhold your approval.

7. Additional Disclosures

a. We are not responsible for the adequacy or effectiveness of any insurance program or policy implemented by another broker, or any acts or omissions occurring prior to our engagement. We do not act on behalf of any insurer or other service provider, are not bound to utilize any particular insurer or service provider, and do not have the authority to make binding commitments on behalf of any insurer or service provider. In addition, we do not guarantee or make any representation or warranty that coverage or service can be placed on terms acceptable to you. We are not responsible for the solvency or ability to pay claims of any insurance carrier or for the solvency or ability of any service provider to provide service. Insurance carriers or service

providers with which your other risk or insurance coverage or other business is placed will be deemed acceptable to you, in the absence of contrary instructions from you.

- b. Mercer and its Affiliates serve a wide array of clients, including clients who compete with or whose interests may be adverse to one another. In addition, Mercer interacts with insurance carriers and other service providers through numerous business and contractual relationships, including serving as a broker for its clients and receiving commissions from carriers, providing consulting or administration services to carriers, and auditing carriers' claims data. Mercer is committed to serving each of its clients in an objective manner and maintaining the confidentiality of each of its client's information. Notwithstanding anything to the contrary in the engagement letter, when providing Work to Client pursuant to this SOW, Mercer may use its Affiliates, from time to time, to assist in the performance of such Work.
- c. You expressly acknowledge that, with respect to the provision of the Work, we are not nor are any of our Affiliates or subcontractors, an "administrator" within the meaning under applicable law, including the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), nor, with respect to the provision of the Work, are we or any of our Affiliates or subcontractors a "fiduciary" within the meaning under applicable law or ERISA, unless provided otherwise herein or required by applicable law.
- d. Title V of the Gramm-Leach-Bliley Act and related state laws and regulations establish limitations on the use and distribution of non-public information collected by financial institutions from their customers and consumers. Our insurance-related work qualifies us as a financial institution under this Act. Our Privacy Policy Notice and additional information regarding other compliance policies at Mercer, including our conflicts of interest policy is available at the following web address <http://www.v.mercer.com/insights/point/2014/transparency.html>. At this web address you will also find information regarding Marsh & McLennan Companies, Inc. and its subsidiaries' equity interests in certain insurers and contractual arrangements with certain insurers and wholesale brokers.
- e. Mercer is unable to provide insurance broking, risk consulting, claims or other services or provide any benefit to the extent that the provision of such services or benefit would violate applicable law or expose Mercer or its Affiliates to any sanction, prohibition or restriction under UN Security Council Resolutions or under other trade or economic sanctions, laws or regulations.

DESCRIPTION OF WORK

Client Strategy Development

- Conduct strategic planning sessions to receive agreed upon performance metrics of Client's current employee benefit coverages and establish future objectives and strategies to manage Client's employee benefit coverages to which this agreement applies.
 - Planning session - 1-3 per year
 - Pre-renewal meeting - 1 per year
 - Renewal meeting- 1-3 per year
 - Benefit Review Committee meetings - up to 12 per year
- Meet with the Client's key designated representatives as needed to discuss strategy, healthcare trends and changes, and open items.
- Benchmark health plan costs and employee contributions to industry, size and regional standards on an annual basis.

Renewal

Develop a mutually agreeable renewal action plan and timeline that meets the Client's stated objectives.

- With respect to the Client's annual renewal process, we will conduct a benefits program review of the benefits coverages for which Mercer is named Broker of Record to include negotiations, on Client's behalf, with current vendors/carriers, as per Client's request.
- At client's request, conduct review of vendor-produced communication and open enrollment pieces for plan rate and accuracy.

Negotiation/Placement

- Identify and negotiate on the Client's behalf with insurers and other benefit program providers and keep the Client informed of significant developments as we understand them to be. We shall be authorized for purposes of this Agreement to represent and assist the Client in all discussions and transactions with all insurers/providers, provided that we shall not place any insurance or vendor programs on behalf of the Client unless so authorized by the Client.
- Assist with documentation and other steps to obtain commitments for and implement insurance policies and other services selected by the Client regarding its employee benefits program upon the Client's instructions, it being understood that we will not independently verify or authenticate information not originating from us necessary to prepare proposals or underwriting submissions and other documents relied upon by insurers/providers, and the Client shall be solely responsible for the accuracy and completeness of such information and other documents furnished to us and/or insurers/providers and shall sign any application for coverage. The Client understands that the failure to provide all necessary information to an insurer, employee benefit provider or third party vendor whether intentional or by error, could result in the impairment or voiding of coverage or service.
- Provide Client access to insurers with whom Mercer is appointed and other service providers as agreed with the Client and use our commercially reasonable efforts to place insurance policies and other services selected by the Client regarding its employee benefit program on behalf of the Client, if so instructed by the Client.
- Review policies and contracts for accuracy and conformity to specifications provided by Client and the related negotiated coverages.

Ongoing Analysis/Projections

- Analyze factors driving Client's plan costs if experience data is available. In connection with such analysis, we will receive carrier/vendor utilization reports to determine possible causes of identified cost increases. Assist Client in managing these risks and costs.
- Establish claims reports for identified coverages medical, dental, vision, life and disability detailing paid claims (and reimbursements if applicable), premium/funding and enrollment summaries. We will review these reports with Client on a quarterly basis and will identify and discuss trends and potential problems.
- Provide agreed upon cost projections on a quarterly basis to determine gross cost scenarios that meet Client objectives.
- If applicable, review funding methodology on an annual basis to determine if benefits funding structure meets Client objectives.

Vendor Management

- Act as a liaison between the Client and insurers/ providers for the lines of coverage and services that we have placed or obtained on behalf of Client or for which Mercer is named as the broker of record.
- Follow up with insurance carriers/providers for timely issuance of policies and contracts.
- Follow up with insurance carriers/providers with respect to the payment or return premiums.
- Assist the Client in connection with issues relating to interpretation of insurance policies/contracts placed by us.
- Review information/coverage summaries for all new coverages and updates on changes to existing coverages.
- Assist Client in the implementation of the benefit program by dealing with vendor/carriers and performing contract and SPD review for purposes of determining conformity to agreed upon plan provisions and costs.

Stop Loss Services

By retaining Mercer, Client hereby authorizes Mercer to perform the following services on Client's behalf with respect to its Stop Loss insurance coverage placement:

- Meet with Client to develop a stop loss placement strategy that meets Client's stated objectives.
- Request and negotiate the terms and conditions of the stop loss insurance renewal from the current insurer and present the insurer's proposed renewal package to Client.
- Conduct a stop loss marketing as agreed based on a list of stop loss carriers selected by Client and its desired terms of coverage.
- If necessary, facilitate communication between Clients' medical and prescription drug vendors and stop loss insurer to establish reporting responsibilities and timing of data required for the purpose of securing stop loss coverage.
- Follow up with insurance carrier for timely issuance of policies and contracts.
- Review policies and contracts for accuracy and conformity to specifications provided by Client in the placement strategy meeting.
- We will assist Client with access to the stop loss insurance marketplace and use our commercially reasonable efforts to place stop loss policies selected by Client on its behalf, if so instructed.
- If requested, we shall transmit information and data supplied by Client or on its behalf without independently verifying the accuracy, completeness or timeliness of the data to the stop loss insurer.

Important Limitations on Mercer's Marketing of Client's Stop Loss Policy

We do not make any representations about an insurer's or MGU's payment or claims denial practices. We do not warrant in any way that all claims submitted to the stop loss carrier will be approved and

ultimately reimbursed. Also, the terms and conditions of covered claims for the stop loss insurance policy may not fully correlate with the benefits covered under Client's benefits program.

With respect to Client's Stop Loss insurance coverage placement. Client is responsible for the following:

- Client will name Mercer as the broker-of-record for your stop loss coverage.
- Client will provide all data/information as required by the stop loss insurer in a timely manner. Client is responsible for the accuracy and completeness of such data and information.
- Client is responsible for timely submission of claims requests and confirmation that appropriate reimbursements have been issued by the stop loss insurer.
- Client is responsible for disclosing all potentially high exposure claims as defined by the stop loss insurer.
- Client is responsible for reviewing and executing a confirmation of coverage letter before binding of coverage.

Other Services

Provide the following health and welfare plan legislative and regulatory compliance support as mutually agreed:

- Updates on pertinent federal benefits legislation and their potential impact to employers' health and welfare benefit plans
- Consultative and strategic guidance related to compliance with [RS, DOL and HHS regulations as mutually agreed from time-to-time
- Assist Client in responding to inquiries related to federal laws and regulations including ERISA, COBRA, HIPAA and the Affordable Care Act (ACA).
- Assist in reviewing and drafting of health and welfare plan SPDs, SMMs, and mutually agreed plan documents for medical, dental, vision, life and disability.
- Access to Mercer seminars, roundtables, executive forums and webcasts.
- Access to Mercer Select Intelligence site, research capabilities, self-help tools, and forms

While our team of ERISA attorneys are available to review documents and advise on issues, since we are not a law firm, we cannot practice law or render legal opinions

2018/2019 Out-of-Scope Health and Benefit Services

Fees for the services listed below will be determined and approved separately from this SOW.

All out of scope projects must be agreed to in advance by Mercer and Client prior to implementation. Fees for these services will be proposed and agreed upon by Client prior to commencing any work on Client's behalf. Out of scope services include but are not limited to:

Development and production of communication materials

Claim pharmacy or eligibility audits

Collective bargaining assistance. Includes attendance at bargaining sessions, education of bargaining units or teams, analysis and materials

Competitive bidding and placement of vendors

Custom benchmarking

Consulting regarding development and/or compliance of wellness programs

Mental Health Parity compliance evaluation



February 28, 2019

Board of County Commissioner
Clackamas County

Members of the Board:

A Board Order Approving a Tax Foreclosed Property for Declaration as Surplus

Purpose/Outcomes	Return the tax foreclosed parcel to the tax rolls
Dollar Amount and Fiscal Impact	Dollar amount varies depending on sale results.
Funding Source	N/A
Duration	Management and disbursement of tax foreclosed and surplus properties are ongoing.
Previous Board Action	A Study Session with the Board of County Commissioners was held on February 5, 2019 to discuss this parcel. The Board approved the parcel to be declared as surplus for sale or distribution.
Strategic Plan Alignment	1. Management of Tax Foreclosed properties. 2. Build public trust through good government.
Contact Person	Rick Gruen, Property Disposition Manager, 503-742-4345

BACKGROUND: Clackamas County's Department of Assessment and Taxation annually forecloses on tax-delinquent properties. The foreclosure process is a six year process – taxes must be delinquent for three years, then a two year judgment is filed and in the sixth year foreclosure occurs and the property is deeded to the County in lieu of uncollected taxes. Following the recording of the deed in the County's name, the management and disposition is then transferred to the Property Disposition Division of the Department of Business and Community Services. Property Disposition Division is tasked with managing, administering and dispersing of tax foreclosed real property assets in a cost effective manner that will provide a County public benefit. No General Fund resources are allocated to this program.

RECOMMENDATION: Staff respectfully recommends the Board of County Commissioners approve the list of the tax foreclosed property for declaration as surplus. Minimum bid amount will be based on the appraisal.

Respectfully submitted,

Laura Zentner, Director
Business and Community Services

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

In the Matter of the Sale of Real Property
acquired by Clackamas County by tax deed,
gift or purchase



Board Order No. _____

Page 1 of 2

This matter coming before the Board of County Commissioners at this time, and it appearing to the Board that the real property parcels listed below, having been acquired by Clackamas County by tax deed, gift or purchase, are not currently in use for County purposes; and

IT FURTHER APPEARING a list of the proposed auction properties was circulated and reviewed by County Department Heads and other governmental agencies within Clackamas County and are therefore presumed surplus.

IT FURTHER APPEARING to the Board that the following properties should be offered for public sale for not less than the minimum price specified herein and in compliance with applicable portions of ORS Chapter 275.110;

NOW, THEREFORE, the Board finds that the real property parcels listed below are surplus, and selling them is in the best interest of the citizens of Clackamas County.

IT IS HEREBY ORDERED that the following properties shall be offered for sale for not less than the minimum price specified herein and in compliance with the applicable portions of ORS Chapter 275.110.

Parcels may be encumbered with restrictions, easements, conditions and covenants.

**Clackamas County Surplus Real Estate Public Oral Auction
Development Services Building
Auditorium
150 Beaver Creek Rd., Oregon City, OR 97045
Date: May 1, 2019**

**REGISTRATION begins at 9:00 a.m. / AUCTION begins at 10:00 a.m.
*** Auction will be conducted in English and in U.S. currency only *****

Description	Assessed Real Market Value \$	Minimum Bid \$	Deposit Amount- 20% of the Minimum Bid
22E07DB02200 Improved Parcel- 5220 SE Oetkin Way Milwaukie, OR 97267 Approximately .20 Acres Land Only	\$373,365	\$71,000	\$14,200

In the Matter of the Sale of Real Property
 acquired by Clackamas County by tax deed,
 gift or purchase



Board Order No. _____
 Page 2 of 2

Description	Assessed Real Market Value \$	Minimum Bid \$	Deposit Amount- 20% of the Minimum Bid
32E06BB00900 and 1000 Unimproved Parcels – off of 5 th Street and South End Road in Oregon City Approximately .53 Acres Combined	\$71,693	\$17,924	\$3,585
52E08DD09400A2 Improved Structure Only- off of Shaver and 211 in Molalla Approximately .05 Acres	\$71,050	\$35,525	\$7,105

IT IS FURTHER ORDERED that the Sheriff of Clackamas County, Oregon be and is hereby directed and authorized to sell the above described properties in the manner provided by law and for not less than the minimum price herein determined; and

IT IS FURTHER ORDERED that the Sheriff of Clackamas County, Oregon is hereby directed to advertise the sale of the above described property in a newspaper of general circulation, circulated and published in Clackamas County, once a week for four consecutive weeks prior to such sale. Such notice shall include the date, time and place of sale, the description of the properties or interests therein to be sold, the market value of the properties or interests as determined by a certified appraiser or the Clackamas County Department of Taxation and Assessment, the minimum price as fixed by the Board at the date of this order. The Sheriff shall further make a proof of publication of such notice in the same manner as proof of publication of summons is made and shall file such proof of publication with the county clerk. Copies of all Sheriff Sale documents shall be forwarded to the Property Resources section upon sale completion; and

IT IS FURTHER ORDERED that the Director or Deputy Director of Business and Community Services, is hereby authorized to act as representative of the Board of County Commissioners in the acceptance and execution of all documents necessary for the sales; and that the Director of Finance for Clackamas County is hereby authorized to execute all necessary documentation for the fulfillment of any contracts of sale associated with these sales at the time of fulfillment, as representative for the Board of County Commissioners.

DATED this 28th day of February, 2019

BOARD OF COUNTY COMMISSIONERS

Chair

Recording Secretary



Dave Cummings
Chief Information Officer

Technology Services

121 Library Court Oregon City, OR 97045

February 28, 2019

Board of County Commissioners
Clackamas County

Members of the Board:

Approval for Service Level Agreement with Molalla River School District

Purpose/Outcomes	Clackamas Broadband eXchange (CBX) is looking for approval for a Service Level Agreement (SLA) with the Molalla River School District for the lease of dark fiber.
Dollar Amount and Fiscal Impact	The Molalla River School District will pay an annual fee of \$3,060.00 for the use of the dark fiber.
Funding Source	The dark fiber currently exists for the connection. No funds will be expended to complete this connection.
Duration	Effective upon signature by the board the SLA is effective for ten (10) years.
Previous Board Action	Board has previously approved CBX SLA's with other Clackamas County school districts.
Strategic Plan Alignment	<ol style="list-style-type: none">1. Build a strong infrastructure.2. Build public trust through good government.
Contact Person	Dave Devore (503)723-4996

BACKGROUND:

CBX is requesting a new SLA with the Molalla River School District for the lease of dark fiber. CBX provided a response to the Molalla River School District due to the issuance of a Request for Proposals from the school district. The Molalla River School District must request proposals to be eligible for reimbursement through the e-rate process from the Universal Service Administrative Company.

RECOMMENDATION:

Staff respectfully recommends approval to enter into this new fiber agreement with the Molalla River School District. Staff further recommends the Board delegate authority to the Technology Services Director to sign agreements necessary in the performance of this agreement.

This Service Level Agreement has been reviewed and approved by County Counsel.

Sincerely,

Dave Cummings
CIO Technology Services

Clackamas County

FIBER OPTIC SERVICE LEVEL AGREEMENT

Molalla River School District

(Customer Name)

1. Recitals

WHEREAS, Clackamas County (County) desires to provide to Molalla River School District (Customer) the Services set forth in this Agreement, between the specified Customer sites listed in Appendix A, and at the price contained in Appendix A; and

WHEREAS, Customer desires to use the Services; and

WHEREAS, the Parties desire to set forth herein their respective rights and obligations with respect to the provision of Services,

NOW, THEREFORE, in consideration of the foregoing, and the mutual covenants and promises set forth herein, intending to be legally bound, the Parties agree as follows.

2. Fiber Optic Network Description

County will provide Customer with point-to-point single mode fiber optic network connectivity, including a termination panel for the fiber optic cables at each Customer premises on a path designated by the County.

3. Service Description

Service provided to Customer by County is physical connectivity of one (or more) strands of optical fiber ("Fiber"), between sites specifically identified in Appendix A for the exclusive use of the Customer's internal communication needs. Each site listed in Appendix A will have a single mode fiber termination.

4. Construction and Installation Requirements

- a. County, when installing fiber optic cables on the property of Customer, shall do so in a neat and professional manner. Routing and location of these cables shall be mutually agreed upon between the parties.
- b. Customer shall secure any easements, leases, permits or other agreements necessary to allow County to use existing pathways to, into and within each site to the demarcation point for service. Customer shall provide a path for the fiber optic cable from the point of entry into the site to the termination panel that complies with all applicable building, electrical, fire and related codes.
- c. Subject to the terms of this Agreement, and at no cost to County, Customer shall provide adequate environmentally controlled space and electricity required for

installation, operation, and maintenance of the County's fiber optic cables used to provision the service within each site.

- d. Customer shall provide a clean, secure, relatively dry and cool location (consistent with environmental requirements for fiber optic network connectivity equipment) at each of its premises for necessary equipment.
- e. Customer will provide or arrange for County and its employees, agents, lessees, officers and its authorized vendors, upon reasonable notice, to have reasonable ingress and egress into and out of Customer properties and buildings in connection with the provision of service.
- f. If the presence of asbestos or other hazardous materials exists or is detected, Customer must have such hazardous materials removed immediately at Customer's expense or notify County to install the applicable portion of the fiber optic network in areas of any such site not containing such hazardous material. Any additional expense incurred as a result of encountering hazardous materials, including but not limited to, any additional equipment shall be borne by Customer.
- g. County shall have no obligation to install, operate, or maintain Customer-provided facilities or equipment.
- h. County shall construct Fiber into each Customer building enumerated herein; splice fiber into existing County fiber optic resources; terminate County's optical fiber in each Customer building; test and certify appropriate Fiber performance at each Customer location; and provide the appropriate "hand-off's" at each location for Customer utilization. Test results for physical connection will be made available upon request.

5. Term of Agreement

At such time as County completes installation and connection of the necessary facilities and equipment to provide service herein, County shall then certify and notify Customer in writing that the service is available for use, and the date of such notice shall be called the "Service Start Date." Unless terminated this Agreement shall remain in effect for a period of ten (10) years beyond the "Service Start Date".

6. Rates

In return for County providing the services described in Appendix A for the term indicated herein, Customer shall pay County both nonrecurring construction/installation charges and recurring charges for services as specified in Appendix A as it shall be amended from time to time.

7. Payment Options

a. Annual Payments

County shall provide an invoice for twelve months of service (July 1 through June 30), or prorated weekly for any portion thereof, to Customer at the

beginning of the service period. The annual charge shall be payable within thirty (30) days of receipt of invoice. Interest charges shall be assessed for late payments in accordance with Appendix A. If the Customer fails to pay within sixty (60) days of receipt of an invoice it shall constitute grounds for County to terminate the Agreement upon appropriate advance written notice to Customer.

b. Alternative Payment Frequency

If Customer demonstrates that prepaid billings present a hardship, Customer may prepay semi-annually, quarterly, and in extreme circumstances may pay monthly. County shall provide an invoice for one quarter or month of service, or prorated weekly for any portion thereof, to Customer at the beginning of the service period. The quarterly or monthly charge shall be payable within thirty (30) days of receipt of invoice. Interest charges shall be assessed for late payments in accordance with Appendix A. If the Customer fails to pay within sixty (60) days of receipt of an invoice it shall constitute grounds for County to terminate the Agreement upon appropriate advance written notice to Customer.

8. Fiber Maintenance

County shall maintain the structural aspects of the Fiber in good operating condition, utilizing sound engineering practices and in accordance with Appendix B, throughout the Agreement Term. In the event the Fiber fails at any time to meet the specifications outlined in Appendix C, County shall endeavor to restore the Fiber to meet the specification standards in as timely and expedited a manner as reasonably possible.

County may subcontract for testing, maintenance, repair, restoration, relocation, or other operational and technical services it is obligated to provide hereunder.

Customer shall promptly notify County of any matters pertaining to any damage or impending damage to or loss of the use of the Fiber that are known to it and that could reasonably be expected to adversely affect the Fiber. County shall promptly notify Customer of any matters pertaining to any damage or impending damage to or loss of the Fiber that are known to it and that could reasonably be expected to adversely affect the Fiber and/or Customer's use thereof.

9. Confidentiality

All Customer data, voice, or video transmission using County fiber optic facilities shall be treated by County as confidential information, to the extent allowable by law. County agrees that this information shall not be made available, in any form, to any party other than County or its agents or contractors as may be necessary to conduct maintenance or repair activity, without written permission of Customer, except as required by law.

10. Content Control and Privacy

Customer shall have full and complete control of, and responsibility and liability for, the content of any and all communications transmissions sent or received using the Fiber.

11. Assignment and Successors

Either party may assign this Agreement upon prior written consent of the other party. Such consent shall not be unreasonably withheld. Upon such assignment, all rights and obligations of County and Customer under this Agreement shall pass in total without modification to any successor(s) regardless of the manner in which the succession may occur.

12. Damage

County shall be responsible for restoring, or otherwise repairing to its prior condition, any portion of the Customer's premises or facilities, which are damaged by County or its agents. Customer shall be responsible for restoring, or otherwise repairing to its prior condition, any portion of County's connectivity equipment or other facilities, located at Customer premises, which are damaged by Customer or its agents.

Customer will reimburse all related Costs associated with damage to the Fiber caused by the negligence or willful misconduct of Customer, its affiliates, employees, agents, contractors or customers, except to the extent caused by the gross negligence or willful misconduct of County, its affiliates, employees, contractors or agents. "Cost(s)", as used herein include the following: (a) labor costs, including wages, salaries, and benefits together with overhead allocable to such labor costs; and (b) other direct costs and out-of-pocket expenses on a pass-through basis (such as equipment, materials, supplies, contract services, sales, use or similar taxes, etc.).

13. Force Majeure

Neither party hereto shall be deemed to be in default of any provision of this Agreement, for any failure in performance resulting from acts or events beyond the reasonable control of such party. For purposes of this Agreement, such acts shall include, but shall not be limited to, acts of nature, civil or military authority, civil disturbance, war, strikes, fires, power failure, other catastrophes or other force majeure events beyond the parties' reasonable control, provided however that the provisions of this paragraph and article shall not preclude Customer from cancelling or terminating this Agreement as otherwise permitted hereunder, regardless of any force majeure event occurring to County.

14. Consequential Damages

NOTWITHSTANDING ANY PROVISION OF THIS AGREEMENT TO THE CONTRARY, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL, OR PUNITIVE DAMAGES, WHETHER FORSEEABLE OR NOT, ARISING OUT OF, OR IN CONNECTION WITH, TRANSMISSION INTERRUPTIONS OR DEGREDDATION, INCLUDING BUT NOT LIMITED TO DAMAGE OR LOSS OF PROFITS OR EQUIPMENT, LOSS OF PROFITS OR REVENUE, COST OF CAPITAL, COST OF REPLACEMENT SERVICES OR CLAIMS OF CUSTOMERS, WHETHER OCCASIONED BY ANY REPAIR OR MAINTENANCE PERFORMED BY OR FAILED

TO BE PERFORMED BY A PARTY, OR ANY OTHER CAUSE WHATSOEVER, INCLUDING WITHOUT LIMITATION BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE OR STRICT LIABILITY.

15. Public Contracting Provisions

The provisions of Oregon public contracting law, ORS 279B.020 through 279B.235, to the extent applicable, are incorporated herein by this reference.

16. Non-Appropriation or Change in Law

Notwithstanding any other provisions of this Agreement, the parties hereby agree and understand that if either party fails to receive expenditure authority sufficient to allow that party, in the exercise of its reasonable administrative discretion, to perform under this Agreement, or if federal or state laws, regulations or guidelines are modified or interpreted in such a way that a party is prohibited from performing under this Agreement, the Agreement shall terminate and Customer shall pay County any remaining pro rata fees for services due to the date of such termination payable pursuant to Section 7 of this Agreement.

17. Compliance with Laws

Customer shall comply with all applicable federal, state county and city laws, ordinances and regulations, including regulations of any administrative agency thereof, heretofore or hereafter adopted or established, during the entire term of this Agreement.

18. Taxes and Assessments

- a. Customer agrees to pay any and all applicable national, federal, state, county and local taxes, fees, assessments or surcharges, and all other similar or related charges, which are imposed or levied on the Fiber, or because of Customers use of the Services under this Agreement (collectively, "Taxes), whether or not the Taxes are imposed or levied directly on the Customer, or imposed or levied on the County because of or arising out of the use of the Services either by the Customer, or its affiliates, or anyone to whom Customer has sold or otherwise granted access to the Services. Customer agrees to pay these Taxes in addition to all other fees and charges as set forth elsewhere in this Agreement.
- b. "Taxes" include, but are not limited to, business and occupation, commercial, district, excise, franchise fee, gross receipts, license, occupational, privilege, property, Public Utility Commission, right-of-ways, utility user, or other similar taxes, fees surcharges and assessments as may be levied against Customer, or against County and passed through to Customer.

19. Termination

- a. Either party may terminate this Agreement for convenience following 90 day's written notice to the other party.

b. In the event Customer terminates this Agreement based upon County 's default or failure to perform as described in this Agreement, County shall reimburse to Customer the pro rata amounts paid on the unexpired term of this Agreement.

c. If Customer terminates this Agreement for any reason other than County's default or failure to perform, County shall be entitled to 5% of the remaining contract amount for the unexpired term of this Agreement.

20. Default

1. Either of the following events shall constitute a default:

a. Failure to perform or comply with any material obligation or condition of this Agreement by any party; or

b. Failure to pay any sums due under this Agreement.

2. Any defaulting party shall have thirty (30) days in which to cure following written notice of default by the non-defaulting party.

21. Amendment

Any amendments to this Agreement shall be in writing and shall be signed by all parties.

22. No recourse Against the Grantor

Customer shall have no recourse whatsoever against County or its officials, boards, commissions, or employees for any loss, costs, expense, or damage arising out of any provision or requirement contained herein, or in the event this Agreement or any part thereof is determined to be invalid.

23. Notice

Any notice hereunder shall be in writing and shall be delivered by personal service or by United States certified or registered mail, with postage prepaid, or by facsimile addressed as follows:

Notice to the County

Manager, Clackamas Broadband Express
Clackamas County Technology Services
121 Library Court
Oregon City, Oregon 97045
Fax Number (503) 655-8255

with a copy to

Chief Information Officer
Clackamas County Technology Services
121 Library Court
Oregon City, Oregon 97045
Fax Number: (503) 655-8255

Notice to the Customer

Rick Gill, Business Manager
Molalla River School District
412 S Sweigle Ave
Molalla, OR 97038
503-829-6740

with a copy to

Gary Dix, Technology Supervisor
Molalla River School District
412 S Sweigle Ave
Molalla, OR 97038
503-829-6740

Either Party, by similar written notice, may change the address to which notices shall be sent.

24. Debt Limitations

This Agreement is expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10, of the Oregon Constitution, and County's performance is contingent upon funds being appropriated therefore. Any provisions herein which would conflict with law are deemed inoperative to that extent.

25. No Attorney Fees

No attorney fees shall be paid for or awarded to either party in the course of any dispute or other recovery under this Agreement. It is the intent of the parties that each shall bear the costs of its own legal counsel.

26. Governing Law

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

District of Oregon.

27. Whole Contract

THIS CONTRACT CONSTITUTES THE COMPLETE AND EXCLUSIVE STATEMENT OF THE CONTRACT BETWEEN THE PARTIES RELEVANT TO THE PURPOSE DESCRIBED HEREIN AND SUPERSEDES ALL PRIOR AGREEMENTS OF PROPOSALS, ORAL OR WRITTEN, AND ALL OTHER COMMUNICATION BETWEEN THE PARTIES RELATING TO THE SUBJECT MATTER OF THIS CONTRACT. NO WAIVER, CONSENT, MODIFICATION, OR CHANGE OF TERMS OF THIS CONTRACT WILL BE BINDING ON EITHER PARTY EXCEPT AS A WRITTEN ADDENDUM SIGNED BY AUTHORIZED AGENTS OF BOTH PARTIES.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the date and year first above written.

Clackamas County

By (signature): _____

Name: _____

Title: _____

Date: _____

Customer

Molalla River School District

(Customer Name)

By (signature):  _____

Name (print): Richard Gill

Title: Business Manager

Date: 2-20-19

APPENDIX A

SERVICE AND RATE SCHEDULE

1. Specified Services and Rates

The following are the sites, services, and rates agreed to by County and Customer at which Customer shall be provided services on the fiber optic network during the term of the Agreement. It is understood by both parties that service to these sites shall be provided for the rates below, subject to any rate increases otherwise applicable in accordance with terms herein. It is further understood that, during the term of the Agreement, Customer may add services to existing or new locations, or change services and/or locations, but that such changes are subject to the rates for such additional services.

2. Construction, Installation and Activation

For construction, installation and activation work and provision of fiber optic network components, the County shall charge Customer nonrecurring charge(s) as specified in Section 5 of Appendix A.

3. Service Changes and Conversions

Both parties agree that Customer may add or change services during the term of the Agreement, but that such changes are subject to applicable rates, and upgrade and downgrade charges.

4. Annual Recurring Charges

	From (Site Name & Address)	To (Site Name & Address)	Service	Monthly Rate (\$)
1	Molalla High School 357 Francis St. Molalla, Oregon 97038	Clackamas Education Service District 13455 SE 97th Ave. Clackamas, Oregon 97015	One Pair (two) dark fibers	\$255.00

5. Nonrecurring Charges

	From (Site Name & Address)	To (Site Name & Address)	Service	Amount (\$)
1	Molalla High School 357 Francis St. Molalla, Oregon 97038	Clackamas Education Service District 13455 SE 97th Ave. Clackamas, Oregon 97015	Construction	\$0

6. Late Payment Interest

Customer will be charged interest for any payment made after its due date (thirty (30) days after receipt of invoice). Interest is charged at a rate of one and a half percent (1.5%) per month, or eighteen percent (18%) annually, on any installment not paid when due.

7. **Annual Consumer Price Index (CPI) Adjustments**

All fees and minimum charges are subject to Consumer Price Index (CPI) adjustments, to be applied annually. The amount of the fees and charges specified herein may increase annually by a percentage up to the change in the West Region (West City Size B/C 2.5 Million or less) Consumer Price Index of the US Dept. of Labor, Bureau of Labor Statistics (<https://www.bls.gov/regions/west/data/xg-tables/ro9xg01.htm>), based upon the rate of change as stated from the last month reported to the same month of the preceding year. In the event such Consumer Price Index (or a successor or substitute index) is not available, a reliable governmental or other nonpartisan publication evaluating the information theretofore used in determining the Consumer Price Index shall be used in lieu of such Consumer Price Index.

Remainder of this page intentionally left blank.

APPENDIX B

MAINTENANCE AND OPERATIONS SPECIFICATIONS AND PROCEDURES

1. Defined Terms

- a. "Routine Maintenance" is all preventive maintenance activities and repairs.
- b. "Non-Routine Maintenance" is all efforts and activities in response to an emergency circumstance which requires restoration of service.

2. General

- a. County shall operate and maintain a Network Control and Management Center (NCAM) staffed twenty-four (24) hours a day, seven (7) days a week, by trained and qualified personnel. County shall maintain (503) 742-4219 telephone number to contact personnel and NCAM. County's NCAM personnel shall dispatch maintenance and repair personnel along the fiber optic network to repair problems detected through the NCAM's remote surveillance equipment, by the Customer, or otherwise.
- b. In the event Customer identifies a circumstance which requires restoration of service, Customer shall provide NCAM personnel the name and address of the facility with the problem, the identification number of the Fiber circuits in question, and the name and telephone numbers of Customer's personnel to contact for site access and status updates. NCAM personnel shall immediately contact a County technician and provide the Customer contact information. County technician shall contact Customer within one (1) hour of initial call.
- c. If the County's technician cannot repair the service interruption by telephone, County shall use commercially reasonable efforts to have its first maintenance employee or contractor at the site requiring repair within five (5) hours of the initial call to the NCAM. County will then work continuously until service has been restored.
- d. County shall use commercially reasonable efforts to notify Customer seven (7) days prior to the date of any planned non-emergency maintenance activity. In the event that a County planned activity is canceled or delayed for any reason as previously notified, County shall notify Customer as soon as reasonably possible and will comply with the provisions of the previous sentence to reschedule any delayed activity.

3. Fiber Optic Network

- a. County shall maintain the fiber optic network in good and operable condition and shall repair the fiber in a manner consistent with industry standards and using commercially reasonable efforts.
- b. County shall perform appropriate routine maintenance on the fiber optic network in accordance with County's then current preventive maintenance procedures. County's maintenance procedures shall not substantially deviate from industry practice.

4. Restoration

- a. When restoring damaged fiber, the Parties agree to work together to restore all traffic as quickly as possible. County, immediately upon arriving on the site of the damage, shall determine the best course of action to be taken to restore the fiber and shall begin restoration efforts.
- b. It will be the responsibility of County and Customer to report to one another respectively any known environmental hazards which would restrict or jeopardize any maintenance work activities in shelters or right of way areas of operation.
- c. Upon notification of interruption of fiber optic network service, disrepair, impairment or other need for repair or restoration of the fiber and the location of the damaged fiber, County shall pursue commercially reasonable efforts to mobilize technicians to achieve necessary repair or restoration, including, but without limitation, having maintenance personnel at the affected site within five (5) hours after receipt of such notice with the required restoration material and equipment.
- d. In the event that Customer's use of the fiber optic network is interrupted due to an occurrence of a force majeure event, repairs and restoration shall be made as expeditiously as reasonably possible. Customer recognizes that five (5) hour response time represents optimal conditions, and may be impossible to achieve when emergency restoration of fiber optic network integrity is required or when responding to certain remote locations. Actual response times will be influenced by such factors as terrain, weather conditions present at the time the request is made and actual mileage to the fault site.
- e. For purposes of this section, "commercially reasonable efforts" means activities and performances consistent with prudent utility practice, existing contract provisions for County technicians and/or employees, practices required for preserving the integrity of the fiber optic network, and response times that do not jeopardize the health and safety of the employees, contractors and agents of County and Customer.

5. Customer shall be responsible for paying County standard maintenance fees for

any calls to County for maintenance issues related to the Fiber that County later confirms as resulting from another source other than functionality of the Fibers.

Remainder of this page intentionally left blank.

APPENDIX C

FIBER SPLICING AND TESTING STANDARDS AND PROCEDURES

1. Fiber and Connector Standards

a. **Connector Standards**

The loss value of any pigtail connector and any associated fiber jumper or pigtail with matching mode field diameters will not exceed .5dB at 1550 nm. The loss value of a connector and its associated jumper with mismatched mode field diameters should not exceed .8 dB.

b. **Field Splice Standards**

The objective for each splice is an averaged loss value of 0.1 dB or less when measured bi-directionally with an OTDR at 1550 nm. In the event of damage and subsequent restoration of the Fibers, commercially reasonable efforts will be made to restore the Fibers to this standard. If after 3 restoration splicing attempts, County is not able to produce a loss value of 0.1 dB or less bi-directionally at 1550 nm, then 0.5 dB or less bi-directionally at 1550 nm will be acceptable. Fibers not meeting the 0.1 dB or less specification will be identified as Out Of Specification (OOS). Documentation of the three attempts (re-burns) to bring the OOS fiber within specification will be provided.

c. **Span Loss**

It is County's responsibility to insure proper continuity of all fibers at the fiber level, not just the pigtail level. Any "frogs" or fibers that cross in the route will be remedied by County. The following span loss calculation will be used:

$$(A * L) + (0.1 * N) + C = \text{Acceptable Span Loss}$$

A = Attenuation per KM at 1550 nm

L = Optical length of cable measured in kilometers (from OTDR Trace)

N = Number of splices in a span

C = Connector loss. The connector loss will not exceed .5dB. The section test will have (2) pigtail connectors/splices under test, so 1.0dB will be allowed for this loss.

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DAN JOHNSON
MANAGER

DEVELOPMENT AGENCY

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

February 28, 2019

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of a Commercial Lease with Miles Fiberglass and Composites, Inc.

Purpose/Outcome	Execute a lease with Miles Fiberglass and Composites, Inc. for Agency owned property located on Otty Road
Dollar Amount and Fiscal Impact	Monthly rent payment of \$20,065.00
Funding Source	N/A.
Duration	Lease will expire on January 1, 2021
Previous Board Action/Review	None
Strategic Plan Alignment	Build public trust through good government
Contact Person	David Queener, Development Agency Program Supervisor, 503-742-4322

The Agency owns property located at 8707 SE Otty Road, which has been leased by Miles Fiberglass since September 2010. Per the terms of the previous lease, both parties can negotiate a renewal or extension.

Miles Fiberglass has agreed to a new lease term that will expire on January 1, 2021. Terms of the lease include monthly rent in the amount of \$20,065.00 and their responsibility for payment of all property taxes. The lease also requires a one hundred eighty (180) day notification by the Agency of its intent to terminate the lease in the event a redevelopment opportunity arises.

County Counsel has reviewed and approved the proposed lease.

RECOMMENDATION

Staff respectfully recommends that the Board, as the governing body of the Clackamas County Development Agency, execute this lease with Miles Fiberglass and Composites, Inc.

Respectfully submitted,

David Queener, Program Supervisor
Development Agency

COMMERCIAL LEASE

8855-8707 SE OTTY ROAD

**Landlord: Clackamas County
Development Agency**

**Tenant: Miles Fiberglass &
Composites, Inc.**

_____, 2019

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COMMERCIAL LEASE

Date: _____, 2019

Between: Clackamas County Development Agency (“Landlord”)
Development Services Building
150 Beavercreek Road
Oregon City, OR 97045

And: Miles Fiberglass & Composites, Inc. (“Tenant”)
8855 SE Otty Road
Happy Valley, OR 97086

RECITALS

WHEREAS, Landlord and Tenant executed a lease September 15, 2010, which expired October 1, 2013 (“Previous Lease”); and

WHEREAS, Landlord and Tenant executed an extension to the Previous Lease on December 30, 2013, which will expire on December 31, 2016 (the extension to the Previous Lease, together with the Previous Lease agreement shall be collectively referred to herein as the “Previous Lease”); and

WHEREAS, Landlord and Tenant executed another extension to the Previous Lease on December 22, 2016, which expired on December 31, 2018 (the extension to the Previous Lease, together with the Previous Lease agreement shall be collectively referred to herein as the “Previous Lease”); and

WHEREAS, Tenant desires to continue leasing the Premises, as defined below, and the Landlord desires to continue leasing the Premises to Tenant.

Section 1. Property; Term of the Lease

1.1 Premises. Landlord leases to Tenant, and Tenant leases from Landlord, the premises (the “Premises”) known as 8855-8707 Otty Road in Happy Valley, Oregon, and more completely described in Exhibits A and B.

1.2 Storage Property Option. Tenant has the additional option of leasing the adjoining property, more specifically described as Township 1 South, Range 2 East, Section 28CB Tax Lot 1200 (“Storage Property”).

1.3 Starting Date: Tenant’s rights under the Lease shall continue uninterrupted from the term set forth in the Previous Lease.

1.4 Termination Date: The first event below that occurs shall terminate the Lease.

1.4.1 12:01 a.m. on January 1, 2021. This Lease is not subject to automatic renewal, however Landlord and Tenant reserve the right to subsequently

negotiate its renewal or extension, or other alternative for permitting Tenant to continue its occupancy of the Premises past the termination date set out immediately above.

1.4.2 If Agency obtains an opportunity to develop the Premises, prior to the expiration of the Lease term in 1.4.1, Agency may terminate the Lease upon one hundred and eighty (180) days written notice to Tenant.

1.4.3 Other events as provided in the Lease, specifically default (Sections 14 and 15), damage or destruction of the Premises (Section 10), and condemnation (Section 11).

Section 2. Possession and Condition of the Premises.

2.1 Tenant's right to possession and Landlord's and Tenant's obligations under the Lease shall continue uninterrupted from the term set forth in the Previous Lease.

2.2 Tenant accepts the Premises "as-is" without any warranty or representation by Landlord as to its condition, fitness for any particular purpose, or habitability. Tenant acknowledges that Landlord has no obligation to make any change or improvement to the Premises or pay any cost, expend any sum, or incur any liability to make any change or improvement.

Section 3. Rent

3.1 Rent: Tenant shall pay as rent to Landlord the sum of Twenty Thousand Sixty-Five and 00/100 Dollars (\$20,065.00) per month, payable in advance at the offices of Landlord as set out below in Section 17.5 below. If Tenant elects to rent the Storage Property, the Tenant shall pay additional rent of Six Hundred and 00/100 Dollars (\$600.00) per month.

3.2 Security Deposit: Landlord reaffirms the receipt of, and shall continue to hold Tenant's security deposit of Seven Thousand Five Hundred and 00/100 Dollars (\$7,500).

3.3 Waiver of Relocation Benefits: Tenant recognizes that, while Landlord is a public entity, this transaction will not be subject to any relocation benefits. Tenant is under taking a voluntary relocation at the conclusion of this Lease, or any extension thereof.

Section 4. Use of the Premises

4.1 Permitted Use: The Premises shall be used for the current operations of Tenant's business and for no other purpose without the consent of Landlord, which consent shall not be unreasonably withheld.

4.2 Restrictions on Use: In connection with the use of the Premises, Tenant shall:

4.2.1 Refrain from any activity that would make it impossible to insure the Premises against casualty, and

4.2.2 Conform to all applicable laws and regulations of any public authority affecting the Premises and Tenant's use and correct, at Tenant's own expense,

any failure of compliance created through Tenant's fault or by reason of Tenant's use.

4.2.2.1 Notwithstanding any failure by Landlord to object to any such acts or work by Tenant, its assignees, agents, or contractors, Landlord shall have no responsibility for Tenant's failure to meet all applicable laws, regulations, or requirements.

4.2.2.2 Landlord declares, and Tenant acknowledges, that Landlord is not a law-making or regulatory authority, and that Landlord does not have the ability to initiate, terminate, or affect the outcome of any compliance action a public authority might take against the Premises. Landlord lacks the capacity, through executing this Lease or any other action, to declare that Tenant's present and contemplated future activities on the Premises conform to all applicable laws and regulations of any public authority.

4.2.3 Neither Landlord nor Tenant shall do or suffer any waste to the Premises.

4.3 No Partnership: Landlord is not a partner or joint venturer with Tenant in connection with the business carried on under this Lease, and Landlord shall have no obligation with respect to Tenant's debts or other liabilities, and no interest in Tenant's profits.

4.4 Hazardous Substances: Tenant shall not cause or permit any Hazardous Substance to be spilled, leaked, disposed of, or otherwise released on or under the Premises. Tenant may use or otherwise handle on the Premises only those Hazardous Substances typically used or sold in the prudent and safe operation of its business. Tenant may store such Hazardous Substances on the Premises only in quantities necessary to satisfy Tenant's reasonably anticipated needs. Tenant shall comply with all Environmental Laws and exercise the highest degree of care in the use, handling, and storage of Hazardous Substances and shall take all practicable measures to minimize the quantity and toxicity of Hazardous Substances used, handled, or stored on the Premises. On the expiration or termination of this lease, Tenant shall remove all Hazardous Substances from the Premises.

4.4.1 The term "Environmental Law" shall mean any federal, state, or local statute, regulation, or ordinance or any judicial or other governmental order pertaining to the protection of health, safety, or the environment.

4.4.2 The term "Hazardous Substance" shall mean any hazardous, toxic, infectious, or radioactive substance, waste, and material as defined or listed by any Environmental Law and shall include, without limitation, petroleum oil and its fractions.

4.5 Asbestos: Prior to its possession under the terms of this Lease, Tenant was the owner in possession of the Premises. Landlord relies upon Tenant's assurances that Tenant is knowledgeable as to the presence of any asbestos on the Premises, and that Tenant will take responsibility for any federal, state, regional, or local measures required for asbestos abatement or control during the term of this Lease.

Section 5. Repairs and Maintenance

5.1 Tenant's Obligations: Tenant shall be responsible for all repairs, maintenance, replacements, or improvements on the Premises, except damage caused by fire and other risks covered by fire and extended coverage insurance, and acts of God. Landlord shall be under no obligation to make or perform any repairs, maintenance, replacements, alterations, or improvements whether they be extraordinary or ordinary.

5.1.1 Standard of work: Tenant, at its exclusive expense, shall keep the Premises in the same condition and repair as the Premises were at the date the Lease was executed.

5.1.2 Abatement: Tenant shall have no right to an abatement of rent or any claim against Landlord for any inconvenience or disturbance resulting from any activities performed in conformance with this provision.

5.2 Reimbursement for Repairs Assumed: If Tenant fails or refuses to make repairs that are required by Section 5.1, Landlord may make the repairs and charge the actual costs of repairs to Tenant.

5.2.1 Tenant shall reimburse such expenditures by Landlord on demand together with interest at the rate of nine percent (9%) per annum from the date of expenditure by Landlord, but if reimbursement is made by Tenant within 30 (thirty) days of demand by Landlord, no interest shall attach.

5.2.2 Except in an emergency creating an immediate risk of personal injury or property damage, Landlord may not perform repairs that are the obligation of the Tenant and charge the Tenant for the resulting expense unless at least 10 (ten) days before work is commenced, the Tenant is given notice in writing outlining with reasonable particularity the repairs required, and Tenant fails within that time to initiate such repairs in good faith and pursue the repairs to completion with due diligence.

5.3 Inspection of Premises: Landlord, with a 10 (ten) day written notice to Tenant, shall have the right to inspect the Premises at any reasonable time or times to determine their general condition and the necessity of any repair. In the event of an emergency Landlord may inspect the Premises without first giving notice.

Section 6. Alterations

6.1 Alterations Prohibited Without Consent: Tenant may make improvements or alterations on the Premises of any kind without first obtaining Landlord's written consent if the total cost of the improvements or alterations does not exceed \$10,000. If the total cost of the improvements or alterations exceeds \$10,000, Tenant must first obtain Landlord's written consent, which may not be unreasonably withheld. All alterations shall be made in a good and workmanlike manner, and in compliance with applicable laws and building codes.

6.2 Ownership and Removal of Alterations: All improvements and alterations performed on the Premises shall be the property of Landlord when installed, and Tenant shall have no obligation to remove any alteration or improvement; however:

6.2.1 At Landlord's written request, Tenant shall remove improvements and alterations installed by Tenant and restore the Premises to its state as of the date

the Tenant took possession of the Premises under the Previous Lease, unless Landlord had earlier specifically provided otherwise in writing.

6.2.2 Landlord shall be entitled to all heating, electrical, and plumbing fixtures, and Tenant shall be entitled to all its equipment, whether attached to the Premises or not.

Section 7. Insurance and Indemnification

7.1 Insurance: Tenant shall keep the Premises insured at Tenant's expense sufficient to protect the value of the improvements, the income stream attributable to Tenant's business operations, and Tenant's responsibility to indemnify Landlord.

7.1.1 Fire and Casualty: Tenant shall continue to insure the Premises against fire and other risks covered by a standard fire insurance policy with an endorsement for extended coverage. Tenant shall deliver to Landlord a copy of the insurance policy with an endorsement naming the Landlord as an additional insured.

7.1.2 General Liability: Tenant shall obtain and at all times maintain, at its sole cost, a comprehensive commercial general liability insurance policy with a responsible company naming Landlord and Clackamas County, their officers, commissioners, agents, and employees, as insured or additional insureds against liability for any and all claims and suits for damages or injuries to persons or property arising from or arising out of the Premises or the operations thereon. Tenant is not required to insure Landlord and Clackamas County against liability, loss, and costs attributable solely and exclusively to acts or omissions of Landlord and Clackamas County, or Landlord's and Clackamas County's officers, agents, and employees.

7.1.2.1 This comprehensive general liability policy must provide coverage on a current basis for both bodily injury and property damage of not less than \$1,000,000 (one million dollars) for injury to one person, \$3,000,000 (three million dollars) for injury to two or more persons in one occurrence, and \$1,000,000 (one million dollars) for damage to property. The deductible may not exceed \$10,000 (ten thousand dollars) per occurrence.

7.1.2.2 Such insurance shall cover all risks arising directly or indirectly out of Tenant's activities on or any condition of the Premises.

7.1.3 All policies of insurance must contain a statement obliging the insurance carrier to notify Landlord of any material change, cancellation, or termination of the coverage at least 30 (thirty) days in advance of the effective date.

7.1.4 All insurance policies provided by Tenant shall be primary insurance and not contributing with any insurance maintained by the Landlord or Clackamas County.

7.1.5 All insurance policies provided by Tenant must contain a waiver of subrogation for the benefit of the Landlord and Clackamas County.

7.1.6 Tenant must give Landlord prompt and timely notice of any claim made or suit arising against the policies.

7.2 Indemnification

7.2.1 Tenant shall indemnify and defend Landlord from, and reimburse Landlord for, any cost, claim, loss, or liability suffered by Tenant or from a third-party claim arising out of or related to any activity of Tenant on the Premises or any condition of the Premises in the possession or under the control of Tenant including any such cost, claim, loss, or liability that may be caused or contributed to in whole or in part by Landlord's failure to effect any repair or maintenance required by this Lease including any cost, claim, loss, or liability suffered by Tenant or from a third-party claim for damage to the Premises. Tenant agrees to indemnify and defend Landlord and Clackamas County and their officers, commissioners, agents, and employees against all liability, loss, and costs arising from actions, suits, claims, or demands attributable in whole or in part to the acts or omissions of Tenant and Tenant's officers, agents, and employees.

7.2.2 Landlord shall have no liability to Tenant for any injury, loss, or damage caused by third parties, or by any condition of the Premises.

Section 8. Taxes: Tenant shall pay as due all real property taxes, personal property taxes, privilege taxes, excise taxes, business and occupation taxes, gross sales taxes, occupational license taxes, water charges, sewer charges, assessments, and all other governmental impositions and charges of every kind and nature whatsoever. As used herein, real property taxes include any fee or charge relating to the ownership, operation, management, maintenance, repair, rebuilding, occupancy, use, or rental of the Premises and includes any assessments for a public improvement.

8.1 Contest of Taxes: Tenant shall be permitted to contest the amount of any tax or assessment as long as such contest is conducted in a manner that does not cause any risk that Landlord's interest in the Premises will be foreclosed for nonpayment. While Landlord will cooperate with Tenant in any dispute as to the taxes, the proceeding must be filed in Tenant's name.

8.2 Real Property Taxes: Tenant shall pay property taxes assessed against the land and improvements. As set out in Section 8 above, Tenant shall pay all personal property taxes.

Section 9. Payment of Utilities Charges: Tenant shall pay when due all charges for services and utilities incurred in connection with the use, occupancy, operation, and maintenance of the Premises, including charges for fuel, water, gas, electricity, sewage disposal, power, refrigeration, air conditioning, telephone, and janitorial services. Landlord shall have no liability for the failure or interruption of utilities.

Section 10. Damage and Destruction

10.1 Partial Damage: If the Premises are partly damaged and Section 10.2 does not apply, the Premises shall be repaired by Tenant at Tenant's expense as set out in Section 5 above. Repairs shall be accomplished with all reasonable dispatch subject to interruptions and delays from labor disputes and matters beyond the control of Tenant and shall be performed in accordance with the provisions of Section 5.

10.2 Destruction: If the Premises are destroyed or damaged such that the cost of repair exceeds 50% (fifty percent) of the value of the structure before the damage, either party may elect to terminate the Lease as of the date of the damage or destruction by notice given to the other in writing not more than 10 (ten) days following the date of damage.

10.2.1 In the event of termination, all rights and obligations of the parties shall cease as of the date of termination and Tenant shall be entitled to the reimbursement of any prepaid amounts paid by Tenant and attributable to the anticipated term.

10.2.2 If neither party elects to terminate, Tenant shall proceed to restore the Premises to substantially the same form as prior to the damage or destruction. Work shall be commenced as soon as reasonably possible and thereafter shall proceed without interruption except for work stoppages on account of labor disputes and matters beyond Tenant's reasonable control.

10.2.3 Tenant shall retain as its sole property insurance proceeds attributable to the loss of income from the property. Landlord shall retain as its sole property insurance proceeds attributable to the destruction of the property.

10.3 Rent Abatement: Rent shall not be abated during the repair of any damage.

10.4 Landlord and Tenant reserve Tenant's ability to request a departure from Sections 10.1 and 10.2. Factors to be weighed in determining any departure from Sections 10.1 and 10.2 are identified as the portion of the Premises damaged, the extent of any damage, the amount of any insurance proceeds, anticipated income from continued and future subleases, and the remaining life of the Lease. Landlord, in choosing whether to agree or disagree with Tenant's request, must apply a standard of reasonableness rather than its sole discretion.

Section 11. Subleases and Eminent Domain

11.1 Subleases: Tenant shall have no right to sublease the Premises.

11.2 Condemnation.

11.2.1 Partial taking: If a portion of the Premises is condemned by an entity other than Landlord, and Section 11.3 does not apply, the Lease shall continue on the following terms:

11.2.1.1 Landlord shall be entitled to all of the proceeds of condemnation due it as owner of the Premises, and Tenant shall have no claim against Landlord as a result of the condemnation.

11.2.1.2 Tenant shall be entitled to all of the proceeds of condemnation due it as tenant of the Premises, and Landlord shall have no claim against Tenant as a result of the condemnation.

11.2.1.3 Landlord and Tenant shall negotiate to decide whether, considering the balance of the Premises left after taking and the remaining duration of the Lease:

11.2.1.3.1 Whether or not the Lease shall cease and terminate, or remain in full force and effect, and

11.2.1.3.2 Whether or not repairs and alterations to the Premises are reasonably practical.

11.2.1.3.3 The standard to be applied to this section is one of reasonableness, and not sole discretion.

11.2.1.4 Tenant's obligation to pay the rent identified in Section 3.1 shall be reduced following the vesting of title in the condemning authority only to the extent that the obligations identified in Section 3.1 apply to the balance of the Premises remaining after condemnation.

11.2.1.5 If a portion of Landlord's property not included in the Premises is taken, and severance damages are awarded on account of the Premises, or an award is made for detriment to the Premises as a result of activity by a public body not involving a physical taking of any portion of the Premises, this shall be regarded as a partial condemnation to which Section 11.2.1 applies.

11.3 Total Taking: If a condemning authority other than Landlord takes all of the Premises or a portion sufficient to render the remaining Premises reasonably unsuitable for the use that Tenant was then making of the Premises, the Lease shall terminate as of the date the title vests in the condemning authorities.

11.3.1 Landlord shall be entitled to all of the proceeds of condemnation due it as owner of the Premises, and Tenant shall have no claim against Landlord as a result of the condemnation.

11.3.2 Tenant shall be entitled to all of the proceeds of condemnation due it as tenant of the Premises, and Landlord shall have no claim against Tenant as a result of the condemnation.

11.4 Sale in Lieu of Condemnation: Sale of all or part of the Premises to a purchaser with the power of eminent domain in the face of a threat or probability of the exercise of the power shall be treated as a taking by condemnation.

Section 12. Liens

12.1 Except with respect to activities for which Landlord is responsible, Tenant shall pay as due all claims for work done on and for services rendered or material furnished to the Premises, and shall keep the Premises free from any liens.

12.1.1 If Tenant fails to pay any such claims or to discharge any lien, Landlord may do so and collect the cost as additional rent.

12.1.2 Any amount so added shall bear interest at the rate of nine percent (9%) per annum from the date expended by Landlord and shall be payable on demand. Such action by Landlord shall not constitute a waiver of any right or remedy that Landlord may have on account of Tenant's default.

12.2 Tenant may withhold payment of any claim in connection with a good-faith dispute over the obligation to pay, as long as Landlord's property interests are not

jeopardized.

12.3 If a lien is filed as a result of nonpayment, Tenant shall, within 10 (ten) days after knowledge of the filing, secure the discharge of the lien or deposit with Landlord cash or sufficient corporate surety bond or other surety satisfactory to Landlord in an amount sufficient to discharge the lien plus any costs, attorney fees, and other charges that could accrue as a result of a foreclosure or sale under the lien.

Section 13. Quiet Enjoyment

13.1 Landlord's Warranty: Landlord warrants that it is the owner of the Premises and has the right to lease them free of all encumbrances, except those encumbrances of record. Subject to these exceptions Landlord will defend Tenant's right to quiet enjoyment of the Premises from the lawful claims of all persons during the Lease term.

13.2 Estoppel Certificate: Either party will, within thirty (30) days after notice from the other, execute and deliver to the other party a certificate stating whether or not this Lease has been modified and is in full force and effect and specifying any modifications or alleged breaches by the other party. Failure to deliver the certificate within the specified time shall be conclusive on the party from whom the certificate was requested that the Lease is in full force and effect and has not been modified except as represented in the notice requesting the certificate.

Section 14. Default. The following shall be events of default:

14.1 Failure of Tenant to comply with any term or condition or fulfill any obligation of the Lease, including the payment of the charges set out as rent in Section 3.1, within 30 (thirty) days after the date of written notice by Landlord specifying the nature of the default with reasonable particularity. If the default is of such a nature that it cannot be completely remedied within the 30 (thirty) day period, this provision shall be complied with if Tenant begins correction of the default within the 30 (thirty) day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable.

14.2 Insolvency of Tenant; an assignment by Tenant for the benefit of creditors; the filing by Tenant of a voluntary petition in bankruptcy; an adjudication that Tenant is bankrupt or the appointment of a receiver of the properties of Tenant; the filing of any involuntary petition of bankruptcy and failure of Tenant to secure a dismissal of the petition within 30 (thirty) days after filing; attachment of or the levying of execution on the leasehold interest and failure of Tenant to secure discharge of the attachment or release of the levy of execution within 10 (ten) days shall constitute a default. If Tenant consists of two or more individuals or business entities, the events of default specified in this section shall apply to each individual unless within 10 (ten) days after an event of default occurs, the remaining individuals produce evidence satisfactory to Landlord that they have unconditionally acquired the interest of the one causing the default. If the lease has been assigned, the events of default so specified shall apply only with respect to the one then exercising the rights of Tenant under the lease.

14.3 Failure of Tenant for 30 (thirty) days or more to occupy the Premises for one or more of the purposes permitted under this Lease, unless such failure is excused under other provisions of this Lease.

Section 15. Remedies on Default

15.1 Termination: In the event of a default the Lease may be terminated at the option of Landlord by written notice to Tenant.

15.1.1 The written notice must specify the manner of default, and if applicable, Tenant's failure to cure the default within the limits set out in Section 14.1.

15.1.2 Whether or not the Lease is terminated by the election of Landlord or otherwise, Landlord shall be entitled to recover damages from Tenant for the default, and Landlord may reenter, take possession of the Premises, and remove any persons or property by legal action or by self-help with the use of reasonable force and without liability for damages and without having accepted a surrender.

15.2 Reletting: Following reentry or abandonment, Landlord may relet the Premises to any prospective new tenant deemed appropriate by Landlord, and may alter or refurbish the Premises, or both, or change the character or use of the Premises.

15.2.1 Landlord shall not be required to relet for any particular use or purpose regardless of the provisions of this Lease, or which Landlord considers detrimental to the Premises. Landlord shall not be required to lease to any tenant Landlord considers objectionable.

15.2.2 Landlord may relet all or part of the Premises, alone or in conjunction with other properties, for a term longer or shorter than the term of this Lease, on any reasonable terms and conditions, including allowances for rent-free occupancy or other rent concession.

15.3 Damages: In the event of termination or retaking of possession following default, Landlord shall be entitled to recover immediately, without waiting until the due date of any future rent or until the date fixed for expiration of the lease term, the following amounts as damages:

15.3.1 The loss of rents from the date of default until a new tenant is, or with the exercise of reasonable efforts could have been, secured and paying rent;

15.3.2 The reasonable costs of reentry and reletting including, without limitation, the cost of any cleanup, refurbishing, removal of Tenant's property and fixtures, costs incurred under Section 15.5, or any other expense occasioned by Tenant's default including any remodeling or repair costs, attorney fees, court costs, broker commissions, and advertising costs; and

15.3.3 Any excess of the value of the rent and all of Tenant's other obligations under this Lease over the reasonable expected return from the Premises for the period commencing on the date the Premises are relet, and continuing through the end of the term. The present value of future amounts will be computed using a discount rate equal to the average prime loan rate of three largest Oregon banks based on total deposits in effect on the date of trial.

15.4 Right to Sue More than Once: Landlord may sue periodically to recover damages during the period corresponding to the remainder of the lease term, and no action for damages shall bar a later action for damages subsequently accruing.

15.5 Landlord's Right to Cure Defaults: If Tenant fails to perform any obligation under this Lease, Landlord shall have the option to do so after 30 (thirty) days' written notice to Tenant. All of Landlord's expenditures to correct the default shall be reimbursed by Tenant on demand with interest at the rate of nine percent (9%) per annum from the date of expenditure by Landlord, unless said sums are paid within 30 (thirty) days of demand in which case no interest shall attach. Such action by Landlord shall not waive any other remedies available to Landlord because of the default.

15.6 Remedies Cumulative. The foregoing remedies shall be in addition to and shall not exclude any other remedy available to Landlord under applicable law.

Section 16. Surrender at Expiration

16.1 Condition of Premises: On expiration of the Lease term or earlier termination on account of default, Tenant shall surrender the Premises broom clean.

16.1.1 Alterations constructed by Tenant with permission from Landlord shall not be removed or restored to the original condition, unless the terms of permission for the alteration so require.

16.1.2. Depreciation and wear from ordinary use for the purpose for which the Premises are leased shall be excepted but repairs for which Tenant is responsible shall be completed to the latest practical date before such surrender.

16.1.3 Tenant shall have removed from the Premises all detritus of its business operations.

16.1.4 The Premises shall be free and clear of all subleases, tenancies, and occupancies.

16.1.5 Tenant's obligations under this section shall be subordinate to the provisions of Section 10 relating to destruction.

16.2 Fixtures: All fixtures placed on the Premises during the term shall remain the property of Tenant. Before expiration or other termination of the Lease term, Tenant shall remove, without injury to the Premises, all furnishings, furniture, and trade equipment and fixtures placed on the Premises during the term.

16.2.1 If Tenant fails to do so, this failure shall be an abandonment of the property, and Landlord may retain the property and all rights of Tenant with respect to it shall cease or, by notice in writing given to Tenant within 20 (twenty) days after removal was required, Landlord may elect to hold Tenant to its obligation of removal.

16.2.2 If Landlord elects to require Tenant to remove, Landlord may effect a removal and place the property in public storage for Tenant's account. Tenant shall be liable to Landlord for the cost of removal, transportation to storage, and storage, with interest at the legal rate on all such expenses from the date of expenditure by Landlord.

16.3 Holdover: If Tenant does not vacate the Premises at the time required,

Landlord shall have the option to treat Tenant as a month-to-month tenant, subject to all of the provisions of this Lease, except the provisions for term and at a rental rate equal to one and a half times (150%) of market rates per month, without any rights that would otherwise be provided by law with respect to a month-to-month tenancy. Landlord, in the alternative, may eject Tenant from the Premises and recover damages caused by wrongful holdover.

16.3.1 Failure of Tenant to remove fixtures, furniture, furnishings, or trade fixtures that Tenant is required to remove under this Lease shall constitute a failure to vacate to which this section shall apply if the property not removed will substantially interfere with occupancy of the Premises by another tenant or with occupancy by Landlord for any purpose including preparation for a new tenant.

16.4 The provisions of Section 16 shall survive any termination of this Lease.

Section 17. Miscellaneous

17.1 Entire Agreement: This Commercial Lease, including any exhibits attached to it, is the entire agreement between the parties with respect to the subject matter of this Lease. It supersedes all prior understandings between the parties, and is the final expression of their consensus. To the extent there are terms contained in the Previous Lease that are not inconsistent with this Commercial Lease, those terms shall remain applicable. This Lease may not be modified, changed, supplemented, or terminated, nor may any obligations under it be waived, except by a written instrument signed by the authorized party.

17.2 Nonwaiver: Waiver by either party of strict performance of any provision of this Lease shall not be a waiver of or prejudice the party's right to require strict performance of the same provision in the future or of any other provision. No extension of time for performing any obligation or act shall be treated as an extension of time for the performance of any other obligation or act.

17.3 Invalidity: If any term or provision of this Lease shall, to any extent, be invalid or unenforceable, the remainder of this Lease shall not be affected. Each term and provision of this Lease shall be valid and enforceable to the fullest extent permitted by law.

17.4 Applicable Law: Landlord and Tenant each acknowledge that this Lease has been negotiated and entered into in the State of Oregon. The parties expressly agree that this Lease shall be governed by, interpreted under, and enforced according to the laws of the State of Oregon, without giving effect to the conflict of laws provisions thereof.

17.5 Notices: Landlord and Tenant must use the addresses set out below for purposes of communicating under this Lease. Notices personally delivered shall be treated as received on their receipt at the office of the addressee. Messages sent by mail shall be sent by registered or certified mail, postage prepaid, return receipt requested, and shall be treated as received three days after deposit in the United States mail.

Landlord's Address: Development Agency Manager
Clackamas County Development Agency
Development Services Building
150 Beaver Creek Road
Oregon City, Oregon 97045

Tenant's Address: Miles Fiberglass & Composites, Inc.
8855 SE Otty Road
Happy Valley, Oregon 97086

17.6 Succession: This transaction is part and parcel of a related series of transactions between Landlord and Tenant. In these transactions the identity and qualifications of Landlord and Tenant are of special importance, one to the other. Neither Landlord nor Tenant shall have the right to assign their respective rights under this Lease. No assignee shall succeed to any of the rights and remedies under this Lease, and no assignee shall be able to claim specific performance.

17.7 Entry for Inspection: Landlord, with a 10 (ten) day written notice to Tenant, shall have the right to enter on the Premises at any time to determine Tenant's compliance with this Lease; to make necessary repairs to the building or to the Premises; to show the Premises to any prospective tenant or purchaser; to conduct surveys, inspections, tests and analysis necessary for the proposed Sunrise Corridor transportation project and, in addition, shall have the right, at any time during the last two months of the term of this Lease, to place and maintain on the Premises notices for leasing or selling of the Premises.

17.8 Interest on Rent and Other Charges: Any payment required of Tenant by this Lease shall, if not paid within 30 (thirty) days after it is due, bear interest at the rate of 9% (nine percent) per annum from the due date until paid.

17.8.1 If Tenant fails to make any payment required by this Lease to be paid to Landlord within 30 (thirty) days after it is due, Landlord may elect to impose a late charge of five cents per dollar (\$0.05/\$1.00) of the overdue payment to reimburse Landlord for the costs of collecting the overdue payment.

17.8.2 Tenant shall pay the late charge on demand by Landlord. Landlord may levy and collect a late charge in addition to all other remedies available for Tenant's default, and collection of a late charge shall not waive the breach caused by the late payment.

17.9 Merger: There shall be no merger unless and until all persons having an interest in this Lease, or in the leasehold estate created by this Lease, join in a written instrument effecting such merger and record the same.

17.10 Time of Essence: Time is of the essence of the performance of each of Landlord's and Tenant's obligations under this Lease.

17.11 Counterparts: This Agreement may be executed in two or more counterparts, each of which shall constitute an original and all of which together shall constitute one and the same Agreement.

The balance of this page has been intentionally left blank.

IN WITNESS WHEREOF, Landlord and Tenant have executed this Lease as of the date and year written above. The persons signing below each represent and warrant that each has the full right and authority to enter into this Lease and to bind the party for whom such person signs to the terms and provisions of this Lease.

Landlord: CLACKAMAS COUNTY DEVELOPMENT AGENCY, the duly designated Urban Renewal Agency of the County of Clackamas County

By: _____

Jim Bernard, Chair

Date: _____

Tenant: MILES FIBERGLASS & COMPOSITES, INC.

By: _____

Lori Miles-Olund, President

Date: _____



DAN JOHNSON
MANAGER

DEVELOPMENT AGENCY

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

February 28, 2019

Board of County Commissioners
Clackamas County

Members of the Board:

Granting of a Permanent Right of Way Easement for Road Purposes

Purpose/Outcome	Authorization for the Chair to execute a Permanent Right of Way Easement for Road Purposes in favor of Clackamas County to become part of SE Monroe Street.
Dollar Amount and Fiscal Impact	N/A
Funding Source	Not applicable. No funding is required as part of this transaction.
Duration	Permanent upon execution.
Previous Board Action/Review	The Board of County Commissioners previously approved a contract with Tapani, Inc. for construction of the Boyer Drive Extension Project.
Strategic Plan Alignment	“Build a strong infrastructure” and “Ensure safe, healthy and secure communities”.
Contact Person	Sharan Hams-LaDuca, Senior Right of Way Agent, Dept. of Transportation and Development, Engineering - 503-742-4675

BACKGROUND: The Clackamas County Development Agency has completed construction of the Boyer Drive Extension Project. This conveyance, after it is recorded, will be referenced in the post construction survey that will be submitted to the County Surveyor. The property from which this easement comes was purchased by the Agency as part of the project and needs to be conveyed to Clackamas County and subsequently become part of county maintained road right of way. The easement is described in the attached Exhibits “A” and “B”.

The Agency is requesting the Board grant this Permanent Right of Way Easement for Road Purposes to Clackamas County and “approve” the conveyance as required for recordation purposes.

County Counsel has reviewed and approved the proposed easement document.

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

- Approve the Permanent Right of Way Easement for Road Purposes by and between the Clackamas County Development Agency and Clackamas County.
- Delegate authority to the Chair to execute the Permanent Right Of Way Easement for Road Purposes.
- Record the Permanent Right of Way Easement in the Deed Records of Clackamas County at no cost to the Development Agency.

Respectfully submitted,

Dave Queener, Program Supervisor
Development Agency

Grantor: Clackamas County Development Agency		State of Oregon
Address: 150 Beaver creek Rd. Oregon City, OR 97045		
Grantee: Clackamas County 150 Beaver creek Rd. Oregon City, OR 97045		
After Recording Return to: Clackamas County Engineering 150 Beaver creek Rd. Oregon City, OR 97045		
Until a change is requested, all taxes shall be sent to: No Change		Accepted by Clackamas County by Act of the Road Official Acceptance Date: _____
Road Name: <u>Monroe Street</u> DTD Rd. File No.		Authorized by Clackamas County Ordinance No. 02-2009 Project:

PERMANENT RIGHT OF WAY EASEMENT FOR ROAD PURPOSES
(Corporate or Non Profit Grantor)

For value received, Clackamas County Development Agency, (Grantor), hereby grants, bargains, sells and conveys to Clackamas County, a political subdivision of the State of Oregon, its heirs, successors and assigns, (Grantee), a permanent easement dedicated to the public for road and right of way purposes, in, under, upon, and across Grantor's real property located in Clackamas County, State of Oregon.

Grantor's real property is more particularly described as follows: A parcel of land located in the NE 1/4 of Section 32, T1S, R2E, WM, more particularly described by Exhibit B of Property Line Adjustment Deed to Clackamas County Development Agency, recorded November 29, 2016 as Document No. 2016-081914, Clackamas County Deed Records.

The Permanent Right of Way Easement for Road Purposes is more particularly described as follows: A strip of land as described and depicted in Exhibits "A" and "B" attached hereto and by this reference made a part hereof (the Easement Area).

Grantee's rights include, but are not limited to, Grantee's right to enter upon and utilize the Easement Area for the purposes described in this document. Grantee may remove trees, shrubs, brush, paving or other materials within the Easement Area whenever necessary to accomplish these purposes.

Grantor, Grantor's heirs, successors, assigns or representatives, shall not construct or maintain any building or other structures upon the above described Easement Area.

This easement does not obligate the public or Grantee to replace landscaping, fencing, shrubs, trees or other improvements that may be placed within the Easement Area in the future, and which interfere with Grantee's use of the Easement Area for the purposes described in this document.

Statutory Land Use Disclaimer: Before signing or accepting this instrument, the person transferring fee title should inquire about the person's rights, if any, under ORS 195.300, 195.301 and 195.305 to 195.336 and Sections 5 to 11, Chapter 424, Oregon Laws 2007, Sections 2 to 9 and 17, Chapter 855, Oregon Laws 2009, and Sections 2 to 7, Chapter 8, Oregon Laws 2010. This instrument does not allow use of the property described in this instrument in violation of applicable land use laws and

regulations. Before signing or accepting this instrument, the person acquiring fee title to the property should check with the appropriate city or county planning department to verify that the unit of land being transferred is a lawfully established lot or parcel, as defined in ORS 92.010 or 215.010, to verify the approved uses of the lot or parcel, to determine any limits on lawsuits against farming or forest practices, as defined in ORS 30.930, and to inquire about the rights of neighboring property owners, if any, under ORS 195.300, 195.301 and 195.305 to 195.336 and Sections 5 to 11, Chapter 424, Oregon Laws 2007, Sections 2 to 9 and 17, Chapter 855, Oregon Laws 2009, and Sections 2 to 7, Chapter 8, Oregon Laws 2010.

In witness whereof, the above named Grantor has hereunto set Grantor's hand to this document on this _____ day of _____ 2019.

CLACKAMAS COUNTY DEVELOPMENT AGENCY,
the URBAN RENEWAL AGENCY OF CLACKAMAS COUNTY,
a corporate body politic under ORS Chapter 457

By: _____
Jim Bernard, Chair

STATE OF OREGON)
) ss.
County of Clackamas)

This instrument was signed and attested before me this _____ day of _____ 2019,
by Jim Bernard as Chair of the Board of County Commissioners on behalf of Clackamas County
Development Agency.

Notary Public for State of Oregon
My Commission Expires: _____

EXHIBIT A

SE BOYER DRIVE EXTENSION
October 22, 2018
OWNER: Clackamas County Development Agency
Page 1 of 2

County Project No. DA-88
Map & Tax Lot No.12E32AA-6100
Property No. 1

Tract 1 (Permanent Right-Of-Way Easement For Road Purposes)

A tract of land, as shown on attached Exhibit "B", lying in the Northeast One-Quarter of the Northeast One-Quarter of Section 32, Township 1 South, Range 2 East, of the Willamette Meridian, Clackamas County, Oregon, and being a portion of that tract of land as described by Exhibit B of Property Line Adjustment Deed to Clackamas County Development Agency, recorded November 29, 2016 as Document No. 2016-081914, Clackamas County Deed Records, said parcel being more particularly described as follows:

COMMENCING at the southeast corner of that parcel as shown on Exhibit B of said Document No. 2016-081914, said point also being on the west right-of-way line of SE 82nd Avenue (Oregon State Highway 213)(Market Road No. 38), as shown on Survey Number 2016-095, Clackamas County Survey Records;

Thence N00°01'35"W, along said west right-of-way line, 35.47 feet to the **TRUE POINT OF BEGINNING**;

Thence leaving said west right-of-way line S89°58'25"W, 10.00 feet to a point 10.00 feet westerly when measured at right angles to said west right-of-way line;

Thence N00°01'35"W, parallel with said west right-of-way line, 24.00 feet to a point;

Thence N55°06'08"W, 8.03 feet to a point;

Thence N89°53'51"W, 97.09 feet to a point on the west line of Exhibit B of said Document No. 2016-081914;

Thence N00°06'09"E, along said west line, 28.97 feet to the northwest corner of Exhibit B of said Document No. 2016-081914;

Thence tracing the north line of Exhibit B of said Document No. 2016-081914 the following three courses and distances:

Thence, S89°53'06"E, 33.53 feet to a point;

Thence, S00°06'54"W, 10.00 feet to a point:

Thence S89°53'06"E, 80.11 feet to a point on the west right-of-way line of SE 82nd Avenue (Oregon State Highway 213) (Market Road No. 38);

Thence, S00°01'35"E, along said west right-of-way line of SE 82nd Avenue (Oregon State Highway 213) (Market Road No. 38), 47.51 feet to **TRUE POINT OF BEGINNING**.

The parcel of land to which this description applies contains 2,792 square feet more or less.

This legal description and the basis of bearings thereof is based on Record of Survey SN 2016-095, Clackamas County Survey Records.



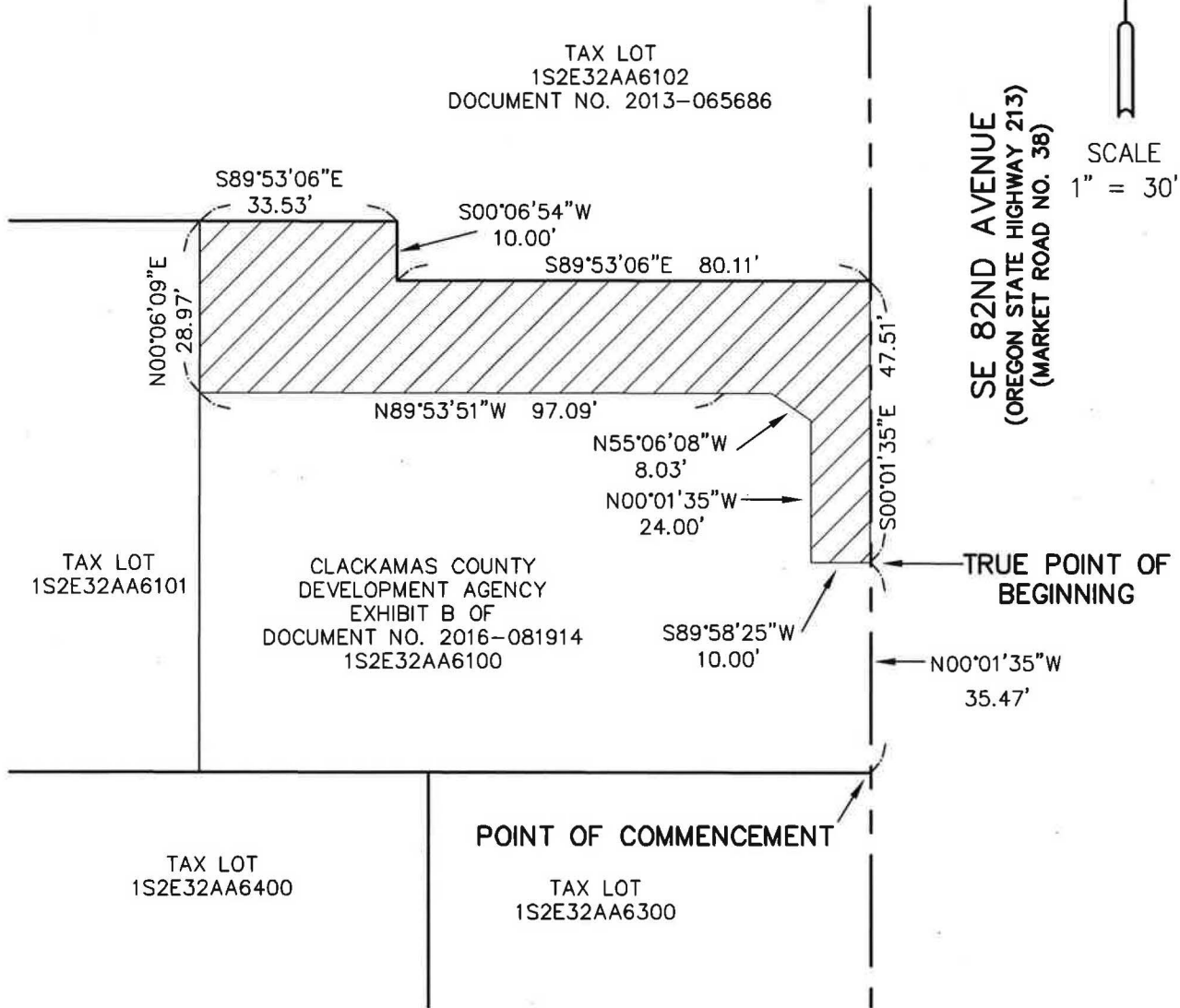
RENEWS: 12-31-2019

EXHIBIT "B"

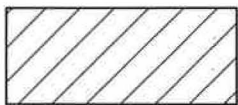
LOCATED IN THE NE 1/4 OF
SECTION 32, T.1S., R.2E., W.M.,
CLACKAMAS COUNTY, OREGON



SCALE
1" = 30'



LEGEND



TRACT 1
PERMANENT RIGHT-OF-WAY
FOR ROAD PURPOSES
± 2,792 SQ.FT.

SEE ATTACHED
LEGAL DESCRIPTION



**Harper
Houf Peterson
Righellis Inc.**

ENGINEERS • PLANNERS
LANDSCAPE ARCHITECTS • SURVEYORS

205 SE Spokane Street, Suite 200, Portland, OR 97202
phone: 503.221.1131 www.hhpr.com fax: 503.221.1171

CLA-76 GCB 10/22/2018 PAGE 1 OF 1



Gregory L. Geist
Director

February 28, 2019

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of an Intergovernmental Agreement between
Water Environment Services and the Oregon Department of Transportation for:
Highway 99E Paving Project Performance Bond Funding

Purpose/Outcomes	This agreement between WES and ODOT fulfills the construction performance bond required by ODOT to grant approval to WES to complete a paving project on Highway 99E in Oregon City.
Dollar Amount and Fiscal Impact	\$10,000 of WES funds are required from the District's approved FY 2018-2019 budget.
Funding Source	WES Sanitary Operating Fund
Duration	The IGA will terminate upon ODOT's relinquishment of all unused fund, or in the even that all of the funds are consumed.
Previous Board Action/Review	None.
Strategic Plan Alignment	This action supports both the County's and WES's Strategic Plan to build strong infrastructure.
Contact Person	Jessica Rinner, WES Capital Program Supervisor, 742-4551

BACKGROUND:

In August of 2019, WES became aware of a failure in its collection system. The incident was tracked to a wastewater manhole located between the north and southbound traffic lanes of Highway 99E, near Tumwater Dr. in Oregon City. An emergency repair was completed by River City Environmental. The repair included removing the manhole and digging a trench to construct a new pipe segment. Although River City completed an asphalt patch over the construction area, the area is smaller than is required by ODOT. ODOT requires a paving area of at least two lanes wide and 100 feet long any time pavement is disturbed.

In order to obtain a permit to pave this area of the highway, ODOT typically requires a performance bond. In lieu of the bond, ODOT has agreed to accept a \$10,000 deposit from WES. This amount will be held in ODOT's Bond Account for a 3-year period. Upon expiration of the 3-year period, WES may request the release of the funds from ODOT and ODOT has agreed to return any unused funds to WES.

RECOMMENDATION:

District staff recommends the Board of County Commissioners, acting as the governing body of Water Environment Services, approve the Intergovernmental Agreement between Water Environment Services and the Oregon Department of Transportation for Highway 99E paving.

Respectfully submitted,

Greg Geist, Director
Water Environment Services



Oregon

Kate Brown, Governor

Department of Transportation
Highway Division
9200 SE Lawnfield Road
Clackamas, OR 97015
Phone: (971) 673-6200
Fax: (503) 653-5655

Water Environment Services
150 Beaver Creek Rd
Oregon City, Or 97045

February 4, 2019

ATT: Nathan Seaver

Subject: Paving mitigation under permit:

Paving out of ODOT specifications for final lift

Memo of Understanding

Water Environment Services ("WES") will grind and inlay to the depth of 2" in marked area. (Full lane ,50' on each side from the center of the cut in both lanes)

WES will provide a maintenance guarantee for the pavement work for a period of 3 years from acceptance of the work in the form of a check in the amount of \$10,000 ("Funds"). WES will provide a check for the Funds to ODOT to be deposited in ODOT's Bond Account, where it will remain until the expiration of the 3-year period. Upon expiration of the 3-year period, WES may request release of the Funds from ODOT and ODOT agrees to return any unused Funds to WES.

In the event of pavement failure within the defined grind and inlay, WES will respond within 1 hr to temporarily repair the site until a permanent repair can be made.

WES will provide a 24/7 contact to ODOT District 2B for response purposes. If you have any questions, please contact me at (971-673-6226).

Kathi Hinkle
2B Permits Specialist

Water Environment Services

Date

Chair



Gregory L. Geist
Director

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of a Goods and Services Contract between Water Environment Services and Newco, Inc. a Corporation of Washington dba Cascade Columbia Distribution Company for the Chemical Supply for Water Environment Services

Purpose/Outcomes	Execution of the contract between Water Environment Services (“WES”) and Newco, Inc. a Corporation of Washington dba Cascade Columbia Distribution Company for the Chemical Supply needs of the various WES plants.
Dollar Amount and Fiscal Impact	The contract amount is not to exceed \$500,000.00 annually, with a total contract value of \$3,200,000.00.
Funding Source	WES Operations Fund. No General Funds involved.
Duration	June 30, 2022 with the option for two (2) additional two (2) year renewals.
Previous Board Action	N/A
Strategic Plan Assignment	<ol style="list-style-type: none">1. This project supports the WES Strategic Plan goal to provide properly functioning infrastructure.2. This project supports the County’s Strategic Plan of building a strong infrastructure that delivers services to customers and honors, utilizes, promotes and invests in our natural resources.
Contact Person	Darren Eki, Plant Operations Supervisor 503-557-2804

BACKGROUND:

Clackamas County Water Environment Services (WES) provides wastewater management services to over 150,000 people in Clackamas County, Oregon and operates multiple wastewater treatment plants; all of which utilize chemicals for process control.

WES includes the Tri-City WRRF, located in Oregon City servicing Happy Valley, West Linn, Gladstone and Oregon City; Kellogg Creek WRRF (formerly known as the Kellogg Creek WPCP) located in Milwaukie, serving Happy Valley, unincorporated North Clackamas County and wholesale customers in the City of Milwaukie and Johnson City, as well as the Hoodland Sewage Treatment Plant (STP), located in Welches serving the Mt. Hood Recreational Corridor of Clackamas County. The Boring STP serves the community of Boring.

Clackamas County WES manages all aspects of wastewater including wastewater treatment and biosolids management. Chemical demands at these facilities vary from Influent pH control of the MBR to chlorination/dechlorination of our Effluent. Biosolids processed in the plants’ digesters are currently dosed with polymer to initiate coagulation of solids, then hauled and land applied on agricultural lands in Sherman County.

The WES operated treatment facilities utilize various chemicals to meet regulatory compliance requirements. Daily consumption varies upon changes in flow, water quality, and process

control demands. The awarded contracts will be used to fulfill the chemical needs for regulatory compliance and to keep the plants running at optimal efficiency.

PROCUREMENT PROCESS:

The project was requested by Darren Eki and Kim McRobbie. This project was advertised in accordance with ORS and LCRB Rules on November 11, 2018. On December 18, 2018, six (6) proposals were received: Northstar Chemical, Inc.; Cascade Columbia Distribution Company; Univar USA, Inc.; Two Rivers Terminal LLC; Hasa, Inc.; and JCI Jones Chemicals. Upon evaluation of the submitted proposals, WES assembled an evaluation committee that scored Northstar Chemical, Inc.; Cascade Columbia Distribution Company; Univar USA, Inc.; and Two Rivers Terminal LLC the highest and recommended a contract be awarded to each. Hasa, Inc. and JCI Jones Chemicals were not offered a contract due to their submitted proposals being incomplete and failing to provide pricing.

The contract was reviewed and approved by County Counsel.

RECOMMENDATION:

Staff recommends that the Board of County Commissioners of Clackamas County, acting as the governing body of Water Environment Services, approve and execute the Contracts between Water Environment Services and Newco, Inc. a Corporation of Washington dba Cascade Columbia Distribution Company for the Chemical Supply for Water Environment Services with a contract amount not to exceed \$500,000.00 annually, with a total contract value of \$3,200,000.00.

Respectfully submitted,

Greg Geist, Director
Water Environment Services

Placed on the BCC agenda _____ by Procurement.



GOODS AND SERVICES CONTRACT

This Goods and Services Contract (this “Contract”) is entered into between **Newco, Inc. a Corporation of Washington dba Cascade Columbia Distribution Company** (“Contractor”), and Water Environment Services, a political subdivision of the State of Oregon (“District”) for the purposes of providing chemical supply and delivery to Water Environment Services.

I. TERM

This Contract shall become effective upon signature of both parties and shall remain in effect until **June 30, 2022**. This Contract may be renewed for two (2) additional two (2) year terms upon written approval of both parties. This Contract and any amendments to this Contract will not be effective until approved in writing by an authorized representative of the Board of County Commissioners of Clackamas County acting as the Governing Body for the District. This Contract supersedes and cancels any prior contracts between the parties hereto for similar services.

II. SCOPE OF WORK

This Contract covers the Scope of Work as described in RFP #2018-104 Chemical Supply for Water Environment Services published November 15, 2018 inclusive of Addenda #1, attached and hereby incorporated by reference as Attachment “A.” This Contract consists of the following documents which are listed in descending order of precedence and are attached and incorporated by reference, this Contract, Attachment “A”, and the Contractor’s Proposal attached and hereby incorporated by reference as Attachment “B.” Work shall be performed in accordance with a schedule approved by the District. The Contractor shall meet the highest standards prevalent in the industry or business most closely involved in providing the appropriate goods or services. The District Representatives for this contract are: Darren Eki and Kim McRobbie.

III. COMPENSATION

1. **PAYMENT.** The District agrees to compensate the Contractor on a time and material basis as detailed in this Contract. The maximum annual compensation authorized under this Contract shall not exceed **five hundred thousand dollars (\$500,000.00)** and the total Contract compensation shall not exceed **three million dollars (\$3,000,000.00)**.

2. **TRAVEL EXPENSE REIMBURSEMENT.** Authorized: Yes No
If travel expense reimbursement is authorized in this Contract, such expenses shall only be reimbursed at the rates in the Clackamas County Contractor Travel Reimbursement Policy, hereby incorporated by reference, in effect at the time of the expense is incurred.

3. **INVOICES.** Invoices submitted for payment in connection with this Contract shall be properly documented and shall indicate pertinent District contract and/or purchase order numbers. All charges shall be billed monthly (unless a different payment period is outlined in Attachment A) and will be paid net thirty (30) days from receipt of invoice and shall be subject to Oregon Revised Statute (“ORS”) 293.462. If Contractor fails to present invoices in proper form within sixty (60) calendar days after the end of the month in which the services were rendered, Contractor waives any rights to present such invoice thereafter and to receive payment therefor. Invoices shall be submitted to the District’s Representative at: Water Environment Services, 150 Beaver Creek Road, Oregon City, Oregon 97045 or vial email to deki@clackamas.us or kmcrobbie@clackamas.us.

IV. CONTRACT PROVISIONS

1. **ACCESS TO RECORDS.** Contractor shall maintain books, records, documents, and other evidence and accounting procedures and practices sufficient to reflect properly all costs of whatever nature claimed to have been incurred and anticipated to be incurred in the performance of this Contract. District and its

duly authorized representatives shall have access to the books, documents, papers, and records of Contractor which are directly pertinent to this Contract for the purpose of making audit, examination, excerpts, and transcripts. Such books and records shall be maintained by Contractor for a minimum of three (3) years, or such longer period as may be required by applicable law, following final payment and termination of this Contract, or until the conclusion of any audit, controversy or litigation arising out of or related to this Contract, whichever date is later.

2. AVAILABILITY OF FUNDS. District certify that sufficient funds are available and authorized for expenditure to finance costs of this Contract within its current annual appropriation or expenditure limitation, provided, however, that continuation of this Contract, or any extension, after the end of the fiscal period in which it is written, is contingent on a new appropriation or limitation for each succeeding fiscal period sufficient in amount, in the exercise of the District's reasonable administrative discretion, to continue to make payments under this Contract.

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 federal, state, county, and local laws, ordinances, and regulations applicable to the work to be done under this Contract. Contractor specifically agrees to comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules, and regulations. Contractor shall also comply with the Americans with Disabilities Act of 1990 (Pub. L. No. 101-336), Title VI of the Civil Rights Act of 1964, Section V of the Rehabilitation Act of 1973, ORS 659A.142, and all regulations and administrative rules established pursuant to those laws. Contractor further agrees to make payments promptly when due, to all persons supplying to such Contractor, labor or materials for the prosecution of the work provided in this Contract; pay all contributions or amounts due the Industrial Accident Funds from such Contractor responsibilities incurred in the performance of this Contract; not permit any lien or claim to be filed or prosecuted against the District on account of any labor or material furnished; pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167. If Contractor fails or refuses to make any such payments required herein, the appropriate District official may pay such claim. Any payment of a claim in the manner authorized in this section shall not relieve the Contractor or Contractor's surety from obligation with respect to unpaid claims. Contractor shall promptly pay any person or entity that furnishes medical care to Contractor's employees those sums which Contractor agreed to pay for such services and all money Contractor collected or deducted from employee's wages to provide such services.

5. EXECUTION AND COUNTERPARTS. This Contract may be executed in several counterparts, each of which shall be an original, all of which shall constitute but one and the same instrument.

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

7. HAZARD COMMUNICATION. Contractor shall notify District prior to using products containing hazardous chemicals to which District employees may be exposed. Products containing hazardous chemicals are those products defined by Oregon Administrative Rules, Chapter 437. Upon District's request, Contractor shall immediately provide Material Safety Data Sheets for the products subject to this provision.

8. INDEMNITY, RESPONSIBILITY FOR DAMAGES. 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 District and Clackamas County, and their 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.

9. INDEPENDENT CONTRACTOR STATUS. The service(s) to be rendered under this Contract are those of an independent contractor. Although the District reserve the right to determine (and modify) the delivery schedule for the Work to be performed and to evaluate the quality of the completed performance, District 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 District 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; (B) This Contract is not intended to entitle the Contractor to any benefits generally granted to the District 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; and (C) If the Contractor has the assistance of other persons in the performance of this Contract, and the Contractor is a subject employer, the Contractor shall qualify and remain qualified for the term of this Contract as an insured employer under Oregon Revised Statutes ("ORS") Chapter 656.

10. INSURANCE. Insurance policies, which cannot be excess to a self-insurance program, are to be issued by an insurance company authorized to do business in the State of Oregon. Contractor shall provide insurance as indicated below:

A. COMMERCIAL GENERAL LIABILITY

The Contractor agrees to furnish the District 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 the District and 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 Contract. The general aggregate shall apply separately to this project / location. The District, at its option, may require a complete copy of the above policy.

B. AUTOMOBILE LIABILITY

The Contractor agrees to furnish the District evidence of business automobile liability insurance with a combined single limit of not less than \$1,000,000 for bodily injury and property damage for the protection of the District and Clackamas County, and their officers, elected officials, agents, and employees against liability for damages because of bodily injury, death or damage to property, including loss of use thereof in any way related to this Contract. The District, at its option, may require a complete copy of the above policy.

C. Contractor shall provide District a certificate of insurance naming the District and Clackamas County, and their officers, elected officials, agents, and employees additional insureds. If Contractor's insurance policy does not include a blanket endorsement for additional insured status when/where required by written contract (as required in this Contract), the insurance, shall include the District and Clackamas County and their agents, officers, and employees as expressly scheduled additional insured. Use CG 20 10 or its equivalent. Such insurance shall provide sixty (60) days written notice to the District in the event of a cancellation or material change and include a statement that no act on the part of the insured shall affect the

coverage afforded to the District under this insurance. This policy(s) shall be primary insurance with respect to the District. Any insurance or self-insurance maintained by the District shall be excess and shall not contribute to it.

D. If the Contractor has the assistance of other persons in the performance of this Contract, and the Contractor is a subject employer, the Contractor agrees to qualify and remain qualified for the term of this Contract as an insured employer under ORS 656. The Contractor shall maintain employer's liability insurance with limits of \$100,000 for each accident, \$100,000 per disease for each employee, and \$500,000 each minimum policy limit.

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

F. There shall be no cancellation, material change, exhaustion of aggregate limits or intent not to renew insurance coverage without 60 days written notice by the Contractor to the District. This policy(s) shall be primary insurance with respect to the District. Any insurance or self-insurance maintained by the District shall be excess and shall not contribute to it.

G. Contractor shall require that all of its subcontractors of any tier provide insurance coverage (including additional insured provisions) and limits identical to the insurance required of the Contractor under this Contract, unless this requirement is expressly modified or waived by the District.

11. LIMITATION OF LIABILITIES. Except for liability arising under or related to Section 14 or 21(B), 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. 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.

12. NOTICES. Except as otherwise expressly provided in this Contract, any communications between the parties hereto or notices to be given hereunder shall be given in writing by personal delivery, facsimile, or mailing the same, postage prepaid, to Contractor or District at the address or number set forth on the signature page of this Contract, or to such other addresses or numbers as either party may hereafter indicate. Any communication or notice so addressed and mailed shall be deemed to be given five (5) days after mailing. Any such communication or notice delivered by facsimile shall be deemed to be given when receipt of transmission is generated by the transmitting machine. To be effective against District, such facsimile transmission must be confirmed by telephone notice to District's supervising representative. Any communication or notice by personal delivery shall be deemed to be given when actually delivered.

13. OWNERSHIP OF WORK PRODUCT. All work product of Contractor that results from this Contract (the "Work Product") is the exclusive property of District. District and Contractor intend that such Work Product be deemed "work made for hire" of which District shall be deemed the author. If for any reason the Work Product is not deemed "work for hire," Contractor hereby irrevocably assigns to District 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 District may reasonably request in order to fully vest such rights in the District. 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.

14. REPRESENTATIONS AND WARRANTIES. Contractor represents and warrants to District that (1) Contractor has the power and authority to enter into and perform this Contract; (2) this Contract, when executed and delivered, shall be a valid and binding obligation of Contractor enforceable in accordance with its terms; (3) the Work under this Contract shall be performed in a good and workmanlike manner and in accordance with the highest professional standards; and (4) Contractor shall at all times during the term of this Contract, be qualified, professionally competent, and duly licensed to perform the Work. The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.

- A. Performance Warranty.** Contractor warrants that the goods provided to the District shall consistently perform according to the performance characteristics described in the Scope of Work.
- B. Service Warranty.** Contractor warrants that the services provided herein to the District, if any, will be performed in a workmanlike manner and in accordance with the highest professional standards. Contractor's liability and District's remedy under this services warranty are limited to Contractor's prompt correction of such services, provided that written notice of such alleged defective services shall have been given by the District to Contractor. The District agree to provide Contractor reasonable access to the goods for purposes of repair or replacement under this services warranty. Failure of Contractor to promptly correct problems pursuant to this Service Warrant shall be deemed a material breach of this Contract.

15. SURVIVAL. All rights and obligations shall cease upon termination or expiration of this Contract, except for the rights and obligations set forth in the following Sections of Section IV: 1, 6, 8, 11, 13, 14, 15, and 21.

16. 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.

17. 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 District. In addition to any provisions the District may require, Contractor shall include in any permitted subcontract under this Contract a requirement that the subcontractor be bound by this section and Sections 1, 8, 13, 15, and 27 as if the subcontractor were the Contractor. District's consent to any subcontract shall not relieve Contractor of any of its duties or obligations under this Contract. District may assign all or part of this Contract at any time without further permission required to the Contractor. District may assign all or part of this Contract at any time without further permission required to the Contractor.

18. 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.

19. TAX COMPLIANCE CERTIFICATION. Contractor must, throughout the duration of this Contract and any extensions, comply with all tax laws of this state and all applicable tax laws of any political subdivision of this state. Any violation of this section shall constitute a material breach of this

Contract. Further, any violation of Contractor's warranty in this Contract that Contractor has complied with the tax laws of this state and the applicable tax laws of any political subdivision of this state also shall constitute a material breach of this Contract. Any violation shall entitle District to terminate this Contract, to pursue and recover any and all damages that arise from the breach and the termination of this Contract, and to pursue any or all of the remedies available under this Contract, at law, or in equity, including but not limited to: (A) Termination of this Contract, in whole or in part; (B) Exercise of the right of setoff, and withholding of amounts otherwise due and owing to Contractor, in an amount equal to District's setoff right, without penalty; and (C) Initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief. District shall be entitled to recover any and all damages suffered as the result of Contractor's breach of this Contract, including but not limited to direct, indirect, incidental and consequential damages, costs of cure, and costs incurred in securing replacement performance. These remedies are cumulative to the extent the remedies are not inconsistent, and District may pursue any remedy or remedies singly, collectively, successively, or in any order whatsoever.

The Contractor represents and warrants that, for a period of no fewer than six calendar years preceding the effective date of this Contract, has faithfully complied with: (A) All tax laws of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318; (B) Any tax provisions imposed by a political subdivision of this state that applied to Contractor, to Contractor's property, operations, receipts, or income, or to Contractor's performance of or compensation for any work performed by Contractor; (C) Any tax provisions imposed by a political subdivision of this state that applied to Contractor, or to goods, services, or property, whether tangible or intangible, provided by Contractor; and (D) Any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions.

20. TERMINATION. This Contract may be terminated for the following reasons: (A) This Contract may be terminated at any time by mutual consent of the parties, or by the District for convenience upon thirty (30) days' written notice to the Contractor; (B) District may terminate this Contract effective upon delivery of notice to Contractor, or at such later date as may be established by the District, if (i) federal or state laws, rules, regulations, or guidelines are modified, changed, or interpreted in such a way that either the work under this Contract is prohibited or the District are prohibited from paying for such work from the planned funding source; or (ii) any license or certificate required by law or regulation to be held by the Contractor to provide the services required by this Contract is for any reason denied, revoked, or not renewed; (C) This Contract may also be immediately terminated by the District for default (including breach of Contract) if (i) Contractor fails to provide services or materials called for by this Contract within the time specified herein or any extension thereof; or (ii) Contractor fails to perform any of the other provisions of this Contract or so fails to pursue the work as to endanger performance of this Contract in accordance with its terms, and after receipt of notice from the District, fails to correct such failure within ten (10) business days; or (D) If sufficient funds are not provided in future approved budgets of the District (or from applicable federal, state, or other sources) to permit the District in the exercise of its reasonable administrative discretion to continue this Contract, or if the program for which this Contract was executed is abolished, District may terminate this Contract without further liability by giving Contractor not less than thirty (30) days' notice.

21. REMEDIES. (A) In the event of termination pursuant to Section 20(A), (B)(i), or (D), Contractor's sole remedy shall be a claim for the sum designated for accomplishing the work multiplied by the percentage of work completed and accepted by the District, less previous amounts paid and any claim(s) which the District has against Contractor. If previous amounts paid to Contractor exceed the amount due to Contractor under Section 21(A), Contractor shall pay any excess to District on demand. (B) In the event of termination pursuant to Sections 20(B)(ii) or 20(C), the District shall have any remedy available to it in law or equity. If it is determined for any reason that Contractor was not in default under Sections 20(B)(ii) or 20(C), the rights and obligations of the parties shall be the same as if the Contract was

terminated pursuant to Section 20(A). (C) Upon receiving a notice of termination of this Contract, Contractor shall immediately cease all activities under this Contract, unless District expressly directs otherwise in such notice of termination. Upon termination of this Contract, Contractor shall deliver to District all documents, information, works-in-progress and other property that are or would be deliverables had the Contract work been completed. Upon District's request, Contractor shall surrender to anyone District designates, all documents, research or objects or other tangible things needed to complete the work.

22. NO THIRD PARTY BENEFICIARIES. District 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.

23. TIME IS OF THE ESSENCE. Contractor agrees that time is of the essence under this Contract.

24. FOREIGN CONTRACTOR. If the Contractor is not domiciled in or registered to do business in the State of Oregon, Contractor shall promptly provide to the Oregon Department of Revenue and the Secretary of State, Corporate Division, all information required by those agencies relative to this Contract. The Contractor shall demonstrate its legal capacity to perform these services in the State of Oregon prior to entering into this Contract.

25. FORCE MAJEURE. Neither District nor Contractor shall be held responsible for delay or default caused by fire, terrorism, riot, acts of God, or war where such cause was beyond, respectively, District's or Contractor's reasonable control. Contractor shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall upon the cessation of the cause, diligently pursue performance of its obligations under this Contract.

26. WAIVER. The failure of District to enforce any provision of this Contract shall not constitute a waiver by District of that or any other provision.

27. COMPLIANCE. Pursuant to the requirements of ORS 279B.020 and 279B.220 through 279B.235 and Article XI, Section 10, of the Oregon Constitution, the following terms and conditions are made a part of this Contract: (A) Contractor shall: (i) Make payments promptly, as due, to all persons supplying to the Contractor labor or materials for the prosecution of the work provided for in this Contract; (ii) Pay all contributions or amounts due the Industrial Accident Fund from such Contractor or subcontractor incurred in the performance of this Contract; (iii) Not permit any lien or claim to be filed or prosecuted against the District on account of any labor or material furnished. (B) 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 such claim becomes due, the proper officer representing the District may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due the Contractor by reason of this Contract. (C) The Contractor shall pay employees for work in accordance with ORS 279B.020 and ORS 279B.235, which is incorporated herein by this reference. All subject employers working under the contract are either employers that will comply with ORS 656.017 or employers that are exempt under ORS 656.126. (D) The Contractor shall promptly, as due, make payment to any person or copartnership, association or corporation furnishing medical, surgical and hospital care or other needed care and attention incident to sickness and injury to the employees of the Contractor, of all sums which the Contractor agrees to pay for such services and all moneys and sums which the Contractor collected or deducted from the wages of the Contractor's employees pursuant to any law, contract or agreement for the purpose of providing or paying for such services.

28. DELIVERY. All deliveries shall be F.O.B. destination with all transportation and handing charges paid by the Contractor, unless specified otherwise in this Contract. Responsibility and liability for loss or damage shall remain with the Contractor until final inspection and acceptance, when responsibility shall pass to the District except as to latent defects, fraud and Contractor's warranty obligations.

29. INSPECTIONS. Goods and services furnished under this Contract will be subject to inspection and test by the District at times and places determined by the District. If the District finds goods and services furnished to be incomplete or not in compliance with the District, the District, at its sole discretion, may either reject the goods and services, require Contractor to correct any defects without charge, or negotiate with Contractor to sell the goods and services to the District at a reduced price, whichever the District deems equitable under the circumstances. If Contractor is unable or refuses to cure any defects within a time deemed reasonable by the District, the District may reject the goods and services and cancel the Contract in whole or in part. Nothing in this paragraph shall in any way affect or limit the District's rights as a Buyer, including the rights and remedies relating to rejection under ORS 72.6020 and revocation of acceptance under ORS 72.6080.

30. 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, ACKNOWLEDGES HAVING READ AND UNDERSTOOD THIS CONTRACT AND CONTRACTOR AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

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

Newco, Inc. A Corporation of Washington dba
Cascade Columbia Distribution Company

Water Environment Services

Authorized Signature

Date

Chair

Date

Name / Title (Printed)

Recording Secretary

Telephone Number

225845-85

Oregon Business Registry #

Approved as to Form:

FBC/Washington

Entity Type / State of Formation

County Counsel

Date

ATTACHMENT A
RFP #2018-104 Chemical Supply for Water Environment Services
Published November 15, 2018

**ATTACHMENT B
CONTRACTOR'S PROPOSAL**



Gregory L. Geist
Director

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of a Public Improvement Contract between Water Environment Services and
Univar USA, Inc. for the Chemical Supply for Water Environment Services

Purpose/Outcomes	Execution of the contract between Water Environment Services (“WES”) and Univar USA, Inc. for the Chemical Supply needs of the various WES plants.
Dollar Amount and Fiscal Impact	The contract amount is not to exceed \$100,000.00 annually, with a total contract value of \$645,000.00.
Funding Source	WES Operations Fund. No General Funds involved.
Duration	June 30, 2022 with the option for two (2) additional two (2) year renewals.
Previous Board Action	N/A
Strategic Plan Assignment	<ol style="list-style-type: none"> 1. This project supports the WES Strategic Plan goal to provide properly functioning infrastructure. 2. This project supports the County’s Strategic Plan of building a strong infrastructure that delivers services to customers and honors, utilizes, promotes and invests in our natural resources.
Contact Person	Darren Eki, Plant Operations Supervisor 503-557-2804

BACKGROUND:

Clackamas County Water Environment Services (WES) provides wastewater management services to over 150,000 people in Clackamas County, Oregon and operates multiple wastewater treatment plants; all of which utilize chemicals for process control.

WES includes the Tri-City WRRF, located in Oregon City servicing Happy Valley, West Linn, Gladstone and Oregon City; Kellogg Creek WRRF (formerly known as the Kellogg Creek WPCP) located in Milwaukie, serving Happy Valley, unincorporated North Clackamas County and wholesale customers in the City of Milwaukie and Johnson City, as well as the Hoodland Sewage Treatment Plant (STP), located in Welches serving the Mt. Hood Recreational Corridor of Clackamas County. The Boring STP serves the community of Boring.

Clackamas County WES manages all aspects of wastewater including wastewater treatment and biosolids management. Chemical demands at these facilities vary from Influent pH control of the MBR to chlorination/dechlorination of our Effluent. Biosolids processed in the plants’ digesters are currently dosed with polymer to initiate coagulation of solids, then hauled and land applied on agricultural lands in Sherman County.

The WES operated treatment facilities utilize various chemicals to meet regulatory compliance requirements. Daily consumption varies upon changes in flow, water quality, and process control demands. The awarded contracts will be used to fulfill the chemical needs for regulatory compliance and to keep the plants running at optimal efficiency.

PROCUREMENT PROCESS:

The project was requested by Darren Eki and Kim McRobbie. This project was advertised in accordance with ORS and LCRB Rules on November 11, 2018. On December 18, 2018, six (6) proposals were received: Northstar Chemical, Inc.; Cascade Columbia Distribution Company; Univar USA, Inc.; Two Rivers Terminal LLC; Hasa, Inc.; and JCI Jones Chemicals. Upon evaluation of the submitted proposals, WES assembled an evaluation committee that scored Northstar Chemical, Inc.; Cascade Columbia Distribution Company; Univar USA, Inc.; and Two Rivers Terminal LLC the highest and recommended a contract be awarded to each. Hasa, Inc. and JCI Jones Chemicals were not offered a contract due to their submitted proposals being incomplete and failing to provide pricing.

The contract was reviewed and approved by County Counsel.

RECOMMENDATION:

Staff recommends that the Board of County Commissioners of Clackamas County, acting as the governing body of Water Environment Services, approve and execute the Contracts between Water Environment Services and Univar USA, Inc. for the Chemical Supply for Water Environment Services with a contract amount not to exceed \$100,000.00 annually, with a total contract value of \$645,000.00.

Respectfully submitted,

Greg Geist, Director
Water Environment Services

Placed on the BCC agenda _____ by Procurement.



GOODS AND SERVICES CONTRACT

This Goods and Services Contract (this “Contract”) is entered into between **Univar USA Inc.** (“Contractor”), and Water Environment Services, a political subdivision of the State of Oregon (“District”) for the purposes of providing chemical supply and delivery to Water Environment Services.

I. TERM

This Contract shall become effective upon signature of both parties and shall remain in effect until **June 30, 2022**. This Contract may be renewed for two (2) additional two (2) year terms upon written approval of both parties. This Contract and any amendments to this Contract will not be effective until approved in writing by an authorized representative of the Board of County Commissioners of Clackamas County acting as the Governing Body for the District. This Contract supersedes and cancels any prior contracts between the parties hereto for similar services.

II. SCOPE OF WORK

This Contract covers the Scope of Work as described in RFP #2018-104 Chemical Supply for Water Environment Services published November 15, 2018 inclusive of Addenda #1, attached and hereby incorporated by reference as Attachment “A.” This Contract consists of the following documents which are listed in descending order of precedence and are attached and incorporated by reference, this Contract, Attachment “A”, and the Contractor’s Proposal attached and hereby incorporated by reference as Attachment “B.” Work shall be performed in accordance with a schedule approved by the District. The Contractor shall meet the highest standards prevalent in the industry or business most closely involved in providing the appropriate goods or services. The District Representatives for this contract are: Darren Eki and Kim McRobbie.

III. COMPENSATION

1. **PAYMENT.** The District agrees to compensate the Contractor on a time and material basis as detailed in this Contract. The maximum annual compensation authorized under this Contract shall not exceed **one hundred thousand dollars (\$100,000.00)** and the total Contract compensation shall not exceed **six hundred thousand dollars (\$600,000.00)**.
2. **TRAVEL EXPENSE REIMBURSEMENT.** Authorized: Yes No
If travel expense reimbursement is authorized in this Contract, such expenses shall only be reimbursed at the rates in the Clackamas County Contractor Travel Reimbursement Policy, hereby incorporated by reference, in effect at the time of the expense is incurred.
3. **INVOICES.** Invoices submitted for payment in connection with this Contract shall be properly documented and shall indicate pertinent District contract and/or purchase order numbers. All charges shall be billed monthly (unless a different payment period is outlined in Attachment A) and will be paid net thirty (30) days from receipt of invoice and shall be subject to Oregon Revised Statute (“ORS”) 293.462. If Contractor fails to present invoices in proper form within sixty (60) calendar days after the end of the month in which the services were rendered, Contractor waives any rights to present such invoice thereafter and to receive payment therefor. Invoices shall be submitted to the District’s Representative at: Water Environment Services, 150 Beaver Creek Road, Oregon City, Oregon 97045 or vial email to deki@clackamas.us or kmcrobbie@clackamas.us.

IV. CONTRACT PROVISIONS

1. **ACCESS TO RECORDS.** Contractor shall maintain books, records, documents, and other evidence and accounting procedures and practices sufficient to reflect properly all costs of whatever nature claimed to have been incurred and anticipated to be incurred in the performance of this Contract. District and its duly authorized representatives shall have access to the books, documents, papers, and records of

Contractor which are directly pertinent to this Contract for the purpose of making audit, examination, excerpts, and transcripts. Such books and records shall be maintained by Contractor for a minimum of three (3) years, or such longer period as may be required by applicable law, following final payment and termination of this Contract, or until the conclusion of any audit, controversy or litigation arising out of or related to this Contract, whichever date is later.

2. AVAILABILITY OF FUNDS. District certify that sufficient funds are available and authorized for expenditure to finance costs of this Contract within its current annual appropriation or expenditure limitation, provided, however, that continuation of this Contract, or any extension, after the end of the fiscal period in which it is written, is contingent on a new appropriation or limitation for each succeeding fiscal period sufficient in amount, in the exercise of the District's reasonable administrative discretion, to continue to make payments under this Contract.

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 federal, state, county, and local laws, ordinances, and regulations applicable to the work to be done under this Contract. Contractor specifically agrees to comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules, and regulations. Contractor shall also comply with the Americans with Disabilities Act of 1990 (Pub. L. No. 101-336), Title VI of the Civil Rights Act of 1964, Section V of the Rehabilitation Act of 1973, ORS 659A.142, and all regulations and administrative rules established pursuant to those laws. Contractor further agrees to make payments promptly when due, to all persons supplying to such Contractor, labor or materials for the prosecution of the work provided in this Contract; pay all contributions or amounts due the Industrial Accident Funds from such Contractor responsibilities incurred in the performance of this Contract; not permit any lien or claim to be filed or prosecuted against the District on account of any labor or material furnished; pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167. If Contractor fails or refuses to make any such payments required herein, the appropriate District official may pay such claim. Any payment of a claim in the manner authorized in this section shall not relieve the Contractor or Contractor's surety from obligation with respect to unpaid claims. Contractor shall promptly pay any person or entity that furnishes medical care to Contractor's employees those sums which Contractor agreed to pay for such services and all money Contractor collected or deducted from employee's wages to provide such services.

5. EXECUTION AND COUNTERPARTS. This Contract may be executed in several counterparts, each of which shall be an original, all of which shall constitute but one and the same instrument.

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

7. HAZARD COMMUNICATION. Contractor shall notify District prior to using products containing hazardous chemicals to which District employees may be exposed. Products containing hazardous chemicals are those products defined by Oregon Administrative Rules, Chapter 437. Upon District's request, Contractor shall immediately provide Material Safety Data Sheets for the products subject to this provision.

8. INDEMNITY, RESPONSIBILITY FOR DAMAGES. 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 District and Clackamas County, and their 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.

9. INDEPENDENT CONTRACTOR STATUS. The service(s) to be rendered under this Contract are those of an independent contractor. Although the District reserve the right to determine (and modify) the delivery schedule for the Work to be performed and to evaluate the quality of the completed performance, District 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 District 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; (B) This Contract is not intended to entitle the Contractor to any benefits generally granted to the District 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; and (C) If the Contractor has the assistance of other persons in the performance of this Contract, and the Contractor is a subject employer, the Contractor shall qualify and remain qualified for the term of this Contract as an insured employer under Oregon Revised Statutes ("ORS") Chapter 656.

10. INSURANCE. Insurance policies, which cannot be excess to a self-insurance program, are to be issued by an insurance company authorized to do business in the State of Oregon. Contractor shall provide insurance as indicated below:

A. COMMERCIAL GENERAL LIABILITY

The Contractor agrees to furnish the District 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 the District and 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 Contract. The general aggregate shall apply separately to this project / location. The District, at its option, may require a complete copy of the above policy.

B. AUTOMOBILE LIABILITY

The Contractor agrees to furnish the District evidence of business automobile liability insurance with a combined single limit of not less than \$1,000,000 for bodily injury and property damage for the protection of the District and Clackamas County, and their officers, elected officials, agents, and employees against liability for damages because of bodily injury, death or damage to property, including loss of use thereof in any way related to this Contract. The District, at its option, may require a complete copy of the above policy.

C. Contractor shall provide District a certificate of insurance naming the District and Clackamas County, and their officers, elected officials, agents, and employees additional insureds. If Contractor's insurance policy does not include a blanket endorsement for additional insured status when/where required by written contract (as required in this Contract), the insurance, shall include the District and Clackamas County and their agents, officers, and employees as expressly scheduled additional insured. Use CG 20 10 or its equivalent. Such insurance shall provide sixty (60) days written notice to the District in the event of a cancellation or material change and include a statement that no act on the part of the insured shall affect the

coverage afforded to the District under this insurance. This policy(s) shall be primary insurance with respect to the District. Any insurance or self-insurance maintained by the District shall be excess and shall not contribute to it.

D. If the Contractor has the assistance of other persons in the performance of this Contract, and the Contractor is a subject employer, the Contractor agrees to qualify and remain qualified for the term of this Contract as an insured employer under ORS 656. The Contractor shall maintain employer's liability insurance with limits of \$100,000 for each accident, \$100,000 per disease for each employee, and \$500,000 each minimum policy limit.

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

F. There shall be no cancellation, material change, exhaustion of aggregate limits or intent not to renew insurance coverage without 60 days written notice by the Contractor to the District. This policy(s) shall be primary insurance with respect to the District. Any insurance or self-insurance maintained by the District shall be excess and shall not contribute to it.

G. Contractor shall require that all of its subcontractors of any tier provide insurance coverage (including additional insured provisions) and limits identical to the insurance required of the Contractor under this Contract, unless this requirement is expressly modified or waived by the District.

11. LIMITATION OF LIABILITIES. Except for liability arising under or related to Section 14 or 21(B), 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. 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.

12. NOTICES. Except as otherwise expressly provided in this Contract, any communications between the parties hereto or notices to be given hereunder shall be given in writing by personal delivery, facsimile, or mailing the same, postage prepaid, to Contractor or District at the address or number set forth on the signature page of this Contract, or to such other addresses or numbers as either party may hereafter indicate. Any communication or notice so addressed and mailed shall be deemed to be given five (5) days after mailing. Any such communication or notice delivered by facsimile shall be deemed to be given when receipt of transmission is generated by the transmitting machine. To be effective against District, such facsimile transmission must be confirmed by telephone notice to District's supervising representative. Any communication or notice by personal delivery shall be deemed to be given when actually delivered.

13. OWNERSHIP OF WORK PRODUCT. All work product of Contractor that results from this Contract (the "Work Product") is the exclusive property of District. District and Contractor intend that such Work Product be deemed "work made for hire" of which District shall be deemed the author. If for any reason the Work Product is not deemed "work for hire," Contractor hereby irrevocably assigns to District 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 District may reasonably request in order to fully vest such rights in the District. 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.

14. REPRESENTATIONS AND WARRANTIES. Contractor represents and warrants to District that (1) Contractor has the power and authority to enter into and perform this Contract; (2) this Contract, when executed and delivered, shall be a valid and binding obligation of Contractor enforceable in accordance with its terms; (3) the Work under this Contract shall be performed in a good and workmanlike manner and in accordance with the highest professional standards; and (4) Contractor shall at all times during the term of this Contract, be qualified, professionally competent, and duly licensed to perform the Work. The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.

- A. Performance Warranty.** Contractor warrants that the goods provided to the District shall consistently perform according to the performance characteristics described in the Scope of Work.
- B. Service Warranty.** Contractor warrants that the services provided herein to the District, if any, will be performed in a workmanlike manner and in accordance with the highest professional standards. Contractor's liability and District's remedy under this services warranty are limited to Contractor's prompt correction of such services, provided that written notice of such alleged defective services shall have been given by the District to Contractor. The District agree to provide Contractor reasonable access to the goods for purposes of repair or replacement under this services warranty. Failure of Contractor to promptly correct problems pursuant to this Service Warrant shall be deemed a material breach of this Contract.

15. SURVIVAL. All rights and obligations shall cease upon termination or expiration of this Contract, except for the rights and obligations set forth in the following Sections of Section IV: 1, 6, 8, 11, 13, 14, 15, and 21.

16. 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.

17. 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 District. In addition to any provisions the District may require, Contractor shall include in any permitted subcontract under this Contract a requirement that the subcontractor be bound by this section and Sections 1, 8, 13, 15, and 27 as if the subcontractor were the Contractor. District's consent to any subcontract shall not relieve Contractor of any of its duties or obligations under this Contract. District may assign all or part of this Contract at any time without further permission required to the Contractor. District may assign all or part of this Contract at any time without further permission required to the Contractor.

18. 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.

19. TAX COMPLIANCE CERTIFICATION. Contractor must, throughout the duration of this Contract and any extensions, comply with all tax laws of this state and all applicable tax laws of any political subdivision of this state. Any violation of this section shall constitute a material breach of this

Contract. Further, any violation of Contractor's warranty in this Contract that Contractor has complied with the tax laws of this state and the applicable tax laws of any political subdivision of this state also shall constitute a material breach of this Contract. Any violation shall entitle District to terminate this Contract, to pursue and recover any and all damages that arise from the breach and the termination of this Contract, and to pursue any or all of the remedies available under this Contract, at law, or in equity, including but not limited to: (A) Termination of this Contract, in whole or in part; (B) Exercise of the right of setoff, and withholding of amounts otherwise due and owing to Contractor, in an amount equal to District's setoff right, without penalty; and (C) Initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief. District shall be entitled to recover any and all damages suffered as the result of Contractor's breach of this Contract, including but not limited to direct, indirect, incidental and consequential damages, costs of cure, and costs incurred in securing replacement performance. These remedies are cumulative to the extent the remedies are not inconsistent, and District may pursue any remedy or remedies singly, collectively, successively, or in any order whatsoever.

The Contractor represents and warrants that, for a period of no fewer than six calendar years preceding the effective date of this Contract, has faithfully complied with: (A) All tax laws of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318; (B) Any tax provisions imposed by a political subdivision of this state that applied to Contractor, to Contractor's property, operations, receipts, or income, or to Contractor's performance of or compensation for any work performed by Contractor; (C) Any tax provisions imposed by a political subdivision of this state that applied to Contractor, or to goods, services, or property, whether tangible or intangible, provided by Contractor; and (D) Any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions.

20. TERMINATION. This Contract may be terminated for the following reasons: (A) This Contract may be terminated at any time by mutual consent of the parties, or by the District for convenience upon thirty (30) days' written notice to the Contractor; (B) District may terminate this Contract effective upon delivery of notice to Contractor, or at such later date as may be established by the District, if (i) federal or state laws, rules, regulations, or guidelines are modified, changed, or interpreted in such a way that either the work under this Contract is prohibited or the District are prohibited from paying for such work from the planned funding source; or (ii) any license or certificate required by law or regulation to be held by the Contractor to provide the services required by this Contract is for any reason denied, revoked, or not renewed; (C) This Contract may also be immediately terminated by the District for default (including breach of Contract) if (i) Contractor fails to provide services or materials called for by this Contract within the time specified herein or any extension thereof; or (ii) Contractor fails to perform any of the other provisions of this Contract or so fails to pursue the work as to endanger performance of this Contract in accordance with its terms, and after receipt of notice from the District, fails to correct such failure within ten (10) business days; or (D) If sufficient funds are not provided in future approved budgets of the District (or from applicable federal, state, or other sources) to permit the District in the exercise of its reasonable administrative discretion to continue this Contract, or if the program for which this Contract was executed is abolished, District may terminate this Contract without further liability by giving Contractor not less than thirty (30) days' notice.

21. REMEDIES. (A) In the event of termination pursuant to Section 20(A), (B)(i), or (D), Contractor's sole remedy shall be a claim for the sum designated for accomplishing the work multiplied by the percentage of work completed and accepted by the District, less previous amounts paid and any claim(s) which the District has against Contractor. If previous amounts paid to Contractor exceed the amount due to Contractor under Section 21(A), Contractor shall pay any excess to District on demand. (B) In the event of termination pursuant to Sections 20(B)(ii) or 20(C), the District shall have any remedy available to it in law or equity. If it is determined for any reason that Contractor was not in default under Sections 20(B)(ii) or 20(C), the rights and obligations of the parties shall be the same as if the Contract was

terminated pursuant to Section 20(A). (C) Upon receiving a notice of termination of this Contract, Contractor shall immediately cease all activities under this Contract, unless District expressly directs otherwise in such notice of termination. Upon termination of this Contract, Contractor shall deliver to District all documents, information, works-in-progress and other property that are or would be deliverables had the Contract work been completed. Upon District's request, Contractor shall surrender to anyone District designates, all documents, research or objects or other tangible things needed to complete the work.

22. NO THIRD PARTY BENEFICIARIES. District 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.

23. TIME IS OF THE ESSENCE. Contractor agrees that time is of the essence under this Contract.

24. FOREIGN CONTRACTOR. If the Contractor is not domiciled in or registered to do business in the State of Oregon, Contractor shall promptly provide to the Oregon Department of Revenue and the Secretary of State, Corporate Division, all information required by those agencies relative to this Contract. The Contractor shall demonstrate its legal capacity to perform these services in the State of Oregon prior to entering into this Contract.

25. FORCE MAJEURE. Neither District nor Contractor shall be held responsible for delay or default caused by fire, terrorism, riot, acts of God, or war where such cause was beyond, respectively, District's or Contractor's reasonable control. Contractor shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall upon the cessation of the cause, diligently pursue performance of its obligations under this Contract.

26. WAIVER. The failure of District to enforce any provision of this Contract shall not constitute a waiver by District of that or any other provision.

27. COMPLIANCE. Pursuant to the requirements of ORS 279B.020 and 279B.220 through 279B.235 and Article XI, Section 10, of the Oregon Constitution, the following terms and conditions are made a part of this Contract: (A) Contractor shall: (i) Make payments promptly, as due, to all persons supplying to the Contractor labor or materials for the prosecution of the work provided for in this Contract; (ii) Pay all contributions or amounts due the Industrial Accident Fund from such Contractor or subcontractor incurred in the performance of this Contract; (iii) Not permit any lien or claim to be filed or prosecuted against the District on account of any labor or material furnished. (B) 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 such claim becomes due, the proper officer representing the District may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due the Contractor by reason of this Contract. (C) The Contractor shall pay employees for work in accordance with ORS 279B.020 and ORS 279B.235, which is incorporated herein by this reference. All subject employers working under the contract are either employers that will comply with ORS 656.017 or employers that are exempt under ORS 656.126. (D) The Contractor shall promptly, as due, make payment to any person or copartnership, association or corporation furnishing medical, surgical and hospital care or other needed care and attention incident to sickness and injury to the employees of the Contractor, of all sums which the Contractor agrees to pay for such services and all moneys and sums which the Contractor collected or deducted from the wages of the Contractor's employees pursuant to any law, contract or agreement for the purpose of providing or paying for such services.

28. DELIVERY. All deliveries shall be F.O.B. destination with all transportation and handing charges paid by the Contractor, unless specified otherwise in this Contract. Responsibility and liability for loss or damage shall remain with the Contractor until final inspection and acceptance, when responsibility shall pass to the District except as to latent defects, fraud and Contractor's warranty obligations.

29. INSPECTIONS. Goods and services furnished under this Contract will be subject to inspection and test by the District at times and places determined by the District. If the District finds goods and services furnished to be incomplete or not in compliance with the District, the District, at its sole discretion, may either reject the goods and services, require Contractor to correct any defects without charge, or negotiate with Contractor to sell the goods and services to the District at a reduced price, whichever the District deems equitable under the circumstances. If Contractor is unable or refuses to cure any defects within a time deemed reasonable by the District, the District may reject the goods and services and cancel the Contract in whole or in part. Nothing in this paragraph shall in any way affect or limit the District's rights as a Buyer, including the rights and remedies relating to rejection under ORS 72.6020 and revocation of acceptance under ORS 72.6080.

30. 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, ACKNOWLEDGES HAVING READ AND UNDERSTOOD THIS CONTRACT AND CONTRACTOR AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

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

Univar USA Inc.

Water Environment Services

Authorized Signature

Date

Chair

Date

Name / Title (Printed)

Recording Secretary

Telephone Number

050483-84

Oregon Business Registry #

Approved as to Form:

FBC/Washington

Entity Type / State of Formation

County Counsel

Date

ATTACHMENT A
RFP #2018-104 Chemical Supply for Water Environment Services
Published November 15, 2018

**ATTACHMENT B
CONTRACTOR'S PROPOSAL**