

AGENDA

Thursday, November 12, 2015 - 10:00 AM
BOARD OF COUNTY COMMISSIONERS

Beginning Board Order No. 2015-119

CALL TO ORDER

- Roll Call
- Pledge of Allegiance

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

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

1. First Reading of Ordinance No. _____ Amending Chapter 2.09, County Administrator, of the Clackamas County Code (Stephen Madkour, County Counsel)
2. First Reading of Ordinance No. _____ Amending Chapter 6.03, Emergency Management, of the Clackamas County Code (Stephen Madkour, County Counsel)

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

A. Health, Housing & Human Services

1. Approval of a Revenue Intergovernmental Agreement with the State of Oregon Criminal Justice Commission for the Specialty Courts Grant Program – *Health Centers*

B. Department of Transportation & Development

1. Board Order No. _____ Adopting the Vacation of Browndale Farm Road

C. Elected Officials

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

D. Business & Community Services

1. Approval of an Oregon Department of Forestry Grant Agreement Cooperative Pilot Project Phase I Feasibility Study
2. Approval of a State Marine Board Facility Grant Cooperative Agreement Facility Grant No. 1541, Hebb Park Boating Improvements

IV. DEVELOPMENT AGENCY

1. Approval of an Intergovernmental Agreement with Oregon Department of Transportation for Right-of-Way Services for the Monterey Ave. Extension Project

V. COUNTY ADMINISTRATOR UPDATE

VI. COMMISSIONERS COMMUNICATION

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



1+2

OFFICE OF COUNTY COUNSEL

PUBLIC SERVICES BUILDING
2051 KAEN ROAD | OREGON CITY, OR 97045

November 12, 2015

Stephen L. Madkour
County Counsel

Board of County Commissioner
Clackamas County

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

Members of the Board:

Amendments to Chapters 2.09 and 6.03 of the Clackamas County Code

Purpose/Outcomes	Amend County Code - Chapter 2.09 County Administration and Chapter 6.03 Emergency Management
Dollar Amount and Fiscal Impact	No fiscal impact
Funding Source	Not applicable
Safety Impact	The amendments are recommended to further the safe and efficient use of county resources and operations.
Duration	Indefinite; ordinances are effective ninety days after second reading.
Previous Board Action	The Board met in an October 20, 2015 policy session on this matter and decided to proceed to a public hearing and a first reading of the proposed ordinance.
Contact Person	Stephen L. Madkour, County Counsel

BACKGROUND:

County Counsel is responsible for maintaining and updating the County Code. A Code Update Committee meets monthly to prioritize code amendments and draft new code provisions. The current batch of code amendments concern revisions to two existing Code Chapters: 2.09 and 6.03.

Chapter 2.09 - The amendments to Chapter 2.09 expand and clarify the authority of the County Administrator. In addition to some general housekeeping revisions, substantive changes include: The Board delegating to the County Administrator contract signing authority for any

contract previously approved by the Board of County Commissioners. This delegation of authority shall apply both to the contract and any contract amendments; and the authority to draft and promulgate administrative rules and establish and implement operational policies. Additionally, the County Administrator's authority over county facilities has been expanded.

Chapter 6.03 - The amendments to Chapter 6.03 serve to clarify and update the emergency management regulations. County Counsel has worked with the Department of Emergency Management regarding three areas to be updated in Chapter 6.03 of the County Code. The first deals with Board functions. The current provisions are premised on a three member board, so the update adds clarity on order of authority succession and the timing and effect of orders without a quorum. The second area of the update includes some best practices language to better address the contribution of private resources to recovery efforts in 6.03.070. Finally, the proposed amendments provide technical updates to the statutory references and clarify the process.

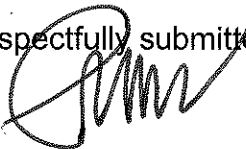
The code updates are intended to clarify and refine those sections of the County Code that require revisions. The proposed amendments to Chapter 2.09 concerning the authority of the County Administrator are intended to provide the Administrator with clear authority and latitude necessary to effectively manage county operations. The amendments to Chapter 6.03 update the Code to make it consistent with the five-member board.

These amendments are proposed by the Code Update Committee, which is comprised of a cross section of county staff and a commissioner representative.

RECOMMENDATION:

Staff recommends the Board of County Commissioners read the proposed ordinance by title only and proceed to a scheduled second reading on December 3, 2015. After the second reading the proposed ordinance would be adopted and effective ninety days after adoption.

Respectfully submitted,



Stephen L. Madkour
County Counsel

ORDINANCE NO. _____

**An Ordinance Amending Chapter 2.09, County Administrator, of the
Clackamas County Code**

WHEREAS, the Board would like to expand and clarify the authority of the County Administrator;

WHEREAS, the Board finds it beneficial to delegate contract signing authority to the County Administrator for contracts that have previously been approved by the Board; and

WHEREAS, the Board finds that the County Administrator should have the authority to implement administrative rules and operational policies; and

WHEREAS, the Board delegates authority over County facilities to the County Administrator; now, therefore;

The Board of Commissioners of Clackamas County ordains as follows:

Section 1: Chapter 2.09 of the Clackamas County Code is hereby amended as shown in Exhibit A attached hereto.

ADOPTED this _____ day of _____, 2015.

BOARD OF COUNTY COMMISSIONERS

Chair

Recording Secretary

CHAPTER 2.09

2.09 COUNTY ADMINISTRATOR

2.09.010 Office of County Administrator Created

The Office of County Administrator is created and the person holding that office shall act as the head of administration for the County and, if delegated by the district board, its service districts. [Added by Ord. 11-2002, 8/22/02]

2.09.020 Appointment

The County Administrator shall be appointed by and serve at the pleasure of the Board of County Commissioners. The relationship between the County and the County Administrator shall be as set forth in this Chapter and any employment agreement between the County and the County Administrator not inconsistent with this Chapter. [Added by Ord. 11-2002, 8/22/02]

2.09.030 Qualifications

The County Administrator shall be appointed by the Board of County Commissioners solely on the basis of his or her executive and administrative qualifications and experience and need not be a resident of the County or the State prior to his or her appointment. After the time of his or her appointment the County Administrator shall reside outside the County only by express permission of the Board. He or she shall receive a salary fixed by the Board commensurate with the responsibilities of the office. [Added by Ord. 11-2002, 8/22/02]

2.09.040 Vacancy

When a permanent vacancy occurs in the Office of County Administrator, the Board of County Commissioners shall designate an Acting County Administrator until such time as a County Administrator is appointed. Such person, while he or she is the Acting County Administrator, shall have all powers and duties conferred by this Chapter on the County Administrator. [Added by Ord. 11-2002, 8/22/02]

2.09.050 Absence or Disability

The County Administrator may designate an administrative officer of the County to exercise and perform his or her powers and duties conferred by the Chapter during his or her temporary absence or disability. [Added by Ord. 11-2002, 8/22/02]

2.09.060 Authority

- A. A.—The County Administrator shall be the Chief Administrative Officer of the County and all County service districts, if that authority is delegated by the board of the district. The County Administrator shall be responsible to the Board of County Commissioners for the administration and management of the County and its service districts and shall have control and supervision of all administrative departments, divisions, offices, districts and agencies subject to his or her jurisdiction, except County Counsel, or as otherwise provided by law.
- B. The County Administrator shall exercise no authority over the actions of elected County officials while they are performing the duties of their offices.
- CB. The Board of County Commissioners hereby delegates to the County Administrator broad authority to perform his or her job functions. The County Administrator is responsible to the Board for the manner of his or her administration. The Board reserves to itself all of its legislative and judicial or quasi-judicial authority, unless expressly delegated.
- D The Board of County Commissioners hereby delegates to the County Administrator contract signing authority for any contract previously approved by the Board of County Commissioners.
- E. The Board of County Commissioners hereby delegates to the County Administrator the authority to draft and promulgate administrative rules and establish and implement policies.
- FE. It shall be within the specific authority of the County Administrator to perform all day-to-day functions necessary for the administration and management of County affairs and the affairs of County service districts, if delegated. Such authority includes but is not limited to the following:
1. Provide for the proper administration of all ordinances, orders and resolutions of the County and its service districts, all contracts and franchises entered into by the County and service districts, and provide for the enforcement of all policies, rules, procedures, orders and regulations adopted by the Board.
 2. Keep the Board informed of pertinent matters related to the administration and management of the County and its service districts.
 3. Serve as the Budget Officer for the County and its service districts and in that role prepare and submit to the Board and Budget Committee an annual budget and a long range capital improvement and expenditure program. Administer the provisions of the budget as adopted by the Board.
 4. Prepare and submit to the Board an annual report on the finances and administrative activities of the County and its service districts for the preceding fiscal year, together with recommendations for the betterment of the public service.
 5. Select, appoint, supervise, discipline or dismiss all County Administration staff and all employees designated as appropriate for unclassified status under Section 2.05.040(3)(B)(11), except the Office of County Counsel and any elected officers. The County Administrator has the authority to sign employment contracts for such designated unclassified employees, consistent with other employment contracts. The County Administrator shall consult the Board on these matters.

6. Manage and administer the County and service districts personnel programs. Prepare and recommend to the Board employee compensation plans.
 7. Coordinate the work and facilities of all offices, departments and agencies, both elective and appointive, and devise ways and means whereby efficiency and economy may be secured in the operation of all offices, departments, districts and agencies.
 8. Formulate and present to the Board plans for the implementation for goals adopted by the Board.
 9. Administer the risk management program for the County and its service districts.
 10. Direct the use, operation, maintenance, control and custody of all County and district property, buildings, works and improvements.
~~according to any policies adopted by the Board.~~
 11. Furnish the Board with information, proposals and recommendations concerning the operation of County departments, districts, boards and commissions.
 12. Unless excused by the Board, attend regular meetings of the Board, participate in the discussions and make recommendations for action by the Board.
 13. Conduct such other activities and assignments as may be required by the Board.
- [Added by Ord. 11-2002, 8/22/02; Amended by Ord. 01-2009, 2/5/09]

2.09.070 Delegation of Authority

The County Administrator may delegate any authority granted by this Chapter to County department heads or other County or district staff, in a manner consistent with the provisions of the County Code.

[Added by Ord. 11-2002, 8/22/02]

2.09.080 Term

The County Administrator shall be appointed for an indefinite term. The County Administrator is an at-will employee and may be removed at the pleasure of the Board, consistent with any applicable employment agreement.

[Added by Ord. 11-2002, 8/22/02]

2.09.090 Interaction with County Administrator, Employees

In the exercise of their authority as members of the governing body of the County, Board members may individually, or as a group in a public meeting, discuss fully and freely with the County Administrator any matter pertaining to County affairs or the interests of the County. Board members may not direct any County employee, other than the County Administrator or County Counsel, in the performance of their duties. This section shall not be construed to prohibit a Board member from pursuing their role as ombudsman in making inquires of County employees concerning the day to day conduct of County affairs.

[Added by Ord. 11-2002, 8/22/02; Amended by Ord. 01-2009, 2/5/09]

ORDINANCE NO. _____

**An Ordinance Amending Chapter 6.03, Emergency Regulations, of the
Clackamas County Code**

WHEREAS, the Board finds it beneficial to update and clarify the Emergency Regulations of the County; and

WHEREAS, the Board finds that the order of succession for the Emergency Regulations Board needs clarification; and

WHEREAS, the Board finds it necessary to update language regarding the contribution of private resources to recovery efforts; now, therefore;

The Board of Commissioners of Clackamas County ordains as follows:

Section 1: Chapter 6.03 of the Clackamas County Code is hereby amended as shown in Exhibit A attached hereto.

ADOPTED this _____ day of _____, 2015.

BOARD OF COUNTY COMMISSIONERS

Chair

Recording Secretary

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

Chapter 6.03

6.03 EMERGENCY REGULATIONS

6.03.010 Purpose

The purpose of this chapter is to provide a procedure to minimize injury to persons, the environment, and property. In addition, to preserve the established civil authority in the event a state of emergency exists within the unincorporated areas of Clackamas County or within the incorporated areas of Clackamas County, if assistance is requested by such incorporated jurisdiction.

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

6.03.020 Definition Of Emergency

For the purposes of this ordinance, emergency is defined as any man-made or natural event or circumstance causing or threatening loss of life; injury to persons, the environment, or property; human suffering; or financial loss to the extent that extraordinary measures must be taken to protect the public health, safety, and welfare. Such event shall include, but not be limited to: fire, explosion, flood, severe weather, drought, earthquake, volcanic activity, spills of oil or other hazardous substances, disease, blight, infestation, utility or transportation service disruptions, civil disturbance, riot, sabotage, terrorism, war or any other such emergency as defined under Oregon Revised Statute, Chapter 401, as may be amended from time to time.

[Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 04-2006, 6-29-06]

6.03.030 Authority Of County

Under the provisions of ORS Chapter 401 and any successor statutes, the authority, and responsibility for responding to emergencies is placed at the local government level. ORS Chapter 401 further mandates that the County shall establish an emergency management agency to perform emergency program management functions ~~to include~~, but not limited to: program development, fiscal management, coordination with non-governmental agencies and organizations, public information, personnel training, and development and implementation of exercises to test the system.

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

6.03.040 Declaration Of Emergency

When, in the judgment of the Board of County Commissioners, a state of emergency exists, it shall declare in writing and publicize the existence of it. At the earliest practical opportunity, a written declaration of emergency shall be adopted by the Board and made a part of the County's official records. If circumstances prohibit the timely action of the Board of County

Commissioners, the Chair of the Board may declare a state of emergency, provided that the approval of a majority of the Board of County Commissioners is sought and obtained at the first available opportunity. Upon that declaration of emergency, the Chair of the Board is empowered to assume centralized control of, and have authority over, all departments, divisions, and offices of Clackamas County in order to implement the provisions of this chapter. The state of emergency declared pursuant to this section shall specify the factors ~~that~~^{which} warrant the exercise of emergency controls.

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

6.03.050 Succession Of Authority

In the event that the Chair of the Board of County Commissioners is unavailable or unable to perform his or her duties under the ordinance, the duties shall be performed by:

- A. The Vice-Chair of the Board of County Commissioners;
- B. ~~If the Vice-Chair is unable to perform the required duties, then the~~
- B. The remaining members of the Board of County Commissioners in order of seniority;
- C. ~~If the remaining members of the Board are unable to perform the required duties, then the~~
- C. The Clackamas County Administrator or designee.

[Codified by Ord. 05-2000, 7/13/00; Amended by Ord. 04-2006, 6-29-06]

6.03.060 Regulation And Control

Whenever a state of emergency has been declared to exist within unincorporated Clackamas County, or on the request of a municipality's governing body, the Board of County Commissioners is empowered to order and enforce the measures listed herein below. However, if circumstances prohibit the timely action of the Board of County Commissioners, the Chair of the Board may order emergency measures, provided that approval from a majority of the Board of County Commissioners is sought and obtained at the first available opportunity, or else the Chair's order will become invalid after if such approval is not granted. Such emergency measures shall include, but not be limited to:

- A. Establish a curfew for the area designated as an emergency area, which fixes the hours during which all persons other than officially authorized personnel may be upon the public streets or other public places;
- B. Prohibit or limit the number of persons who may gather or congregate upon any public street, public place, or any outdoor place within the area designated as an emergency area;
- C. Barricade streets and roads, as well as access points onto streets and roads, and p-~~In addition, prohibit vehicular or pedestrian traffic, or restrict or regulate the same in any reasonable manner in the area designated as an emergency area for such distance or degree of regulation as may be deemed necessary under the circumstances;-~~
- D. Evacuate persons from the area designated as an emergency area;
- E. Close taverns or bars and prohibit the sale of alcoholic beverage throughout Clackamas County or a portion thereof;
- F. Commit to mutual aid agreements;
- G. Suspend standard competitive bidding procedures to obtain necessary goods, services and/or equipment, utilizing the procedures in the Clackamas County Local ~~Control~~

Contract Review Board rules, Appendix "B", Section B110.030, et seq.;

- H. Redirect funds for emergency use; and
- I. Order such other measures as are found to be immediately necessary for the protection of life and/or property.

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

6.03.070 Acquisition Of Resources

Under this section, the Board of County Commissioners is authorized to extend government authority to non-governmental resources (i.e.: personnel, equipment) that which may support regular government forces during an emergency and may enter into agreements with other public and private agencies for either use of governmental resources in aid of authorized private agency efforts related to the emergency or for private resources to aid governmental efforts. When real or personal property is taken under power granted by this section, the owner of the property shall be entitled to immediate notice of the requisition by the Board County under its authority hereunder and to receive reasonable compensation within a reasonable time period.

Under the provisions of ORS Chapter 401, State resources are available when the appropriate response to an emergency is beyond the capability of the county in which it occurs.

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

6.03.080 Penalty

- A. Any person, firm, corporation, association or entity who violates any emergency measure taken by the Board of County Commissioners under authority of this chapter shall be subject, upon conviction, to a fine in an amount set by resolution of the Board of County Commissioners.
- B. Each day of violation shall be deemed a separate offense for purposes of imposition of penalty up to the maximum allowed by law.
- C. Where the Oregon Revised Statutes provide for a penalty for anthe act, commission, or omission, the penalty prescribed herein shall be no greater than the penalty prescribed by said Oregon Revised Statues.

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

6.03.090 Responsibility For Emergency Management

For purposes of this Ordinance, in accordance with ORS Chapter 401 or any successor statutes, the Emergency Management Agency for Clackamas County shall be the Clackamas County Department of Emergency Management. The Clackamas County Administrator is hereby designated as the Emergency Program Manager. Day-to-day management of the emergency program may be delegated to the Emergency Management Director. The National Incident Management System (NIMS) shall be used as the foundation for incident command, coordination and support activities.

COPY

November 12, 2015

Board of County Commissioner
Clackamas County

Members of the Board:

Approval of Revenue Intergovernmental Agreement with State of Oregon
Criminal Justice Commission, for the Specialty Courts Grant Program

Purpose/Outcomes	This Agreement provides the basis for financial support for our existing Mental Health Court which serves individuals living with serious mental illness and co-occurring disorders by providing treatment not incarceration.
Dollar Amount and Fiscal Impact	Contract maximum value is \$467,200.
Funding Source	Health Centers Division is receiving Grant funds from the State of Oregon Criminal Justice Commission – No County General Funds will be used.
Safety Impact	
Duration	Effective July 1, 2015 and terminates on June 30, 2017
Previous Board Action	No previous Board Action
Contact Person	Deborah Cockrell, Health Centers Director – 503-742-5495
Contract No.	7362

BACKGROUND:

The Clackamas County Health Center Division (CCHCD) of the Health, Housing & Human Services Department requests the approval of an Agreement with the State of Oregon Criminal Justice Commission to receive a grant award. This Agreement provides the basis for financial support for our existing Mental Health Court which serves individuals living with serious mental illness and co-occurring disorders by providing treatment not incarceration.

This contract is effective July 1, 2015 and continues through June 30, 2017. The agreement is retro-active due to late receipt of funding approval by the State. This agreement was approved by County Counsel on November 2, 2015.

RECOMMENDATION:

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

Respectfully submitted,


Richard Swift, Director

CRIMINAL JUSTICE COMMISSION
SPECIALTY COURTS GRANT PROGRAM

885 Summer Street NE
Salem, OR 97301

Contract # 7362

This Agreement is made and entered into by and between the **State of Oregon**, acting by and through its Criminal Justice Commission, hereafter referred to as "CJC," and **Clackamas County by and through its Clackamas Health Centers**, hereinafter referred to as "Grantee," and collectively referred to as the "Parties."

1. Effective Date; Availability of Grant Funds. This Agreement shall become effective on the later of **July 1, 2015** or the date when this Agreement is fully executed and approved as required by applicable law. Grant Funds under this Agreement are available for eligible costs incurred beginning on the Project Start Date and ending on the Project End Date provided in Exhibit A. CJC's obligation to disburse Grant Funds under this Agreement shall end 90 days after the Project End Date.

2. Agreement Documents. This Agreement consists of this document and the following documents, all of which are attached hereto and incorporated herein by reference:

- Exhibit A: **Project Description and Budget**
- Exhibit B: **Grant Application**
- Exhibit C: **Subcontractor Insurance**
- Exhibit D: **Federal Terms and Conditions**

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

3. Project Cost; Grant Funds. In accordance with the terms and conditions of this Agreement, CJC shall provide Grantee an amount not to exceed **\$467,200** in Grant Funds for eligible costs described in Section 6 hereof.

4. Project. The Grant Funds shall be used solely for the Project described in Exhibits A and B 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 CJC by amendment pursuant to Section 11.d hereof.

5. Reports. Grantee shall submit the reports required by this section.

a. Progress Reports. Grantee shall to submit a report each quarter on its progress in meeting each of its agreed upon goals and objectives and comprehensive evaluation plan. Progress reports must include data on performance measures. Reports must be received by CJC no later than October 20, January 20, April 20 and July 20. Grantee must receive prior

approval from CJC to extend a progress report past its due date. CJC may adjust this reporting schedule on an as needed-basis upon notice to Grantee as provided in Section 11.g.

b. Financial Reimbursement Reports.

i. In order to receive reimbursement, Grantee shall submit to CJC Requests for Reimbursement (RFR) that include supporting documentation for all grant expenditures. CJC must receive RFRs no later than October 20, January 20, April 20, and July 15. Reimbursements for expenses will be withheld if Progress Reports have not timely been submitted or are incomplete. Grantee must receive prior approval from CJC to extend an RFR past its due date.

ii. Reimbursement rates for travel expenses shall not exceed those allowed by the Oregon travel policy, available at http://www.oregon.gov/DAS/CFO/SARS/pages/oam_toc.aspx#Chapter_40_Travel. Requests for reimbursement for travel must be supported with a detailed statement identifying the person who traveled, the purpose of the travel, the times, dates, and places of travel, and the actual expenses or authorized rates incurred.

iii. When requesting reimbursement for equipment costing over \$5,000, the Grantee agrees to provide a description of the equipment, purchase price, date of purchase, and identifying numbers if any.

iv. Reimbursements will be made only for actual expenses incurred during the grant period. The Grantee agrees that no grant funds may be used for expenses incurred before the Project Start Date or after the Project End Date.

v. Grantee shall be accountable for and shall repay any overpayment, audit disallowances or amounts resulting from the Agreement that results in a debt owed to the Federal Government. CJC may apply interest, penalties, and administrative costs to a delinquent debt owed by a debtor pursuant to the Federal Claims Collection Standards and OMB Circular A-129.

6. Disbursement and Recovery of Grant Funds.

a. Disbursement Generally. CJC shall reimburse eligible costs incurred in carrying out the Project, up to the Grant Fund amount provided in Section 3. Reimbursements shall be made by CJC within 30 days of CJC's approval of a RFR. Eligible costs are the reasonable and necessary costs incurred by Grantee, or under a subagreement described in Section 9 of this Agreement, in performance of the Project and that are not excluded from reimbursement by CJC, either by this Agreement or by exclusion as a result of financial review or audit.

b. Conditions Precedent to Disbursement. CJC's obligation to disburse Grant Funds to Grantee is subject to satisfaction, with respect to each disbursement, of each of the following conditions precedent:

- i.** CJC has received funding, appropriations, limitations, allotments or other expenditure authority sufficient to allow CJC, in the exercise of its reasonable administrative discretion, to make the disbursement.
- ii.** Grantee is in compliance with the terms of this Agreement.
- iii.** Grantee's representations and warranties set forth in Section 7 hereof are true and correct on the date of disbursement with the same effect as though made on the date of disbursement.
- iv.** Grantee has provided to CJC a RFR in accordance with Section 5.b.i. hereof. Grantee must submit its final request for reimbursement following completion of the Project and no later than 60 days after the Project End Date. Failure to submit the final request for reimbursement within 60 days after the Termination Date could result in non-payment.

c. Recovery of Grant Funds. Any funds disbursed to Grantee under this Agreement that are expended in violation or contravention of one or more of the provisions of this Agreement ("Misexpended Funds") or that remain unexpended on the earlier of termination or expiration of this Agreement ("Unexpended Funds") must be returned to CJC. Grantee shall return all Misexpended Funds to CJC promptly after CJC's written demand and no later than 15 days after CJC's written demand. Grantee shall return all Unexpended Funds to CJC within 14 days after the earlier of expiration or termination of this Agreement.

7. Representations and Warranties of Grantee. Grantee represents and warrants to CJC as follows:

a. Organization and Authority. Grantee is duly organized and validly existing under the laws of the State of Oregon and is eligible to receive the Grant Funds. Grantee 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 Grantee of this Agreement (1) have been duly authorized by all necessary action of Grantee 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 Grantee'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 Grantee is a party or by which Grantee 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 Grantee of this Agreement.

b. Binding Obligation. This Agreement has been duly executed and delivered by Grantee and constitutes a legal, valid and binding obligation of Grantee, 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. Grantee's officers, employees, and agents shall neither solicit nor accept gratuities, favors, or any item of monetary value from contractors, potential contractors, or parties to subagreements. No member or delegate to the Congress of the United States or State of Oregon employee shall be admitted to any share or part of this Agreement or any benefit arising therefrom.

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

e. Registration with the System for Award Management (SAM). Grantee has registered with SAM (available through <http://www.ojp.usdoj.gov/funding/sam.htm>) and has provided its Data Universal Numbering System (DUNS) Number to CJC.

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

8. Records Maintenance and Access; Audit.

a. Records, Access to Records and Facilities. Grantee shall make and retain proper and complete books of record and account and maintain all fiscal records related to this Agreement and the Project in accordance with all applicable generally accepted accounting principles, generally accepted governmental auditing standards, state minimum standards for audits of municipal corporations, and in accordance with 2 CFR Part 200, Subpart F. Grantee shall ensure that each of its subgrantees and subcontractors complies with these requirements. CJC, the Secretary of State of the State of Oregon (Secretary), the United States Department of Justice Office of Special Programs, Bureau of Justice Assistance (USDOJ), and their duly authorized representatives shall have access to the books, documents, papers and records of Grantee that are directly related to this Agreement, the funds provided hereunder, or the Project for the purpose of making audits and examinations. In addition, CJC, the Secretary, USDOJ and their duly authorized representatives may make and retain excerpts, copies, and transcriptions of the foregoing books, documents, papers, and records. Grantee shall permit authorized representatives of CJC, the Secretary and USDOJ to perform site reviews of the Project, and to inspect all vehicles, real property, facilities and equipment purchased by Grantee as part of the Project, and any transportation services rendered by Grantee.

b. Retention of Records. Grantee shall retain and keep accessible all books, documents, papers, and records that are directly related to this Agreement, the Grant Funds or the Project for a minimum of six (6) years, or such longer period as may be required by other provisions of this Agreement or applicable law, following the Project End Date. If there are unresolved audit questions at the end of the six-year period, Grantee shall retain the records until the questions are resolved.

c. Expenditure Records. Grantee shall document the expenditure of all funds disbursed by CJC under this Agreement. Grantee shall create and maintain all expenditure records in accordance with generally accepted accounting principles and in sufficient detail to permit CJC to verify how the moneys were expended.

d. Audits. If Grantee expends \$750,000 or more in Federal funds (from all sources) in its fiscal year, Grantee shall have a single organization-wide audit conducted in accordance with the 2 CFR part 200, Subpart F. Copies of all audits must be submitted to CJC within 30 days of completion. If Grantee expends less than \$750,000 in its fiscal year in Federal funds, Grantee is exempt from Federal audit requirements for that year. Records must be available for review or audit by appropriate officials as provided in Section 8.a herein.

e. Audit Costs. Audit costs for audits not required in accordance with 2 CFR Part 200, Subpart F, are unallowable. If Grantee did not expend \$750,000 or more in Federal funds in its fiscal year, but contracted with a certified public accountant to perform an audit, costs for performance of that audit shall not be charged to this grant.

9. Grantee Subagreements and Procurements

a. Subagreements. Grantee may enter into agreements with subgrantees, contractors or subcontractors (collectively, "subagreements") for performance of the Project.

i. All subagreements must be in writing executed by Grantee 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 Grantee of its responsibilities under this Agreement.

ii. Grantee agrees to provide CJC with a copy of any signed subagreement upon request by CJC. Any substantial breach of a term or condition of a subagreement relating to funds covered by this Agreement must be reported by Grantee to CJC within ten (10) days of its being discovered.

b. Subagreement indemnity; insurance.

Grantee's subagreement(s) shall require the other party to such subagreements(s) that is not a unit of local government as defined in ORS 190.003, or a unit of state government as defined in ORS 174.111, if any, to indemnify, defend, save and hold harmless the CJC and its officers, employees and agents from and against any and all claims, actions, liabilities, damages, losses, or expenses, including attorneys' fees, arising from a tort, as now or

hereafter defined in ORS 30.260, caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of the other party to Grantee's subagreement or any of such party's officers, agents, employees or subcontractors ("Claims"). It is the specific intention of the Parties that CJC shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the CJC, be indemnified by the other party to Grantee's subagreement(s) from and against any and all Claims.

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

Grantee 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.

i. Grantee 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.

ii. All procurement transactions, whether negotiated or competitively bid and without regard to dollar value, shall be conducted in a manner so as to provide maximum open and free competition. Justification must be provided to CJC for any non-competitive or sole-source procurement. Justification should include a description of the program and what is being contracted for, an explanation of why it is necessary to contract noncompetitively, time constraints and any other pertinent information. All sole source procurements in excess of \$100,000 must receive prior written approval from CJC in addition to any other approvals required by law applicable to Grantee. Interagency agreements between units of government are excluded from this requirement to obtain CJC approval of sole source procurements.

iii. The Grantee shall be alert to organizational conflicts of interest or non-competitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade. Contractors that develop or draft specifications, requirements, statements of work, or Requests for Proposals (RFP) 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 CJC.

10. Termination

a. Termination by CJC. CJC may terminate this Agreement effective upon delivery of written notice of termination to Grantee, or at such later date as may be established by CJC in such written notice, if:

- i.** Grantee fails to perform the Project within the time specified herein or any extension thereof or commencement, continuation or timely completion of the Project by Grantee is, for any reason, rendered improbable, impossible, or illegal; or
- ii.** CJC fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow CJC, 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.** Grantee takes any action pertaining to this Agreement without the approval of CJC and which under the provisions of this Agreement would have required the approval of CJC.

b. Termination by Grantee. Grantee may terminate this Agreement effective upon delivery of written notice of termination to CJC, or at such later date as may be established by Grantee in such written notice, if:

- i.** The requisite local funding to continue the Project becomes unavailable to Grantee or Grantee is unable to continue implementation of the Program as a result of circumstances not reasonably anticipated by Grantee at the time it executed this Agreement and that are beyond Grantee's reasonable control; or
- ii.** Federal or state laws, rules, regulations or guidelines are modified or interpreted in such a way that the Project is no longer allowable or no longer eligible for funding under this Agreement.
- iii.** Upon termination of this Agreement under this subsection b, CJC may end all further disbursements of grant funds upon receipt of Grantee's termination notice but Grantee shall not be required to repay to CJC any grant funds previously disbursed to and expended by Grantee in accordance with the terms and conditions of this Agreement.

c. Termination by Either Party. Either Party may terminate this Agreement upon at least ten days notice to the other Party and failure of the other Party to cure within the period provided in the notice, if the other Party fails to comply with any of the terms of this Agreement.

11. GENERAL PROVISIONS

a. Contribution. If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 (“Third Party Claim”) against CJC or Grantee 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.

With respect to a Third Party Claim for which CJC is jointly liable with Grantee (or would be if joined in the Third Party Claim), CJC 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 Grantee in such proportion as is appropriate to reflect the relative fault of the CJC on the one hand and of the Grantee 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 CJC on the one hand and of Grantee 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. CJC’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 CJC had sole liability in the proceeding.

With respect to a Third Party Claim for which Grantee is jointly liable with CJC (or would be if joined in the Third Party Claim), Grantee 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 CJC in such proportion as is appropriate to reflect the relative fault of Grantee on the one hand and of CJC 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 Grantee on the one hand and of CJC 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. Grantee’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. Reserved.

d. Amendments; budget changes. This Agreement may be amended or extended only by a written instrument signed by both Parties and approved as required by applicable law. Grantee may propose changes to the Budget in Exhibit A that do not increase the total budget amount. The proposed changes to the Budget will be effective without a written Amendment to this Agreement upon written approval by CJC delivered to Grantee as provided in Section 11.g.

e. Duplicate Payment. Grantee 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.

f. No Third Party Beneficiaries. CJC and Grantee are the only Parties to this Agreement and are the only Parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly or indirectly, to a third person unless such a third person is individually identified by name herein and expressly described as an intended beneficiary of the terms of this Agreement.

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

g. Notices. Except as otherwise expressly provided in this Agreement, any communications between the Parties hereto or notices to be given hereunder shall be given in writing by personal delivery, facsimile, email, or mailing the same by registered or certified mail, postage prepaid, to Grantee Contact or CJC Contact at the address or number set forth on the signature page of this Agreement, or to such other addresses or numbers as either Party may hereafter indicate pursuant to this Section 11.g. Any communication or notice personally delivered shall be deemed to be given when actually delivered. Any communication or notice delivered by facsimile shall be deemed to be given when receipt of the transmission is generated by the transmitting machine, and to be effective against CJC, such facsimile transmission must be confirmed by telephone notice to CJC Contact. Any communication by email shall be deemed to be given when the recipient of the email acknowledges receipt of the email. The parties also may communicate by telephone, regular mail or other means, but such

communications shall not be deemed notices under this Section unless receipt by the other party is expressly acknowledged in writing by the receiving party.

h. Governing Law, Consent to Jurisdiction. This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively, "Claim") between State (or any other agency or department of the State of Oregon) and Grantee that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Marion County in the State of Oregon. In no event shall this section be construed as a waiver by the State of Oregon of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the eleventh amendment to the Constitution of the United States or otherwise, from any Claim or from the jurisdiction of any court. Each party hereby consents to the exclusive jurisdiction of such court, waives any objection to venue, and waives any claim that such forum is an inconvenient forum.

i. Compliance with Law. Grantee 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 D. Without limiting the generality of the foregoing, Grantee expressly agrees to comply with (i) Title VI of Civil Rights Act of 1964; (ii) Title V and Section 504 of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 and ORS 659A.142; (iv) all regulations and administrative rules established pursuant to the foregoing laws; and (v) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.

j. Insurance; Workers' Compensation. All employers, including Grantee, 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. Grantee shall ensure that each of its subgrantee(s), contractor(s), and subcontractor(s) complies with these requirements.

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

l. Severability. If any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the Parties shall be

construed and enforced as if this Agreement did not contain the particular term or provision held to be invalid.

m. Counterparts. This Agreement may be executed in two or more counterparts (by facsimile or otherwise), each of which is an original and all of which together are deemed one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart.

n. Integration and Waiver. This Agreement, including all Exhibits, constitutes the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. The delay or failure of either Party to enforce any provision of this Agreement shall not constitute a waiver by that Party of that or any other provision.

Grantee, by the signature below of its authorized representative, hereby acknowledges that it has read this Agreement, understands it, and agrees to be bound by its terms and conditions.

Approved by Grantee

Signature of Grantee _____ Date _____

Name/Title _____

Federal Tax ID Number _____ State Tax ID Number _____

Approved by Criminal Justice Commission

Michael Schmidt, Executive Director _____ Date _____

Approved for Legal Sufficiency

Approved for Legal Sufficiency by AAG Keith L. Kutler by email dated September 3, 2015

Keith L. Kutler _____ Date _____

CJC Grant Administrator
Tiffany Quintero
885 Summer St. NE
Salem, OR 97301-2524
Tiffany.Quintero@oregon.gov
(503) 378-4078

Grantee Contact
Wendy Robinson
998 Library Court
Oregon City, OR 97045
WRobinson@co.clackamas.or.us
(503)722-
(503) 722-6502

6502



COPY 4

M. BARBARA CARTMILL
DIRECTOR

DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT

DEVELOPMENT SERVICES BUILDING
150 BEAVERCREEK ROAD | OREGON CITY, OR 97045

November 12, 2015

Board of Commissioners
Clackamas County

Members of the Board:

A Board Order Adopting the Vacation of Browndale Farm Road

Purpose/Outcomes	Vacates a portion of Browndale Farm Road
Dollar Amount and Fiscal Impact	Application and processing fee received.
Funding Source	N/A
Safety Impact	The vacation of this portion of Browndale Farm Road will have no negative impact on the traveling public.
Duration	Upon execution; permanent vacation.
Previous Board Action	N/A
Contact Person	Doug Cutshall, Engineering Technician 503-742-4669

BACKGROUND

Browndale Farm Road, County Road Number 802, Department of Transportation and Development Maintenance Number 31036, located east of Charbonneau and the northeast quarter of Section 30, T.3 S., R.1 E., W.M., was established January 2, 1913, to provide a county road to Browndale and other area farms. The portion of Browndale Farm Road to be vacated will not deprive public access to any adjoining properties. The petitioner has provided an extension to the existing access easement to Bonneville Power Administration over the vacated portion of right-of-way. Vacating this portion of Browndale Farm Road will not affect traffic flow nor reduce the established width of sixty feet.

This portion of Browndale Farm Road is a 60 foot wide, 410 foot long, right-of-way that serves no public need and is not a benefit to the traveling public.

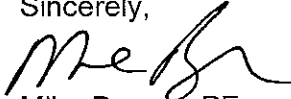
The Petition to Vacate has been filed with the determined fee and signed by 100 percent of the abutting property owners. All abutting property owners have signed Consent to Vacate forms that have been acknowledged by the proper authority. Clackamas County Department of Transportation Maintenance, Engineering, Planning, and Traffic Divisions, along with all local utility companies including Bonneville Power Administration, have been contacted and do not have any objections to this vacation.

County Counsel has reviewed and approved this vacation.

RECOMMENDATION

Staff respectfully recommends that the Board adopt the attached Board Order approving the vacation of a portion of Browndale Farm Road, County Road Number 802, Department of Transportation and Development Maintenance Number 31036.

Sincerely,



Mike Bezner, PE
Transportation Engineering Manager

For information on this issue or copies of attachments
please contact Doug Cutshall at 503-742-4669.

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

In the matter of the Vacation
Of a portion of Browndale Farm Road
County Road No. 802 situated in
Section 30, T.3 S., R.1 E., WM
Clackamas County, Oregon



Order No.
Page 1 of 2

This matter coming before the Board of County Commissioners at this time and appearing to the Board that in accordance with ORS 368.351 a petition signed by 100 percent of the abutting owners and a written report finding this vacation to be in the public interest from the County Road Official, M. Barbara Cartmill, Director, have been submitted in the matter of the vacation of a portion of Browndale Farm Road, County Road Number 802, described as follows:

All that portion of Browndale Farm Road, County Road Number 802, situated in Section 30, T.3 S., R.1 E., WM, Clackamas County, Oregon, as more particularly described and shown on attached Exhibits "A" and "B".

IT FURTHER APPEARING that the Board having read said petition and report from the County Road Official and having determined the vacation of the above described portion of roadway to be in the public interest; and,

IT FURTHER APPEARING that Clackamas County Departments of Transportation Maintenance, Engineering, Planning, Traffic, along with all local utility companies, including Bonneville Power Administration, have been contacted and do not have any objections to this vacation providing that utility easement rights are reserved; now therefore,

IT IS HEREBY ORDERED that the attached described portion of Browndale Farm Road, County Road Number 802, containing 23,414 square feet, more or less, be vacated; and,

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

In the matter of the Vacation
Of a portion of Browndale Farm Road
County Road No. 802 situated in
Section 30, T.3 S., R.1 E., WM
Clackamas County, Oregon



Order No.
Page 2 of 2

IT IS FURTHER ORDERED that rights for all exiting utilities within the vacated portion of Browndale Farm Road be reserved. Nothing contained herein shall cause or require the removal or abandonment of any storm or sanitary sewer, water main, gas line, conduit of any kind, wires or poles which are now installed in said right-of-way and used or intended to be used for any public service or utility. In addition, the rights are reserved to maintain, repair, construct or reconstruct, install, renew, and enlarge all utilities that are now used for any public service or utility; and,

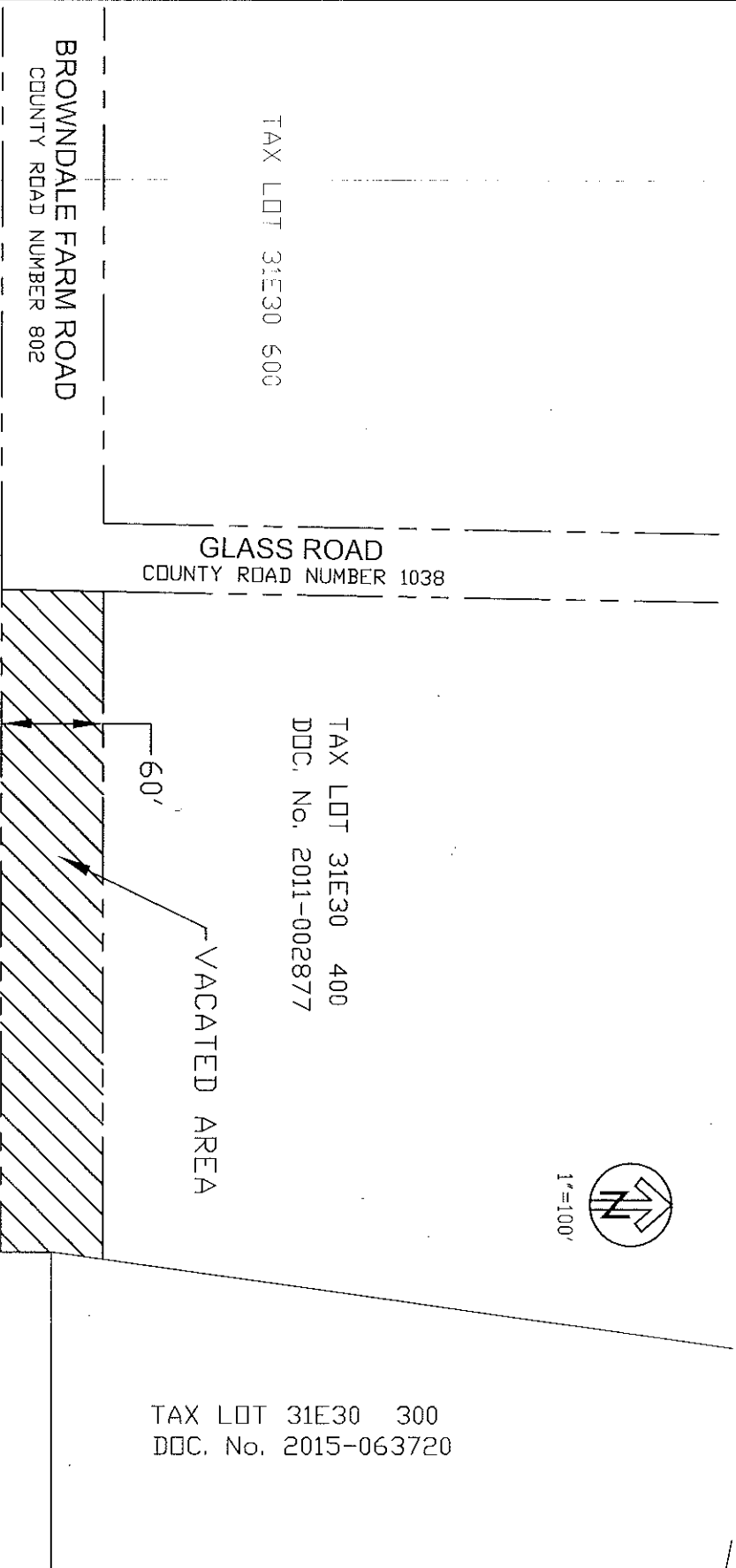
IT IS FURTHER ORDERED, that this Order and attached exhibits be recorded in the Deed Records for Clackamas County and that a copy be filed with the County Surveyor, County Assessor, and Finance Office/Fixed Assets.

ADOPTED this 12th day of November, 2015

BOARD OF COUNTY COMMISSIONERS

Chair

Recording Secretary



TAX LOT 31E30 1100

TAX LOT 31E30 600

GLASS ROAD
COUNTY ROAD NUMBER 1038

BROWNDALE FARM ROAD
COUNTY ROAD NUMBER 802

TAX LOT 31E30 500
DDC. No. 2015-063720

TAX LOT 31E30 400
DDC. No. 2011-002877

60'

VACATED AREA



TAX LOT 31E30 300
DDC. No. 2015-063720

REGISTERED
PROFESSIONAL
LAND SURVEYOR

OREGON
FEBRUARY 08, 2000
GEFFORY N. ADAIR
58984

RENEWS: 12-31-15

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



BY: D. CUTSHALL DATE: 07/31/2015

EXHIBIT "B"

SHEET
PAGE 1

Exhibit "A"

Browndale Farm Road

DTD Maintenance No. 31036

Map No. 31E30 00500

Date: September 10, 2015

Page 1 of 1

VACATION OF A PORTION OF BROWNDALE FARM ROAD

A portion of Browndale Farm Road, as shown on attached Exhibit "B", which by this reference is made a part hereof, being a portion of County Road Number 802, located near Wilsonville, Oregon, situated in the northeast quarter of Section 30, Township 3 South, Range 1 East, Willamette Meridian, Clackamas County, Oregon, said portion of road right-of-way being more particularly described as follows:

All of Browndale Farm Road, County Road Number 802, lying east of the southerly extension of the east right-of-way line of Glass Road, County Road Number 1038. Said portion of Browndale Farm Road is 60 feet wide and 410 feet long more or less, and shown on Private Survey Number 1922, a map by Thomas Telford, Clackamas County Survey Records, which by this reference is made a part hereof.

Containing 23,414 square feet, more or less.

REGISTERED
PROFESSIONAL
LAND SURVEYOR



OREGON
FEBRUARY 08, 2000
GEFFORY N. ADAIR
58984

RENEWES: 12-31-15

MEMORANDUM

TO: Board of Commissioners

FROM: M. Barbara Cartmill, Director D.T.D.

DATE: November 12, 2015

SUBJ: **ROAD OFFICIAL'S REPORT FOR THE VACATION OF A PORTION OF
BROWNDALE FARM ROAD**

LOCATION: Browndale Farm Road, County Road Number 802, is located in the northeast quarter of Section 30, T.3 S., R.1 E., W.M. near Charbonneau.

FACTS AND FINDINGS: The subject portion of Browndale Farm Road, Department of Transportation and Development Maintenance Number 31036, became a part of the county road system January 2, 1913, to provide a county road to Browndale and other area farms. The portion of Browndale Farm Road to be vacated will not deprive public access to adjoining properties. The petitioner has provided an extension to an existing access easement to Bonneville Power Administration over the vacated portion of right-of-way.

This portion of Browndale Farm Road is a 60 foot wide, 410 foot long, right-of-way that serves no public need and is not a benefit to the traveling public. Vacating this portion of Browndale Farm Road will not affect traffic flow nor reduce the established width of sixty feet.

The Petition to Vacate has been filed with the determined fee and signed by 100 percent of the abutting property owners. All abutting property owners have signed Consent to Vacate forms, which have been acknowledged by the proper authority.

Clackamas County Departments of Transportation Maintenance, Engineering, Planning, Traffic, along with all local utility companies and Bonneville Power Administration have been contacted and do not have any objections to this vacation.

After considering traffic impacts, fiscal impacts, and social impacts, it appears to be in the public interest to vacate the area petitioned.

It is my assessment to support the subject vacation.

Pursuant to ORS 368.351 and County policy, the Board may make its determination in the matter of this vacation without a public hearing. This is allowed when there is 100% agreement from the affected property owners, this Road Official's Report is submitted, and there is no controversy related to the proposed vacation.

DRAFT

Approval of Previous Business Meeting Minutes:

October 22, 2015

(draft minutes attached)

BOARD OF COUNTY COMMISSIONERS BUSINESS MEETING MINUTES

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

<http://www.clackamas.us/bcc/business.html>

Thursday, October 22, 2015 – 10:00 AM

Public Services Building

2051 Kaen Rd., Oregon City, OR 97045

PRESENT: Commissioner John Ludlow, Chair
Commissioner Tootie Smith
Commissioner Martha Schrader

EXCUSED: Commissioner Paul Savas
Commissioner Jim Bernard

CALL TO ORDER

■ Roll Call

Commissioners Bernard and Savas will not be in attendance today.

■ Pledge of Allegiance

I. PRESENTATION

1. Presentation on Ebola Planning Updates

Dr. Sarah Present and Dr. Doug Lyon presented the staff report and showed a PowerPoint Presentation.

~Board Discussion~

II. CITIZEN COMMUNICATION

<http://www.clackamas.us/bcc/business.html>

1. Thane Eddington, Chair of Stafford Hamlet – request to the Board for the Stafford area to be undesignated, and voter engagement.

~Board Discussion~

III. PUBLIC HEARING

1. Resolution No. **2015-110** Amending Appendix A, Fees of the Clackamas County Code to Repeal the Department of Transportation & Development Utility Permit Inspection Fee and Credit/Debit Card Department Managed Service Fee

Diedre Landon, Department of Transportation & Development presented the staff report.

~Board Discussion~

Chair Ludlow opened the public hearing and asked if anyone wished to speak, seeing none he closed the public hearing and asked for a motion.

MOTION:

Commissioner Smith: I move we approve the Resolution Amending Appendix A, Fees of The Clackamas County Code to Repeal the Department of Transportation & Development Utility Permit Inspection Fee and Credit/Debit Card Department Managed Service Fee.

Commissioner Schrader: Second

Clerk calls the poll.

Commissioner Smith: Aye.

Commissioner Schrader: Aye.

Chair Ludlow: Aye - the motion passes 3-0

IV. CONSENT AGENDA

Chair Ludlow asked the Clerk to read the consent agenda by title.

MOTION:

Commissioner Schrader: I move we approve the consent agenda.

Commissioner Smith: Second.

Clerk calls the poll.

Commissioner Schrader: Aye.

Commissioner Smith: Aye.

Chair Ludlow: Aye – the motion passes 3-0.

A. Health, Housing & Human Services

1. Approval of renewal Intra-Agency Agreement with Clackamas County Health Centers Division (CCHCD), for the School Based Health Centers (SBHC) Building Mental Health Capacity for Oregon City and Sandy High Schools – *Public Health*
2. Approval to Apply for a Grant Renewal from the U.S. Department of Housing and Urban Development (HUD) for the HOPE I Program – *Social Services*

B. Elected Officials

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

V. COUNTY ADMINISTRATOR UPDATE

<http://www.clackamas.us/bcc/business.html>

VI. COMMISSIONERS COMMUNICATION

<http://www.clackamas.us/bcc/business.html>

MEETING ADJOURNED 11:11 AM

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



November 12, 2015

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of an Oregon Department of Forestry Grant Agreement
Cooperative Pilot Project Phase 1 Feasibility Study

Purpose/Outcomes	Provides for Business and Community Services - Ag and Forest Economic Development division to carry out the services necessary to determine the feasibility of developing a Clackamas County Forestry Products Cooperative as a pilot project for the state as authorized in HB2984.
Dollar Amount and Fiscal Impact	This grant awards \$400,000 to Clackamas County to carry out the project. Business and Community Services is in the process of preparing a supplemental budget to add the grant and expenditure authority to the fiscal year 2015-2016 budget.
Funding Source	State of Oregon – HB2984
Safety Impact	None
Duration	This project is expected to begin in December 2015 and run through June 2017.
Previous Board Action	None
Contact Person	Rick Gruen, Agriculture and Forest Economic Development Manager, x4345
Contract No.	ODF/Clackamas County Forestry Products Cooperative

BACKGROUND:

During the 2015 legislative session, Representative Julie Parrish (R-Tualatin/West Linn) introduced, and the Oregon Legislature passed, HB 2984. The bill provides for Clackamas County to conduct a pilot project determining the feasibility of a Clackamas Forestry Product Cooperative Program, otherwise known as the Clackamas Urban Lumber Program. The goal of the project is to develop a statewide model for Oregon counties to promote economic development through the establishment of Urban Lumber Cooperatives. If determined feasible, these Cooperatives would oversee the sustainable commercial production and marketing of specialty lumber products on non-forest lands in urban areas in order to promote economic development and new public revenues for local communities. This innovative concept has the potential to yield significant benefits for Clackamas County, its cities, and the State of Oregon.

RECOMMENDATION:

County Counsel has reviewed the grant award documents and has approved as to form. Staff recommends the Board approve the Oregon Department of Forestry Cooperative Pilot Project Phase 1 Feasibility Study.

Respectfully submitted,

Laura Zentner,
Deputy Director of Business and Community Services

**GRANT AGREEMENT FOR CLACKAMAS COUNTY FORESTRY PRODUCT
COOPERATIVE PILOT PROJECT PHASE 1 FEASIBILITY STUDY
BETWEEN
OREGON DEPT. OF FORESTRY
AND
CLACKAMAS COUNTY**

THIS GRANT AGREEMENT for the Clackamas County Forestry Product Cooperative Pilot Phase 1 Feasibility Study ("Agreement") is made and entered into as of the last date of signature indicated below (the "Effective Date"), by and between Oregon Dept. of Forestry ("ODF"), a department of the State of Oregon Government, and Clackamas County ("COUNTY"), an Oregon municipal corporation (collectively, the "Parties" and individually "Party").

RECITALS

- A. HB 2984 (2015) provides for COUNTY to carry out the services necessary to determine the feasibility of developing a Clackamas County Forestry Products Cooperative as a pilot project beginning with the signing of this Agreement and reporting back to the Oregon State Legislature by June 30, 2017. ("Agreement Period").
- B. ODF has been designated by Oregon State Legislature through HB 2984 (2015) as the oversight state agency that would direct the state allocated funding to COUNTY.

NOW, THEREFORE, the Parties agree as follows:

TERMS

1. Grant Award. The County agrees to perform the project described in the Statement of Work, attached as Exhibit A, and as specified in this Agreement. In return ODF agrees to provide the payment for actual costs of expenditures identified in this agreement according to the Grant Budget, attached as Exhibit B.

The Grantee agrees that funds provided by the Legislature will be used only for the work identified in this Agreement.

2. Statement of Work. County agrees to accomplish the work described in Exhibit A attached hereto and by this reference made a part thereof.
3. Term. The term of this Agreement shall commence with the signing of this agreement by all Parties and expire in June 30, 2017 with the final report due to ODF before September 30, 2017.
4. Records Maintenance and Access.
 - a. County will retain and keep accessible all books, documents, papers, and records that are directly related to this Agreement, the grant moneys or the project for a minimum of six (6) years, or such longer period as may be required by other provisions of this Agreement or applicable law, following termination or expiration of this Agreement. If there are unresolved audit questions or litigation at the end of the six-year period, Grantee will retain the records until the questions or litigation is resolved.
 - b. County will document the expenditure of all grant moneys disbursed by ODF under this Agreement. Grantee will create and maintain all expenditure records in accordance with

generally accepted accounting principles and in sufficient detail to permit ODF to verify how the grant moneys were expended.

- c. The Secretary of State's Office of the State of Oregon and their duly authorized representatives will have access to the books, documents, papers and records of County that are directly related to this Agreement, the grant moneys provided hereunder, or the project for the purpose of making audits and examinations.
5. Payment. This grant is to reimburse the County for actual expenditures incurred pursuant to this Agreement through the end of the Agreement Period. Advance payments each made in the amount of \$100,000 or in an amount requested by the County not to exceed a total of \$400,000 will be made under this award. Requests to receive an advanced payment shall be submitted to ODF. These requests will be accompanied by an accounting of the actual expenses incurred as a result of the previous advance on the form provided in Exhibit C with the exception of the first request that would not have documentation of expenses. Allowable expenditures will be those approved in (1) the initial Statement of Work or Budget, or (2) in subsequent approved modifications to these documents. If County receives an advance payment and subsequently requests another advance payment, then the request must clearly demonstrate that the previously advanced funds have been substantially expended, at least 80%, before ODF can approve the request for payment and issue another advance.
6. Reporting. COUNTY shall provide ODF with quarterly reporting of funds expended and project summaries of progress. Quarters will be January 1 through March 31, April 1 through June 30, July 1 through September 30, and October 1 through December 31. Reports are due within 30 days from the end of a quarter.
7. Award Closeout. The County will submit to ODF all financial performance and related reports required by the terms of the agreement within 90 days following the date of expiration or termination of this grant.
 - a. Any funds advanced but not spent upon expiration of this award shall be returned to ODF within 90 days of the expiration date of this Agreement unless the Legislature provides for an extension of fund availability.
 - b. A final progress report describing the tasks completed and final outcomes of the completed project including program model documents identified in HB 8984 Section 5 will be submitted to ODF.
8. Public Domain Information. The project funded by this grant will determine the feasibility to produce a program model that other counties wanting to promote economic development by using cooperatives to provide for the commercial production and marketing of forestry products from non-forest lands can use. The County acknowledges that all program model information developed from Agreement funds will become public information subject to the requirements of ORS 192.410 to 192.505.
9. Modification Provisions. The terms of this Agreement may be modified by mutual agreement of the Parties. Any modification shall be in writing, shall refer specifically to this Agreement, and shall be executed by the Parties.
10. Termination of Agreement. This Agreement may be terminated:
 - a. At any time by mutual written consent of all parties;
 - b. Upon written notice by ODF to County for County's failure to perform any provision of this Agreement;

- c. Upon 30 days written notice to County by ODF as directed by the Legislature for any other reason specified in writing; or
 - d. At any time, upon written notice by the ODF, if ODF lacks sufficient funding, appropriations, limitations, allotments, or other expenditure authority to allow ODF, in the exercise of its reasonable administrative discretion, to disburse the grant funds.
11. Compliance with Laws. County agrees to comply with all state and federal laws in the execution of this project.
12. Defense and Indemnification. Subject to the Oregon Constitution and the limits of the Oregon Tort Claims Act, each Party agrees to hold harmless, defend, and indemnify the other Party, its officers, employees and agents against any and all claims, demands, actions or suits (including all attorneys' fees and costs) arising from this Agreement where the claim, suit, action, loss, damage, injury or liability is attributable to the acts or omissions of the indemnifying Party, its officers, employees or agents.

Nothing in this section shall require a Party to indemnify the other Party from liability arising from the sole negligence of the other Party, its officers, employees, or agents.

13. Alternative Dispute Resolution. The Parties should attempt in good faith to resolve any dispute arising out of this Agreement. This may be done at any management level, including at a level higher than persons directly responsible for administration of the 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.
14. Consent to Jurisdiction. Any claim, suit or action between the Parties that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the jurisdiction of the Circuit Court of Clackamas County in the State of Oregon. In no event shall this Section be construed as a waiver by the State of Oregon of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the eleventh amendment to the Constitution of the United States or otherwise, from any Claim or from the jurisdiction of any court. EACH PARTY HEREBY CONSENTS TO THE EXCLUSIVE JURISDICTION OF SUCH COURT, WAIVES ANY OBJECTION TO VENUE AND WAIVES ANY CLAIM THAT SUCH FORUM IS AN INCONVENIENT FORUM.
15. Assignment. This Agreement is non-assignable and non-transferrable.
16. Contracting. The COUNTY, at its discretion, may contract portions of its work under this Agreement without the prior written approval of ODF. The COUNTY shall require contractor to agree, as to the portion contracted, to fulfill the obligations of the COUNTY as specified in this Agreement. The COUNTY shall remain obligated for full performance hereunder, and ODF shall incur no obligation other than its obligations to the COUNTY hereunder. The COUNTY agrees that if contractors are employed in the performance of this Agreement, the COUNTY will follow all required public contracting policies and procedures established by the COUNTY.
17. Severability. If any provision of this Agreement is found to be unconstitutional, illegal or unenforceable, this Agreement nevertheless shall remain in full force and effect and the offending provision shall be stricken. The Court or other authorized body finding such provision unconstitutional, illegal or unenforceable shall construe this Agreement without such provision to give effect to the intentions of the parties to the maximum extent possible.

18. Integration. This Agreement contains the entire agreement between ODF and the COUNTY and supersedes any, or all, prior written or oral discussions or agreements.
19. Waiver. ODF and the COUNTY shall not be deemed to have waived any breach of this Agreement by the other Party except by an express waiver in writing. An express written waiver as to one breach shall not be deemed a waiver of any other breach not expressly identified, even though the other breach be of the same nature as that waived.
20. Notice. Any notice under this Agreement shall be in writing and shall be effective when actually delivered or when deposited in the mail, addressed to the Parties as follows:

ODF: Peter Daugherty, Chief
Private Forests Division
Oregon Dept. of Forestry
2600 State Street
Salem, OR 97310

COUNTY: Rick Gruen, Manager, Clackamas County Parks and Forest,
Clackamas County
150 Beavercreek Rd
Oregon City, OR 97045

Laura Zentner, Deputy Director, Business and
Community Services, Clackamas County
150 Beavercreek Rd
Oregon City, OR 97045

21. Exhibits Attached. The following exhibits are attached and incorporated by reference as part of this Agreement:

Exhibit A	Statement of Work
Exhibit B	Grant Budget
Exhibit C	Advance Form

22. Signatures. Each party, by the signature below of its authorized representative, hereby acknowledges that it has read this Agreement, understands it, and agrees to be bound by its terms and conditions. Each person signing this Agreement represents and warrants having the authority to execute this Agreement.

Oregon Dept. of Forestry

By: _____
Title: _____
Date: _____

Clackamas County/Business and Community Services

By: _____
Title: _____
Date: _____

Exhibit A
Statement of Work

Clackamas Forestry Product Cooperative Project

Grant Period: July 1, 2015 – June 30, 2017

Grant Amount: \$400,000

Purpose:

The Clackamas Forestry Product Cooperative Project is an urban lumber pilot project. The purpose of the project shall be to develop a cooperative model for Oregon counties to promote economic development using non-forest lands to produce and market forestry products.

During the 2015 legislative session, Rep. Julie Parrish (R-Tualatin/West Linn) introduced, and the Oregon Legislature passed, HB 2984. The bill requires Clackamas County to conduct a pilot project determining the feasibility of a Clackamas Forestry Product Cooperative Program, otherwise known as the Clackamas Urban Lumber Program. This project will take place over the next two years. The goal of the project is to develop a statewide model for counties to establish Urban Lumber Cooperatives. These Cooperatives will oversee the sustainable commercial production and marketing of specialty lumber products on non-forest lands in urban areas in order to promote economic development and new public revenues for local communities.

Currently there is no efficient method of harnessing valuable lumber from trees grown in cities. Typically, a dying/diseased/hazardous tree is cut down and either chipped or used for firewood. Any potential value of the resource for use by specialty hardwood mills is wasted. Alternatively, specialty hardwood trees could provide great economic and environmental benefits if planted and managed with the intention of eventual harvest. This innovative concept has the potential to yield significant benefits for Clackamas County, its cities, and the State of Oregon.

Scope of work:

The pilot is intended to determine the feasibility of a Forestry Product Cooperative and also develop the operation strategies of the program (e.g., governance, technology, and education). No enrollment or harvesting of trees will occur during this study period. Rather, as directed by the Legislature, the County will carry out the following five tasks to determine the feasibility of a Forestry Product Cooperative Program:

1. Feasibility Analysis.

- a. Work will address the long term viability for a Forestry Product Cooperative by conducting economic analyses determining the necessary capacities to grow and sustain the cooperative. Tasks under this section include:
 - i. Determination of log volume and membership enrollment requirements;

- ii. Supply/demand forecast;
 - iii. Pilot Program costs: short and long term revenue streams;
 - iv. Pilot program limitations and opportunities;
 - v. Strategies for short term sustainability: identify revenue streams before 1st harvest;
 - vi. Development of a pro forma statement.
- b. Work will be carried out by a contractor under the direction of the Project Coordinator.
 - c. Timeline: January - October, 2016
 - d. Deliverables: Report to Project Coordinator and Urban Lumber Advisory Committee addressing each of the task objectives.

2. Governance Structure

- a. Work will define the appropriate cooperative structure to run the Forestry Product Cooperative. Tasks under this section include:
 - i. Organization and registration as formal vs. informal Coop;
 - ii. Solicit stakeholder recommendations regarding cooperative structure and operation;
 - iii. Develop standardized memorandums of understanding setting forth the services provided and the terms of program participation.
- b. Work will be carried out by a contractor under the direction of the Project Coordinator.
- c. Timeline: January - October, 2016
- d. Deliverables: Report to Project Coordinator and Urban Lumber Advisory Committee addressing each of the task objectives.

3. Technical

- a. Work will develop the technical requirements for planting, growing, managing and marketing of the trees. Tasks under this section include:
 - i. Design tree enrollment and membership criteria;
 - ii. Identify suitable software system for developing geo tagging process for identification, tracking, growth modeling, mapping, and reporting;
 - iii. Develop program policies and procedures for operations and management;
- b. Work will be carried out by a contractor under the direction of the Project Coordinator.

c. Timeline: January - October, 2016

d. Deliverables:

- i. Identify tree species best suited for use in western Oregon for producing urban forestry products;
- ii. Develop software and/or application to track enrolled trees and growth modeling;
- iii. Determine feasibility of cloud based website for internal and external program use;
- iv. Care instructions and identification of best practices for the production of forestry products;
- v. Means for identifying and monitoring the status of trees in the program;
- vi. Materials for the marketing of, and promoting pilot forestry products cooperative.

4. Education

a. Work will engage urban cities through outreach and education to encourage participation in the pilot project; develop an "Owner's Manual" to guide counties in successful cooperative implementation. Tasks under this section include:

- i. Meetings and interviews with cities; define passive/active participation;
- ii. Meetings with Oregon Dept. of Forestry;
- iii. Identify Advisory Committee member and bring recommendation before Board of County Commissioners;
- iv. Develop opt in participation procedures; develop MOU/IGA with participating cities;
- v. Demo planting or milling logs; outreach presentations/conferences;
- vi. Reconcile the feasibility associated with all project tasks;

b. Work will be carried out by Project Team (Project Coordinator, Project Contractors) under the supervision of the Project Coordinator.

c. Timeline: January 2016 - June, 2017

d. Deliverables:

- i. Quarterly meetings with Advisory Committee;
- ii. A training document (Owner's Manual) to guide counties in establishing and administering cooperatives for the commercial production and marketing of forestry products on non-forest lands;
- iii. Outreach presentations to cities;

- iv. MOU's with cities;
- v. Final report and project recommendation ("go/no go") to Legislature, Board of County Commissioners;
- vi. Legislative Progress Reports.

**Exhibit B
Project Budget**

Budget

**Feasibility
Analysis**

	Administrative	Project Coord.	Contractor	Facilitator	
Salary	\$ 944.00	\$ 3,461.99			
Fringe	\$ 502.00	\$ 2,765.06			
Supplies		\$ 666.67			
Travel		\$ 250.00			
Contractual			\$ 45,000		
	\$ 1,446	\$ 7,144	\$ 45,000	-	\$ 53,590

**Governance
Structure**

	Administrative	Project Coord.	Contractor	Facilitator	
Salary	\$ 944.00	\$ 6,923.97			
Fringe	\$ 502.00	\$ 5,530.13			
Supplies		\$ 1,333.33			
Travel		\$ 500.00			
Contractual			\$ 25,000	\$ 8,000	
	\$ 1,446	\$ 14,287	\$ 25,000	\$ 8,000	\$ 48,733

Technical

	Administrative	Project Coord.	Contractor	Facilitator	
Salary	\$ 1,888.00	\$ 6,923.97			
Fringe	\$ 1,004.00	\$ 5,530.13			
Supplies		\$ 1,333.33			
Travel		\$ 500.00			
Contractual			\$ 100,000	\$ 2,000	
	\$ 2,892	\$ 14,287	\$ 100,000	\$ 2,000	\$ 119,179

Education

	Administrative	Project Coord	Contractor	Facilitator	
Salary	\$ 13,216.00	48,468			
Fringe	\$ 7,028.00	38,711			
Supplies		9,333			
Travel		3,500			
Contractual				\$ 25,000	
	\$ 20,244	\$ 100,012	\$ -	\$ 25,000	\$ 145,256

Administrative	Administrative	Project Coord.	Contractor	Facilitator	
Salary	\$ 7,244.64	\$ 3,461.99			
Fringe	\$ 3,853.08	\$ 2,765.06			
Supplies		\$ 666.67			
Travel		\$ 250			
Contractual				\$ 15,000	
	\$ 11,098	\$ 7,144	-	\$ 15,000	\$ 33,241

Totals	Administrative	Project Coord.	Contractor	Facilitator	
Salary	\$ 24,237	\$ 69,239.70	-	-	
Fringe	\$ 12,889	\$ 55,301.25	-	-	
Supplies	\$ -	\$ 13,333.33	-	-	
Travel	\$ -	\$ 5,000	-	-	
Contractual	\$ -	\$ -	\$ 170,000	\$ 50,000	
	\$ 37,126	\$ 142,874	\$ 170,000	\$ 50,000	\$ 400,000

Administrative= Project Manager + Finance Team

Note: This budget reflects projected expenses related to the Clackamas County Forest Products Coop Project. Actual expenses may fluctuate among the different pieces of work.

**Exhibit C
Advance-Reimbursement Form**

CLACKAMAS COUNTY FORESTRY PRODUCTS COOPERATIVE PILOT PROJECT																				
Grant Advance - Reimbursement Forms																				
Grant Advance Request					Request by: _____															
Request #: _____					Date: _____															
Amount Requested: _____																				
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	Start		to		End															
Period of Request																				
Project Tasks to Fund:				Amount Requested:																
				Budgeted \$ this period																
Project Task																				
Feasibility Analysis	\$					-														
Governance Structure	\$					-														
Technical (Owner's Manual)	\$					-														
Education	\$					-														
Administrative	\$					-														
			Totals	\$		-														
Documentation of Expenses																				
					Submitted by: _____															
Previous Advance Amount : _____					Date: _____															
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	Start		to		End															
Previous Request Period																				
Expenses this Period																				
	Feasibility Analysis	Governance Structure	Technical	Education	Admin.	Totals														
Salary	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -														
Fringe	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -														
Travel	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -														
Supplies	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -														
Contractual	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -														
	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -														
Amount of previous Advance						\$ -														
Percent expended						0%														
Project Progress																				

Wolf, Samantha

From: Gruen, Rick
Sent: Wednesday, November 04, 2015 11:05 AM
To: Zentner, Laura
Cc: Wolf, Samantha
Subject: FW: HB2984 _ Grant Agreement Review Request

Laura,
Here is Counsel's acceptance of the agreement.

Rick

Rick Gruen | Manager
County Parks & Forest | Ag and Forest Economic Development
Clackamas County
150 Beaver Creek Road | Oregon City | OR | 97045
P: 503.742.4345 | rgruen@clackamas.us

From: Storey, Chris
Sent: Friday, October 23, 2015 3:06 PM
To: Gruen, Rick
Cc: Rastetter, Kathleen
Subject: RE: HB2984 _ Grant Agreement Review Request

Rick,

I've reviewed the proposed grant and it seems fairly reasonable. So long as you have reviewed and are comfortable with the scope and the proposed project budget, then I don't see a problem. If so, it can go through your normal grant acceptance process.

Chris

Chris Storey
Assistant County Counsel
2051 Kaen Road, 4th Floor
Oregon City, OR 97045
503 742 4623 Phone

From: Rastetter, Kathleen
Sent: Thursday, October 15, 2015 8:58 AM
To: Storey, Chris
Cc: Gruen, Rick
Subject: FW: HB2984 _ Grant Agreement Review Request

Can you please review this for them? I'm slammed and won't be able to get to it in that timeframe. Thanks!

KR

Kathleen J. Rastetter

Senior County Counsel
Clackamas County
2051 Kaen Road
Oregon City, OR 97045
503-742-5398

Our hours are Monday through Thursday 7:00 a.m. to 6:00 p.m.

*****CONFIDENTIALITY NOTICE*****

This e-mail may contain information that is privileged, confidential, or otherwise exempt from disclosure under applicable law. If you are not the addressee or it appears from the context or otherwise that you have received this e-mail in error, you are hereby notified that the sender has not waived any privilege, and that you may not read, disclose, copy, distribute, use or take action based upon this transmission or any accompanying documents. If you have received this transmission in error, please immediately notify this office, keep the contents confidential, and immediately delete the message and any attachments from your system.

From: Gruen, Rick
Sent: Wednesday, October 14, 2015 11:43 AM
To: Rastetter, Kathleen
Cc: Zentner, Laura
Subject: HB2984 _ Grant Agreement Review Request

Hi Kathy,
We are getting close to moving forward with the feasibility phase of the pilot urban lumber project under HB2984. Laura, Sam and I have met with Oregon Dept. of Forestry to discuss and make edits to the grant agreement. I have attached this for your review (along with supporting Statement of Work and Budget). Do you have time this week to review the grant agreement? Please let know if any changes are needed or if you are good with the grant agreement as written. We've come a long way since we first met with you to review the bill as it was going through the amendment process. Thank you for your help with this.

Regards,

Rick

Rick Gruen | Manager
County Parks & Forest | Ag and Forest Economic Development
Clackamas County
150 Beaver Creek Road | Oregon City | OR | 97045
P: 503.742.4345 | rgruen@clackamas.us

From: Wolf, Samantha
Sent: Wednesday, October 14, 2015 11:31 AM
To: Gruen, Rick
Subject: UL: agreement, statement of work, budget



7

Laura Zentner, CPA
Deputy Director
BUSINESS AND COMMUNITY SERVICES
Development Services Building
150 Beaver Creek Road, Oregon City, OR 97045

November 12, 2015

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of a State Marine Board Facility Grant Cooperative Agreement
Facility Grant no. 1541 – Hebb Park Boating Improvement

Purpose/Outcomes	Removal of an aged and failing wooden dock system and replacement with a new aluminum dock system. Additional improvements include sediment removal along bank-side of courtesy dock and repair to the scoured boat ramp toe.
Dollar Amount and Fiscal Impact	This grant award will contribute \$315,000 of a total project amount of \$420,000. County Parks has budgeted the remaining project expense of \$105,000 in its 2015-16 Fiscal Year budget.
Funding Source	County Parks Fund 213
Safety Impact	Improvements will alleviate potential risk and hazards from the failing dock system, and will enhance boater experience.
Duration	Project is expected to begin in late summer 2016 and run through the fall of 2016.
Previous Board Action	None
Contact Person	Rick Gruen, County Parks & Forest Manager 742-4345
Contract No.	Facility Grant No. 1541

BACKGROUND:

The existing Hebb Park boarding and courtesy docks were installed after the flood of 1996. Wood materials were used and have reached their useful life expectancy of almost 20 years. This project consists of removal and disposal of the existing wood boarding and courtesy docks, and sediment removal under existing gangway and on existing rip rap along the bank to improve river flow, stability for the docks, and to allow for additional boater access on the bank side of the courtesy dock. A new aluminum boarding dock, and courtesy dock will be installed, and the existing steel piles will be re-used for the courtesy dock. Additionally, two existing aluminum gangplanks will be saved and reused in this project.

RECOMMENDATION:

Staff recommends the Board approve the State Marine Board Facility Grant Cooperative Agreement.

Respectfully submitted,

Laura Zentner, Deputy Director of Business and Community Services

**STATE MARINE BOARD
FACILITY GRANT COOPERATIVE AGREEMENT
FACILITY GRANT NO. 1541- HEBB PARK BOATING IMPROVEMENTS**

This Agreement is entered into by and between the State of Oregon, acting by and through its State Marine Board, hereinafter called the "Board," and Clackamas County, hereinafter called the "Recipient", each a "Party" and, together, the "Parties".

RECITALS

The Board and the Recipient are authorized under ORS Chapter 190 to enter into cooperative agreements.

The Board is authorized to provide grants for boating facility projects under ORS 830.150 and

The Board has sufficient facility grant funds available within its current biennial budget and has authorized expenditure on the Recipient's Project as defined below, and

The Recipient agrees to comply with Boating Facility Grant Program rules in OAR 250-014 and other Board adopted policies and procedures, and

The purpose of this Agreement is to set forth the obligations of both Parties in the development of recreational boating facilities at Hebb Park for the construction, purchase and installation of aluminum boarding docks and short-term tie-up docks, hereinafter called the "Project," as described in the Recipient's Facility Grant Application (FG#1541) and Staff Report to the Board. With this reference, the Facility Grant Application and Staff Report are made part of this Agreement. If a conflict exists between the Facility Grant Application, Staff Report and this Agreement, the Agreement will govern.

NOW, THEREFORE, the Board and the Recipient agree to the following:

I. BOARD COVENANTS

1. **Grant Funds.** Upon approval by its governing body, the Board shall provide grant funds in the amount of \$315,000 in dedicated state boater funds to the Recipient to fund the Project. The Board shall not provide to the Recipient, and the Recipient shall not use any funds described in this section for administration, overhead, or indirect costs whether or not related to this Agreement.
2. **Payments.** After the Recipient awards the contract for the Project, and activities commence, the Board shall, upon receipt of the Recipient's request for reimbursement and appropriate documentation all in form and substance satisfactory to the Board, disburse funds to the Recipient in accordance with Section III.
3. **Overpayment.** In the event that the aggregate amount of the Board's interim progress payments to the Recipient exceeds the allowable reimbursable costs of the Recipient for the Project, the Recipient agrees to refund to the Board the amount paid in excess of such allowable expenses within thirty (30) days of final billing by the Recipient or the Project Completion Date, whichever is earlier.

4. Disallowed Costs. The Recipient agrees that payment(s) made by the Board under this Agreement shall be subject to offset or reduction for any amounts previously paid hereunder that are found by the Board not to constitute allowable costs under this Agreement based on the results of an audit examination. If such disallowed amount exceeds the payment(s), the Recipient shall pay the Board the amount of such excess within 30 days after written notice of disallowed costs is provided by the Board,
5. Cost Savings. Any cost savings realized on the Project shall be prorated between the parties based on the percentage of their respective cash contributions as set forth in Section I.1. and Section IV.1.
6. Board Principal Contact: A Party may designate a new authorized principal contact by written notice to the other Party.

Name/Title: Janine Belleque Boating Facilities Manager

Address: PO Box 14145, 435 Commercial St. NE, Salem, OR 97309-5065

Phone/Email: (503) 378-2628 janine.belleque@state.or.us

II. TERM; PROJECT COMPLETION; PROJECT OWNERSHIP

1. Term. The term of this Agreement shall begin upon the Effective Date and continue for twenty (20) years after the date of Project completion or the date of final payment issuance, whichever is later. The Effective Date is the date that the last party to sign this Agreement has duly executed this Agreement and all required approvals have been obtained.
2. Project Completion. The Project shall be completed, and final billing for the Project shall be submitted to the Board, on or before June 30, 2017. Unless approved in writing, the Board shall not be obligated to disburse any payments after this date.
3. Project Ownership. The Board acknowledges and agrees that the Project is the exclusive property of the Recipient. The Board is neither responsible nor liable in any manner for the construction, operation or maintenance of the Project.
4. Boating Facility Operation. If the Board and the Recipient have entered into other grant agreement(s) for boating facilities, including but not limited to, restrooms, docks, boat ramps, then Recipient shall continue to operate those boating facilities for the duration of this Agreement, even if the terms of the other grant agreement(s) have expired.

III. CONDITIONS TO DISBURSEMENT

1. Conditions Precedent to Any Reimbursement. The Board shall not be obligated to disburse any of the grant funds to reimburse the Recipient for Project costs hereunder unless the Board has received from the Recipient:
 - a. Prior to Project bid advertisement or construction, the final architectural and engineering plans, specifications, and cost estimate(s) for the Project, the plans, specifications and estimates to be in form and substance satisfactory to the Board;

- b. Prior to Project construction a copy of all required, federal, state and local permits or approvals for the Project; and
 - c. A copy of the contractor's, vendor's or supplier's bid pricing, unless the Recipient is completing the Project; and
 - d. Reimbursement Requests must be submitted on the approved Board form along with all supporting documentation. Reimbursements shall be prorated between the parties based on the percentage of their respective cash contributions as set forth in Section I.1. and Section IV.1.
2. Conditions Precedent to Partial Progress Payment(s). The Board shall not be obligated to make partial progress reimbursement payment(s) hereunder until supporting documentation of the percentage of Project completion has been received, reviewed and approved by the Board. In no event shall the Board disburse more than ninety percent (90%) of the amount indicated in Section I.1. as progress payments.
 3. Conditions Precedent to Final Payment. The Board shall not be obligated to make final payment hereunder until the following have been completed or supplied:
 - a. Supporting documentation in form and content determined by the Board, has been received reviewed and approved by the Board; and
 - b. Recipient provides a minimum of three photographs detailing the completed work. One photo must be of the installed sign crediting the Board with funding the Project; and
 - c. Inspection and approval of the Project by the Board; and

IV. RECIPIENT COVENANTS

1. Project Timeline. The Recipient is responsible for maintaining the project timeline for all dates and activities outlined as the Recipient's responsibility as identified in Attachment "A".
2. Matching Cash Funds. The Recipient shall contribute the total sum of \$105,000 in cash as described in the Staff Report.
3. Matching Non-cash Resources. The Recipient shall contribute the total sum of \$6,125 in-kind match for administration and permit fees. These are non-reimbursable items.
4. Construction. The Recipient shall award, and monitor the contractor's performance under the construction contract in such a manner as to insure compliance with Project plans and specifications. The Recipient must notify the Board immediately of any proposed change in Project design, cost modifications, proposed change orders or modification of scope. The Recipient shall be responsible for all costs associated with unauthorized changes or modifications unless otherwise specifically agreed to in writing by the Board.
5. Commercial and Other Uses.
 - a. For purposes of this section 4, Commercial Use means any activity on or affecting the Project that was not described in the Facility Grant Application or Staff Report, or not

approved pursuant to Board Policy 93-06 or 93-02, where the Recipient

- i. has financial profit as a goal,
- ii. charges any fees or receives any benefit to provide services, supplies or goods, or
- iii. allows third parties to charge any fees or receive any benefit to provide services, supplies or goods.

b. Commercial Use is prohibited.

c. Recipient must have the capability to make an ordinance, rule, or other regulation to the effect that the Projects are for the benefit of recreational boaters. If, in the sole discretion of the Board, the use by non-recreational boaters such as swimmers, fishermen, divers, crabbers impact recreational boating uses or diminishes the useful life of the Project, then the Recipient must establish and enforce its ordinance, rule, or other regulation.

d. If Project funded a pumpout or dump station in a marina or transient dock, the Recipient must include language in its moorage agreement requiring use of the pumpout and/or dump station if a boat has a holding tank or marine toilet.

e. Recipient must restrict use of the Project to only boats that comply with ORS 830.770 and 830.775.

6. Project Sign. The Recipient shall post in a conspicuous location at the site a sign identifying the Board's participation in the Project.

7. Public Access to Project. During the term of this Agreement the Recipient shall allow open and unencumbered public access to the Project to all persons without regard to race, color, religious or political beliefs, sex, national origin, or place of primary residence.

8. User Fees. Recipient shall notify and request written approval from the Board of any user fees charged to recreational boaters for the use of the improvements described herein throughout the term of this Agreement. Fees charged shall be reasonable and are subject to review and approval by the Board. If user fees are charged for the use of the completed Project, the Recipient shall maintain sufficient records and accounting procedures that demonstrate all of the gross income from the fees is used to defray direct operational costs (for example, maintenance and repair costs) for the Project. User fees may affect Maintenance Assistance Program, as described in OAR 250-14-004 eligibility on publicly owned and operated Projects.

9. Maintenance. The Recipient shall at all times be responsible for the maintenance and operation of the Project and related facilities during the term of the Agreement. This does not restrict the Recipient's ability to subcontract for the performance of maintenance and operation services. Such subcontractors would be subject to Section IV. 13, Indemnification by Subcontractors.

10. Payments. Recipient agrees to:

a. Make payment promptly as due to all contractors, subcontractors, vendors or any other persons supplying labor or materials for the Project;

b. All employers, including Recipient that employ subject workers as defined in ORS

656.027, shall comply with ORS 656.017 and shall provide workers' compensation insurance coverage for those workers, unless they meet the requirement for exemption under ORS 656.126(2). Recipient shall require and ensure that each of its subcontractors complies with these requirements (unless inapplicable as a matter of federal law); and

- c. Not permit any lien or claim to be filed or prosecuted against the Board, due to any construction or maintenance activities at the Project.

11. Liabilities. 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 along with the written notice, a copy of the claim, process, and all legal pleadings with respect to the Third Party Claim that have been received by the Notified Party. 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 Section 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 contribution obligation under this Section with respect to the Third Party Claim.

With respect to a Third Party Claim for which the Board is jointly liable with the Recipient (or would be if joined in the Third Party Claim), the Board 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 Recipient in such proportion as is appropriate to reflect the relative fault of the Board 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 the Board on the one hand and of the 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 Board's contribution amount in any instance is capped under Oregon law if the State had sole liability in the proceeding.

With respect to a Third Party Claim for which the Recipient is jointly liable with the Board (or would be if joined in the Third Party Claim), the 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 Board in such proportion as is appropriate to reflect the relative fault of the Recipient on the one hand and of the Board 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 Recipient on the one hand and of the Board 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 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.

12. Alternative Dispute Resolution. The Parties should attempt in good faith to resolve any dispute arising out of this agreement. This may be done at any management level, including at a level higher than persons directly responsible for administration of the 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.
13. Indemnification by Subcontractors. The Recipient shall take all reasonable steps to cause its contractor(s) that are not units of local government as defined in ORS 190.003, if any, to indemnify, defend, save and hold harmless the State of Oregon and its officers, employees and agents ("Indemnitee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including attorneys' fees) arising from a tort (as now or hereafter defined in ORS 30.260) caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Recipient's contractor or any of the officers, agents, employees or subcontractors of the contractor ("Claims"). It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by the contractor from and against any and all Claims.
14. Compliance with Applicable Law. The Recipient agrees to comply with Boating Facility Grant Program rules OAR 250-014 and all applicable Board adopted policies and procedures. The Recipient shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to this Agreement
15. Records Maintenance. The Recipient shall maintain all financial records relating to this Agreement in accordance with generally accepted accounting principles. In addition, the Recipient shall maintain any other records, books, documents, papers, plans, records of shipments and payments and writings of the Recipient, whether in paper, electronic or other form that are pertinent to this Agreement in such a manner as to clearly document the Recipient's performance. The Recipient's accounting procedures shall provide for an accurate and timely recording of receipt of funds by source, of expenditures made from such funds, and of unexpended balances. Controls shall be established which are adequate to ensure that all expenditures reimbursed under this Agreement are for allowable purposes and that documentation is readily available to verify that such charges are accurate. All financial records, other records, books, documents, papers, plans, records of shipments and payments and writings of the Recipient whether in paper, electronic or other form that are pertinent to this Agreement, are collectively referred to as "Records"
16. Access. The Recipient acknowledges and agrees that the Board and the Oregon Secretary of State's Office and the federal government and their duly authorized representatives will have access to all Records to perform examinations and audits and make excerpts and transcripts. The Recipient shall retain and keep accessible all Records for a minimum of six (6) years, or such longer period as may be required by applicable law, following termination of this Agreement, or until the conclusion of any audit, controversy, or litigation arising out of or related to this Agreement, whichever date is later. Subject to foregoing minimum records retention requirement, the Recipient shall maintain Records in accordance with the records retention schedules set forth in OAR Chapter 166.
17. Recipient Principal Contact: A Party may designate a new authorized principal contact by written notice to the other Party. The Recipient must notify the Board within 30 days if the point of contact changes.

Name/Title: Rick Gruen, Parks Manager

Address: 150 Beaver Creek Rd, Oregon City, Or 97045

Phone/Email: 503-742-4345 rgruen@co.clackamas.or.us

V. TERMINATION; REMEDIES

1. Termination for Convenience. The Recipient may terminate this Agreement at any time upon thirty (30) days prior written notice to the Board; provided, however, that the Recipient shall, within thirty (30) days of such termination, reimburse the Board for all funds contributed by the Board to the Project; provided further that until the Recipient has fully reimbursed the Board for such funds, the Recipient shall comply with the terms hereof.
2. Termination Because of Non-Appropriation or Project Ineligibility. The Board, as provided in VI.3 Force Majeure, may modify or terminate this Agreement and at any time upon thirty (30) days prior written notice to the Recipient, may modify or terminate this Agreement if:
 - a. The Board fails to receive funding or allotments, appropriations, limitations, or other expenditure authority at levels sufficient to pay for the allowable costs of the Project to be funded hereunder or should any state law, regulation or guideline be modified, changed or interpreted in such a way that the Project, or any portion of the Project, is no longer eligible for facility grant funds as described in ORS 830.150.
 - b. In the event insufficient funds are appropriated for the payments under this Agreement and the Recipient has no other lawfully available funds, then the Recipient may terminate this Agreement at the end of its current fiscal year, with no further liability to the Board. The Recipient shall deliver written notice to the Board of such termination no later than thirty (30) days from the determination by the Recipient of the event of non-appropriation. The Board shall pay for all authorized Project costs expended up to the date of written notice of termination.
3. Termination for Default. The Board, at any time upon thirty (30) days prior written notice of default to the Recipient, may modify or terminate this Agreement if:
 - a. The design, permitting, or construction of the Project is not pursued with due diligence; or
 - b. The Recipient's fee simple title to or other interest in the construction sites or Project is not sufficient, legal and valid; or
 - c. The construction of the Project is not permissible under federal, state, or local law; or
 - d. The Recipient, does not abide by the nondiscrimination and affirmative action provisions of this Agreement; or
 - e. The Recipient, without the prior written approval of the Board, uses the funds provided by the Board hereunder to build any project other than the Project described in the final architectural and engineering drawings approved by the Board; or

- f. The construction is not completed in a good and workmanlike manner or fails to comply with any required permits; or
 - g. During the term of this Agreement, the Recipient fails to perform any obligation or requirement of this Agreement, or conveys the Project or the Project property or any part thereof or converts the use of the Project or the Project property to a use that precludes free and unencumbered recreational public boating access.
 - h. The Recipient defaults under any other agreement between Recipient and Board.
4. Rights and Remedies. The Recipient shall, within thirty (30) days of its receipt of a notice of default, reimburse the Board for all funds contributed by the Board to the Project. Further, the Board shall have any and all rights and remedies available at law or in equity.

VI. GENERAL PROVISIONS

1. No Duplicate Payment. The Recipient shall not be compensated for, or receive 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.
2. Amendments. The terms of this Agreement shall not be waived, altered, modified, supplemented or otherwise amended, except by written agreement by the Parties.
3. Force Majeure: Neither the Board or the Recipient is responsible for any failure to perform or any delay in performance of any obligations under this Agreement caused by fire, civil unrest, natural causes, or war which is beyond either Parties reasonable control. Each Party shall, however make all reasonable efforts to remove or eliminate such cause of failure to perform or delay in performance and shall, upon the cessation of the cause, diligently pursue performance of its obligations under this Agreement. The Board may terminate this Agreement upon written notice to the Recipient after reasonably determining that failure or delay will likely prevent successful performance of this Agreement.
4. Persons Not to Benefit. No member of or delegate to Congress, resident commissioner, officer, agent or employee of the United States of America, member of the Oregon Legislative Assembly, elected official of the State of Oregon, or official, agent, or employee of the State of Oregon, or elected member, officer, agent, or employee of any political subdivision, municipality or municipal corporation of the State of Oregon shall be admitted to any share or part of this Agreement or derive any financial benefit that may arise therefrom.
5. Intended Beneficiaries. The Board and Recipient are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement provides, is intended to provide, or may be construed to provide any direct or indirect benefit or right to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of this Agreement.
6. Tax Compliance. By signature on this Agreement for Recipient, the undersigned hereby certifies under penalty of perjury that the undersigned is authorized to act on behalf of Recipient and that Recipient is, to the best of the undersigned's knowledge, not in violation of any Oregon Tax Laws. For purposes of this certification, "Oregon Tax Laws" means a

state tax imposed by ORS 320.005 to 320.150 (Amusement Device Taxes), 403.200 to 403.250 (Tax For Emergency Communications), 118 (Inheritance Tax), 314 (Income Tax), 316 (Personal Income Tax), 317 (Corporation Excise Tax), 318 (Corporation Income Tax), 321 (Timber and Forest Land Taxation) and 323 (Cigarettes And Tobacco Products) and the elderly rental assistance program under ORS 310.630 to 310.706 and any local taxes administered by the Department of Revenue under ORS 305.620.

7. Assignment and Successors in Interest. The Recipient may not assign or transfer its interest in this Agreement without the prior written consent of the Board and any attempt by the Recipient to assign or transfer its interest in the Agreement without such consent will be void and of no force or effect. Board's consent to the Recipient's assignment or transfer of its interest in this Agreement will not relieve the Recipient of any of its duties or obligations under this Agreement. The provisions of this Agreement will be binding upon and inure to the benefit of the Parties hereto, and their respective successors and permitted assigns.
8. Severability. The Board and the Recipient 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 will be construed and enforced as if the Agreement did not contain the particular term or provisions held to be invalid.
9. Notice. Except as otherwise expressly provided in this Agreement, any notices to be given hereunder relating to this Agreement must be given in writing by personal delivery, facsimile, email or, postage prepaid mail, to the Board or the Recipient at the physical address, fax number or email address set forth in this Agreement, or to such other addresses as either Party may indicate pursuant to this Agreement Section. Any notice so addressed and mailed becomes effective five (5) days after mailing. Any notice given by personal delivery becomes effective when actually delivered. Any notice given by email becomes effective upon the sender's receipt of confirmation generated by the recipient's email system that the notice has been received by the recipient's email system. Any notice given by facsimile becomes effective upon electronic confirmation of successful transmission to the designated fax number.
10. Counterparts. This Agreement may be executed in several counterparts, all of which when taken together shall constitute one agreement binding all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of the Agreement so executed shall constitute an original.
11. Governing Law; Venue; Consent to Jurisdiction.

This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively "Claim") between Board or any other agency or department of the State of Oregon, or both, 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 for the State of Oregon; provided, however, if a Claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this Section be construed as a waiver by the State of Oregon of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the eleventh amendment to the Constitution of the United States or otherwise, to or

from any Claim or from the jurisdiction of any court. RECIPIENT, BY EXECUTION OF THIS AGREEMENT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS.

12. Merger Clause; Waiver. The Agreement and all exhibits and attachments, if any, constitute the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements or representations, oral or written, not specified herein regarding this Agreement. No waiver or consent under this Agreement binds either Party unless in writing and signed by both Parties. Such waiver or consent, if made, is effective only in the specific instance and for the specific purpose given. EACH PARTY, BY SIGNATURE OF ITS AUTHORIZED REPRESENTATIVE, HEREBY ACKNOWLEDGES THAT IT HAS READ THIS AGREEMENT, UNDERSTANDS IT AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

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

BOARD:
State of Oregon, acting by and through its
State Marine Board

By: _____
Scott Brewen

Title: Director

Date: _____

Telephone: (503) 378-2619

Fax No: (503) 378-4597

Address: PO Box 14145,
Salem, OR 97309

RECIPIENT:
Clackamas County

By: _____
John Ludlow

Title: Chair, Board of County Commissioners

Date: _____

Telephone: (503) 742-4299

Fax No: (503) 742-4420

Address: 150 Beaver Creek Road
Oregon City, OR 97045

Federal Employer Identification Number:
93-6002286

DUNS ID. No. 096992656

ATTACHMENT "A"
FACILITY GRANT NO. – 1541
HEBB PARK BOATING FACILITY IMPROVEMENTS

PROJECT TIMELINE

Responsibility	Date	Description
Recipient	Estimated early May 2016	Solicit for bids-prepare documents, bid opening, evaluate responses, award contract and manage the process.
Recipient	Estimated late June 2016	Provide Board with a copy of bid document, bid results and awarded contract.
Recipient	Estimated early July 2016	Consult with the Board if a pre-construction meeting is recommended.
Recipient	Estimated early September 2016	Notify the Board when the contractor will mobilize onsite.
Recipient	Estimated September 2016	Notify the Board when the docks are being delivered.
Recipient	Estimated late October 2016-early November 2016	Notify the Board when the Contractor has requested a final inspection
Board	During bid process through final completion and inspection. Estimated May-October 2016	The Board will be available to provide technical assistance to the Recipient, review submittals, and conduct designated inspections.
Recipient	Estimated early November 2016	Receive contractor invoices, issue payment and request final reimbursement from the Board.
Board	Estimated early December 2016	Issue final reimbursement, close the grant and term of the grant begins.



DEVELOPMENT AGENCY

DEVELOPMENT SERVICES BUILDING
150 BEAVERCREEK ROAD | OREGON CITY, OR 97045

November 12, 2015

Board of County Commissioners
Clackamas County

Members of the Board:

**Approval of an Intergovernmental Agreement with Oregon Department of Transportation for
Right of Way Services for the Monterey Avenue Extension Project**

Purpose/Outcomes	This agreement memorializes roles and responsibilities as agreed to by both parties related to right of way acquisition for the Monterey Avenue extension project.
Dollar Amount and Fiscal Impact	The Agency will reimburse ODOT up to \$5,000 for costs associated with review and processing of necessary right of way documents.
Funding Source	Clackamas County Development Agency: Clackamas Town Center Urban Renewal District.
Safety Impact	The project provides an improved intersection and modified accesses that will create safer, more defined crossings for vehicles and pedestrians.
Duration	The Agreement will be in effect until all right of way work is completed, but no longer than ten years.
Previous Board Action	The Board of County Commissioners previously approved a Cooperative Improvement Agreement with ODOT in March 2007. That agreement was amended and approved by the Board in April 2015.
Contact Person	David Queener, Senior Project Planner, Clackamas County Development Agency – (503) 742-4322

BACKGROUND

Construction is underway on the extension of Monterey Avenue from 82nd Avenue to Fuller Road. As part of the project, it was necessary to acquire right of way for the new roadway and intersection improvements. Portions of the acquired right of way related to the intersection at 82nd Avenue will need to be transferred to the State following completion of the project.

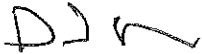
The Agreement memorializes the roles and responsibilities that are to be followed in the right of way acquisition process. While many of the elements contained in the Agreement have already been completed, the transfer of property to the State has not occurred. In order for this to happen a fully executed Agreement must be in place.

The Agreement commits the Agency to reimburse ODOT up to \$5,000 for review and processing of right of way documents and will remain in effect only until such time the property transfer is completed.

RECOMMENDATION

Staff recommends the Board approve and authorize the Chair to sign the Intergovernmental Agreement with Oregon Department of Transportation for right of way services for the Monterey Avenue extension project.

Respectfully submitted,



David Queener
Development Agency Supervisor

**INTERGOVERNMENTAL AGREEMENT
FOR RIGHT OF WAY SERVICES**

Monterey Ave Extension - 82nd Ave to Fuller Rd

THIS AGREEMENT is made and entered into by and between the STATE OF OREGON, acting by and through its Department of Transportation, hereinafter referred to as "State"; and CLACKAMAS COUNTY, acting by and through its elected officials, hereinafter referred to as "Agency," both herein referred to individually or collectively as "Party" or "Parties."

RECITALS

1. By the authority granted in Oregon Revised Statute (ORS) 190.110, 283.110, 366.572 and 366.576, state agencies may enter into agreements with units of local government or other state agencies for the performance of any or all functions and activities that a Party to the agreement, its officers, or agents have the authority to perform.
2. By the authority granted in ORS 366.425, State may accept deposits of money or an irrevocable letter of credit from any county, city, road district, person, firm, or corporation for the performance of work on any public highway within the State. When said money or a letter of credit is deposited, State shall proceed with the Project. Money so deposited shall be disbursed for the purpose for which it was deposited.
3. That certain SE Monterey Ave is a County Road under the jurisdiction and control of Agency and Agency may enter into an agreement for the acquisition of real property.
4. That OR213 (SE 82nd Avenue), is a part of the state highway system under the jurisdiction and control of the Oregon Transportation Commission (OTC).
5. This Agreement shall define roles and responsibilities of the Parties regarding the real property to be used as part of right of way for road, street or construction of public improvement. The scope and funding is further described in Cooperative Improvement Agreement number 23930 and as amended in 23930-1. Hereinafter, all acts necessary to accomplish services in this Agreement shall be referred to as "Project."
6. As of this time there are no local agencies certified to independently administer federal-aid projects for right of way services. Therefore, State is ultimately responsible for the certification and oversight of all right of way activities under this Agreement.

NOW THEREFORE, the premises being in general as stated in the foregoing Recitals, it is agreed by and between the Parties hereto as follows:

TERMS OF AGREEMENT

1. Under such authority, to accomplish the objectives in Agreement No. 23930 and as amended in 23930-1, State and Agency agree to perform certain right of way activities shown in Special Provisions - Exhibit A, attached hereto and by this reference made a part hereof. For the right of way services State performs on behalf of the Agency, under no

conditions shall Agency's obligations exceed a maximum of \$5,000.00, including all expenses, unless agreed upon by both Parties.

2. The work shall begin on the date all required signatures are obtained and shall be completed no later than ten (10) calendar years following the date all required signatures are obtained, on which date this Agreement automatically terminates unless extended by a fully executed amendment.
3. The process to be followed by the Parties in carrying out this Agreement is set out in Exhibit A.
4. It is further agreed both Parties will strictly follow the rules, policies and procedures of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, ORS Chapter 35 and the "State Right of Way Manual".

STATE OBLIGATIONS

1. State shall perform the work described in Special Provisions - Exhibit A.
2. With the exception of work related to appraisals, State shall not enter into any subcontracts for any of the work scheduled under this Agreement without obtaining prior written approval from Agency.
3. State shall perform the service under this Agreement as an independent contractor and shall be exclusively responsible for all costs and expenses related to its employment of individuals to perform the work under this Agreement including, but not limited to, retirement contributions, workers compensation, unemployment taxes, and state and federal income tax withholdings.
4. State's right of way contact person for this Project is Shannon Fish, Region 1 Right of Way Project Manager, 123 NW Flanders St, Portland, OR 97209, (503) 731-8433, shannon.fish@odot.state.or.us, or assigned designee upon individual's absence. State shall notify the other Party in writing of any contact changes during the term of this Agreement.

AGENCY OBLIGATIONS

1. Agency shall perform the work described in Special Provisions - Exhibit A.
2. Agency certifies, at the time this Agreement is executed, that sufficient funds are available and authorized for expenditure to finance costs of this Agreement within Agency's current appropriation or limitation of current budget. Agency is willing and able to finance all, or its pro-rata share of all, costs and expenses incurred in the Project up to its maximum.
3. Agency may utilize its own staff, State's staff, or subcontract from the qualified list of consultants using State's Full Service Architectural and Engineering (A&E) Price Agreement II Tier Selection Process for Agency's work identified in Exhibit A provided Agency receives prior written approval of any staff, consultant or contractor by the State's Region Right of Way office prior to performance of said activities. State's Full-Service A&E Work Order

Contract (WOC) User-Guide for Local Public Agencies (LPA) Projects Tier 2 Forms and Procedures for LPAs and Local Agency Liaisons (LALs) is located at the following link:

<http://www.oregon.gov/ODOT/CS/OPO/docs/fs/tier2guide.doc>

4. The Tier 2 forms must be reviewed and filled out by State's LAL and submitted to State's Procurement Office's Personal Services Request Inbox for processing the contract located at the following e-mail address:

PersonalServicesContract@odot.state.or.us

5. Agency or its subcontractor will strictly follow the rules, policies and procedures of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, ORS Chapter 35 and the "State Right of Way Manual."
6. Agency represents that this Agreement is signed by personnel authorized to do so on behalf of Agency.
7. Agency's right of way contact person for this Project is Kath Rose, Right of Way, Clackamas County Dept. of Transportation & Development, 150 Beaver Creek Rd., DSB, Oregon City, OR 97045, kathros@co.clackamas.or.us, (503) 742-4713, or assigned designee upon individual's absence. Agency shall notify the other Party in writing of any contact information changes during the term of this Agreement.

PAYMENT FOR SERVICES AND EXPENDITURES:

1. In consideration for the services performed by State (as identified in the attached Exhibit A), Agency agrees to pay or reimburse State a maximum amount of \$5,000.00. Said maximum amount shall include reimbursement for all expenses, including travel expenses. Travel expenses shall be reimbursed to State in accordance with the current Oregon Department of Administrative Services' rates. Any expenditure beyond federal participation will be from, or reimbursed from, Agency funds. Payment in Agency and/or federal funds in any combination shall not exceed said maximum, unless agreed upon by both Parties.
2. State shall upon execution of this Agreement, forward to Agency either: 1) a request to sign an irrevocable limited power of attorney to access the Local Government Investment Pool account of the Agency, or 2) a letter of request for an advance deposit. Agency shall make any advance deposit to the State's Financial Services Branch, in an amount equal to the estimate of costs to be incurred by State for the Project. The preliminary estimate of costs is \$5,000.00. Additional deposits, if any, shall be made as needed upon request from State and acceptance by Agency. Requests for additional deposits shall be accompanied by an itemized statement of expenditures and an estimated cost to complete Project.
 - a. Agency agrees to pay or reimburse all salaries and payroll reserves of State employees working on Project, direct costs, costs of rental equipment used, and per-diem expenditures, plus 10 percent surcharge on salary costs to cover administrative costs of Right of Way Section.

- b. State shall present invoices for 100 percent of actual costs incurred by State on behalf of the Project directly to Agency's right of way contact for review and approval. Such invoices shall be in a form identifying the Project, the agreement number, invoice number or account number, and shall itemize all expenses for which reimbursement is claimed. Invoices shall be presented for periods of not less than one (1) month duration, based on actual expenses incurred.
- c. Upon completion of right of way acquisition and receipt from State of a final itemized statement, Agency shall pay an amount which, when added to said advance deposit, will equal 100 percent of the final total actual cost. Any portion of deposits made in excess of the final total costs of Project shall be refunded to Agency.

GENERAL PROVISIONS:

1. This Agreement may be terminated by either Party upon thirty (30) days' notice, in writing and delivered by certified mail or in person, under any of the following conditions:
 - a. If either Party fails to provide services called for by this Agreement within the time specified herein or any extension thereof.
 - b. If either Party fails to perform any of the other provisions of this Agreement or so fails to pursue the work as to endanger performance of this Agreement in accordance with its terms, and after receipt of written notice fails to correct such failures within ten (10) days or such longer period as may be authorized.
 - c. If Agency fails to provide payment of its share of the cost of the Project.
 - d. If State fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow State, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement.
 - e. If federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the work under this Agreement is prohibited or State is prohibited from paying for such work from the planned funding source.
2. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.
3. Agency acknowledges and agrees that State, the Oregon Secretary of State's Office, the federal government, and their duly authorized representatives shall have access to the books, documents, papers, and records of Agency which are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts, and transcripts for a period of six (6) years after final payment. Copies of applicable records shall be made available upon request. Payment for costs of copies is reimbursable by State.
4. Agency shall 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, 279B.225, 279B.230, 279B.235 and 279B.270 incorporated herein by reference and made a part hereof. Without limiting the generality

of the foregoing, Agency expressly agrees to comply with (i) Title VI of Civil Rights Act of 1964; (ii) Title V and Section 504 of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 and ORS 659A.142; (iv) all regulations and administrative rules established pursuant to the foregoing laws; and (v) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.

5. All employers that employ subject workers who work under this Agreement in the State of Oregon shall comply with ORS 656.017 and provide the required workers' compensation coverage unless such employers are exempt under ORS 656.126. Employers Liability insurance with coverage limits of not less than \$500,000 must be included. Both Parties shall ensure that each of its subcontractors complies with these requirements.
6. If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 ("Third Party Claim") against State or Agency with respect to which the other Party may have liability, the notified Party must promptly notify the other Party in writing of the Third Party Claim and deliver to the other Party a copy of the claim, process, and all legal pleadings with respect to the Third Party Claim. Each Party is entitled to participate in the defense of a Third Party Claim and to defend a Third Party Claim with counsel of its own choosing. Receipt by a Party of the notice and copies required in this paragraph and meaningful opportunity for the Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to that Party's liability with respect to the Third Party Claim.
7. With respect to a Third Party Claim for which State is jointly liable with Agency (or would be if joined in the Third Party Claim), State shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by Agency in such proportion as is appropriate to reflect the relative fault of State on the one hand and of Agency on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of State on the one hand and of Agency on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. State's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if State had sole liability in the proceeding.
8. With respect to a Third Party Claim for which Agency is jointly liable with State (or would be if joined in the Third Party Claim), Agency shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by State in such proportion as is appropriate to reflect the relative fault of Agency on the one hand and of State on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of Agency on the one hand and of State on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such

expenses, judgments, fines or settlement amounts. Agency's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if it had sole liability in the proceeding.

9. 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.
10. When federal funds are involved in this Agreement, Exhibits B and C are attached hereto and by this reference made a part of this Agreement, and are hereby certified to by Agency.
11. When federal funds are involved in this Agreement, Agency, as a recipient of federal funds, pursuant to this Agreement with the State, shall assume sole liability for Agency's breach of any federal statutes, rules, program requirements and grant provisions applicable to the federal funds, and shall, upon Agency's breach of any such conditions that requires the State to return funds to the Federal Highway Administration, hold harmless and indemnify the State for an amount equal to the funds received under this Agreement; or if legal limitations apply to the indemnification ability of Agency, the indemnification amount shall be the maximum amount of funds available for expenditure, including any available contingency funds or other available non-appropriated funds, up to the amount received under this Agreement.
12. The Parties hereto agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be invalid, unenforceable, illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.
13. This Agreement may be executed in several counterparts (facsimile or otherwise) all of which when taken together shall constitute one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of this Agreement so executed shall constitute an original.
14. This Agreement and attached exhibits and Agreement No. 23930 and as amended in 23930-1 constitute the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either Party unless in writing and signed by both Parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of State to enforce any provision of this Agreement shall not constitute a waiver by State of that or any other provision.

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

Signature Page to Follow

CLACKAMAS COUNTY, by and through
its elected officials

By _____
Chair

Date _____

By _____

Date _____

APPROVED AS TO LEGAL SUFFICIENCY

By _____
Agency Legal Counsel

Date _____

Agency Contact:

David Queener, Sr. Project Planner
Clackamas County Development Agency
150 Beaver Creek Road
Oregon City, OR 97045
503-742-4322
davidque@clackamas.us

State Contact:

Shannon Fish, Region 1
Right of Way Project Manager
123 NW Flanders St
Portland, OR 97209
503-731-8433
shannon.fish@odot.state.or.us

STATE OF OREGON, by and through
its Department of Transportation

By _____
State Right of Way Manager

Date _____

APPROVAL RECOMMENDED

By _____
Region 1 Right of Way Manager

Date _____

By _____

Date _____

APPROVED AS TO LEGAL SUFFICIENCY

By N/A
Assistant Attorney General

Date _____

APPROVED

(If Litigation Work Related to Condemnation is
to be done by State)

By N/A
Chief Trial Counsel

Date _____

SPECIAL PROVISIONS EXHIBIT A
Right of Way Services

THINGS TO BE DONE BY STATE OR AGENCY

1. Pursuant to this Agreement, the work performed on behalf of the Agency can be performed by the Agency, the Agency's consultant, the State or a State Flex Services consultant, as listed under Agency Obligations, paragraph 3 of this Agreement. The work may be performed by Agency staff or any of these representatives on behalf of Agency individually or collectively provided they are qualified to perform such functions and after receipt of approval from the State's Region 1 Right of Way Manager.
2. With the exception of work related to appraisals, State shall not enter into any subcontracts for any of the work scheduled under this Agreement without obtaining prior written approval from Agency.

Instructions: Insert either: State, Agency, or N/A on each line.

A. Preliminary Phase

1. Agency shall provide preliminary cost estimates.
2. Agency shall make preliminary contacts with property owners.
3. Agency shall gather and provide data for environmental documents.
4. Agency shall develop access and approach road list.
5. Agency shall help provide field location and Project data.

B. Acquisition Phase

1. General:
 - a. When doing the Acquisition work, as described in this Section, Agency shall provide State with a status report of the Project quarterly.
 - b. Title to properties acquired shall be in the name of the Agency.
 - c. The Agency shall adopt a resolution of intention and determination of necessity in accord with ORS 35.235 and ORS 35.610, authorizing acquisition and condemnation, such approval will be conditioned on passage of a resolution by Agency substantially in the form attached hereto as Exhibit D, and by this reference made a part hereof. If the Oregon Department of Justice is to handle condemnation work, prior approval evidenced by Chief Trial Counsel, Department of Justice, signature on this Agreement is required; and authorization for such representation shall be included in the resolution adopted by the Agency. Prior approval by Oregon Department of Justice is required.

2. Legal Descriptions:

- a. Agency shall provide sufficient horizontal control, recovery and retracement surveys, vesting deeds, maps and other data so that legal descriptions can be written.
 - b. Agency shall provide construction plans and cross-section information for the Project.
 - c. Agency shall write legal descriptions and prepare right of way maps. If the Agency acquires any right of way on a State highway, the property descriptions and right of way maps shall be based upon centerline stationing and shall be prepared in accordance with the current "ODOT Right of Way & Rail/Utility Coordination Contractor Services Guide" and the "Right of Way Engineering Manual." The preliminary and final versions of the property descriptions and right of way maps must be reviewed and approved by the State.
 - d. Agency shall specify the degree of title to be acquired (e.g., fee, easement).
3. Real Property and Title Insurance:
- a. Agency shall provide preliminary title reports, if State determines they are needed, before negotiations for acquisition commence.
 - b. State shall determine sufficiency of title (taking subject to). If the Agency acquires any right of way on a State highway, sufficiency of title (taking subject to) shall be determined in accordance with the current "State Right of Way Manual" and the "ODOT Right of Way & Rail/Utility Coordination Contractor Services Guide." Agency shall clear any encumbrances necessary to conform to these requirements, obtain Title Insurance policies as required and provide the State copies of any title policies for the properties acquired.
 - c. Agency shall conduct a Level 1 Initial Site Assessment within project limits to detect presence of hazardous materials on any property purchase, excavation or disturbance of structures, as early in the project design as possible, but at a minimum prior to property acquisition or approved design.
 - d. Agency shall conduct a Level 2 Preliminary Site Investigation of sufficient scope to confirm the presence of contamination, determine impacts to properties and develop special provisions and cost estimates, if the Level 1 Corridor study indicates the potential presence of contamination that could impact the properties.
 - If contamination is found, a recommendation for remediation will be presented to State.
 - e. Agency shall be responsible for proper treatment and cost of any necessary remediation.
 - f. Agency shall conduct asbestos, lead paint and other hazardous materials surveys for all structures that will be demolished, renovated or otherwise disturbed. Asbestos surveys must be conducted by an AHERA (asbestos hazard emergency response act) certified inspector.

4. Appraisal:

- a. Agency shall conduct the valuation process of properties to be acquired.
- b. Agency shall perform the Appraisal Reviews to set Just Compensation.
- c. Agency shall recommend Just Compensation, based upon a review of the valuation by qualified personnel.

5. Negotiations:

- a. Agency shall tender all monetary offers to land-owners in writing at the compensation shown in the appraisal review. Agency shall have sole authority to negotiate and make all settlement offers. Conveyances taken for more or less than the approved Just Compensation will require a statement justifying the settlement. Said statement will include the consideration of any property trades, construction obligations and zoning or permit concessions.
- b. State and Agency shall determine a date for certification of right of way and agree to cosign the State's Right of Way Certification form. State and Agency agree possession of all right of way shall occur prior to advertising for any construction contract, unless exceptions have been agreed to by Agency and State.
- c. Agency agrees to file all Recommendations for Condemnation at least seventy (70) days prior to the right of way certification date if negotiations have not been successful on those properties.

6. Relocation:

- a. Agency shall perform any relocation assistance, make replacement housing computations, and do all things necessary to relocate any displaced parties on the Project.
- b. Agency shall make all relocation and moving payments for the Project.
- c. Agency shall facilitate the relocation appeal process.

C. Closing Phase

- 1. Agency shall close all transactions. This includes drawing of deeds, releases and satisfactions necessary to clear title, obtaining signatures on release documents, and making all payments. State shall submit all signed Final Report packets, information required by the Uniform Act, and agreements to the Agency.
- 2. Agency shall record conveyance documents, only upon acceptance by appropriate agency.

D. Property Management

1. Agency shall take possession of all the acquired properties. There shall be no encroachments of buildings or other private improvements allowed upon the State highway right of way.
2. Agency shall dispose of all improvements and excess land consistent with State and Agency prevailing laws and policies.

E. Condemnation

1. Agency may offer mediation if the Agency and property owners have reached an impasse.
2. Agency shall perform all administrative functions in preparation of the condemnation process, such as preparing final offer and complaint letters.
3. Agency shall perform all legal and litigation work related to the condemnation process. Agency is responsible for passage of a resolution substantially in the form attached hereto as Exhibit D, and by this reference made a part hereof, specifically identifying the property being acquired.
4. When State shall perform legal or litigation work related to the condemnation process, Agency acknowledges, agrees and undertakes to assure that no member of Agency's board or council, nor Agency's mayor, when such member or mayor is a practicing attorney, nor Agency's attorney nor any member of the law firm of Agency's attorney, board or council member, or mayor, will represent any party, except Agency, against the State of Oregon, its employees or contractors, in any matter arising from or related to the Project which is the subject of this Agreement.

F. Transfer of Right of Way to State

When right of way is being acquired in Agency's name, Agency agrees to transfer and State agrees to accept all right of way acquired on the State highway. The specific method of conveyance will be determined by the Agency and the State at the time of transfer and shall be coordinated by the State's Region Right of Way Manager. Agency agrees to provide the State all information and file documentation the State deems necessary to integrate the right of way into the State's highway system. At a minimum, this includes: copies of all recorded conveyance documents used to vest title in the name of the Agency during the right of way acquisition process, and the Agency's Final Report or Summary Report for each acquisition file that reflects the terms of the acquisition and all agreements with the property owner(s).

G. Transfer of Right of Way to Agency

When right of way is being acquired in State's name, State agrees to transfer and Agency agrees to accept all right of way acquired on the Agency's facility. The specific method of conveyance will be determined by the State and the Agency at the time of transfer and shall be coordinated by the State's Region Right of Way Manager. If requested, State agrees to provide Agency information and file documentation associated with the transfer.

RESOLUTION EXERCISING THE POWER OF EMINENT DOMAIN EXHIBIT D
Right of Way Services

Regions: This portion of the document is unlocked. The LPA should block and copy to incorporate this language into their own standard resolution form **OR** fill in an "attested to" line or signature line at the bottom and use this form.

WHEREAS (insert title of agency) may exercise the power of eminent domain pursuant to (Agency's charter) (statutes conferring authority) and the Law of the State of Oregon generally, when the exercise of such power is deemed necessary by the (insert title of agency)'s governing body to accomplish public purposes for which (insert title of agency) has responsibility;

WHEREAS (insert title of agency) has the responsibility of providing safe transportation routes for commerce, convenience and to adequately serve the traveling public;

WHEREAS the project or projects known as (insert Project name) have been planned in accordance with appropriate engineering standards for the construction, maintenance or improvement of said transportation infrastructure such that property damage is minimized, transportation promoted, travel safeguarded; and

WHEREAS to accomplish the project or projects set forth above it is necessary to acquire the interests in the property described in "Exhibit A," attached to this resolution and, by this reference incorporated herein; now, therefore

BE IT HEREBY RESOLVED by (Agency's Council, Commission, or Board)

1. The foregoing statements of authority and need are, in fact, the case. The project or projects for which the property is required and is being acquired are necessary in the public interest, and the same have been planned, designed, located, and will be constructed in a manner which will be most compatible with the greatest public good and the least private injury;
2. The power of eminent domain is hereby exercised with respect to each of the interests in property described in Exhibit A. Each is acquired subject to payment of just compensation and subject to procedural requirements of Oregon law;
3. The (insert title of agency)'s staff and the (Agency's Attorney, Counsel, or District's Counsel (or) (The Oregon Department of Transportation and the Attorney General) are authorized and requested to attempt to agree with the owner and other persons in interest as to the compensation to be paid for each acquisition, and, in the event that no satisfactory agreement can be reached, to commence and prosecute such condemnation proceedings as may be necessary to finally determine just compensation or any other issue appropriate to be determined by a court in connection with the acquisition. This authorization is not intended to expand the jurisdiction of any court to decide matters determined above or determinable by the (Agency's Council, Commission, or Board).
4. (insert title of agency) expressly reserves its jurisdiction to determine the necessity or propriety of any acquisition, its quantity, quality, or locality, and to change or abandon any acquisition.

DATED this ____ day of _____, 20__