



AGENDA

THURSDAY, DECEMBER 12, 2013 - 10:00 AM BOARD OF COUNTY COMMISSIONERS

Beginning Board Order No. 2013-95

I. CALL TO ORDER

- Roll Call
- Pledge of Allegiance

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

1. Presentation of the 2013 Government Channel Programming Awards (Debbie McCoy, Cable Communications)

III. 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 hearing. Testimony is limited to three (3) minutes. Comments shall be respectful and courteous to all.)*

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

A. Health, Housing & Human Services

- 2 1. Approval of Mental Health Director's Designee to Authorize a Custody Hold Under ORS 426.233 – Behavioral Health
- 3 2. Approval of Intergovernmental Agreement #142998, Amendment #1 with the State of Oregon, Department of Human Services, Aging & People with Disabilities Division for the Provision of Services to Clackamas County Residents age 60 and Over – Social Services
- 4 3. Approval of Construction Contract between Community Development Division and CivilWorks NW, Inc., for the Northside Sidewalk Infill Improvements – Sandy, Oregon – Community Development
- 5 4. Approval of a Cooperative Agreement between Clackamas County and Wilsonville Community Sharing for Food Bank Expansion Project in Wilsonville – Community Development

B. Department of Transportation & Development

- 6 1. Approval of Local Agency Agreement No. 29634 with Oregon Department of Transportation (ODOT) for the Sunnyside Road Adaptive Signal System Project

- 7 2. Approval of Grant Contract F14-52117-003 with the Washington Department of Commerce for Participation in the Pacific Northwest Solar Partnership Rooftop Solar Challenge II

C. Elected Officials

- 8 1. Approval of Previous Business Meeting Minutes – BCC

D. Administration

- 9 1. Approval of Design and Construction Services Agreement between TriMet, Clackamas County and North Clackamas Parks and Recreation District
- 10 2. Approval of Continuing Control Agreement between TriMet, Clackamas County and the North Clackamas Parks and Recreation District
- 11 3. Approval of Agreement with TriMet for County Funding of Road Improvements in the Vicinity of Park Ave., and Oatfield Road.

V. NORTH CLACKAMAS PARKS & RECREATION DISTRICT

- 12 1. Approval of Design and Construction Services Agreement between TriMet, Clackamas County and North Clackamas Parks and Recreation District
- 13 2. Approval of Continuing Control Agreement between TriMet, Clackamas County and the North Clackamas Parks and Recreation District

VI. WATER ENVIRONMENT SERVICES

- 14 1. Approval of a Partnership Agreement between Clackamas County Service District No. 1 and Clackamas River Basin Council for the Rock Creek Confluence Restoration
- 15 2. Approval of a Professional Services Agreement between Clackamas County Service District No. 1 and Brown, Caldwell, Inc., for the Kellogg Creek Water Pollution Control Plant Basin Diffuser Rebuild Project
- 16 3. Purchase of a Loader for Clackamas County Service District No. 1 Eastern Oregon Biosolids Operations
- 17 4. Purchase of a New Combination Cleaner Vacuum Truck for Clackamas County Service District No. 1 (CCSD#1)

VII. COUNTY ADMINISTRATOR UPDATE

VIII. COMMISSIONERS COMMUNICATION

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



Debbie McCoy
Manager

CABLE COMMUNICATIONS

PUBLIC SERVICES BUILDING

2051 KAEN ROAD OREGON CITY, OR 97045

December 12, 2013

Board of County Commissioner
Clackamas County

Members of the Board:

Presentation of the 2013 Government Channel Programming Awards

Purpose/Outcomes	Presentation of the Clackamas County Government channel awards for 2013.
Dollar Amount and Fiscal Impact	N/A
Funding Source	N/A
Safety Impact	N/A
Duration	N/A
Previous Board Action	N/A
Contact Person	Debbie McCoy, Manager of Cable Communications (503) 742-5902.

BACKGROUND:

The Cable Communications Division is pleased to present to the Board of County Commissioners the recent programming awards received for the Clackamas County Government Channel (CCGC) productions. At the NATOA (National Association of Telecommunications Officers and Advisors) 28th Annual Government Programming Awards competition on September 19, 2013, we received two First Place Awards; three Second Place Awards; three Third Place Awards plus eight Honorable Mentions and one Special Award. Additionally, the channel received two Awards of Excellence, one Award of Distinction and two Honorable Mentions from the Videographer Award competition held in June of this year.

We have a video clip to show you highlighting our achievements. These will include our honors from the NATOA awards competition where we received two first Place Awards for "Down the Drain" by videographer Richard Butler and animator Nik Arnold; and the magazine series "Inside Clackamas County" by host/writer Kimberly Jacobsen and videographers Chris Miller, Allison Grayson and Valerie Garrison. Three Second Place awards for: "Excellence in Government Programming"; "Securing a Bridge to our Future" by Marc Ivanish and "Inside Clackamas County-Civil War Reenacted" by Chris Miller. Three Third Place awards for "Hunger in Clackamas County" by Brian Gee; "Natural Resources Program" by Marc Ivanish and "Public Service Announcements" by videographers Richard Butler, Melody Ashford, Darren Aboulafia and Brian Gee in conjunction with Clackamas High School Students with assistance from Water Environment Services. "Government Program Awards Promo" by Darren Aevermann; "Salmon Toss" by Ryan Gahr; "Hunger in Clackamas County" by Brian Gee; "Securing a Bridge to our Future"; "Natural Resources Program" and "Diversity is Valued at Clackamas County" all produced by Marc Ivanish received Honorable Mentions. "Government Programming Awards Promo" by Meagan Brady-Wright received a special award.


Awards of Excellence were received for "Pechuck Mountain Lookout" by Terry Musgrove and "Hunger in Clackamas County" by Brian Gee from the Videographer Award competition. Also an Award of Distinction was received for "Inside Clackamas County-Growing Hope" by Valerie Garrison. "Securing a Bridge to our Future" and "Natural Resources Program" both by Marc Ivanish received Honorable Mentions.

These programming competitions are highly respected with entries throughout the United States and several international entries. Clackamas County Cable Communications is proud to have won 22 awards this year for programming. Since its inception the Clackamas County Government Channel has won 230 awards.

RECOMMENDATION:

Staff requests the Board's continued support for the Government Channel productions.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Debbie McCoy".

Debbie McCoy, Manager
Cable Communications

2

COPY

December 12, 2013

Board of County Commissioner
 Clackamas County

Members of the Board:

Approval of Mental Health Director's
Designee to Authorize a Custody Hold Under ORS 426.233

Purpose/Outcomes	The Clackamas County Behavioral Health Division (CCBH) of the Health, Housing and Human Services Department requests the Board approve the Designation of Debra Agee, MSW with Cascadia, by the CCBH Director as additional designee authorized under ORS 426.233.
Dollar Amount and Fiscal Impact	N/A
Funding Source	N/A
Safety Impact	None
Duration	Effective December 12, 2013 through duration of employment
Previous Board Action	N/A
Contact Person	Martha Spiers, Mental Health Program Mgr. – Behavioral Health Division – 503-742-5833
Contract No.	N/A

BACKGROUND:

The Behavioral Health Division (CCBH) of the Health, Housing and Human Services Department requests the Board approve the Designation of additional designees authorized under ORS 426.233 (copy attached), the mental health designee will be authorized to direct a peace officer to take a person into custody and remove the person to a hospital or non-hospital facility approved by the Oregon Mental Health and Developmental Disability Services Division.

RECOMMENDATION:

Staff recommends the Board approve the Board Order of Debra Agee, MSW with Cascadia, as additional qualified mental health professional authorized to direct a peace officer to take a person into custody under ORS 426.233.

Respectfully submitted,



Cindy Becker, Director

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

In the Matter of the Designation of
Debra Agee, MSW with Cascadia, as
Mental Health Director Designee to Direct
Peace Officer Custody Holds



ORDER NO.

This matter coming on at this time to be heard, and it appearing to this Board that Cindy Becker, Director of Health, Housing & Human Services Department, has recommended to this Board the approval of Debra Agee with Cascadia, as additional designee of the Behavioral Health Division Director, authorized under ORS 426.233 to direct a peace officer to take a person into custody and remove the person to a hospital or non-hospital facility approved by the Oregon Mental Health and Developmental Disability Services Division, and

This Board finds that it would be in the best interest of Clackamas County to approve said designations,

IT IS THEREFORE HEREBY ORDERED that Clackamas County approve the designation of Debra Agee, MSW with Cascadia, as qualified mental health professional authorized to direct a peace officer to take a person into custody under ORS 426.233.

ADOPTED this 12th day of December, 2013.

BOARD OF COUNTY COMMISSIONERS

Chair

Recording Secretary

426.233 Authority of community mental health program director and of other persons; costs of transportation. (1)(a) A community mental health program director operating under ORS 430.610 to 430.695 or a designee thereof, under authorization of a county governing body, may take one of the actions listed in paragraph (b) of this subsection when the community mental health program director or designee has probable cause to believe a person:

(A) Is dangerous to self or to any other person and is in need of immediate care, custody or treatment for mental illness; or

(B)(i) Is a mentally ill person placed on conditional release under ORS 426.125, outpatient commitment under ORS 426.127 or trial visit under ORS 426.273; and

(ii) Is dangerous to self or to any other person or is unable to provide for basic personal needs and is not receiving the care that is necessary for health and safety and is in need of immediate care, custody or treatment for mental illness.

(b) The community mental health program director or designee under the circumstances set out in paragraph (a) of this subsection may:

(A) Notify a peace officer to take the person into custody and direct the officer to remove the person to a hospital or nonhospital facility approved by the Oregon Health Authority;

(B) Authorize involuntary admission of, or, if already admitted, cause to be involuntarily retained in a nonhospital facility approved by the authority, a person approved for care or treatment at a nonhospital facility by a physician under ORS 426.232;

(C) Notify a person authorized under subsection (3) of this section to take the person into custody and direct the authorized person to remove the person in custody to a hospital or nonhospital facility approved by the authority;

(D) Direct a person authorized under subsection (3) of this section to transport a person in custody from a hospital or a nonhospital facility approved by the authority to another hospital or nonhospital facility approved by the authority as provided under ORS 426.235; or

(E) Direct a person authorized under subsection (3) of this section to transport a person in custody from a facility approved by the authority to another facility approved by the authority as provided under ORS 426.060.

(2) A designee under subsection (1) of this section must be recommended by the community mental health program director, meet the standards established by rule of the authority and be approved by the county governing body before assuming the authority permitted under subsection (1) of this section.

(3) The county governing body may, upon recommendation by the community mental health program director, authorize any person to provide custody and secure transportation services for a person in custody under ORS 426.228. In authorizing a person under this subsection, the county governing body shall grant the person the authority to do the following:

(a) Accept custody from a peace officer of a person in custody under ORS 426.228;

(b) Take custody of a person upon notification by the community mental health program director under the provisions of this section;

(c) Remove a person in custody to an approved hospital or nonhospital facility as directed by the community mental health program director;

(d) Transfer a person in custody to another person authorized under this subsection or a peace officer;

(e) Transfer a person in custody from a hospital or nonhospital facility to another hospital facility or nonhospital facility when directed to do so by the community mental health program director; and

(f) Retain a person in custody at the approved hospital or nonhospital facility until a physician makes a determination under ORS 426.232.

(4) A person authorized under subsection (3) of this section must be recommended by the community mental health program director, meet the standards established by rule of the authority and be approved by the governing body before assuming the authority granted under this section.

(5) The costs of transporting a person as authorized under ORS 426.060, 426.228 or 426.235 by a person authorized under subsection (3) of this section shall be the responsibility of the county whose peace officer or community mental health program director directs the authorized person to take custody of a person and to transport the person to a facility approved by the authority, but the county shall not be responsible for costs that exceed the amount provided by the state for that transportation. A person authorized to act under subsection (3) of this section shall charge the cost of emergency medical transportation to, and collect that cost from, the person, third party payers or otherwise legally responsible persons or agencies in the same manner that costs for the transportation of other persons are charged and collected. [1993 c.484 §5; 1997 c.531 §5; 2009 c.595 §405]

December 12, 2013

Board of County Commissioner
Clackamas County

Members of the Board:

Approval of Intergovernmental Agreement #142998, Amendment #1 with The State of Oregon, Department of Human Services, Aging and People with Disabilities Division for the Provision of Services to Clackamas County Residents age 60 and over

Purpose/Outcomes	To provide Older American Act (OAA) and Oregon Project Independence (OPI) funded services for persons age 60 and over in Clackamas County.
Dollar Amount and Fiscal Impact	The total agreement is \$4,621,579. Funded by Federal OAA Funds and State General Funds designated for the OPI Program.
Funding Source	Federal Older American Act (OAA) & State General Fund designated for the OPI Program. The match required for OAA services provided by Social Services Division is funded by County General funds. The match required for OAA services provided by contracted community partners is funded by the community partner. All match is provided as in-kind match rather than cash match.
Safety Impact	None
Duration	Effective July 1, 2013 and terminates on June 30, 2015
Previous Board Action	072513-A3 Original Agreement Approved
Contact Person	Brenda Durbin, Director, Social Services Division 503-655-8641
Contract No.	6327

BACKGROUND:

This amended agreement reflects the updated planning allocation amounts for Older American Act (OAA) and Oregon Project Independence (OPI) funding from July 1, 2013 through June 30, 2015 of the 2013-2015 biennial agreement period. This funding will provide services for residents of Clackamas County who are age 60 and over by Social Services Division staff and/or sub-contractors. OPI funded services include case management and in-home services.

The services provided include nutrition programs, health promotion activities, transportation, information and referral activities, and In-home services. These services link residents with resources to meet their individual needs. This helps them to remain independent and involved in the community as long as possible.

The planning allocation increased from \$3,884,648 to \$4,621,579. The original agreement and this amendment were reviewed and approved by County Council. This agreement is effective when signed by all parties and terminates on June 30, 2015.

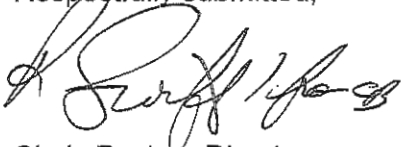
For information on this issue or copies of attachments
Please contact Brenda Durbin, # 503-655-8641

Healthy Families. Strong Communities.

RECOMMENDATION:

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

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Cindy Becker", written in a cursive style.

Cindy Becker, Director

Agreement Number 142998



AMENDMENT TO
STATE OF OREGON
INTERGOVERNMENTAL GRANT AGREEMENT

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

This is amendment number 1 to Agreement Number 142998 between the State of Oregon, acting by and through its Department of Human Services, hereinafter referred to as "DHS" and...

Clackamas County Social Services Division
Serving: Clackamas County
PO Box 2950 - 2051 Kaen Road
Oregon City, Oregon 97045
Attn: Brenda Durbin
Telephone: 503-655-8640
Facsimile: 503-655-8889
E-mail address: stefanierei@co.clackamas.or.us

...hereinafter referred to as "County" or "AAA".

1. This amendment shall become effective on the date this amendment has been fully executed by every party and, when required, approved by Department of Justice.
2. The Agreement is hereby amended as follows:
 - a. Section 3. "Consideration", subsection a. only is amended as follows: language to be deleted or replaced is ~~struck through~~; new language is **underlined and bold**.
 - "a. The maximum not-to-exceed amount payable to County under this Agreement, which includes any allowable expenses, is ~~\$3,884,648.00~~ **\$4,621,579.00** DHS will not pay County any amount in excess of the not-to-exceed amount for completing the Work, and will not pay for Work until this Agreement has been signed by all parties and, when required, approved by the Department of Justice."
 - b. EXHIBIT A, Part 3, Payment and Financial Reporting for Older Americans Act services and Oregon Project Independence services, Section 1. "Funding Appropriations" subsection b. is superseded and replaced in its entirety as follows:

- a. Payment for all work performed under this Agreement shall be subject to the provisions of ORS 293.462 and disbursements under this Agreement shall be as set forth below:

OLDER AMERICANS ACT	\$2,420,676.00	CFDA 93.044, 93.045, 93.043, 93.052, 93.041
NSIP	\$287,508.00	CFDA 93.053
OREGON PROJECT INDEPENDENCE	\$1,817,551.00	
OTHER STATE FUNDS	\$35,844.00	
MEDICAID LOCAL MATCH FUNDS	\$60,000.00	CFDA 93.778

- c. EXHIBIT A, Part 3, Payment and Financial Reporting for Older Americans Act services and Oregon Project Independence services, Section 2. "Fiscal Control Functions", subsection d. "Fiscal Reporting", subsection iii. only is amended as follows: language to be deleted or replaced is ~~struck through~~; new language is **underlined and bold**.

"iii. AAA agrees that DHS may decrease AAA's OPI allocation for incurred home-care worker ("HCW") expenses which is an hourly rate of \$11.39 as of the Effective Date of this Agreement, **which includes the hourly rate of salary (subject to change based on the HCW collective bargaining agreement) and Federal and State Unemployment Tax Act (FUTA/SUTA), Workman's Compensation tax (WC/WCD) and Federal Insurance Contributions Act (FICA)**. This hourly rate is also subject to change based on the HCW collective bargaining agreement."

- d. Exhibit A, Part 4 "Special Terms and Conditions" Sections labeled "4. Confidentiality of Client Information" and "5. Amendments" are renumbered sequentially as 1. and 2.
- e. Exhibit A, Part 4 "Special Terms and Conditions" Section 1. "Confidentiality of Client Information" subsection is amended to add subsection d. as follows:
- d. This Section 1 is subject to the requirements of the Oregon Public Records law.
- f. Exhibit C "Subcontractor Insurance Requirements" is hereby superseded and replaced in its entirety as set forth in Exhibit C "Subcontractor Insurance Requirements" attached hereto and incorporated herein by reference.

3. Certification.

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

Act against the AAA. Without limiting the generality of the foregoing, by signature on this Agreement, the AAA hereby certifies that:

- (1) Under penalty of perjury the undersigned is authorized to act on behalf of AAA and that AAA is, to the best of the undersigned's knowledge, not in violation of any Oregon Tax Laws. For purposes of this certification, "Oregon Tax Laws" means a state tax imposed by ORS 320.005 to 320.150 and 403.200 to 403.250 and ORS chapters 118, 314, 316, 317, 318, 321 and 323 and the elderly rental assistance program under ORS 310.630 to 310.706 and local taxes administered by the Department of Revenue under ORS 305.620;
 - (2) The information shown in AAA Data and Certification, of original Agreement or as amended is AAA's true, accurate and correct information;
 - (3) To the best of the undersigned's knowledge, AAA has not discriminated against and will not discriminate against minority, women or emerging small business enterprises certified under ORS 200.055 in obtaining any required subcontracts;
 - (4) AAA and AAA's employees and agents are not included on the list titled "Specially Designated Nationals and Blocked Persons" maintained by the Office of Foreign Assets Control of the United States Department of the Treasury and currently found at: <http://www.treas.gov/offices/enforcement/ofac/sdn/t11sdn.pdf>;
 - (5) AAA is not listed on the non-procurement portion of the General Service Administration's "List of Parties Excluded from Federal procurement or Nonprocurement Programs" found at: <https://www.sam.gov/portal/public/SAM/>; and
 - (6) AAA is not subject to backup withholding because:
 - (a) AAA is exempt from backup withholding;
 - (b) AAA has not been notified by the IRS that AAA is subject to backup withholding as a result of a failure to report all interest or dividends; or
 - (c) The IRS has notified AAA that AAA is no longer subject to backup withholding.
- b. AAA is required to provide its Federal Employer Identification Number (FEIN). By AAA's signature on this Agreement, AAA hereby certifies that the FEIN provided to DHS is true and accurate. If this information changes, AAA is also required to provide DHS with the new FEIN within 10 days.
2. Except as expressly amended above, all other terms and conditions of the original Agreement and any previous amendments are still in full force and effect. AAA certifies that the representations, warranties and certifications contained in the original Agreement are true and correct as of the effective date of this amendment and with the same effect as though made at the time of this amendment.

4. Signatures.

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

Clackamas County Social Services Division (AAA)

By:

Authorized Signature	Title	Date
----------------------	-------	------

State of Oregon acting by and through its Department of Human Services (DHS)

By:

Authorized Signature	Title	Date
----------------------	-------	------

Approved for Legal Sufficiency:

Reviewed for legal sufficiency and approved by AAG Steven Marlowe on November 6, 2013. A copy of the emailed approval is on file at OCP.

DHS, Seniors & People with Disabilities, State Unit on Aging

Reviewed and approved for release by Rhonda Buedefeldt on October 25, 2013.

Office of Contracts and Procurement:

Phillip G. McCoy, OPBC, OCAC	Contract Specialist	Date
------------------------------	---------------------	------

EXHIBIT C

Subcontractor Insurance Requirements

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

1. **Workers Compensation.** Insurance must be in compliance with ORS 656.017, which requires all employers that employ subject workers, as defined in ORS 656.027, to provide workers' compensation coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). If contractor is a subject employer, as defined in ORS 656.023, contractor shall obtain employers' liability insurance coverage limits of not less than \$1,000,000.

2. **Professional Liability.**

Required by DHS Not required by DHS

Professional Liability Insurance covering any damages caused by an error, omission or any negligent acts related to the services to be provided under this Agreement. AAA shall provide proof of insurance of not less than the following amounts as determined by DHS:

3. **Commercial General Liability.**

Required by DHS Not required by DHS

Commercial General Liability Insurance covering bodily injury, death, and property damage in a form and with coverages that are satisfactory to DHS. This insurance shall include personal injury liability, products and completed operations. Coverage shall be written on an occurrence form basis, with not less than the following amounts as determined by DHS:

Bodily Injury, Death and Property Damage:

Amount described below per occurrence (for all claimants for claims arising out of a single accident or occurrence):

Service Provider Contract not-to-exceed under this Agreement:	Service Provider Required Insurance Amount:
\$0 - \$1,000,000.	\$1,000,000.
\$1,000,001. - \$2,000,000.	\$2,000,000.
\$2,000,001. - \$3,000,000.	\$3,000,000.
In excess of \$3,000,000.	\$4,000,000.

4. Automobile Liability Insurance.

Required by DHS (if AAA transports DHS clients) Not required by DHS

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

Bodily Injury/Death and Property Damage:

Amount described below per occurrence (for all claimants for claims arising out of a single accident or occurrence):

Service Provider Contract not-to-exceed under this Agreement:	Service Provider Required Insurance Amount:
\$0 - \$1,000,000.	\$1,000,000.
\$1,000,001. - \$2,000,000.	\$2,000,000.
\$2,000,001. - \$3,000,000.	\$3,000,000.
In excess of \$3,000,000.	\$4,000,000.

5. **Additional Insured.** The Commercial General Liability insurance and Automobile Liability insurance must include the State of Oregon, its officers, employees and agents as Additional Insureds but only with respect to the contractor's activities to be performed under the Subcontract. Coverage must be primary and non-contributory with any other insurance and self-insurance.

6. **"Tail" Coverage.** If any of the required insurance policies is on a "claims made" basis, such as professional liability insurance, the contractor shall maintain either "tail" coverage or continuous "claims made" liability coverage, provided the effective date of the continuous "claims made" coverage is on or before the effective date of the Subcontract, for a minimum of 24 months following the later of: (i) the contractor's completion and County's acceptance of all services required under the Subcontract or, (ii) the expiration of all warranty periods provided under the Subcontract. Notwithstanding the foregoing 24-month requirement, if the contractor elects to maintain "tail" coverage and if the maximum time period "tail" coverage reasonably available in the marketplace is less than the 24-month period described above, then the contractor may request and DHS may grant approval of the maximum "tail" coverage period reasonably available in the marketplace. If DHS approval is granted, the contractor shall

maintain “tail” coverage for the maximum time period that “tail” coverage is reasonably available in the marketplace.

7. **Notice of Cancellation or Change.** The contractor or its insurer must provide 30 days’ written notice to County before cancellation of, material change to, potential exhaustion of aggregate limits of, or non-renewal of the required insurance coverage(s).
8. **Certificate(s) of Insurance.** County shall obtain from the contractor a certificate(s) of insurance for all required insurance before the contractor performs under the Subcontract. The certificate(s) or an attached endorsement must specify: (i) all entities and individuals who are endorsed on the policy as Additional Insured and (ii) for insurance on a “claims made” basis, the extended reporting period applicable to “tail” or continuous “claims made” coverage.

December 12, 2013

Board of County Commissioner
Clackamas County

Members of the Board:

Approval of a Construction Contract between Community Development Division
and CivilWorks NW, Inc. for the
Northside Sidewalk Infill Improvements – Sandy Oregon

Purpose/Outcomes	This Construction Contract with CivilWorks, NW, Inc. is for the construction of new curbs and sidewalks in the City of Sandy.
Dollar Amount and Fiscal Impact	The contract amount is \$193,200 dollars. This contract is for Fiscal Year 2013-2014.
Funding Source	Community Development Block Grant Funds: \$140,000.00 City of Sandy Public Works Funds: \$ 53,200.00 Total Project Funds: \$193,200.00 No County General Funds are involved.
Safety Impact	None
Duration	Effective December 15, 2013 and terminates March 1, 2014
Previous Board Action	Project was approved by BCC as part of the 2012 Action Plan on April 26, 2012.
Contact Person	Steve Kelly – Community Development: 650-5665
Contract No.	CD-6518

BACKGROUND:

CivilWorks NW, Inc. on November 14, 2013 was the lowest, responsive bidder of ten general contractors for this project. The City of Sandy requested Community Development Block Grant funds from the Community Development Division (CDD) to construction new sidewalks and curbs along several streets. The streets include; Bluff Road, Beers Ave., Bruns Ave, and Pleasant Street. CDD will provide project coordination. The City of Sandy will provide all engineering services. This agreement has been reviewed and approved by County Counsel.

RECOMMENDATION:

Staff recommends the Board approve this contract and authorize Cindy Becker, H3S Director to sign on behalf of Clackamas County.

Respectfully submitted,


Cindy Becker, Director

**AGREEMENT FOR PUBLIC WORKS CONSTRUCTION WORK
BETWEEN OWNER AND CONTRACTOR**

OWNER

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

CONTRACTOR

CivilWorks NW, Inc.
PO Box 5698
Vancouver, WA 98668

THIS AGREEMENT is entered into by and between Clackamas County, Oregon (hereinafter called OWNER) and CivilWorks NW, Inc. (hereinafter called CONTRACTOR) and is dated as of the date it is signed by the OWNER.

This Contract for construction has been prepared for use with the ODOT Specifications for Construction of the Construction Contract (2008, APWA Oregon Chapter, Volume 1) prepared by the Engineer's Joint Contract Documents Committee.

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

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

ARTICLE 1: WORK

CONTRACTOR shall complete all Work as specified or indicated in the Contract Documents. Work consists of: 435 square yards of street widening, 1,350 lineal feet of new curb and sidewalk, ADA ramps, excavation, paving, landscaping block walls and drainage improvements along Beers Avenue, Bruns Avenue, Bluff Road and Pleasant Street in Sandy, Oregon. This project is hereinafter referred to as the PROJECT.

ARTICLE 2: ENGINEER

The Project has been designed by Curran-McLeod Inc., Consultant Engineers who is hereinafter called ENGINEER and who is to act as OWNER's representative, assume all duties and responsibilities and have the rights and authority assigned to ENGINEER in the Contract Documents in connection with completion of the Work in accordance with the Contract Documents.

ARTICLE 3: CONTRACT TIME

3.1. Time is of the essence in this Contract and the CONTRACTOR agrees that all work shall be substantially completed by _____ 2014 with a contract completion date of _____ 2014. The project is to commence within ten (10) calendar days after the date of Notice To Proceed by the COUNTY. If the Notice To Proceed is delayed, the time schedule will be adjusted accordingly. The total timeframe for this work is **45 days** unless a time extension is approved by the ENGINEER and OWNER, via Change Order.

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

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

ARTICLE 4: CONTRACT PRICE

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

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

4.2 The Contract Price shall be for **One Hundred Ninety Three Thousand Two Hundred Dollars and No Cents (\$193, 200.00)** which are described in the Contract Documents and are hereby accepted by the Owner.

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

ARTICLE 5: PAYMENT PROCEDURES

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

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

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

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

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

95% of Work completed and approved by the ENGINEER.

95% of materials and equipment not incorporated in the Work (but delivered, suitably stored and accompanied by documentation satisfactory to OWNER as provided in Section 00195.60 of the ODOT Specifications for Construction).

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

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

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

5.4. Payments, Contributions and Liens:

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

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

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

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

5.4.1.4. Pay to the Revenue Department all sums withheld from the employees pursuant to ORS 316.197.

5.4.2. If the contract is for a public improvement, the CONTRACTOR shall demonstrate that an employee drug testing program is in place.

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

services and charge the amount of the payment against the funds due or to become due the CONTRACTOR by reason of the contract. If a CONTRACTOR or a first-tier subcontractor fails, neglects or refuses to make prompt payment to a person furnishing labor or materials in connection with the public contract for a public improvement within 30 days after receipt of payment from the public contracting agency or a contractor, the CONTRACTOR or first-tier subcontractor shall owe the person the amount due plus interest charges commencing at the end of the 10-day period that payment is due under ORS 279C.580 (3) and(4) and ending upon final payment, unless payment is subject to a good faith dispute as defined in ORS 279C.580. The rate of interest charged to the CONTRACTOR or first-tier subcontractor on the amount due shall equal three times the discount rate on 90-day commercial paper in effect at the Federal Reserve Bank in the Federal Reserve district that includes Oregon on the date that is 30 days after the date when payment was received from the public contracting agency or from the CONTRACTOR, but the rate of interest shall not exceed 30 percent. The amount of interest may not be waived.

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

ARTICLE 6: CONTRACTOR'S REPRESENTATIONS

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

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

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

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

6.4. CONTRACTOR has carefully studied all reports of explorations and tests of subsurface conditions at or contiguous to the site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the site as provided in Section 00120.15 of the ODOT Specifications for Construction. CONTRACTOR acknowledges that OWNER and ENGINEER do not assume responsibility for the accuracy or completeness of information and data shown or indicated in the Contract Documents with respect to Underground Facilities at or contiguous to the site. CONTRACTOR has obtained and carefully studied (or assumes responsibility for having done so) all such additional supplementary examinations, investigations, explorations, tests, studies and data concerning conditions (surface, subsurface and

Underground Facilities) at or contiguous to the site or otherwise which may affect cost, progress, performance or furnishing of the construction to be employed by CONTRACTOR and safety precautions and programs incident thereto. CONTRACTOR does not consider that any additional examinations, investigations, explorations, tests, studies or data are necessary for the performance and furnishing of the Work at the Contract Price, within the Contract Times and in accordance with the other terms and conditions of the Contract Documents.

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

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

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

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

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

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

ARTICLE 7: INDEMNITY – INSURANCE – BONDS

7.1 Indemnity. The CONTRACTOR agrees to indemnify, save harmless and defend the OWNER, its officers, commissioners and employees from and against all claims and action, and all expenses incidental to the investigation and defense thereof, arising out of or based upon

damage or injuries to persons or property caused by the errors, omissions, fault or negligence of the CONTRACTOR or the CONTRACTOR'S employees.

7.2 Insurance.

7.2.1. As evidence of the insurance coverage required by this contract, CONTRACTOR shall furnish a Certificate of Insurance to COUNTY. No contract shall be in effect until the required certificates have been received, approved and accepted by COUNTY. A renewal certificate will be sent to COUNTY 10 days prior to coverage expiration. The CONTRACTOR agrees to furnish the OWNER evidence of commercial general liability insurance in the amount of not less than \$4,000,000 combined single limit per occurrence/\$5,000,000 general annual aggregate for personal injury and property damage for the protection of the OWNER, its officers, commissioners and employees against liability for damages because of personal injury, bodily injury, death or damage to property, including loss of use thereof in any way related to this contract. The general aggregate shall apply separately to this project/location. The OWNER, at its option, may require a complete copy of the above policy.

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

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

7.2.4. The CONTRACTOR agrees to furnish the OWNER evidence of business automobile liability insurance in the amount of not less than \$500,000 combined single limit for bodily injury and property damage for the protection of the OWNER, its officers, commissioners and employees against liability for damages because of bodily injury, death or damage to property, including loss of use thereof in any way related to this contract. The OWNER, at its option, may require a complete copy of the above policy.

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

This policy(s) shall be primary insurance as respects to the OWNER. Any insurance or self insurance maintained by the OWNER shall be excess and shall not contribute to it.

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

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

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

ARTICLE 8: CONTRACT DOCUMENTS

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

8.1. This Agreement (pages 1 to 11, inclusive).

- 8.2. Exhibits to this Agreement (Exhibit GC-4, 1 page).
- 8.3. Performance and Labor Material Payment Bonds, Public Works Bond consisting of 5 pages.
- 8.4. 2008 ODOT Specifications for Construction (cover, pages 1 to 121, inclusive).
- 8.5. Supplementary Conditions, including:
- Special Conditions (pages 1 to 13, inclusive).
 - HUD Labor Standards, HUD-4010 (pages 1 to 5, inclusive).
 - Federal Prevailing (Davis-Bacon) Wage Decision **OR130001, Modification No.14**
Type: Highway, Dated 10/14/2013 (20 total pages).
 - State of Oregon (BOLI) Wage Rates Decision: **July 1, 2013** (30 total pages).
- 8.6. Specifications provided by Curran-McLeod Engineers, totaling 40 pages.
- 8.7. Drawing(s) bearing the title “**City of Sandy, Bluff Rd., Beers Ave., Bruns Ave., and Pleasant St., Curb and Sidewalk Improvements**” C1 of 9 pages. Provided by Curran-McLeod Engineers.
- 8.8. Addenda Number 1, 1 page provided by Curran-McLeod Engineers, **Date November 7, 2013**.
- 8.9. CONTRACTOR's Bid (Bid Proposal: pages 1 through 7, 1st Tier: page 8, 8 inclusive).
- 8.10. The following which may be delivered or issued after the Effective Date of the Agreement and are not attached hereto: All Written Amendments and other documents amending, modifying, or supplementing the Contract Documents pursuant to Section 00140.30 of the ODOT Specifications for Construction.

The documents listed in paragraphs 7.2 et seq. above are attached to this Agreement (except as expressly noted otherwise above).

There are no Contract Documents other than those listed above in this Article 7. The Contract Documents may only be amended, modified or supplemented as provided in Section 00140.30 of the ODOT Specifications for Construction.

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

Each worker in each trade or occupation employed in the performance of the contract either by the CONTRACTOR, subcontractor, or other person(s) doing or contracting for the whole or any part of the work on this contract, shall be paid not less than the applicable prevailing wage rate, and will pay the higher rate of pay on an individual job classification of which shall be in effect for this

contract pursuant to Davis-Bacon Act (40 U.S.C. 276a) and Bureau of Labor and Industries (a.k.a. BOLD) ORS 279C.800 through ORS 279C.870.

ARTICLE 10: DESCRIPTION OF CONTRACTOR

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

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

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

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

ARTICLE 11: MISCELLANEOUS

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

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

11.3. No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and specifically but without limitation moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

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

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

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

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

CONTRACTOR

OWNER

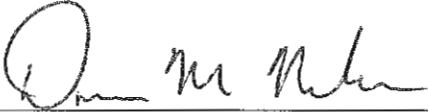
CivilWorks NW, Inc.

Clackamas County, Oregon

PO Box 5698
Vancouver, WA 98668

Chair: John Ludlow
Commissioner: Jim Bernard
Commissioner: Paul Savas
Commissioner: Martha Schrader
Commissioner: Tootie Smith

Signing on Behalf of the Board

By: 
Dwayne Nelson - PRESIDENT

By: _____
Cindy Becker, Director
Health, Housing and Human Services
Department

11-27-13

Date Signed

Date Signed

04-3733499

Contractor's Federal Tax Identification No.
or Social Security No. (if individual)

154103

Oregon Commercial Contractor's Board No.

December 12, 2013

Board of County Commissioner
Clackamas County

Members of the Board:

**Approval of a Cooperative Agreement between
Clackamas County and Wilsonville Community Sharing
for a Food Bank Expansion Project in Wilsonville**

Purpose/Outcomes	The Agreement allows for the building a new food bank facility for the Wilsonville Food Bank and Information and Referral office on land owned by Meridian United Church of Christ.
Dollar Amount and Fiscal Impact	\$230,000 of CDBG grant funds and approximately \$50,000 of Wilsonville Community Sharing funds.
Funding Source	U.S. Department of Housing and Urban Development Community Development Block Grant (CDBG) funds. No County funds are involved.
Safety Impact	A new facility with improved parking.
Duration	Effective when signed and terminates 15 years after completion of the project
Previous Board Action	The Board approved the Wilsonville Community Sharing Facility Expansion project as part of the 2012 Action Plan approved on May 3, 2012
Contact Person	Chuck Robbins, Community Development Director – (503) 655-8591
Contract No.	H3S CD 6520

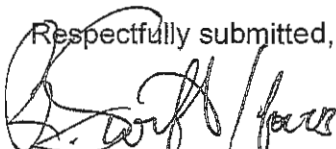
BACKGROUND:

Wilsonville Community Sharing was awarded Community Development Block Grant (CDBG) funds for this project through the CDBG application process. Wilsonville Community Sharing (WCS) is an Oregon non-profit organization providing services to over 5,500 low income residents in over 1,500 families every year. WCS services include emergency food boxes, referral services and counseling to connect families in crisis with any available community resources. Meridian United Church of Christ is the owner of the 6750 SW Boeckman Road property and has signed a 25-year lease with WCS for part of the property to build a facility for WCS operations.

RECOMMENDATION:

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

Respectfully submitted,


Cindy Becker, Director

COOPERATION AGREEMENT

Between

CLACKAMAS COUNTY, OREGON

And

WILSONVILLE COMMUNITY SHARING

And

MERIDIAN UNITED CHURCH OF CHRIST

I. Purpose

- A. This Agreement is entered into between Clackamas County (COUNTY), Wilsonville Community Sharing (WCS) and Meridian United Church of Christ (UCC) jointly referred to as PARTIES. The purpose of this Agreement is to provide a basis for a cooperative working relationship to complete the **Wilsonville Community Sharing Facility Expansion project**. The project will consist of building a new facility to house the Wilsonville Food Bank and Information and Referral office on land owned by Meridian United Church of Christ herein referred to as PROJECT. The project site is located at 6750 SW Boeckman Road in Wilsonville, Oregon 97070.
- B. Wilsonville Community Sharing (WCS) is an Oregon non-profit organization providing services to over 5,500 low income residents in over 1,500 families every year. WCS services include emergency food boxes, referral services and counseling to connect families in crisis with any available community resources.
- C. Meridian United Church of Christ (UCC) is the owner of the 6750 SW Boeckman Road property and is leasing part of the property to Wilsonville Community Sharing for the PROJECT. The Commercial Lease between UCC and WCS is hereby made a part of this Agreement as ATTACHMENT E.

II. Scope of Cooperation

- A. Under this agreement the responsibilities of WCS shall be as follows:
 1. WCS shall provide all necessary supervisory and administrative support to assist the COUNTY with the completion of the PROJECT.
 2. WCS shall obtain any easements or approvals necessary to allow access onto private property. Acquisition of any easement shall be obtained pursuant to the federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA).
 3. WCS shall provide Architect services for the design and construction oversight of the PROJECT. Such services shall be provided at no cost to the COUNTY. The WCS shall assume responsibility for ensuring the following:
 - a. WCS shall hire a registered professional Architect (herein after referred to as Architect) to prepare all plans and specifications necessary to publicly bid the PROJECT for award to a construction contractor (herein after referred to as Contractor) and provide construction oversight of the PROJECT.
 - b. WCS shall require the Architect to maintain comprehensive general (including contractual liability) and automobile liability insurance in the amount of not less

than \$500,000 combined single limit per occurrence/\$1,000,000 general annual aggregate for personal injury and property damage for the protection of the County, its officers, commissioners and employees against liability for damages because of personal injury, bodily injury, death or damage to property, including loss of use thereof, in any way related to Architect's or any of Architect's subcontractor's performance of this Agreement.

- c. WCS shall require the Architect to maintain professional liability insurance in an amount of not less than \$1,000,000 per claim. Such insurance shall include limited contractual liability coverage and shall provide for thirty days prior written notice to the COUNTY in event of cancellation. The Architect shall endeavor to use good faith in order to maintain in force such coverage for not less than three (3) years following completion of the PROJECT. The COUNTY, at its option, may require a complete copy of the above policy and evidence of required coverage.
 - d. WCS shall require the Architect to include the County as an additional insured and refer to and support the Architect's obligation to hold harmless the County, its officers, and employees. Such insurance shall provide 30 days' written notice to the COUNTY in the event of cancellation, non-renewal, or material change and include a statement that no act on the part of the insured shall affect the coverage afforded to the County under this insurance. The insurance company will provide written notice to the COUNTY within thirty (30) days after any reduction on the general annual aggregate limit.
 - e. WCS agrees to require the Architect to furnish the COUNTY evidence of the insurance required in II.A.3 (b) and (c).
 - f. WCS shall ensure that the Architect's responsibilities include, but are not limited to, the following:
 - (1) During construction the Architect shall endeavor to guard the COUNTY against apparent defects and deficiencies in the permanent work constructed by the Contractor.
 - (2) All reports and recommendations concerning construction shall be submitted to the COUNTY for their approval. The COUNTY agrees that no decisions affecting construction shall be made without WCS approval.
 - (3) In the event modifications to the construction contract, which result in an increase in the contract amount, are made without the prior approval of the COUNTY, WCS shall be solely responsible for these modifications.
4. WCS shall operate and maintain the improvements for public purposes for fifteen years subject to the limitations on the expenditure of funds by the WCS as provided by Oregon Statute.
 5. WCS will bear the risk of loss from fire, extended coverage, and will purchase and maintain property insurance on all affected WCS property. The WCS will bear the risk of loss from accidents coverable by owner's liability insurance and may, at its

option, maintain such insurance as detailed in the Commercial Lease agreement (ATTACHMENT E).

6. WCS will submit to COUNTY for its approval all reports and recommendations concerning construction of PROJECT. The COUNTY will submit to WCS for its approval all of COUNTY's decisions affecting construction. The COUNTY and WCS agree that their approval may not be unreasonably delayed withheld or conditioned and will be deemed given within 7 business days of receiving written request for approval from the other party or its agent, if such party has not given written disapproval and the specific basis for same within such 7 day period.
 7. Upon completion of the PROJECT, WCS
 - a. agrees to accept the improvements
 - b. agrees to become the successor of the Construction Contract, and
 - c. agrees to continue operating the property as a food bank facility.
 8. WCS agrees to report to the COUNTY information on the race and head-of-household status for the clients served. The report shall cover the period between July 1 to June 30 for each year or partial year until completion of the PROJECT. The report format shall be provided by the COUNTY and shall be submitted to the COUNTY no later than the 31st day of August (ATTACHMENT A).
 9. WCS shall complete and submit a Matching Funds Report following completion of the PROJECT. (ATTACHMENT D)
- B. Under this agreement the responsibilities of UCC will be as follows:
1. UCC agrees to maintain ownership of the property for the 15-year life of the PROJECT.
 2. UCC agrees to inform the COUNTY in writing prior to making any change in the use of the property. Should the new use not meet HUD eligibility criteria, and/or the clients no longer meet the HUD income guidelines UCC and WCS shall reimburse COUNTY as provided in 24 CFR Part 570.505. Said provision is attached as ATTACHMENT B and hereby made a part of this Agreement.
 3. Should the property be sold and converted to a non-qualifying use UCC and WCS agree to reimburse the COUNTY as provided in 24 CFR Part 570.505.
- C. Under this agreement the responsibilities of the COUNTY will be as follows:
1. The COUNTY agrees to provide and administer available Federal Community Development Block Grant (CDBG) funds (CFDA 14.218) granted by the U.S. Department of Housing and Urban Development (HUD) to finance the PROJECT.
 2. The COUNTY Community Development Division shall conduct an environmental assessment of the PROJECT as required in 24 CFR 570.604 of the CDBG.

3. The COUNTY will appropriately bid and contract for construction of the PROJECT. In this contract the COUNTY will act as the Owner and shall assume all of the Owners rights and responsibilities during construction.
4. The COUNTY with the advice of WCS, will approve changes, modifications, or amendments as necessary to serve the public interest.
5. The COUNTY shall provide reasonable and necessary staff for administration of the PROJECT. A Project Coordinator from the County's Community Development Division will assist with the project management, coordination and contract administration.
6. The responsibilities of the Project Coordinator shall include:
 - a. Prepare a Bid Packet to be advertised in a local contractor's publication;
 - b. Conduct the Bid Opening on the date determined by all PARTIES;
 - c. Hire a General Contractor via the lowest responsible and responsive bidder;
 - d. Issue a Notice to Proceed after the Construction Contract is approved;
 - e. Conduct a Pre-Construction Conference with the General Contractor and WCS, and the WCS Architect;
 - f. Coordinate with the Architect, WCS and General Contractor throughout General Contractor's performance of the Work;
 - g. Administration of federal and state prevailing wage requirements;
 - h. Closeout Paperwork and all federal reporting requirements;
 - i. With the Approval of the Architect and both PARTIES;
 - (1) Make payment to the General Contractor
 - (2) Release retainage funds to the General Contractor as appropriate;
 - j. Notify WCS of their responsibilities for all warranty related issues after the Release of Retainage.

III. Budget and Financial

- A. The COUNTY will apply CDBG funds in an amount not to exceed **\$230,000** to the project. The obligations of the COUNTY are expressly subject to the COUNTY receiving funds from HUD for the PROJECT, and in no event shall the COUNTY'S financial contribution exceed the amount finally granted, released and approved by HUD for this project.
- B. WCS agrees to contribute the greater of:
 1. Twenty percent (20%) of the total PROJECT cost, or
 2. All costs which exceed available CDBG funds budgeted for the PROJECT.
- C. WCS shall be credited towards the matching requirements stated in Part III. D. an amount equal to **10%** of the final construction cost for providing architectural services as detailed in Part II. A. 3.
- D. In no event shall WCS matching funds financial participation be less than twenty percent (20%) of the PROJECT costs. PROJECT costs include final construction costs which is

defined as original construction amount plus approved change orders, and the credit for architectural services.

- E. In the event the PROJECT can not be completed with available funds the COUNTY and WCS will jointly determine the priorities of the improvements to be made within funding limits.
- F. In the event a contractor is entitled to payments for work completed after \$230,000 in CDBG funds have been expended, the COUNTY shall request a transfer of funds from the WCS for the amount necessary to make such payments.
- G. WCS in payment of PROJECT costs shall remit requested funds to the Community Development Division within Twenty-One (21) working days of the invoice by the COUNTY. All checks shall be made payable to Clackamas County and mailed to the following address:

Attn: Toni Hessevick
Public Services Building-Department of Finance
2051 Kaen Road, Fourth Fl.
Oregon City, OR 97045

IV. Liaison Responsibility

Rich Truitt will act as liaison from WCS for the PROJECT. Mark Sirois will act as liaison from the COUNTY.

V. Special Requirements

- A. Law and Regulations. The COUNTY and the WCS agree to comply with all applicable local, state, and federal ordinances, statutes, laws and regulations.
- B. Public Contracting Requirements. To the extent applicable, the provisions of ORS 279B.220 through 279B.235 are incorporated by this reference as though fully set forth.
- C. Relationship of Parties. Each party is an independent contractor with regard to the other party. Neither party is an agent or employee of the other. No party or its employees is entitled to participate in a pension plan, insurance, bonus, or similar benefits provided by any other party.
- D. Indemnification. WCS agrees to indemnify, defend and hold harmless the COUNTY [The State of Oregon] [and other funding sources] and its [their] officers, agents and employees against all liability, loss and costs arising from actions, suits, claims or demands attributable solely and exclusively to acts or omissions of WCS, and their officers, agents and employees, in performance of this contract. Subject to the limitations of the Oregon Tort Claims Act and the Oregon Constitution, COUNTY agrees to indemnify, defend and hold harmless the WCS [The State of Oregon] [and other funding sources] and its [their] officers, agents and employees against all liability, loss and costs arising from actions, suits, claims or demands attributable solely and exclusively to acts or omissions of COUNTY, and COUNTY'S officers, agents and employees, in performance of this contract.

- E. Each party shall give the other immediate written notice of any action or suit filed or any claim made against the party which may result in litigation in any way related to this Agreement.
- F. Record and Fiscal Control System. All payroll and financial records pertaining in whole or in part to this Agreement shall be clearly identified and readily accessible. Such records and documents shall be retained for a period of three (3) years after receipt of final payment under this Agreement; provided that any records and documents that are the subject of audit findings shall be retained for a longer time until such audit findings are resolved.
- G. Access to Records. The COUNTY, the State of Oregon and the Federal Government, and their duly authorized representatives shall have access to the books, documents, papers, and records of the WCS which are directly pertinent to the Agreement for the purpose of making audit, examination, excerpts, and transcripts.
- H. Debt Limitation. This Agreement is expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10 of the Oregon Constitution, and is contingent upon funds being appropriated therefore. Any provisions herein which would conflict with law are deemed inoperative to that extent. Obligations of the COUNTY are also expressly subject to the COUNTY receiving funds from HUD for this project and in no event shall the COUNTY's financial contribution exceed the amount finally granted, released and approved by HUD for this project.
- I. Conflict of Interest. No officer, employee, or agent of WCS or COUNTY who exercises any functions or responsibilities in connection with the planning and carrying out of the Block Grant Program, or any other person who exercises any functions or responsibilities in connection with the program, shall have any personal financial interest, direct or indirect, in the use of the funds provided pursuant to this Agreement, and the Parties shall take appropriate steps to assure compliance. The Parties will insure that no contractor, subcontractor, contractor's employee or subcontractor's employee has or acquires any interest, direct or indirect, which would conflict in any manner or degree with the performance of his services.
- J. Insurance. WCS will bear the risk of loss from fire, extended coverage, and will purchase and maintain property insurance on all affected WCS property. The WCS will bear the risk of loss from accidents coverable by owner's liability insurance and may, at its option, maintain such insurance. If applicable, WCS shall be required to maintain flood insurance. At the WCS's expense and keep in effect during the term of this agreement, Commercial General Liability Insurance covering Bodily Injury and Property Damage on an "occurrence" form in the amount of not less than \$1 Million per occurrence/ \$2 Million general aggregate for the protection of the COUNTY, its officers, WCS, and employees. This coverage shall include Contractual Liability insurance for the indemnity provided under this contract. Each party agrees to maintain insurance, or self-insurance, in accordance with ORS 30.282, for the duration of this Agreement at levels necessary to protect against public body liability as specified in ORS 30.270.
- K. Nondiscrimination. WCS and the COUNTY agree to comply with all Federal, State, and local laws prohibiting discrimination on the basis of age, sex, marital status, race, creed,

color, national origin, familial status, or the presence of any mental or physical handicap. These requirements are specified in ORS chapter 659; Section 109 of the Housing and Community Development Act of 1974; Civil Rights Act of 1964, Title VII; Fair Housing Amendments Act of 1988; Executive Order 11063; Executive Order 11246; and Section 3 of the Housing and Urban Development Act of 1968; all as amended; and the regulations promulgated thereunder.

- L. Handicapped Accessibility. WCS agrees that all improvements made under this Agreement shall comply with standards set for facility accessibility by handicapped persons required by the Architectural Barriers Act of 1968, as amended. Design standards for compliance are contained in 24 CFR 8.31-32 and the document entitled Uniform Federal Accessibility Standards published by HUD in April, 1988 as a joint effort with other Federal agencies.
- M. Nonsubstituting for Local Funding. The CDBG funding made available under this Agreement shall not be utilized by WCS to reduce substantially the amount of local financial support for community development activities below the level of such support prior to the availability of funds under this Agreement.
- N. Evaluation. WCS agrees to participate with the COUNTY in any evaluation project or performance report, as designed by the COUNTY or the appropriate Federal department, and to make available all information required by any such evaluation process.
- O. Religious Organization. WCS agrees that funds provided under this Agreement will not be utilized for religious activities, to promote religious interest, or for the benefit of a religious organization in accordance with the Federal regulations specified in 24 CFR 570.200(j).
- P. Audits and Inspections. WCS will ensure that the COUNTY, the Secretary of HUD, the Comptroller General of the United States, or any of their duly authorized representatives shall have access to all books, accounts, records, reports, files, and other papers or property pertaining to the funds provided under this agreement for the purpose of making surveys, audits, examinations, excerpts, and transcripts.
- Q. Acquisition. If completion of the project requires acquisition of any real property the PARTIES agree to comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended.
- R. Change of Use. WCS agrees to comply with applicable change of use provisions contained in 24 CFR 570.505 (refer to ATTACHMENT B).
- S. Reversion of Assets. Upon expiration or termination of this Agreement, WCS shall transfer to County any CDBG funds on hand at the time of expiration and any accounts receivable attributable to the use of CDBG funds. Also for any real property under WCS control that was acquired or improved in whole or in part with CDBG funds (including CDBG funds provided to the WCS in the form of a loan) in excess of \$25,000 shall ensure said real property is either:
 - 1. Used to meet one of the National Objectives in CFR 570.208 for the term of this Agreement; or

2. Not used to meet on the National Objectives for the term of this Agreement, in which event the WCS shall pay to COUNTY an amount equal to the current market value of the property less any portion of the value attributable to expenditures of non-CDBG funds for the acquisition of, or improvement to, the property.

VII. Term of Agreement

- A. This Agreement becomes effective when it is signed by all PARTIES.
- B. The term of this Agreement is a period beginning when it becomes effective and ending fifteen (15) years after completion of the PROJECT.
- C. This Agreement may be suspended or terminated prior to the expiration of its term by:
 1. Written notice provided to the COUNTY from WCS before acquisition has been established, or;
 2. Written notice provided by the COUNTY in accordance with 24 CFR 85.43, included as ATTACHMENT C, resulting from material failure by WCS to comply with any term of this Agreement; or
 3. Mutual agreement by the COUNTY and WCS in accordance with 24 CFR 85.44 included as part of ATTACHMENT C.
- D. Upon termination of this Agreement, any unexpended balances CDBG funds that remain shall remain with the COUNTY.

**WILSONVILLE COMMUNITY
SHARING**

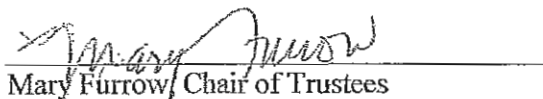
P.O. Box 205
Wilsonville, OR 97070


Rich Truitt, WCS Board Chair

10/9/13

Date

Meridian United Church of Christ
6750 SW Boeckman Road
Wilsonville, OR 97070


Mary Furrow, Chair of Trustees

10/25/13

Date

CLACKAMAS COUNTY

Chair: John Ludlow
Commissioner Jim Bernard
Commissioner Paul Savas
Commissioner Martha Schrader
Commissioner Tootie Smith
Housing and Human Services Dept.
Signing on Behalf of the Board.

Cindy Becker, Director, Health,
Housing and Human Services Department

Date

ATTACHMENT A

COMMUNITY DEVELOPMENT BLOCK GRANT
ANNUAL PERFORMANCE REPORT
FOR THE PERIOD: JULY 1, _____ TO JUNE 30, _____

Project Name: Wilsonville Community Sharing Facility Expansion (#53241)
Note: Need data from July 1, 2013 through June 30, 2014

Total Number Assisted (H or P)	Total of Columns C, D, and E	Income Categories			Female Headed Households
		Low/Mod (80% - 51%)	Very Low (50% - 30%)	Extremely Low (<30%)	
(A)	(B)	(C)	(D)	(E)	(F)

Race Categories		Total #	# Hispanic
		(G)	(H)
(1)	White:		
(2)	Black/African American:		
(3)	Asian:		
(4)	American Indian/Alaskan Native:		
(5)	Native Hawaiian/Other Pacific Islander:		
(6)	American Indian/Alaskan Native & White:		
(7)	Asian & White:		
(8)	Black/African American & White:		
(9)	Am. Indian/Alaskan Native & Black/African Am:		
(10)	Other Multi-Racial:		

Signature

Date

Organization

INSTRUCTIONS

Total Number Assisted (Column A):

Enter the actual number of persons (or households) who received assistance. Indicate whether this number represents "households" or "persons" with either (H) or (P) respectively. Each household or person may be counted only once. The number of beneficiaries reported in Column A must reflect the total of the beneficiaries reported in Column G.

Total Low/Mod (<80% MFI) (Column B):

The total number of lower income households or persons being served (total of Columns C, D, and E) should be entered in this column.

Income Categories

Low/Mod (Column C) - The total number of persons or households assisted who have an annual household income of 51% to 80% Median Family Income.

Low (Column D) - The total number of persons or households assisted who have an annual household income of 30% to 50% Median Family Income.

Extremely Low (Column E) - The total number of persons or households assisted who have an annual household income of 30% Median Family Income or less.

Female-Headed Household (Column F)

Enter the number of female-headed households. If "persons" assisted is reported in Column A rather than "households" assisted, leave this column blank.

Race (Rows 1 through 10)

All persons/households served (including persons of Hispanic ethnicity) must indicate Race.

Enter the number of households or persons using the facility or service (Column G) who are the following:

White (Row 1) - A person having origins in any of the original peoples of Europe, North Africa, or the Middle East. This category will generally include persons of Hispanic ethnicity but other categories may be chosen as appropriate.

Black or African American (Row 2) - A person having origins in any of the black racial groups of Africa.

Asian (Row 3) - A person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent.

American Indian or Alaskan Native Origin (Row 4) - A person having origins in any of the original peoples of North America, and who maintains cultural identification through tribal affiliations or community recognition.

Native Hawaiian or Other Pacific Islander (Row 5) - A person having origins in the Hawaiian Islands or other Pacific Islands.

American Indian or Alaska Native and White (Row 6)

Asian and White (Row 7)

Black or African American and White (Row 8)

American Indian or Alaska Native and Black or African American (Row 9)

Other Multi-Racial (Row 10) -- The balance category will be used to report individuals that are not included in any of the single race categories or in any of the multiple race categories listed above.

Ethnicity - Hispanic (Column H)

Enter the total number of persons or households within each Race Category who indicate origins in Mexico, Puerto Rico, Cuba, Central or South America or other Spanish culture or origin.

ATTACHMENT B

Excerpt from 24 CFR Part 570

570.505 Use of real property.

The standards described in this section apply to real property within the recipient's control which was acquired or improved in whole or in part using CDBG funds in excess of \$25,000. These standards shall apply from the date CDBG funds are first spent for the property until five years after closeout of an entitlement recipient's participation in the entitlement CDBG program or, with respect to other recipients, until five years after the closeout of the grant from which the assistance to the property was provided.

(a) A recipient may not change the use or planned use of any such property (including the beneficiaries of such use) from that for which the acquisition or improvement was made unless the recipient provides affected citizens with reasonable notice of, and opportunity to comment on, any proposed change, and either;

(1) The new use of such property qualifies as meeting one of the national objectives in 570.208 (**formerly 570.901**) and is not a building for the general conduct of government; or

(2) The requirements and paragraph (b) of this section are met.

(b) If the recipient determines, after consultation with affected citizens, that it is appropriate to change the use of the property to a use which does not qualify under paragraph (a)(1) of this section, it may retain or dispose of the property for the changed use if the recipient's CDBG program is reimbursed in the amount of the current fair market value of the property, less any portion of the value attributable to expenditures of non-CDBG funds for acquisition of, and improvements to, the property.

(c) If the change of use occurs after closeout, the provisions governing income from the disposition of the real property in 570.504(b) (4) or (5), as applicable, shall apply to the use of funds reimbursed.

(d) Following the reimbursement of the CDBG program in accordance with paragraph (b) of this section, the property no longer will be subject to any CDBG requirements.

ATTACHMENT C

Compliance with Terms of Agreements

Excerpt from 24 CFR Part 85

§85.43 Enforcement.

(a) *Remedies for noncompliance.* If a grantee or subgrantee materially fails to comply with any term of an award, whether stated in a Federal statute or regulation, an assurance, in a State plan or application, a notice of award or elsewhere, the awarding agency may take one or more of the following actions, as appropriate in the circumstances:

- (1) Temporarily withhold cash payments pending correction of the deficiency by the grantee or subgrantee or more severe enforcement action by the awarding agency,
- (2) Disallow (that is, deny both use of funds and matching credit for) all or part of the cost of the activity or action not in compliance,
- (3) Wholly or partly suspend or terminate the current award for the grantee's or subgrantee's program,
- (4) Withhold further awards for the program, or
- (5) Take other remedies that may be legally available.

(b) *Hearings, appeals.* In taking an enforcement action, the awarding agency will provide the grantee or subgrantee an opportunity for such hearing, appeal, or other administrative proceeding to which the grantee or subgrantee is entitled under any statute or regulation applicable to the action involved.

(c) *Effects of suspension and termination.* Costs of grantee or subgrantee resulting from obligations incurred by the grantee or subgrantee during a suspension or after termination of an award are not allowable unless the awarding agency expressly authorizes them in the notice of suspension or termination or subsequently. Other grantee or subgrantee costs during suspension or after termination which are necessary and not reasonably avoidable are allowable if:

- (1) The costs result from obligations which were properly incurred by the grantee or subgrantee before the effective date of suspension or termination, are not in anticipation

of it, and, in the case of a termination, are noncancellable, and,

- (2) The costs would be allowable if the award were not suspended or expired normally at the end of the funding period in which the termination takes effect.

(d) *Relationship to Debarment and Suspension.* The enforcement remedies identified in this section, including suspension and termination, do not preclude grantee or subgrantee from being subject to "Debarment and Suspension" under E.O. 12549 (see §85.35).

§85.44 Termination for convenience.

Except as provided in §85.43 awards may be terminated in whole or in part only as follows:

- (a) By the awarding agency with the consent of the grantee or subgrantee in which case the two parties shall agree upon the termination conditions, including the effective date and in the case of partial termination, the portion to be terminated, or
- (b) By the grantee or subgrantee upon written notification to the awarding agency, setting forth the reasons for such termination, the effective date, and in the case of partial termination, the portion to be terminated. However, if, in the case of a partial termination, the awarding agency determines that the remaining portion of the award will not accomplish the purposes for which the award was made, the awarding agency may terminate the award in its entirety under either §85.43 or paragraph (a) of this section.

ATTACHMENT D

CDBG Project Match Funds

For reporting to HUD at the end of the year, indicate the specific sources and amounts of matching funds for your Project:

FY 2012-2013 Match Funds	\$
--------------------------	----

SOURCES OF LOCAL MATCH:

Other Federal (including pass-through funds, e.g. County CDBG, State FEMA, etc.)

	\$
	\$
	\$
	\$
	\$
	\$
	\$

State/Local Governmental Funding (e.g. State Housing Trust Funds, Local Assessment, etc.)

	\$
	\$
	\$
	\$
	\$

Private (including recipient) Funding

Fund Raising/Cash	\$
Loans	\$
Building Value or Lease	\$
Donated Goods	\$
New Staff Salaries	\$
Volunteers (\$5/hr)	\$
Volunteer Medical/Legal	\$
Other	\$

Project: _____

Prepared By:
(Print name)

Signature

Date

ATTACHMENT E

Insert Lease Here

COPY

COMMERCIAL LEASE

DATE: 17th day of June, 2013

Landlord: Meridian United Church of Christ
6750 SW Boeckman Rd.
Wilsonville, OR 97070
EIN #: 93-0574507

Tenant: Wilsonville Community Sharing, an Oregon Non-Profit Corp.
P.O. Box 205
Wilsonville, OR 97070
EIN #: 93-0851927

Landlord leases to Tenant and Tenant leases from Landlord the following described property (the "Premises") on the terms and conditions stated below:

Approximately 18,000 square feet of leasable space, located at 6750 SW Boeckman Rd., Wilsonville, Oregon, located primarily within the southernmost portion of the real property owned by Landlord, and more particularly described on Exhibit A attached hereto and made a part hereof.

1. Occupancy

1.1 Original Term. The term of this lease shall commence on the Rent Commencement Date and continue for twenty-five (25) years unless sooner terminated as hereinafter provided.

1.2 Possession. Tenant's right to possession and obligations under the lease shall commence on the occupancy date described above or on such later date as the Premises are available for possession by Tenant if possession is not given on the opening day of the term.

1.3 Renewal Option. If the lease is not in default at the time each option is exercised or at the time the renewal term is to commence, Tenant shall have the option to renew this lease, for one additional twenty-five (25) year term, as follows:

1.3.1 Each of the renewal terms shall commence on the day following expiration of the preceding term.

1.3.2 Tenant's exercise of any Renewal Option shall be contingent upon fulfilling the following requirements, unless such requirements are waived by Landlord: (a) at the time of exercising such renewal option, Tenant must demonstrate that the mission of Tenant remains compatible with the mission of Landlord; (b) at the time of exercising such renewal option, Tenant must maintain tax exempt status under IRC 501(c)(3), or any successor provision of the tax code; (c) compliance with the annual exchange of financial information as required in the Section 12.2 herein, and that the financial documentation produced by Tenant

for the year immediately preceding the renewal option exercise reflect annual budgets with revenues equal to or greater than expenses, excepting any extraordinary maintenance or repair expenses for the Premises, maintenance of adequate operating reserves relative to annual costs and adequate capital reserves relative to the value of the Premises, and no delinquency in any bills, periodic expenses or other accounts payable, excepting a valid dispute as to the legitimacy of such bills, expenses or accounts payable; (d) compliance with the requirements for a semi-annual meeting as required by Section 12.1 and Tenant's compliance with any reasonable requests of Landlord at such semi-annual meetings to the mutual satisfaction of both parties.

1.3.3 The option may be exercised by written notice to Landlord on or before the Rent Commencement Date of the final year of the initial lease term, or any subsequent renewal periods. Upon the receipt of that notice by Landlord, Tenant and Landlord shall mutually agree upon a person or party to inspect the Premises for any necessary repairs or maintenance items. In addition to the conditions for exercise of the renewal option as indicated in section 1.3.2, Tenant's exercise of the Renewal Option shall be contingent upon the completion of all repairs or maintenance items as reasonably required by the agreed-upon inspector, unless otherwise waived by Landlord.

1.3.4 The terms and conditions of the lease for each renewal term shall be identical with the original term except for base rent and except that Tenant will no longer have any option to renew this lease for a period that has been exercised.

1.3.5 Base Rent for the Renewal Option term shall be the base rent of the year immediately preceding the Renewal Option term adjusted by the consumer price index (CPI) for that year, which adjustment shall not exceed ten percent (10%).

1.3.6 Additional terms beyond the first 25-year Renewal Option term may be negotiated by Landlord and Tenant, taking into account services provided to the community, the lease history, the current value of the building, and other pertinent factors. If the lease is to be considered for renewal beyond the Renewal Option term, either party must initiate a request to negotiate at least 18 months prior to expiration of the Renewal Option term.

1.4 Expansion. During the term of this Lease, and any extensions thereon, Landlord will allow expansion of the Premises up to twenty-five percent (25%) of the initial footprint of the building on the Premises and parking facilities commensurate with such expansion. Base Rent shall be increased for such expansion on a pro rata basis.

2. Rent

2.1 Base Rent. Beginning on the Rent Commencement Date, Tenant shall pay to Landlord \$6,000.00 annually and paid on a monthly basis on or before the first of each month. Starting at the five (5) year anniversary of the Rent Commencement Date and

every five (5) years thereafter, rent will increase by the amount of the CPI increase over the same time period. The Consumer Price Index all Urban Consumers Not Seasonally Adjusted (CPI-U NSA) will be used. The maximum increase at each five-year interval will be ten percent (10%). In the event that the parties reasonably agree that economic conditions have changed substantially, Landlord and Tenant will be open to discussing potential adjustments to Base Rent appropriate for both parties.

2.2 Rent Commencement Date. The Rent Commencement Date will be the date upon which the improvements are completed and occupancy permits are issued for the improvements on the Premises.

2.3 Impact Costs. On an annual basis, on the anniversary of the Rent Commencement Date, the parties shall agree to a method of calculation of any unanticipated impacts that Tenant's operations may have had on Landlord's other facilities and operations. As the parties agree, an amortized cost will be assigned to said impacts to be paid by Tenant monthly in addition to Base Rent.

3. Use of the Premises

3.1 Permitted Use. The Premises shall be used for the operation of a food bank, providing informational, referral and assistance services, and offices and storage related to those uses.

3.2 Restrictions on Use. In connection with the use of the Premises, Tenant shall:

3.2.1 Conform to all applicable laws and regulations of any public authority affecting the premises and the use, and correct at Tenant's own expense any failure of compliance created through Tenant's fault or by reason of Tenant's use, but Tenant shall not be required to make any structural changes to effect such compliance unless such changes are required because of Tenant's specific use.

3.2.2 Refrain from any activity that would make it impossible to insure the Premises against casualty, would increase the insurance rate, or would prevent Landlord from taking advantage of any ruling of the Oregon Insurance Rating Bureau, or its successor, allowing Landlord to obtain reduced premium rates for long-term fire insurance policies, unless Tenant pays the additional cost of the insurance.

3.2.3 Refrain from any use that would be reasonably offensive to other tenants or owners or users of neighboring premises or that would tend to create a nuisance or damage the reputation of the Premises.

3.2.4 Tenant shall not cause or permit any Hazardous Substance to be spilled, leaked, disposed of, or otherwise released on or under the Premises. Tenant may use or otherwise handle on the Premises only those Hazardous Substances typically used or sold in the prudent and safe operation of the business specified in Section 3.1. Tenant may store such Hazardous Substances on the

Premises only in quantities necessary to satisfy Tenant's reasonably anticipated needs. Tenant shall comply with all Environmental Laws and exercise the highest degree of care in the use, handling, and storage of Hazardous Substances and shall take all practicable measures to minimize the quantity and toxicity of Hazardous Substances used, handled, or stored on the Premises. Upon the expiration or termination of this Lease, Tenant shall remove all Hazardous Substances from the Premises. The term Environmental Law shall mean any federal, state, or local statute, regulation, or ordinance or any judicial or other governmental order pertaining to the protection of health, safety or the environment. The term Hazardous Substance shall mean any hazardous, toxic, infectious or radioactive substance, waste, and material as defined or listed by any Environmental Law and shall include, without limitation, petroleum oil and its fractions.

3.3 Shared Use. Tenant acknowledges that the Property is located on property operated by a church. Tenant agrees that Landlord and its other lessees may share the use of Tenant's parking facilities when such parking facilities are not in use for Tenant's operations as described herein. In addition, on Sundays and other Holy Days as identified by Landlord (including, but not limited to Christmas), Landlord and its lessees shall have an absolute right to the use of all parking spaces on the Premises.

4. Repairs and Maintenance

4.1 Landlord's Obligations. Landlord shall be under no obligation to make or perform any repairs, maintenance, replacements, alterations, or improvements on the Premises.

4.2 Tenant's Obligations. Tenant, at its expense, shall keep the Premises (including without limitation the roof, foundation, exterior walls, exterior paint, parking lot and landscaping) in good repair, operating condition, working order, and appearance, ordinary wear and tear excepted.

4.3 Landlord's Interference with Tenant. In performing any repairs, replacements, alterations, or other work performed on or around the Premises, Landlord shall not cause unreasonable interference with use of the Premises by Tenant. Tenant shall have no right to an abatement of rent nor any claim against Landlord for any inconvenience or disturbance resulting from Landlord's activities performed in conformance with the requirement of this provision.

4.4 Inspection of Premises. Landlord shall have the right to inspect the Premises at any reasonable time or times to determine Tenant's compliance with this Lease.

5. Signage

5.1 Permitted Signs. Tenant may install, or have installed, on the Premises, various signs advertising Tenant's uses. Tenant shall be allowed to install the maximum amount of signage on the Premises permitted by local ordinance in order to advertise Tenant's uses.

5.2 Prohibited Signs. Except as indicated in section 5.1, Tenant shall refrain from making any marks on or attaching any sign or insignia to the exterior, windows, or roof of the premises without the written consent of Landlord.

6. Insurance

6.1 Insurance Required. Tenant will obtain and pay for a general broad coverage comprehensive general liability insurance policy insuring Landlord and Tenant against liability arising from Tenant's occupancy and use of the Premises, with blanket policy limits as required by Landlord's insurer. Beginning on the Rent Commencement Date, Tenant will carry not less than One Million Dollars (\$1,000,000) of such coverage, with an umbrella policy of not less than an additional One Million Dollars (\$1,000,000). Tenant shall provide Landlord annually with an insurance certificate showing the policy limits and listing the Landlord as an additional insured.

6.2 Waiver of Subrogation. Neither party shall be liable to the other (or to the other's successors or assigns) for any loss or damage caused by fire or any of the risks enumerated in a standard fire insurance policy with a special extended coverage endorsement, to the extent such loss or damage is actually covered and paid for by the insurance carried by the parties. In the event of insured loss, neither party's insurance company shall have a subrogated claim against the other. This waiver shall be valid only if the insurance policy in question expressly permits waiver of subrogation or if the insurance company agrees in writing that such a waiver will not affect coverage under the policies. Each party agrees to use best efforts to obtain such an agreement from its insurer if the policy does not expressly permit a waiver of subrogation.

7. Taxes; Utilities

7.1 Property Taxes. Tenant shall pay as due all taxes on its personal property located on the Premises. Tenant shall pay as due all real property taxes and special assessments levied against the Premises. As used herein, real property taxes include any fee or charge relating to the ownership, use, or rental of the Premises, other than taxes on the net income of Landlord or Tenant.

7.2 Special Assessments. If an assessment for a public improvement is made against the Premises, Landlord may elect to cause such assessment to be paid in installments, in which case all of the installments payable with respect to the lease term shall be treated the same as general real property taxes for purposes of Section 7.1.

7.3 Contest of Taxes. Tenant shall be permitted to contest the amount of any tax or assessment as long as such contest is conducted in a manner that does not cause any risk that Landlord's interest in the Premises will be foreclosed for nonpayment. Landlord shall cooperate in any reasonable manner with such contest by Tenant.

7.4 Proration of Taxes. Tenant's share of real property taxes and assessments for the years in which this lease commences or terminates shall be prorated based on the portion of the tax year that this lease is in effect.

7.5 New Charges or Fees. If a new charge or fee relating to the ownership or use of the Premises or the receipt of rental therefrom or in lieu of property taxes is assessed or imposed, then, to the extent permitted by law, Tenant shall pay such charge or fee. Tenant, however, shall have no obligation to pay any income, profits, or franchise tax levied on the net income derived by Landlord from this lease.

7.6 Payment of Utilities Charges. To the extent possible, Tenant will pay its actual cost of utilities through separate metering of the Premises. Tenant will be responsible for the cost of all meters, for all tap, hookup and other installation fees. If the charges are not separately metered or stated, an adjustment to the Base Rent commensurate with utility usage will be negotiated to address such costs.

8. Improvements

8.1 Construction. Tenant will construct a building on the Premises for the uses described in section 3.1 above, together with necessary parking and access to the building from existing access point to the public streets, and the construction of any available signage for such uses. Landlord shall not be responsible for the costs of planning, design or construction of such improvements.

8.2 Liens. Tenant shall pay as due all claims for work done on and for services rendered or material furnished to the Premises, and shall keep the Premises free from any liens. If Tenant fails to pay any such claims or to discharge any lien, Landlord may do so and collect the cost as additional rent. Such action by Landlord shall not constitute a waiver of any right or remedy which Landlord may have on account of Tenant's default. Tenant may withhold payment of any claim in connection with a good-faith dispute over the obligation to pay, as long as Landlord's property interests are not jeopardized. If a lien is filed as a result of nonpayment, Tenant shall, within 10 days after knowledge of the filing, secure the discharge of the lien or deposit with Landlord cash or sufficient corporate surety bond or other surety satisfactory to Landlord in an amount sufficient to discharge the lien plus any costs, attorney fees, and other charges that could accrue as a result of a foreclosure or sale under the lien.

8.3 Indemnification. Tenant shall indemnify and defend Landlord from any claim, loss, or liability arising out of or related to any activity of Tenant on the Premises or any condition of the Premises in the possession or under the control of Tenant. Landlord shall have no liability to Tenant for any injury, loss, or damage caused by third parties, or by any condition of the Premises except to the extent caused solely by Landlord's negligence or breach of duty under this lease.

9. Eminent Domain

9.1 Partial Taking. If any part of the Premises shall be taken under the power of eminent domain, this Lease shall terminate as to the part so taken on the date Tenant is required to yield possession thereof to the condemning or acquiring authority. In the event of a partial taking which does not render the balance of the Property unusable by Tenant, Landlord shall within sixty (60) days of such taking make such repairs and

alterations to the Property as may be necessary in order to restore the part not taken (not including the Tenant's improvements) to useful condition, and the Base Rent and other charges shall be reduced in proportion to the portion of the Premises so taken. Rent shall be abated during the portion of any of the restoration period in which the Premises are unfit for occupancy or for the usual conduct of Tenant's business.

9.2 Total Taking. In the event Tenant's use of the Property is materially impaired due to a taking under the power of eminent domain, either party may terminate this Lease as of the date on which Tenant is required to yield possession by giving written notice to the other party not less than twenty (20) days following notice of any such condemnation or friendly acquisition. Tenant shall have no right to any award or compensation in connection with any exercise of the power of eminent domain; provided, however, nothing contained herein shall prevent Tenant from claiming, proving, and receiving awards for moving expenses or removal of trade fixtures, Tenant's relocation expenses or loss of business and goodwill by Tenant, so long as such award does not diminish the amount of any award to Landlord or Landlord's mortgagee.

9.3 Sale in Lieu of Condemnation. Sale of all or part of the premises to a purchaser with the power of eminent domain in the face of a threat or probability of the exercise of the power shall be treated for the purposes of this Section 9 as a taking by condemnation.

10. Due Diligence Contingencies

10.1 Contingencies. It is understood and agreed by and between the parties hereto that this Lease and the commencement of rent are subject to the satisfaction of the following contingencies and in the event said contingencies or any of them are not satisfied in the manner and/or within the time limits hereinafter specified, this Lease shall become null and void, and all rights and obligations hereunder of the parties hereto shall cease and be of no further force or effect; provided, however, Tenant may waive any of said contingencies:

10.1.1 Landlord will permit Tenant and its representatives full and complete access to investigate and inspect the Premises, and will disclose environmental reports, agreements, and all other known documents and records, relating to the Premises.

10.1.2 The Lease is contingent upon Tenant being able to obtain all permits, licenses, variances, approvals and easements necessary to construct and operate the Premises for the uses described herein. Tenant shall have one hundred and eighty (180) days from the date of a mutually executed Ground Lease to obtain such approvals, which shall be extended up to an additional sixty (60) days if the approving agency is still evaluating any of the above mentioned applications.

10.1.3 The Lease is contingent upon the timely cooperation of Landlord in executing applications or other documents reasonably necessary for Tenant to

10.2 LENDER CONSENT. Landlord and Tenant acknowledge that the following consents will need to be acquired from Landlord's lender, and that the parties will timely cooperate to procure that consent. This Lease is contingent upon the receipt of all necessary consents from Landlord's lender under such terms and conditions as are reasonable in Tenant's sole discretion.

10.3 Cooperation. Landlord will cooperate and sign necessary documents that allow the permitting and construction of an approximately 3,000 sf building plus shared parking and access as described in the use provision and the construction provision above.

11. Quiet Enjoyment: Mortgage Priority

11.1 Landlord's Warranty. Landlord warrants that it is the owner of the Premises and has the right to lease them. Landlord will defend Tenant's right to quiet enjoyment of the Premises from the lawful claims of all persons during the lease term.

11.2 Mortgage Priority. Upon the request of Landlord, this lease is and shall be subordinate to any mortgage or deed of trust ("Encumbrance") recorded after the date of this lease and affecting the Premises. If any lender holding such an Encumbrance requires that this lease be subordinate to the Encumbrance, then Tenant agrees that the lease shall be subordinate to the Encumbrance if the holder thereof agrees in writing with Tenant that as long as Tenant performs its obligations under this lease no foreclosure, deed given in lieu of foreclosure, or sale pursuant to the terms of the Encumbrance, or other steps or procedures taken under the Encumbrance shall affect Tenant's rights under this lease. If the foregoing condition is met, Tenant shall execute the written agreement and any other documents required by the holder of the Encumbrance to accomplish the purposes of this paragraph. If the premises are sold as a result of foreclosure of any Encumbrance thereon, or otherwise transferred by Landlord or any successor, Tenant shall attorn to the purchaser or transferee.

11.3 Estoppel Certificate. Either party will, within 20 days after notice from the other, execute and deliver to the other party a certificate stating whether or not this lease has been modified and is in full force and effect and specifying any modifications or alleged breaches by the other party. The certificate shall also state the amount of monthly base rent, the dates to which rent has been paid in advance, and the amount of any security deposit or prepaid rent. Failure to deliver the certificate within the specified time shall be conclusive upon the party from whom the certificate was requested that the lease is in full force and effect and has not been modified except as represented in the notice requesting the certificate.

11.4 Fee Mortgage. Landlord shall not be required to encumber its interest in the Premises with any mortgage securing any debt owed by Tenant. The Tenant will grant ample notice, cure and non-disturbance rights to those interested parties such as lenders and partners of the Tenant.

12. Cooperation and Exchange of Financial Information

12.1 Meetings. Unless waived by both parties, designated representatives of Landlord and Tenant shall meet within sixty (60) days of the execution of this Lease to discuss the cooperation and coordination of the parties with respect to the construction and uses of the Premises described herein. Thereafter, unless waived by both parties, the designated representatives of Landlord and Tenant shall meet on a semi-annual basis to address any issues regarding the tenancy, use of the Premises and this Lease.

12.2 Financial Review. On or before March 31 of each year of Tenant's tenancy, the parties will exchange financial statements, including income statements and balance sheets, for the previous calendar year and budgets for the current year for the respective organizations as are reasonable and normally prepared for each organizations' management needs.

13. Assignment and Subletting

No part of the Premises may be assigned, or subleased, nor may a right of use of any portion of the property be conferred on any third person by any other means, without the prior written consent of Landlord, which consent shall not be unreasonably withheld, conditioned or delayed. No consent in one instance shall prevent the provision from applying to a subsequent instance. In determining whether to consent to assignment Landlord, it shall not be unreasonable for Landlord to deny consent to the assignment, subletting or any use of the Premises for any other use than a food bank, providing of informational, referral and assistive services, and office and storage related to those uses; nor shall it be unreasonable for Landlord to withhold consent to the assignment, subletting or any use of the Premises that is not compatible with the religious purposes and tenets of the Landlord.

14. Default

The following shall be events of default:

14.1 Default in Rent. Failure of Tenant to pay any rent or other charge within 10 days after due.

14.2 Failure to Carry Insurance. Failure of Tenant to carry and continue in force any insurance required under this Lease.

14.3 Default in Other Covenants. Failure of Tenant to comply with any term or condition or fulfill any obligation of the lease (other than the payment of rent or other charges, or failure to carry or maintain insurance) within 30 days after written notice by Landlord specifying the nature of the default with reasonable particularity. If the default is of such a nature that it cannot be completely remedied within the 30-day period, this provision shall be complied with if Tenant begins correction of the default within the 30-day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable.

14.4 Insolvency. Insolvency of Tenant; an assignment by Tenant for the benefit of creditors; the filing by Tenant of a voluntary petition in bankruptcy; an adjudication that Tenant is bankrupt or the appointment of a receiver of the properties of Tenant; the filing of any involuntary petition of bankruptcy and failure of Tenant to secure a dismissal of the petition within 30 days after filing; attachment of or the levying of execution on the leasehold interest and failure of Tenant to secure discharge of the attachment or release of the levy of execution within 10 days shall constitute a default. If the lease has been assigned, the events of default so specified shall apply only with respect to the one then exercising the rights of Tenant under the lease.

14.5 Abandonment. Failure of Tenant for 30 days or more to occupy the Premises for one or more of the purposes permitted under this lease, unless such failure is excused under other provisions of this lease.

15. Remedies on Default

15.1 Termination. In the event of a default this Lease may be terminated at the option of Landlord by written notice to Tenant.

15.2 Reletting. Following reentry or abandonment, Landlord may relet the Premises and in that connection may make any suitable alterations or refurbish the Premises, or both, or change the character or use of the Premises, but Landlord shall not be required to relet for any use or purpose other than that specified in the lease or which Landlord may reasonably consider injurious to the Premises, or to any tenant that Landlord may reasonably consider objectionable.

15.3 Damages. In the event of termination or retaking of possession following default, Landlord shall be entitled to recover immediately, without waiting until the due date of any future rent or until the date fixed for expiration of the lease term, the following amounts:

15.3.1 The loss of rental from the date of default until a new tenant is, or with the exercise of reasonable efforts could have been, secured and paying rent.

15.3.2 The reasonable costs of reentry and reletting including without limitation the cost of any cleanup, refurbishing, removal of Tenant's property and fixtures, costs incurred under Section 15.4 or any other expense occasioned by Tenant's default including but not limited to, any remodeling or repair costs, attorney fees, court costs, broker commissions, and advertising costs.

15.3.3 Any excess of the value of the rent and all of Tenant's other obligations under this lease over the reasonable expected return from the premises for the period commencing on the earlier of the date of trial or the date the premises are relet, and continuing through the end of the term. The present value of future amounts will be computed using a discount rate equal to the prime loan rate of major Oregon banks in effect on the date of trial.

15.4 Landlord's Right to Cure Defaults. If Tenant fails to perform any obligation under this lease, Landlord shall have the option to do so after 30 days' written notice to Tenant. All of Landlord's expenditures to correct the default shall be reimbursed by Tenant on demand. Such action by Landlord shall not waive any other remedies available to Landlord because of the default.

15.5 Remedies Cumulative. The foregoing remedies shall be in addition to and shall not exclude any other remedy available to Landlord under applicable law.

16. Surrender at Expiration

16.1 Condition of Premises. Upon expiration of the lease term or earlier termination on account of default, Tenant shall deliver all keys to Landlord and surrender the Premises broom clean and in the same condition as received, except for ordinary wear and tear. Alterations constructed by Tenant with permission from Landlord shall not be removed or restored to the original condition unless the terms of permission for the alteration so require.

16.2 Improvements. At the termination of this Lease, all improvements on the Premises shall become the property of Landlord.

16.3 Fixtures

16.3.1 All fixtures placed upon the Premises during the term, other than Tenant's trade fixtures, shall, at Landlord's option, become the property of Landlord. If Landlord so elects, Tenant shall remove any or all fixtures that would otherwise remain the property of Landlord, and shall repair any physical damage resulting from the removal.

16.3.2 Prior to expiration or other termination of the lease term Tenant shall remove all furnishings, furniture, and trade fixtures that remain its property.

16.4 Holdover

16.4.1 If Tenant does not vacate the Premises at the time required, Landlord shall have the option to treat Tenant as a tenant from month to month, subject to all of the provisions of this lease except the provisions for term and renewal and at a rental rate (base and percentage) equal to one hundred and twenty percent (120%) of the rent last paid by Tenant, or to eject Tenant from the Premises and recover damages caused by wrongful holdover.

16.4.2 If a month-to-month tenancy results from a holdover by Tenant under this Section 16.4, the tenancy shall be terminable at the end of any monthly rental period on written notice from Landlord given not less than 10 days prior to the termination date which shall be specified in the notice.

17. Miscellaneous

17.1 Nonwaiver. Waiver by either party of strict performance of any provision of this lease shall not be a waiver of or prejudice the party's right to require strict performance of the same provision in the future or of any other provision.

17.2 Attorney Fees. If suit or action is instituted in connection with any controversy arising out of this lease, including any insolvency, bankruptcy or similar proceeding, the prevailing party shall be entitled to recover in addition to costs such sum as the court may adjudge reasonable as attorney fees and paralegal fees at trial, on petition for review, and on appeal.

17.3 Notices. Any notice required or permitted under this lease shall be given when actually delivered or 48 hours after deposited in United States mail as certified mail addressed to the address first given in this lease or to such other address as may be specified from time to time by either of the parties in writing.

17.4 Succession. Subject to the above-stated limitations on transfer of Tenant's interest, this lease shall be binding on and inure to the benefit of the parties and their respective successors and assigns.

17.5 Entry for Inspection. Landlord shall have the right to enter upon the Premises at any time to determine Tenant's compliance with this lease, to make necessary repairs to the building or to the Premises, or to show the Premises to any prospective tenant or purchaser, and in addition shall have the right, at any time during the last two months of the term of this lease, to place and maintain upon the Premises notices for leasing or selling of the Premises.

17.6 Proration of Rent. In the event of commencement or termination of this lease at a time other than the beginning or end of one of the specified rental periods, then the rent shall be prorated as of the date of commencement or termination and in the event of termination for reasons other than default, all prepaid rent shall be refunded to Tenant or paid on its account.

17.7 Time of Essence. Time is of the essence of the performance of each of Tenant's obligations under this lease.

17.8 Memorandum of Lease. At the request of either party, a Memorandum of Lease, suitable for recording in the office of the County Recorder of Clackamas County, State of Oregon, and satisfactory in form to both Landlord and Tenant, may be prepared, executed and recorded setting forth the parties, lease term, option terms, and Premises legal description, and no other terms. In the event that a legal description specifically delineating only the Premises is prepared, the Memorandum of Lease shall include such legal description for recording as an attachment to the Memorandum of Lease.

Landlord:

MERIDIAN UNITED CHURCH OF CHRIST

By: *Mary Furrow*

Name: Mary Furrow

Title: Chair of Trustees

Tenant:

WILSONVILLE COMMUNITY SHARING

By: *Richard R. Truitt*

Name: Richard R. Truitt

Title: President

208
2013

After Recording Return to:

DAVID B. AVISON
Richard Trutt Meridian UCC
Wilsonville Community Sharing
6750 SW Boeckman Rd
Wilsonville, OR 9707



01722022201300688080200209

\$163.00

10/01/2013 11:00:43 AM

D-LSUB Cnt=1 Stn=9 COUNTER1
\$100.00 \$16.00 \$17.00 \$10.00 \$20.00

(Space above for Recorder's use only)

SUBORDINATION, NON-DISTURBANCE
AND ATTORNMENT AGREEMENT WITH LENDER

This Subordination, Non-Disturbance and Attornment Agreement (the "**Agreement**"), dated for reference purposes only as of SEPTEMBER 17, 2013, is made by and among Meridian United Church of Christ, an Oregon Non-Profit Corporation ("**Landlord**"), United Church of Christ Cornerstone Fund, Inc., an Indiana Non-Profit Corporation ("**Lender**"), and Wilsonville Community Sharing, an Oregon Non-Profit Corporation ("**Tenant**").

Recitals

A. Lender is the beneficiary of the deed of trust dated September 6, 2000, recorded in the Official Records of the County of Clackamas, State of Oregon (the "**Official Records**"), on October 16, 2000, as Document Number 2000-067256 (the "**Deed of Trust**"), which is a lien against that certain real property described in Exhibit A attached hereto (the "**Property**"). As used herein, the term Deed of Trust shall include the document described in this Recital A, and any subsequent deed of trust granted by Landlord to Lender, or their successors and assigns, or a subsequent deed of trust granted by Landlord to any other lender for the purpose of financing the Leased Premises.

B. Tenant is the tenant under a Ground Lease from Landlord dated as of 17th day of June, 2013 (as amended, the "**Lease**"), relating to a portion of the Property as more particularly described in the Lease (the "**Leased Premises**").

C. Tenant has agreed to subordinate its leasehold interest in the Leased Premises to the lien of the Deed of Trust, provided Lender agrees that Tenant's possession of the Leased Premises and its rights under the Lease in the portion of the Property encumbered by the Deed of Trust shall not be disturbed as hereinafter provided.

Agreement

NOW, THEREFORE, in consideration of the foregoing Recitals and the terms and conditions hereinafter set forth, the parties agree as follows:

1. The Lease is hereby made subject and subordinate to the lien of the Deed of Trust on the following terms and conditions; provided, however, that (i) if there are any inconsistencies between the Lease and the Deed of Trust, as to Tenant's rights and obligations under the Lease and Landlord's obligations under the Lease or (ii) in any matter involving the rights of the parties in the event of condemnation or damage and destruction, the Lease shall control.

2. In the event any proceedings are brought for (i) foreclosure and sale or other suit, sale, or proceeding under the Deed of Trust, or (ii) a deed in lieu of foreclosure, hereinafter referred to collectively as "Foreclosure," Lender agrees, so long as Tenant is not in default under the Lease beyond any period given Tenant to cure such default, after notice required by the Lease, that

2.1 Tenant's possession of the Leased Premises and its rights under the Lease shall not be disturbed by Lender or any successor or assign, or any purchaser at Foreclosure, hereinafter referred to as the "Purchaser";

2.2 Tenant shall not be made a party to any Foreclosure unless required by law to do so, and the same shall not affect Tenant's rights under the Lease;

2.3 The lien of the Deed of Trust shall not encumber any trade fixtures or equipment used by Tenant in its business on the Leased Premises; and

2.4 Lender or Purchaser shall assume in writing the landlord's obligations under the Lease as a direct lease from and after the date of Foreclosure, provided that neither Lender nor any Purchaser shall be: (i) liable for any act, omission or default of any prior landlord (including Landlord) under the lease, (ii) subject to any right of off-set arising out of a default by Landlord of which Lender did not receive notice and the opportunity to cure prior to Foreclosure, and (iii) bound by any amendment or other modification of the Lease made without Lender's prior written consent, which consent Lender agrees it shall not unreasonably withhold, condition or delay. In the event of Foreclosure, nothing contained in clause (i) of this Section 2.4 shall be deemed to release Lender or Purchaser from the obligation to cure an on-going default by Landlord.

3. Tenant shall attorn to Lender or Purchaser upon foreclosure and shall recognize Lender or Purchaser, as the case may be, as the lessor under the Lease.

4. Landlord and Tenant agree that, upon receipt of written notice from Lender of default by Landlord under the Deed of Trust, upon the request of Lender Tenant shall make all further payments of rent due under the Lease directly to Lender.

5. Lender, by succeeding to the interest of Landlord under the Lease, shall only become obligated to perform the covenants of Landlord accruing thereunder during Lender's period of ownership. In the event Lender subsequently transfers its interest in the Property and/or assigns Lender's interest in the Lease and Lender's successor in interest assumes all of Lender's obligations accruing under the Lease from and after the date of such sale or transfer, Lender shall be released from all further obligations under the Lease, not accrued as of the date of such sale or transfer; and the purchaser, at such sale or transfer or any subsequent sale or transfer of the Property, shall be deemed, without any further agreement between the parties or their successors in interest or between the parties and any such purchaser, to have assumed and agreed to carry out any and all of the covenants and obligations of the landlord accruing under the Lease from and after the date of such sale or transfer.

6. Any and all notices to be given pursuant to this Agreement shall be in writing and mailed by United States certified mail, return receipt requested, postage prepaid, and addressed as follows:

If Lender: United Church of Christ Cornerstone Fund, Inc.
700 Prospect Avenue
Cleveland, OH 44115
Attn: Gordon J. Giles

If Tenant: Wilsonville Community Sharing
P.O. Box 205
Wilsonville, OR 97070
Attn: Richard Truitt

If Landlord: Meridian United Church of Christ
6750 SW Boeckman Rd.
Wilsonville, OR 97070
Attn: Gabrielle Chavez

7. This Agreement shall be binding upon and inure to the benefit of the respective successors, transferees and assigns of the parties hereto.

8. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which, taken together, shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have entered into this Subordination, Non-Disturbance and Attornment Agreement as of the day and year first set forth above.

LANDLORD:

Meridian United Church of Christ, an Oregon non-profit corporation

By: Mary Furrow
Mary Furrow, its Chair of Trustees

LENDER:

United Church of Christ Cornerstone Fund, Inc., an Indiana non-profit corporation

By: Gordon J. Giles
Gordon J. Giles, its President

TENANT:

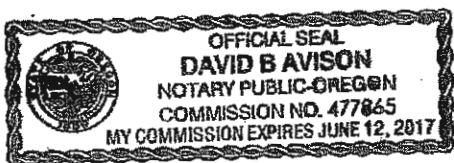
Wilsonville Community Sharing, an Oregon non-profit corporation

By: Richard Truitt
Richard Truitt, its President

ACKNOWLEDGMENT

STATE OF OREGON)
) ss.
County of Washington)

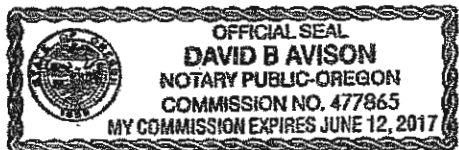
On this 17th day of September, 2013, before me, the undersigned Notary Public in and for said State, personally appeared MARY FURROW who said ~~he~~she is a Marketing/President of Mendocino LLC, and acknowledged to me that the said instrument is the free and voluntary act and deed of said Mendocino Umbrella of Church for the uses and purposes therein mentioned, and on oath stated that he/she is authorized to execute the said instrument.



Printed Name: DAVID B. AVISON
Notary Public in and for the State of OREGON
Residing at Lake Oswego, OR
My appointment expires 6-12-17

STATE OF OREGON)
) ss.
County of Clackamas)

On this 20th day of September, 2013, before me, the undersigned Notary Public in and for said State, personally appeared RICHARD TRUITT who said ~~he~~she is a President of Wilschville Comm Shery and acknowledged to me that the said instrument is the free and voluntary act and deed of said Wilschville Community Shery, for the uses and purposes therein mentioned, and on oath stated that he/she is authorized to execute the said instrument.



Printed Name: DAVID B. AVISON
Notary Public in and for the State of OREGON
Residing at Lake Oswego, OR
My appointment expires 6-12-17

STATE OF Ohio)
County of Cuyahoga) ss.

On this 24th day of September, 2013, before me, the undersigned Notary Public in and for said State, personally appeared Gordon J. Gilles who said he/she is a of President of Lee Cornerstone Fund and acknowledged to me that the said instrument is the free and voluntary act and deed of said Lee Cornerstone Fund, Inc. for the uses and purposes therein mentioned, and on oath stated that he/she is authorized to execute the said instrument.

NICHOLETTE I. KOLLER
Notary Public for the State of Ohio
Geauga County
My Commission Expires 4/15/2014

Nichollette I. Koller
Printed Name: Nichollette I. Koller
Notary Public in and for the State of Ohio
Residing at Newbury, OH
My appointment expires 4/15/2014

Exhibit A

LEGAL DESCRIPTION OF PROPERTY

A tract of land lying within the Northeast one-quarter of Section 13, Township 3 South, Range 1 West, described as follows:

Commencing at a point 29 rods West of the Northeast corner of Section 13 Township 3 South Range 1 West of Willamette Meridian; thence running South 30 rods; thence West 16 rods thence North 30 rods thence East 16 rods to the place of beginning.

EXCEPTING THEREFROM that portion lying within Landover No. 2, a duly filed plat.

Grantor's Name and Address

Beneficiary's Name and Address

After recording, return to
United Church of Christ Cornerstone
Fund 700 Prospect Avenue 5th Floor
Cleveland, Ohio 44115

RECORDED IN CLACKAMAS COUNTY
JOHN KAUFFMAN, COUNTY CLERK

2000-067256



\$71.00

10/16/2000 10:42:15 AM

MTD - 2 - 3 BEVERLY
\$45.00 \$5.00 \$11.00 \$10.00

9P
50
5M
11

DEED OF TRUST AND SECURITY AGREEMENT

THIS DEED OF TRUST AND SECURITY AGREEMENT (this "Indenture"), made as of the 6th day of September, 2000, by MERIDIAN UNITED CHURCH OF CHRIST, a corporation organized and existing under the laws of the State of OREGON ("Mortgagor"), located at 6750 S.W. Boeckman Road, Wilsonville, Oregon 97070, to Ticor Title Insurance Company, as trustee (the "Trustee"), having its principal office at 1629 SW Salmon Street Portland, OR 97205, for the benefit of the UNITED CHURCH OF CHRIST CORNERSTONE FUND, a corporation organized and existing under the State of Indiana, having its principal office at 700 Prospect Avenue, Cleveland, Ohio 44115 ("Mortgagee"),

W I T N E S S E T H :

WHEREAS, Mortgagor has executed and delivered to Mortgagee a promissory note of even date herewith (the "Note") in the principal sum of SEVENTY-FIVE THOUSAND AND 00/100 (\$75,000.00) DOLLARS payable in accordance with the terms of said Note, the entire balance of principal and interest being due and payable on or before March 1, 2005 (the "Maturity Date");

NOW, THEREFORE, Mortgagor, to secure payment in full under the Note and the performance and observance of all covenants, conditions, stipulations and agreements contained in this Indenture and the Note, does hereby mortgage, grant, bargain and sell, convey and confirm to Trustee for the benefit of Mortgagee all of Mortgagor's right, title, estate and interest in and to the real property described in Exhibit A attached hereto and made a part hereof (the "Real Property").

TOGETHER WITH all right, title, estate and interest of Mortgagor in and to all buildings, structures and other improvements now standing or at any time hereafter constructed or placed upon the Real

Recorded B, ICOR TITLE

C 754603

Property and all rents, income, revenues, issues and profits from and in respect to the Real Property.

TOGETHER WITH all personal property, including all furniture, seats, musical instruments, furnishings, equipment, fixtures, supplies, signs and any other equipment used or useful in connection with the operation of the Real Property, and all extensions, improvements, betterments, renewals, substitutes and replacements thereof and all additions and appurtenances thereto, of every kind and nature, whether now owned or constructed, assembled, installed or placed upon the Real Property or hereafter acquired, constructed, assembled, installed or placed on the Real Property.

TOGETHER WITH all right, title, estate and interest of Mortgagor in and to the tenements, hereditaments, easements, rights-of-way, rights, privileges and appurtenances in and to the Real Property belonging or in any way appertaining thereto, including without limitation all right, title, estate and interest of the Mortgagor in, to and under any streets, ways, alleys, vaults, gores or strips of land adjoining the Real Property.

All of the foregoing shall hereinafter be collectively referred to as the "Premises."

TO HAVE AND TO HOLD the same with the privileges and appurtenances thereof unto the Trustee and successors in trust, forever; IN TRUST, NEVERTHELESS, upon the terms and trusts herein set forth for the benefit and security of Mortgagee, its successors and assigns forever.

Mortgagor and its successors and assigns do hereby covenant and agree with the Trustee and Mortgagee as follows:

1. The Note. Mortgagor shall pay all principal and interest under the Note at the time and in the manner provided in the Note and shall comply with all covenants, agreements and conditions to be performed by the Mortgagor, whether contained herein, in the Note, or in any other instrument from time to time held by Mortgagee as security for the Note.

2. Use of Proceeds. The sums advanced to Mortgagor under the Note shall be used solely for the following purpose(s):
Completion of construction project

3. Use of Premises. The Premises shall be used exclusively by an evangelical church in fellowship with and holding membership in a Synod, Conference, Association, or their successors, of the United Church of Christ, or its successors. The Premises shall be used and

shall continue to be used for activities and purposes directly related to the ministry of Mortgagor, or the church related to Mortgagor, in either case consistent with the aforesaid membership, including public worship, Christian education or parsonage.

4. Taxes. Mortgagor shall punctually pay and discharge, as the same become payable, all taxes, assessments and other governmental or quasi-governmental charges whatsoever now or hereafter imposed by any public authority upon the Premises, or any part thereof, or upon Mortgagee's interest therein, without regard to any law heretofore or hereafter enacted imposing payment of the whole or any part thereof upon Mortgagee.

5. Title. Mortgagor represents and warrants that Mortgagor owns and holds at the delivery hereof good record and marketable fee simple title to the Premises, free and clear of all liens, claims, clouds or encumbrances whatsoever except those heretofore disclosed to the Trustee or Mortgagee in writing. Mortgagor shall not create or permit to accrue, and shall promptly discharge, any debt, lien, mortgage, security interest or charge upon the Premises or any part thereof which would be prior to, on a parity with or inferior to the lien of this Mortgage without the prior written consent of the Trustee or Mortgagee. Mortgagor shall promptly give the Trustee or Mortgagee notice of, and, unless the Trustee or Mortgagee requests otherwise, Mortgagor shall appear in and diligently contest at Mortgagor's expense, any action or proceeding which purports to affect Mortgagor's title to the Premises or the priority or validity of the lien of this Indenture. The Trustee or Mortgagee shall have the right to intervene or otherwise participate in any such action or proceedings, if an Event of Default shall have occurred.

6. Representations and Warranties. Mortgagor hereby represents, warrants and covenants with and to the Trustee and Mortgagee that:

- (a) Mortgagor is a not-for-profit corporation duly organized, validly existing and in good standing under the laws of the State of Oregon.
- (b) Mortgagor has all requisite corporate power and authority to execute and deliver this Indenture and the Note and to perform its obligations under this Indenture and the Note and Mortgagor has taken all necessary corporate action on its part to authorize the execution, delivery and performance of this Indenture and the Note.
- (c) This Indenture and the Note have been duly executed and delivered by Mortgagor and constitute the legal, valid

and binding obligation of Mortgagor enforceable against Mortgagor in accordance with their respective terms.

7. Condition of the Premises. Mortgagor shall keep the Premises in good repair and shall not commit waste or permit impairment or deterioration of the Premises. No building, structures or other improvements now standing or at any time hereinafter constructed or placed upon the Premises shall be removed, demolished or materially altered without the prior written consent of the Trustee or Mortgagee.

8. Insurance. At Mortgagor's expense, Mortgagor shall obtain and maintain in full force and effect with respect to the Premises at all times during the continuance of this Indenture insurance against loss or damage in an amount equal to the full insurable value of the Premises. All such insurance policies or renewals thereof shall include a standard mortgage clause in favor of and in form acceptable to Mortgagee, which shall list Mortgagee as a loss payee. Mortgagor shall provide the Trustee and Mortgagee with a copy of said policies and all receipts of paid premiums. The policies of insurance shall provide for written notice to Mortgagee at least thirty (30) days prior to any cancellation, modification or lapse thereof. In the event of loss, Mortgagor shall give prompt written notice to Mortgagee and Mortgagee may make proof of loss if not promptly made by Mortgagor.

9. Compliance with Laws. Mortgagor shall comply with all statutes, regulations and rules which may be established by any legally constituted public authority with respect to the use, maintenance and care of the Premises, including, without limitation, the Americans with Disabilities Act of 1990 and regulations thereunder.

10. Eminent Domain. If all or any part of the Premises are taken or acquired, either temporarily or permanently, in any condemnation proceeding, or by exercise of the right of eminent domain, or by the alteration of the grade of any street affecting the Premises, the amount of any award or other payment for such other taking or damages made in consideration thereof, to the extent of the full amount of the then remaining unpaid indebtedness secured hereby, is hereby assigned to Mortgagee, which is empowered to collect and receive the same and to give proper receipts therefor in the name of Mortgagor, and the same shall be paid forthwith to Mortgagee. Any award or payment so received by Mortgagee shall, at the sole option of Mortgagee, either be retained and applied, in whole or in part, to the indebtedness secured hereby (whether or not then due and payable), in such manner as Mortgagee may determine, or released, in whole or in part, for the purpose of altering, restoring or rebuilding those portions of the Premises that may have been altered, damaged or destroyed as a result of such taking, alteration or proceeding, but Mortgagee shall not be obligated to see to the application of any amounts so released.

11. Event of Default. The occurrence of any one or more of the following events shall constitute an event of default (an "Event of Default") hereunder:

- (a) Failure of Mortgagor to pay to Mortgagee any sum owing to Mortgagee under the Note in accordance with the terms of the Note, which failure continues for ten (10) days after receipt of written notice by the Mortgagor from Mortgagee that any such payment or payments have not been made;
- (b) Failure of Mortgagor to observe or perform any covenant, condition, stipulation or agreement contained in the Note or this Indenture;
- (c) Any representation or warranty made by Mortgagor herein shall be false, incorrect or misleading in any material respect;
- (d) Mortgagor shall, or shall attempt to, transfer, sell, convey, hypothecate or encumber any or all of the legal or beneficial interest of Mortgagor in the Premises, or shall use or permit the use of the Premises for purposes other than those described in Section 3 above, including, without limitation, the use or occupancy of the Premises by a church not a member of the a Synod, Conference, Association, or their successors, of the United Church of Christ, or its successors;
- (e) In the event that: (i) a judicial proceeding is commenced by or on behalf of a party other than the Trustee or Mortgagee and a receiver is appointed for Mortgagor or the property of Mortgagor on the grounds of failure to pay debts or otherwise; (ii) a judicial proceeding is commenced by a party other than the Trustee or Mortgagee and an order, judgment, or decree is entered for the sequestration of the Premises or any part thereof; or (iii) bankruptcy proceedings are filed by or against Mortgagor or Mortgagor shall be unable to meet its debts as they mature or if Mortgagor's financial condition is such that the sum of Mortgagor's debts is greater than the value of all of its property, or Mortgagor shall make a general assignment for the benefit of creditors; or
- (f) In the event that (i) the amounts secured hereby are not used solely for those purposes set forth in paragraph 2 herein or (ii) the Premises shall cease to be used for those purposes set forth in paragraph 3 herein without the prior written consent of Mortgagee.

12. Remedies. Upon the occurrence of an Event of Default, the Trustee or Mortgagee, at their option, may, so long as such default may be continuing, declare all of the sums secured by this Indenture to be immediately due and payable, without demand or notice, whereupon the Trustee or Mortgagee may foreclose this Indenture by any means authorized by law, and the Trustee or Mortgagee may exercise all remedies under applicable law to collect the indebtedness due under the Note. If the Trustee or Mortgagee proceeds to foreclose the lien of this Indenture, the Trustee or Mortgagee shall have the statutory power of sale if permitted by applicable law. The rights and remedies provided herein are cumulative and may be exercised singularly or concurrently and are in addition to any other or further rights and remedies available at law or in equity.

13. Payments Made by the Trustee or Mortgagee. In the event Mortgagor shall fail to pay any taxes, assessments or governmental charges upon the Premises, or shall fail in the due performance or observance of any other condition, obligation, covenant or requirement contained in the Note or herein, the Trustee or Mortgagee may, if either so desires, make good any such default or defaults, and Mortgagor hereby agrees to pay to the Trustee or Mortgagee immediately upon demand a sum equal to any monies advanced by the Trustee or Mortgagee for any such purposes together with interest thereon at the highest per annum rate allowable by law. All sums so paid and expended by the Trustee or Mortgagee and interest thereon shall be secured by the lien of this Indenture. If the Trustee or Mortgagee shall pay any obligation for the payment of which Mortgagor is in default, such payment shall be without prejudice to the Trustee's or Mortgagee's right to declare the entire indebtedness hereby secured immediately due and payable.

14. Expenses. If the Trustee or Mortgagee shall incur or expend any sums, including reasonable attorneys' fees, whether or not in connection with any action or proceeding, to maintain the lien of this Indenture or its priority, or to protest or enforce any of the Trustee's or Mortgagee's rights hereunder, or for the protection of the Premises, or to recover any indebtedness hereby secured, all such sums shall become immediately due and payable by Mortgagor with interest thereon at the per annum rate of one percentage point over the Prime Rate until repaid; provided, however, that in no event shall said interest rate exceed the maximum rate permissible under the laws of the state governing this instrument. All such sums shall be secured by this Indenture and be a lien on the Premises prior to any right, title, interest or claim in, to or upon the Premises attaching or accruing subsequent to the lien of this Indenture.

15. Security Agreement. In addition to being a mortgage, this Indenture is intended to be a security agreement pursuant to the Uniform Commercial Code for any of the items specified herein as part of

the Premises, which under applicable law may be subject to a security interest pursuant to the Uniform Commercial Code or other law, and Mortgagor hereby grants to the Trustee for the benefit of Mortgagee a security interest in said items, and all substitutions, replacements, replacement parts, additions, repair, repair parts, accessions and accessories incorporated therein or affixed thereto in which mortgagor acquires an interest, and the proceeds thereof (collectively sometimes referred to herein as the "Collateral"). Mortgagor agrees to execute and deliver to the Trustee or Mortgagee, upon their request, any financing statements, as well as extensions, renewals and amendments thereof, and reproductions of this Indenture in such form as the Trustee or Mortgagee may require, to perfect or protect the security interest hereby created with respect to the Collateral, or to more fully describe the Collateral.

16. Impairment of Security. Mortgagor shall not in any manner impair the security of this Indenture for the payment of the indebtedness secured hereby.

17. Waiver. No waiver by the Trustee or Mortgagee of any breach of any covenant of Mortgagor herein contained or in the Note shall be construed as a waiver of any subsequent breach of the same or any other covenant contained herein or in the Note.

18. Further Assurances. At any time and all times, Mortgagor shall do, execute, acknowledge and/or deliver, or will cause to be done, executed, acknowledged and/or delivered all and every such further acts, deeds, conveyances, mortgages, security agreements and financing statements, transfers and assurances in law as the Trustee or Mortgagee shall reasonable require, for the better assuring, conveying, transferring, mortgaging, pledging, assigning and confirming the Premises unto the Trustee for the benefit of Mortgagee.

19. Delays or Omissions. Except as herein expressly provided to the contrary, no remedy herein conferred upon or reserved to the Trustee or Mortgagee is intended to be exclusive of any other remedy, but each and every remedy shall be cumulative. No delay or omission by the Trustee or Mortgagee in exercising any right or power accruing upon default as hereinbefore in this Indenture provided, shall impair any such right or power, or be construed to be a waiver of any such default or acquiescence therein.

20. Severability. The enforceability or invalidity of any provision or provisions of this Indenture shall not render any other provision or provisions herein contained unenforceable or invalid. All terms, covenants,, conditions and agreements herein set forth shall respectively be binding upon Mortgagor and its heirs, personal representatives, and assigns, and inure to the benefit of Mortgagee and its successors and assigns. Time is of the essence hereof.

NOW, THEREFORE, in consideration of this Indenture, the terms hereof are such that, if Mortgagor shall punctually pay all indebtedness evidenced by the Note and secured hereby according to the terms of the Note and this Indenture and if Mortgagor shall punctually perform the covenants of Mortgagor herein contained, this Indenture shall be void; otherwise, the same shall remain in full force and effect.

IN WITNESS WHEREOF, the undersigned have caused this instrument to be duly executed as of the 6th day of Sept., 2000.

Signed and acknowledged
In the presence of:

Marilyn Schmeer
Print Name: Marilyn Schmeer
Nancy Schmeer
Print Name: Nancy Schmeer

MERIDIAN UNITED CHURCH OF CHRIST

And by: *D. B. Avison*

Its: MODERATOR & CORP PRESIDENT

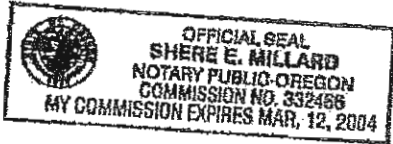
By: *Marilyn Schmeer*

Its: CHAIR, TRUSTEES

STATE OF OREGON)
)SS:
COUNTY OF CLACKAMAS)

BEFORE ME, a Notary Public in and for said County and State, personally appeared the above-named MERIDIAN UNITED CHURCH OF CHRIST, WILSONVILLE, OREGON by DAVID B. AVISON, its MODERATOR & CORP PRESIDENT, and by , its who executed the foregoing instrument as such officer on behalf of such corporation and who acknowledged that the same is their free act and deed personally and as such officers and the free act and deed of such corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at LAKE OSWEGO, OR, this 6th day of September, 2000.



Shere E Millard
Notary Public

EXHIBIT A

LEGAL DESCRIPTION

A tract of land lying within the Northeast one-quarter of Section 13, Township 3 South, Range 1 West, described as follows:

Commencing at a point 29 rods West of the Northeast corner of Section 13 Township 3 South Range 1 West of Willamette Meridian; thence running South 30 rods; thence West 16 rods thence North 30 rods thence East 16 rods to the place of beginning.

EXCEPTING THEREFROM that portion lying within Landover No. 2, a duly filed plat.

STATE OF OREGON 99-066602
CLACKAMAS COUNTY
Received and placed in the public
records of Clackamas County
RECEIPT# AND FEE: 88549 \$50.00
DATE AND TIME: 07/01/99 03:47 PM
JOHN KAUFFMAN, COUNTY CLERK

7



COPY

6

DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT

DEVELOPMENT SERVICES BUILDING

150 BEAVERCREEK ROAD | OREGON CITY, OR 97045

December 12, 2013

Board of Commissioners
Clackamas County

Members of the Board:

**Approval of Local Agency Agreement No. 29634 with
Oregon Department of Transportation (ODOT) for the
Sunnyside Road Adaptive Signal System Project**

Purpose/Outcomes	Local Agency Agreement with ODOT for the Sunnyside Road Adaptive Signal Project.
Dollar Amount and Fiscal Impact	\$558,000 total \$500,000 provided through Federal Funds and remaining \$58,000 through County match.
Funding Source	Surface Transportation Program (STP) County Match provided through construction cost-sharing for the Sunnyside Road at Stevens Road Intersection Improvement Project
Safety Impact	The Sunnyside Road Adaptive Signal System Project is expected to reduce/manage vehicular and pedestrian delays.
Duration	Completion of the Project or ten (10) years following the date of final execution, whichever is sooner.
Previous Board Action	6/18/2013 – BCC Study Session
Contact Person	Bikram Raghubansh, Project Manager 503-742-4706

BACKGROUND:

This is a local agency agreement between Clackamas County and the Oregon Department of Transportation (ODOT) to deploy Adaptive Signal Control Technology (ASCT) on Sunnyside Road between 82nd Avenue and 122nd Avenue. This project consists of the installation of Intelligent Transportation System (ITS) technology for up to thirteen (13) traffic signals along Sunnyside Road. Implementation of ASCT is expected to improve the operational efficiency of Sunnyside Road and access to and from the Clackamas Town Center, freeway ramps, Sunnyside Hospital, and Happy Valley area.

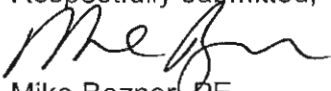
This agreement has been reviewed and approved by County Counsel.

Y 100

RECOMMENDATION:

Staff respectfully recommends that the Board of County Commissioners approve the attached Local Agency Agreement for the Sunnyside Road Adaptive Signal System Project.

Respectfully submitted,



Mike Bezner, PE
Transportation Engineering Manager

For information on this issue or copies of attachments
please contact Bikram Raghubansh at 503-742-4706

**LOCAL AGENCY AGREEMENT
SURFACE TRANSPORTATION PROGRAM –URBAN
Sunnyside Road Adaptive Signal System**

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 the 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. I-205 and OR 213 are a part of the state highway system under the jurisdiction and control of the Oregon Transportation Commission (OTC). Sunnyside Road, Sunnybrook Boulevard, SE Monterey Avenue, SE Bob Schumacher Road, and SE Stevens Road are a part of the county road system under the jurisdiction and control of County.
2. By the authority granted in Oregon Revised Statutes (ORS) 190.110, 366.572 and 366.576, state agencies may enter into cooperative agreements with counties, cities and units of local governments for the performance of work on certain types of improvement projects with the allocation of costs on terms and conditions mutually agreeable to the contracting parties.
3. Maintenance responsibilities shall be addressed in subsequent agreement No. 29674.

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

TERMS OF AGREEMENT

1. Under such authority, State and Agency agree that Agency shall upgrade its traffic signal system by implementation of Adaptive Traffic Signal systems along the SE Sunnyside Road corridor, hereinafter referred to as "Project." The Project consists of the installation of Adaptive Traffic Control Systems for up to thirteen (13) traffic signals along Sunnyside Road within Clackamas County. The location of the Project is approximately as shown on the detailed map attached hereto, marked "Exhibit A," and by this reference made a part hereof.
2. The Project will be conducted as a part of the Federal-Aid Surface Transportation Program (STP) under Title 23, United States Code. The total Project cost is estimated at \$558,000, which is subject to change. State Urban STP funds for this Project will be limited to \$500,000. The Project will be financed with STP funds at the maximum allowable federal participating amount, with Agency providing the match and any non-participating costs, including all costs in excess of the available federal funds.

3. The federal funding for this Project is contingent upon approval by the Federal Highway Administration (FHWA). Any work performed prior to acceptance by FHWA or outside the scope of work will be considered nonparticipating and paid for at Agency expense.
4. State considers Agency a subrecipient of the federal funds it receives as reimbursement under this Agreement. The Catalog of Federal Domestic Assistance (CFDA) number and title for this Project is 20.205, Highway Planning and Construction.
5. The term of this Agreement will begin upon execution and will terminate upon completion of the Project and final payment or ten (10) calendar years following the date of final execution, whichever is sooner.
6. Agency shall require its contractor(s) and subcontractor(s) that are not units of local government as defined in ORS 190.003, if any, to indemnify, defend, save and hold harmless the State of Oregon, Oregon Transportation Commission and its members, Department of Transportation and its officers, employees and agents from and against any and all claims, actions, liabilities, damages, losses, or expenses, including attorneys' fees, arising from a tort, as now or hereafter defined in ORS 30.260, caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Agency's contractor or any of the officers, agents, employees or subcontractors of the contractor ("Claims"). It is the specific intention of the Parties that State shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of State, be indemnified by the contractor and subcontractor from and against any and all Claims.
7. Any such indemnification shall also provide that neither Agency's contractor and subcontractor nor any attorney engaged by Agency's contractor and subcontractor shall defend any claim in the name of the State of Oregon or any agency of the State of Oregon, nor purport to act as legal representative of the State of Oregon or any of its agencies, without the prior written consent of the Oregon Attorney General. The State of Oregon may, at anytime at its election assume its own defense and settlement in the event that it determines that Agency's contractor is prohibited from defending the State of Oregon, or that Agency's contractor is not adequately defending the State of Oregon's interests, or that an important governmental principle is at issue or that it is in the best interests of the State of Oregon to do so. The State of Oregon reserves all rights to pursue claims it may have against Agency's contractor if the State of Oregon elects to assume its own defense.
8. This Agreement may be terminated by mutual written consent of both Parties.
9. State may terminate this Agreement effective upon delivery of written notice to Agency, or at such later date as may be established by State, under any of the following conditions:

- a. If Agency fails to provide services called for by this Agreement within the time specified herein or any extension thereof.
 - b. If Agency fails to perform any of the other provisions of this Agreement, or so fails to pursue the work as to endanger performance of this Agreement in accordance with its terms, and after receipt of written notice from State fails to correct such failures within ten (10) days or such longer period as State may authorize.
 - c. If Agency fails to provide payment of its share of the cost of the Project.
 - d. If State fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow State, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement.
 - e. If federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the work under this Agreement is prohibited or State is prohibited from paying for such work from the planned funding source.
10. Any termination of this Agreement will not prejudice any rights or obligations accrued to the Parties prior to termination.
11. The Special and Standard Provisions attached hereto, marked Attachments 1 and 2, respectively, are by this reference made a part hereof. The Standard Provisions apply to all federal-aid projects and may be modified only by the Special Provisions. The Parties hereto mutually agree to the terms and conditions set forth in Attachments 1 and 2. In the event of a conflict, this Agreement will control over the attachments, and Attachment 1 will control over Attachment 2.
12. Agency, as a recipient of federal funds, pursuant to this Agreement with State, shall assume sole liability for Agency's breach of any federal statutes, rules, program requirements and grant provisions applicable to the federal funds, and will, upon Agency's breach of any such conditions that requires State to return funds to the Federal Highway Administration, hold harmless and indemnify State for an amount equal to the funds received under this Agreement; or if legal limitations apply to the indemnification ability of Agency, the indemnification amount will 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.
13. Agency certifies and represents that the individual(s) signing this Agreement has been authorized to enter into and execute this Agreement on behalf of Agency, under the direction or approval of its governing body, commission, board, officers, members or representatives, and to legally bind Agency.

14. State's Project Manager for this Project is Mahasti Hastings, Local Agency Liaison, 123 NW Flanders Street, Portland, OR 97209, 503-731-8595, mahasti.v.hastings@odot.state.or.us, or assigned designee upon individual's absence. State shall notify the other Party in writing of any contact information changes during the term of this Agreement.
15. Agency's Project Manager for this Project is Bikram Raghubansh, Traffic Engineer, 150 Beavercreek Road, Oregon City, OR 97045, 503-742-4706, bikramrag@co.clackamas.or.us, or assigned designee upon individual's absence. Agency shall notify the other Party in writing of any contact information changes during the term of this Agreement.
16. This Agreement may be executed in several counterparts (facsimile or otherwise) all of which when taken together will 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 will constitute an original.
17. This Agreement and attached exhibits constitute the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement will 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, will be effective only in the specific instance and for the specific purpose given. The failure of State to enforce any provision of this Agreement will 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.

This Project is in the 2012-2015 Statewide Transportation Improvement Program, (Key #18305) that was approved by the Oregon Transportation Commission on March 21, 2012 (or subsequently approved by amendment to the STIP).

SIGNATURE PAGE TO FOLLOW

Agency/State
Agreement No. 29634

CLACKAMAS COUNTY, by and through
its elected officials

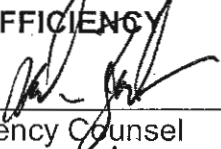
By _____
Chair

Date _____

By _____
Recording Secretary

Date _____

**APPROVED AS TO LEGAL
SUFFICIENCY**

By  _____
Agency Counsel

Date 12/3/13 _____

Agency Contact:

Bikram Raghubansh, Traffic Engineer
150 Beaver Creek Road
Oregon City, OR 97045
503-742-4706
bikramrag@co.clackamas.or.us

State Contact:

Mahasti Hastings, Local Agency Liaison
123 NW Flanders Street
Portland, OR 97209
503-731-8595
mahasti.v.hastings@odot.state.or.us

STATE OF OREGON, by and through
its Department of Transportation

By _____
Highway Division Administrator

Date _____

APPROVAL RECOMMENDED

By _____
Technical Services Manager/Chief
Engineer

Date _____

By _____
State Traffic/Roadway Engineer

Date _____

By _____
Region 1 Manager

Date _____

**APPROVED AS TO LEGAL
SUFFICIENCY**

By _____
Assistant Attorney General

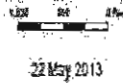
Date _____

EXHIBIT A – Project Location Map



Clackamas County
Traffic Signals
ADAPTIVE SIGNAL PROJECT

Jurisdiction		Adaptive Signal Project
●	Clackamas Co. Signals	[Shaded Area]
▲	ODOT Signals	



**ATTACHMENT NO. 1 to Agreement No. 29634
SPECIAL PROVISIONS**

1. Agency or its consultant shall, as a federal-aid participating preliminary engineering function, conduct the necessary field surveys, environmental studies, traffic investigations, foundation explorations, and hydraulic studies, identify and obtain all required permits, assist State with acquisition of necessary right of way and/or easements, and perform all preliminary engineering and design work required to produce final plans, preliminary/final specifications and cost estimates.
2. Upon State's award of the construction contract, Agency, or its consultant, shall be responsible to perform all construction engineering, field testing of materials, technical inspection and project manager services for administration of the contract.
3. State may make available Region 1's On-Call Preliminary Engineering (PE), Design and Construction Engineering Services consultant for Local Agency Projects upon written request. If Agency chooses to use said services, Agency agrees to manage the work performed by the consultant and make funds available to the State for payment of those services. All eligible work will be a federally participating cost and included as part of the total cost of the Project.
4. Indemnification language in the Standards Provisions, Paragraphs 46 and 47; and Paragraph 4 in regards to tort claims, shall be replaced with the following language:
 - a. 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.
 - b. 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.

- c. 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.
 - d. 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.
5. Both Parties agree that maintenance of Project facilities shall be performed in accordance with the subsequent Agreement No. 29674.

ATTACHMENT NO. 2

FEDERAL STANDARD PROVISIONS

JOINT OBLIGATIONS PROJECT ADMINISTRATION

1. State (ODOT) is acting to fulfill its responsibility to the Federal Highway Administration (FHWA) by the administration of this Project, and Agency (i.e. county, city, unit of local government, or other state agency) hereby agrees that State shall have full authority to carry out this administration. If requested by Agency or if deemed necessary by State in order to meet its obligations to FHWA, State will further act for Agency in other matters pertaining to the Project. Agency shall, if necessary, appoint and direct the activities of a Citizen's Advisory Committee and/or Technical Advisory Committee, conduct a hearing and recommend the preferred alternative. State and Agency shall each assign a liaison person to coordinate activities and assure that the interests of both parties are considered during all phases of the Project.
2. Any project that uses federal funds in project development is subject to plans, specifications and estimates (PS&E) review and approval by FHWA or State acting on behalf of FHWA prior to advertisement for bid proposals, regardless of the source of funding for construction.

PRELIMINARY & CONSTRUCTION ENGINEERING

3. State, Agency, or others may perform preliminary and construction engineering. If Agency or others perform the engineering, State will monitor the work for conformance with FHWA rules and regulations. In the event that Agency elects to engage the services of a personal services consultant to perform any work covered by this Agreement, Agency and Consultant shall enter into a State reviewed and approved personal services contract process and resulting contract document. State must concur in the contract prior to beginning any work. State's personal services contracting process and resulting contract document will follow Title 23 Code of Federal Regulations (CFR) 172, Title 49 CFR 18, ORS 279A.055, the current State Administrative Rules and State Personal Services Contracting Procedures as approved by the FHWA. Such personal services contract(s) shall contain a description of the work to be performed, a project schedule, and the method of payment. Subcontracts shall contain all required provisions of Agency as outlined in the Agreement. No reimbursement shall be made using federal-aid funds for any costs incurred by Agency or its consultant prior to receiving authorization from State to proceed. Any amendments to such contract(s) also require State's approval.
4. On all construction projects where State is the signatory party to the contract, and where Agency is doing the construction engineering and project management, Agency, subject to

Agency/State
Agreement No. 29634

any limitations imposed by state law and the Oregon Constitution, agrees to accept all responsibility, defend lawsuits, indemnify and hold State harmless, for all tort claims, contract claims, or any other lawsuit arising out of the contractor's work or Agency's supervision of the project.

REQUIRED STATEMENT FOR UNITED STATES DEPARTMENT OF TRANSPORTATION (USDOT) FINANCIAL ASSISTANCE AGREEMENT

5. If as a condition of assistance, Agency has submitted and the United States Department of Transportation (USDOT) has approved a Disadvantaged Business Enterprise Affirmative Action Program which Agency agrees to carry out, this affirmative action program is incorporated into the financial assistance agreement by reference. That program shall be treated as a legal obligation and failure to carry out its terms shall be treated as a violation of the financial assistance agreement. Upon notification from USDOT to Agency of its failure to carry out the approved program, USDOT shall impose such sanctions as noted in Title 49, CFR, Part 26, which sanctions may include termination of the agreement or other measures that may affect the ability of Agency to obtain future USDOT financial assistance.
6. **Disadvantaged Business Enterprises (DBE) Obligations.** State and its contractor agree to ensure that DBE as defined in Title 49, CFR, Part 26, have the opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with federal funds. In this regard, Agency shall take all necessary and reasonable steps in accordance with Title 49, CFR, Part 26, to ensure that DBE have the opportunity to compete for and perform contracts. Neither State nor Agency and its contractors shall discriminate on the basis of race, color, national origin or sex in the award and performance of federally-assisted contracts. Agency shall carry out applicable requirements of Title 49, CFR, Part 26, in the award and administration of such contracts. Failure by Agency to carry out these requirements is a material breach of this Agreement, which may result in the termination of this contract or such other remedy as State deems appropriate.
7. The DBE Policy Statement and Obligations shall be included in all subcontracts entered into under this Agreement.
8. Agency agrees to comply with all applicable civil rights laws, rules and regulations, including Title V and Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990 (ADA), and Titles VI and VII of the Civil Rights Act of 1964.
9. The parties hereto agree and understand that they will comply with all applicable federal, state, and local laws, regulations, executive orders and ordinances applicable to the work including, but not limited to, the provisions of ORS 279C.505, 279C.515, 279C.520, 279C.530 and 279B.270, incorporated herein by reference and made a part hereof; Title 23 CFR Parts 1.11, 140, 710, and 771; Title 49 CFR Parts 18, 24 and 26; 2 CFR 225, and OMB CIRCULAR NO. A-133, Title 23, USC, Federal-Aid Highway Act; Title 41, Chapter 1, USC 51-58, Anti-Kickback Act; Title 42 USC; Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970, as amended and provisions of Federal-Aid Policy Guide (FAPG).

STATE OBLIGATIONS

PROJECT FUNDING REQUEST

10. State shall submit a Project funding request to FHWA with a request for approval of federal-aid participation in all engineering, right-of-way acquisition, eligible utility relocations and/or construction work for the Project. **No work shall proceed on any activity in which federal-aid participation is desired until such approval has been obtained.** The program shall include services to be provided by State, Agency, or others. State shall notify Agency in writing when authorization to proceed has been received from FHWA. Major responsibility for the various phases of the Project will be as outlined in the Special Provisions. All work and records of such work shall be in conformance with FHWA rules and regulations.

FINANCE

11. State shall, in the first instance, pay all reimbursable costs of the Project, submit all claims for federal-aid participation to FHWA in the normal manner and compile accurate cost accounting records. Agency may request a statement of costs to date at any time by submitting a written request. When the actual total cost of the Project has been computed, State shall furnish Agency with an itemized statement of final costs. Agency shall pay an amount which, when added to said advance deposit and federal reimbursement payment, will equal 100 percent of the final total actual cost. Any portion of deposits made in excess of the final total costs of Project, minus federal reimbursement, shall be released to Agency. The actual cost of services provided by State will be charged to the Project expenditure account(s) and will be included in the total cost of the Project.
12. If federal funds are used, State will specify the Catalog of Federal Domestic Assistance (CFDA) number in the Agreement. State will also determine and clearly state in the Agreement if recipient is a subrecipient or vendor, using criteria in Circular A-133.

PROJECT ACTIVITIES

13. State shall, if the preliminary engineering work is performed by Agency or others, review and process or approve all environmental statements, preliminary and final plans, specifications and cost estimates. State shall, if they prepare these documents, offer Agency the opportunity to review and approve the documents prior to advertising for bids.
14. The party responsible for performing preliminary engineering for the Project shall, as part of its preliminary engineering costs, obtain all Project related permits necessary for the construction of said Project. Said permits shall include, but are not limited to, access, utility, environmental, construction, and approach permits. All pre-construction permits will be obtained prior to advertisement for construction.
15. State shall prepare contract and bidding documents, advertise for bid proposals, and award all contracts.

Agency/State
Agreement No. 29634

16. Upon State's award of a construction contract, State shall perform independent assurance testing in accordance with State and FHWA Standards, process and pay all contractor progress estimates, check final quantities and costs, and oversee and provide intermittent inspection services during the construction phase of the Project.
17. State shall, as a Project expense, assign a liaison person to provide Project monitoring as needed throughout all phases of Project activities (preliminary engineering, right-of-way acquisition, and construction). The liaison shall process reimbursement for federal participation costs.

RIGHT OF WAY

18. State is responsible for proper acquisition of the necessary right of way and easements for construction and maintenance of the Project. Agency may perform acquisition of the necessary right of way and easements for construction and maintenance of the Project, provided Agency (or Agency's consultant) are qualified to do such work as required by the State's Right of Way Manual and have obtained prior approval from State's Region Right of Way office to do such work.
19. Regardless of who acquires or performs any of the right of way activities, a right of way services agreement shall be created by State's Region Right of Way office setting forth the responsibilities and activities to be accomplished by each party. State shall always be responsible for requesting project funding, coordinating certification of the right of way, and providing oversight and monitoring. Funding authorization requests for federal right of way funds must be sent through the State's Region Right of Way offices on all projects. All projects must have right of way certification coordinated through State's Region Right of Way offices (even for projects where no federal funds were used for right of way, but federal funds were used elsewhere on the Project). Agency should contact the State's Region Right of Way office for additional information or clarification.
20. State shall review all right of way activities engaged in by Agency to assure compliance with applicable laws and regulations. Agency agrees that right of way activities shall be in accord with the Uniform Relocation Assistance & Real Property Acquisition Policies Act of 1970, as amended, ORS Chapter 35, FHWA Federal-Aid Policy Guide, State's Right of Way Manual and the Code of Federal Regulations, Title 23, Part 710 and Title 49, Part 24.
21. If any real property purchased with federal-aid participation is no longer needed for the originally authorized purpose, the disposition of such property shall be subject to applicable rules and regulations, which are in effect at the time of disposition. Reimbursement to State and FHWA of the required proportionate shares of the fair market value may be required.
22. Agency insures that all Project right of way monumentation will be conducted in conformance with ORS 209.155.
23. State and Agency grants each other authority to enter onto the other's right of way for the performance of the Project.

AGENCY OBLIGATIONS

FINANCE

24. Federal funds shall be applied toward Project costs at the current federal-aid matching ratio, unless otherwise agreed and allowable by law. Agency shall be responsible for the entire match amount, unless otherwise agreed to and specified in the intergovernmental agreement.
25. Agency's estimated share and advance deposit.
- a) Agency shall, prior to commencement of the preliminary engineering and/or right of way acquisition phases, deposit with State its estimated share of each phase. Exception may be made in the case of projects where Agency has written approval from State to use in-kind contributions rather than cash to satisfy all or part of the matching funds requirement.
 - b) Agency's construction phase deposit shall be 110 percent of Agency's share of the engineer's estimate and shall be received prior to award of the construction contract. Any additional balance of the deposit, based on the actual bid must be received within forty-five (45) days of receipt of written notification by State of the final amount due, unless the contract is canceled. Any unnecessary balance of a cash deposit, based on the actual bid, will be refunded within forty-five (45) days of receipt by State of the Project sponsor's written request.
 - c) Pursuant to ORS 366.425, the advance deposit may be in the form of 1) money deposited in the State Treasury (an option where a deposit is made in the Local Government Investment Pool, and an Irrevocable Limited Power of Attorney is sent to the Highway Finance Office), or 2) an Irrevocable Letter of Credit issued by a local bank in the name of State, or 3) cash.
 - d) Agency may satisfy all or part of any matching funds requirements by use of in-kind contributions rather than cash when prior written approval has been given by State.
26. If the estimated cost exceeds the total matched federal funds available, Agency shall deposit its share of the required matching funds, plus 100 percent of all costs in excess of the total matched federal funds. Agency shall also pay 100 percent of the cost of any item in which FHWA will not participate. If Agency has not repaid any non-participating cost, future allocations of federal funds, or allocations of State Highway Trust Funds, to that Agency may be withheld to pay the non-participating costs. If State approves processes, procedures, or contract administration outside the Local Agency Guidelines that result in items being declared non-participating, those items will not result in the withholding of Agency's future allocations of federal funds or the future allocations of State Highway Trust Funds.

Agency/State
Agreement No. 29634

27. Costs incurred by State and Agency for services performed in connection with any phase of the Project shall be charged to the Project, unless otherwise mutually agreed upon.
28. If Agency makes a written request for the cancellation of a federal-aid project; Agency shall bear 100 percent of all costs as of the date of cancellation. If State was the sole cause of the cancellation, State shall bear 100 percent of all costs incurred. If it is determined that the cancellation was caused by third parties or circumstances beyond the control of State or Agency, Agency shall bear all development costs, whether incurred by State or Agency, either directly or through contract services, and State shall bear any State administrative costs incurred. After settlement of payments, State shall deliver surveys, maps, field notes, and all other data to Agency.
29. Agency shall follow requirements of the Single Audit Act. The requirements stated in the Single Audit Act must be followed by those local governments and non-profit organizations receiving \$500,000 or more in federal funds. The Single Audit Act of 1984, PL 98-502 as amended by PL 104-156, described in "OMB CIRCULAR NO. A-133", requires local governments and non-profit organizations to obtain an audit that includes internal controls and compliance with federal laws and regulations of all federally-funded programs in which the local agency participates. The cost of this audit can be partially prorated to the federal program.
30. Agency shall make additional deposits, as needed, upon request from State. Requests for additional deposits shall be accompanied by an itemized statement of expenditures and an estimated cost to complete the Project.
31. Agency shall present invoices for 100 percent of actual costs incurred by Agency on behalf of the Project directly to State's Liaison Person for review and approval. Such invoices shall identify the Project and Agreement number, and shall itemize and explain all expenses for which reimbursement is claimed. Billings shall be presented for periods of not less than one-month duration, based on actual expenses to date. All billings received from Agency must be approved by State's Liaison Person prior to payment. Agency's actual costs eligible for federal-aid or State participation shall be those allowable under the provisions of Title 23 CFR Parts 1.11, 140 and 710, Final billings shall be submitted to State for processing within three (3) months from the end of each funding phase as follows: 1) award date of a construction contract for preliminary engineering (PE) 2) last payment for right of way acquisition and 3) third notification for construction. Partial billing (progress payment) shall be submitted to State within three (3) months from date that costs are incurred. Final billings submitted after the three months shall not be eligible for reimbursement.
32. The cost records and accounts pertaining to work covered by this Agreement are to be kept available for inspection by representatives of State and FHWA for a period of six (6) years following the date of final voucher to FHWA. Copies of such records and accounts shall be made available upon request. For real property and equipment, the retention period starts from the date of disposition (Title 49 CFR 18.42).

33. State shall request reimbursement, and Agency agrees to reimburse State, for federal-aid funds distributed to Agency if any of the following events occur:
- a) Right of way acquisition or actual construction of the facility for which preliminary engineering is undertaken is not started by the close of the tenth fiscal year following the fiscal year in which the federal-aid funds were authorized;
 - b) Right of way acquisition is undertaken utilizing federal-aid funds and actual construction is not started by the close of the twentieth fiscal year following the fiscal year in which the federal-aid funds were authorized for right of way acquisition.
 - c) Construction proceeds after the Project is determined to be ineligible for federal-aid funding (e.g., no environmental approval, lacking permits, or other reasons).
34. Agency shall maintain all Project documentation in keeping with State and FHWA standards and specifications. This shall include, but is not limited to, daily work records, quantity documentation, material invoices and quality documentation, certificates of origin, process control records, test results, and inspection records to ensure that projects are completed in conformance with approved plans and specifications.

RAILROADS

35. Agency shall follow State established policy and procedures when impacts occur on railroad property. The policy and procedures are available through State's appropriate Region contact or State's Railroad Liaison. Only those costs allowable under Title 23 CFR Part 646, subpart B and Title 23 CFR Part 140, subpart I, shall be included in the total Project costs; all other costs associated with railroad work will be at the sole expense of Agency, or others. Agency may request State, in writing, to provide railroad coordination and negotiations. However, State is under no obligation to agree to perform said duties.

UTILITIES

36. Agency shall follow State established Statutes, Policies and Procedures when impacts occur to privately or publicly-owned utilities. Only those utility relocations, which are eligible for federal-aid participation under, the FAPG, Title 23 CFR 645A, Subpart A and B, shall be included in the total Project costs; all other utility relocations shall be at the sole expense of Agency, or others. State will arrange for utility relocations/adjustments in areas lying within jurisdiction of State, if State is performing the preliminary engineering. Agency may request State in writing to arrange for utility relocations/adjustments lying within Agency jurisdiction, acting on behalf of Agency. This request must be submitted no later than twenty-one (21) weeks prior to bid let date. However, State is under no obligation to agree to perform said duties.

Agency/State
Agreement No. 29634

37. The State utility relocation policy, procedures and forms are available through the appropriate State's Region Utility Specialist or State Utility Liaison. Agency shall provide copies of all signed utility notifications, agreements and Utility Certification to the State Utility Liaison.

STANDARDS

38. Agency agrees that design standards for all projects on the National Highway System (NHS) and the Oregon State Highway System shall be in compliance to standards specified in the current "State Highway Design Manual" and related references. Construction plans shall be in conformance with standard practices of State for plans prepared by its own staff. All specifications for the Project shall be in substantial compliance with the most current "Oregon Standard Specifications for Highway Construction".

39. Agency agrees that minimum design standards for non-NHS projects shall be recommended AASHTO Standards and in accordance with the current "Oregon Bicycle and Pedestrian Design Guide", unless otherwise requested by Agency and approved by State.

40. Agency agrees and will verify that the installation of traffic control devices shall meet the warrants prescribed in the "Manual on Uniform Traffic Control Devices and Oregon Supplements".

41. All plans and specifications shall be developed in general conformance with the current "Contract Plans Development Guide" and the current "Oregon Standard Specifications for Highway Construction" and/or guidelines provided.

42. The standard unit of measurement for all aspects of the Project shall be English Units. All Project documents and products shall be in English. This includes, but is not limited to, right of way, environmental documents, plans and specifications, and utilities.

GRADE CHANGE LIABILITY

43. Agency, if a County, acknowledges the effect and scope of ORS 105.755 and agrees that all acts necessary to complete construction of the Project which may alter or change the grade of existing county roads are being accomplished at the direct request of the County.

44. Agency, if a City, hereby accepts responsibility for all claims for damages from grade changes. Approval of plans by State shall not subject State to liability under ORS 105.760 for change of grade.

45. Agency, if a City, by execution of Agreement, gives its consent as required by ORS 373.030(2) to any and all changes of grade within the City limits, and gives its consent as required by ORS 373.050(1) to any and all closure of streets intersecting the highway, if any there be in connection with or arising out of the project covered by the Agreement.

CONTRACTOR CLAIMS

46. Agency shall, to the extent permitted by state law, indemnify, hold harmless and provide legal defense for State against all claims brought by the contractor, or others resulting from Agency's failure to comply with the terms of this Agreement.
47. Notwithstanding the foregoing defense obligations under Paragraph 46, neither Agency nor any attorney engaged by Agency shall defend any claim in the name of the State of Oregon or any agency of the State of Oregon, nor purport to act as legal representative of the State of Oregon or any of its agencies, without the prior written consent of the Oregon Attorney General. The State of Oregon may, at anytime at its election assume its own defense and settlement in the event that it determines that Agency is prohibited from defending the State of Oregon, or that Agency is not adequately defending the State of Oregon's interests, or that an important governmental principle is at issue or that it is in the best interests of the State of Oregon to do so. The State of Oregon reserves all rights to pursue any claims it may have against Agency if the State of Oregon elects to assume its own defense.

MAINTENANCE RESPONSIBILITIES

48. Agency shall, upon completion of construction, thereafter maintain and operate the Project at its own cost and expense, and in a manner satisfactory to State and FHWA.

WORKERS' COMPENSATION COVERAGE

49. All employers, including Agency, that employ subject workers who work under this Agreement in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage unless such employers are exempt under ORS 656.126. Employers Liability Insurance with coverage limits of not less than \$500,000 must be included. Agency shall ensure that each of its contractors complies with these requirements.

LOBBYING RESTRICTIONS

50. Agency certifies by signing the Agreement that:
- a) No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

Agency/State
Agreement No. 29634

- b) If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, and contracts and subcontracts under grants, subgrants, loans, and cooperative agreements) which exceed \$100,000, and that all such subrecipients shall certify and disclose accordingly.
- d) This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Title 31, USC Section 1352.
- e) Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Paragraphs 36, 37, and 48 are not applicable to any local agency on state highway projects.



7 COPY

Scott Caufield
 Building Codes Administrator
 BUILDING CODES DIVISION

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

December 12, 2013

Board of County Commissioners
 Clackamas County

Members of the Board:

Approval of Grant Contract F14-52117-003 with the Washington Department of Commerce for
Participation in the Pacific Northwest Solar Partnership Rooftop Solar Challenge II

Purpose/Outcomes	This contract provides a scope of work and funding for county staff time to participate in the consortium Pacific Northwest Solar Partnership, a Rooftop Solar Challenge II project intended to improve permitting and planning processes.
Dollar Amount and Fiscal Impact	The grant represents a small positive fiscal benefit. Of the staff time committed for the first phase of the project (approximately 250-270 hours over 18 months), 80% will be reimbursed. Through March 31, 2015, the contract grants Clackamas County \$24,120 to cover fully loaded staff time, requiring an in-kind match of \$6,030 in additional staff time from the County. The project does not require new staff.
Funding Source	Washington State Department of Commerce is the lead applicant and the immediate funder. Funds originate with the US Department of Energy under the Rooftop Solar Challenge II initiative.
Safety Impact	None.
Duration	The contract ends March 31, 2015. Contingent upon the partnership's completion of deliverables the grant may extend an additional 12 months and offer an additional \$11,880 in funds during that time, with an additional in-kind match of staff time of \$2,970.
Previous Board Action/Review	3/19/13: BCC approved participation in the Partnership and a letter of commitment and support for the grant proposal.
Contact Person	Scott Caufield – DTD Building Codes / Sustainability 503-742-4747

BACKGROUND:

Ongoing improvement in customer service is a priority for DTD's development review and building permit processes. This grant project funds staff participation in a regional partnership intended to identify and implement improvements in the zoning and development ordinance and permitting process for solar projects. It covers 80% of the cost of staff time, primarily in the Building Codes and Planning Divisions. The partnership includes 7 local governments in Washington and Oregon, the Oregon Department of Energy, and the Energy Trust of Oregon.

DTD is moving towards expanded online permitting to improve convenience and reduce costs for building permits. This project may benefit online permitting for many other types of permits in addition to the solar permits that are the subject of this specific grant.

On March 19 2013, the Board of Commissioners approved participation in the partnership and signed a letter of commitment for a project value of up to \$50,000. The grant award to the Washington Department of Commerce was 10% less than requested, translating to a \$45,000 project.

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

RECOMMENDATION:

Staff respectfully recommends that the Board of County Commissioners approve Contract No. F14-52117-003 with the Washington State Department of Commerce and delegate signing authority to the DTD Interim Director Barbara Cartmill.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Eben Polk". The signature is written in a cursive, flowing style.

Eben Polk, MPP/MEM
Sustainability Supervisor

On behalf of Scott Caufield, Building Codes Administrator, and Mike McCallister, Planning Director.



Department of Commerce

Innovation is in our nature.

Interagency Agreement with

Clackamas County

through

State Energy Program – Rooftop Solar Challenge II

For

Rooftop Challenge II- Lower costs and increase residential PV through more standard permitting, zoning, and interconnection.

Start date: Date of contract execution

FACE SHEET	i
SPECIAL TERMS AND CONDITIONS.....	1
1. REQUIREMENTS FOR Federal FundED PUBLICATIONS	1
2. GRANT MANAGEMENT	1
3. COMPENSATION AND FUNDING IN BUDGET PERIODS.....	1
4. BILLING PROCEDURES AND PAYMENT.....	1
5. INSURANCE.....	2
6. PERFORMANCE OF WORK IN UNITED STATES	3
7. SITE VISITS.....	3
8. COMPLIANCE WITH FEDERAL, STATE, AND MUNICIPAL LAW.....	4
9. RECORD RETENTION	4
10. ORDER OF PRECEDENCE.....	4
GENERAL TERMS AND CONDITIONS.....	1
1. DEFINITIONS	1
2. ACCESS TO DATA.....	1
3. ADVANCE PAYMENTS PROHIBITED.....	1
4. ALL WRITINGS CONTAINED HEREIN.....	1
5. AMENDMENTS.....	1
6. AMERICANS WITH DISABILITIES ACT (ADA) OF 1990, PUBLIC LAW 101-336.....	2
7. ASSIGNMENT	2
8. ATTORNEYS' FEES.....	2
9. AUDIT	2
10. CERTIFICATION REGARDING DEBARMENT, SUSPENSION OR INELIGIBILITY AND VOLUNTARY EXCLUSION	3
11. CONFIDENTIALITY/SAFEGUARDING OF INFORMATION.....	4
12. CONFLICT OF INTEREST	54
13. COPYRIGHT PROVISIONS.....	5
14. DISPUTES	5
15. GOVERNING LAW AND VENUE	7
16. INDEMNIFICATION.....	7
17. INDEPENDENT CAPACITY OF THE GRANTEE	7
18. INDUSTRIAL INSURANCE COVERAGE	7
19. LAWS	7
B. Labor and Safety Standards	87
C. Laws against Discrimination	8
D. Office of Management and Budget Circulars.....	8

FACE SHEET

Contract Number: F14-52117-003

Washington State Department of Commerce
 Energy Policy Division
 State Energy Program
 Rooftop Solar Challenge II

1. Grantee Clackamas County 2051 Kaen Road Oregon City, OR 97045		2. Grantee Doing Business As (optional)	
3. Grantee Representative Eben Polk, Clackamas County Office of Sustainability epolk@co.clackamas.or.us 503-742-4470		4. COMMERCE Representative Tim Stearns Senior Energy Policy Specialist 206.256.6121 206.256.6158 tim.stearns@commerce.wa.gov PO Box 42525 1011 Plum St. SE Olympia, WA 98504-2525	
5. Grant Amount \$24,120	6. Funding Source Federal: <input checked="" type="checkbox"/> State: <input type="checkbox"/> Other: <input type="checkbox"/> N/A: <input type="checkbox"/>	7. Start Date Last date of signature below	8. End Date March 31, 2015
9. Federal Funds (as applicable) \$24,120	Federal Agency: Department of Energy	CFDA Number 81.117	
10. Tax ID # 936002286	11. SWV # 0009724-00	12. UBI # NA	13. DUNS # 096992656
14. Grant Purpose Rooftop Solar Challenge II will build upon and expand Phase I permitting, zoning and interconnection improvements to create a more uniform and robust residential solar market throughout the Pacific Northwest. Clackamas County, as a consortium member, will review and provide feedback to assist in the development of deliverables to share statewide and regionally as examples of best practices.			
COMMERCE, defined as the Department of Commerce, and the Grantee, as defined above, acknowledge and accept the terms of this Grant and attachments and have executed this Grant on the date below to start as of the date and year referenced above. The rights and obligations of both parties to this Grant are governed by this Grant and the following other documents incorporated by reference: Grantee Terms and Conditions including Attachment "A" – Scope of Work & Budget.			
FOR GRANTEE _____ Barbara Cartmill, Interim Director, Department of Transportation and Development _____ Date		FOR COMMERCE _____ Tony Usibelli, State Energy Office, Director, _____ Date APPROVED AS TO FORM ONLY BY ASSISTANT ATTORNEY GENERAL _____ _____ Date	

**SPECIAL TERMS AND CONDITIONS
INTERAGENCY AGREEMENT
FEDERAL FUNDS**

1. REQUIREMENTS FOR FEDERAL FUNDED PUBLICATIONS

- A. Grantee is encouraged to publish or otherwise make publicly available the results of the work conducted under this award.
- B. The Grantee agrees that any publications (written, visual, or sound) but excluding press releases, newsletters, and issue analyses, issued by the Grantee describing programs or projects funded in whole or in part with federal funds under this Agreement, shall contain the following acknowledgement:

"The information, data, or work presented herein was funded in part by the U.S. Department of Energy, Energy Efficiency and Renewable Energy Program, under Award Number DE-EE0006307."

- A. The following disclaimer must appear in the publication of any material, whether copyrighted or not, based on or developed under this project:

"The information, data, or work presented herein was funded in part by an *agency* of the United States Government. Neither the United States Government nor any agency thereof, nor any of their employees, makes any warranty, express or implied, or assumes any legal liability or responsibility for the accuracy, completeness, or usefulness of any information, apparatus, product, or process disclosed, or represents that its use would not infringe privately owned rights. Reference herein to any specific commercial product, process, or service by trade name, trademark, manufacturer, or otherwise does not necessarily constitute or imply its endorsement, recommendation, or favoring by the United States Government or any agency thereof. The views and opinions of authors expressed herein do not necessarily state or reflect those of the United States Government or any agency thereof."

2. GRANT MANAGEMENT

The Representative for each of the parties shall be responsible for and shall be the contact person for all communications and billings regarding the performance of this Grant.

The Representative for COMMERCE and their contact information are identified on the Face Sheet of this Grant.

The Representative for the Grantee and their contact information are identified on the Face Sheet of this Grant.

3. COMPENSATION AND FUNDING IN BUDGET PERIODS

COMMERCE shall pay an amount not to exceed (\$24,120) for the performance of all things necessary for or incidental to the performance of work as set forth in the Scope of Work and Budget (Attachment A) for Budget Period 1, ending March 31, 2015. Grantee's compensation for services rendered shall be based on deliverables identified in the Scope of Work and Budget (Attachment A), in accordance with the following terms:

Proceeding to Budget Period 2 will be subject to approval by Department of Energy for Commerce's continuation request and will depend upon DOE determination of progress shown meeting required deliverables for Budget Period 1. If approved, the remainder of (\$11,880) will be provided to Grantee through an amendment to this Agreement.

Funding for all awards and future budget periods is contingent upon the availability of funds appropriated by Congress for the purpose of the program under which this grant is funded and the availability of future-year budget authority.

4. BILLING PROCEDURES AND PAYMENT

COMMERCE will pay Grantee upon acceptance of services provided and receipt of properly completed invoices, which shall be submitted to the Representative for COMMERCE quarterly.

The invoices shall describe and document, to COMMERCE's satisfaction, a description of the work performed, the progress of the project, and fees. The invoice shall include the Grant Number F14-

**SPECIAL TERMS AND CONDITIONS
INTERAGENCY AGREEMENT
FEDERAL FUNDS**

liability insurance shall be required. The minimum limit for automobile liability is \$1,000,000 per occurrence, using a Combined Single Limit for bodily injury and property damage.

Professional Liability, Errors and Omissions Insurance. The Grantee shall maintain Professional Liability or Errors and Omissions Insurance. The Grantee shall maintain minimum limits of no less than \$1,000,000 per occurrence to cover all activities by the Grantee and licensed staff employed or under contract to the Grantee. The State of Washington, its agents, officers, and employees need *not* be named as additional insureds under this policy.

Fidelity Insurance. Every officer, director, employee, or agent who is authorized to act on behalf of the Grantee for the purpose of receiving or depositing funds into program accounts or issuing financial documents, checks, or other instruments of payment for program costs shall be insured to provide protection against loss:

- A. The amount of fidelity coverage secured pursuant to this Agreement shall be \$100,000 or the highest of planned reimbursement for the Agreement period, whichever is lowest. Fidelity insurance secured pursuant to this paragraph shall name COMMERCE as beneficiary.
- B. Subgrantees/subcontractors that receive \$10,000 or more per year in funding through this Agreement shall secure fidelity insurance as noted above. Fidelity insurance secured by Subgrantees/subcontractor pursuant to this paragraph shall name the Grantee as beneficiary.
- C. The Grantee shall provide, at COMMERCE's request, copies of insurance instruments or certifications from the insurance issuing agency. The copies or certifications shall show the insurance coverage, the designated beneficiary, who is covered, the amounts, the period of coverage, and that COMMERCE will be provided thirty (30) days advance written notice of cancellation.

Local Government Grantees that Participate in a Self-Insurance Program

Self-Insured/Liability Pool or Self-Insured Risk Management Program – With prior approval from COMMERCE, the Grantee may provide the coverage above under a self-insured/liability pool or self-insured risk management program. In order to obtain permission from COMMERCE, the Grantee shall provide: (1) a description of its self-insurance program, and (2) a certificate and/or letter of coverage that outlines coverage limits and deductibles. All self-insured risk management programs or self-insured/liability pool financial reports must comply with Generally Accepted Accounting Principles

(GAAP) and adhere to accounting standards promulgated by: 1) Governmental Accounting Standards Board (GASB), 2) Financial Accounting Standards Board (FASB), and 3) the Washington State Auditor's annual instructions for financial reporting. Grantee's participating in joint risk pools shall maintain sufficient documentation to support the aggregate claim liability information reported on the balance sheet. The State of Washington, its agents, and employees need not be named as additional insured under a self-insured property/liability pool, if the pool is prohibited from naming third parties as additional insured.

Grantee shall provide annually to COMMERCE a summary of coverage and a letter of self-insurance, evidencing continued coverage under Grantee's self-insured/liability pool or self-insured risk management program. Such annual summary of coverage and letter of self-insurance will be provided on the anniversary of the start date of this Agreement.

6. PERFORMANCE OF WORK IN UNITED STATES

All work performed under this award must be performed in the United States. This requirement does not apply to the purchase of supplies and equipment, however, the Grantee should make every effort to purchase supplies and equipment within the United States. The Grantee must flow this requirement to its sub awards.

7. SITE VISITS

COMMERCE and DOE's authorized representatives have the right to make site visits at reasonable times to review project accomplishments and management control systems and to provide technical

**GENERAL TERMS AND CONDITIONS
INTERAGENCY AGREEMENT
FEDERAL FUNDS**

1. DEFINITIONS

As used throughout this Grant, the following terms shall have the meaning set forth below:

- A. "Authorized Representative" shall mean the Director and/or the designee authorized in writing to act on the Director's behalf.
- B. "Grantee" shall mean the entity identified on the face sheet performing service(s) under this Grant, and shall include all employees and agents of the Grantee.
- C. "COMMERCE" shall mean the Department of Commerce.
- D. "Personal Information" shall mean information identifiable to any person, including, but not limited to, information that relates to a person's name, health, finances, education, business, use or receipt of governmental services or other activities, addresses, telephone numbers, social security numbers, driver license numbers, other identifying numbers, and any financial identifiers.
- E. "State" shall mean the State of Washington.
- F. "Subgrantee/subcontractor" shall mean one not in the employment of the Grantee, who is performing all or part of those services under this Grant under a separate Grant with the Grantee. The terms "subgrantees/subcontractor" refers to any tier.
- G. "Subrecipient" shall mean a non-federal entity that expends federal awards received from a pass-through entity to carry out a federal program, but does not include an individual that is a beneficiary of such a program. It also excludes vendors that receive federal funds in exchange for goods and/or services in the course of normal trade or commerce.
- H. "Vendor" is an entity that agrees to provide the amount and kind of services requested by COMMERCE; provides services under the grant only to those beneficiaries individually determined to be eligible by COMMERCE and, provides services on a fee-for-service or per-unit basis with contractual penalties if the entity fails to meet program performance standards.

2. ACCESS TO DATA

In compliance with RCW 39.26.180, the Grantee shall provide access to data generated under this Grant to COMMERCE, the Joint Legislative Audit and Review Committee, and the Office of the State Auditor at no additional cost. This includes access to all information that supports the findings, conclusions, and recommendations of the Grantee's reports, including computer models and the methodology for those models.

3. ADVANCE PAYMENTS PROHIBITED

No payments in advance of or in anticipation of goods or services to be provided under this Grant shall be made by COMMERCE.

4. ALL WRITINGS CONTAINED HEREIN

This Grant contains all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this Grant shall be deemed to exist or to bind any of the parties hereto.

5. AMENDMENTS

This Grant may be amended by mutual agreement of the parties. Such amendments shall not be binding unless they are in writing and signed by personnel authorized to bind each of the parties.

**GENERAL TERMS AND CONDITIONS
INTERAGENCY AGREEMENT
FEDERAL FUNDS**

- ~~Beginning balance~~
- Current year expenditures
- ~~Current year revenues~~
- ~~Program Total~~

If the Grantee is a state or local government entity, the Office of the State Auditor shall conduct the audit. Audits of non-profit organizations are to be conducted by a certified public accountant selected by the Grantee in accordance with OMB Circular A-110 "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations."

The Grantee shall include the above audit requirements in any Subgrants/subcontracts.

In any case, the Grantee's financial records must be available for review by COMMERCE.

C. Documentation Requirements

The Grantee must send a copy of any required audit Reporting Package as described in OMB Circular A-133, Part C, Section 320(c) no later than nine (9) months after the end of the Grantee's fiscal year(s) by sending a scanned copy to auditreview@commerce.wa.gov or a hard copy to:

Department of Commerce
ATTN: Audit Review and Resolution Office
1011 Plum Street SE
PO Box 42525
Olympia WA 98504-2525

In addition to sending a copy of the audit, when applicable, the Grantee must include:

- Corrective action plan for audit findings within three (3) months of the audit being received by COMMERCE.
- Copy of the Management Letter.

10. CERTIFICATION REGARDING DEBARMENT, SUSPENSION OR INELIGIBILITY AND VOLUNTARY EXCLUSION

(PRIMARY AND LOWER TIER COVERED TRANSACTIONS)

- A. Grantee, defined as the primary participant and its principals, certifies by signing these General Terms and Conditions that to the best of its knowledge and belief that they:
1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency.
 2. Have not within a three-year period preceding this Contract, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction, violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, receiving stolen property, making false claims, or obstruction of justice;
 3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of federal Executive Order 12549; and
 4. Have not within a three-year period preceding the signing of this Contract had one or more public transactions (Federal, State, or local) terminated for cause of default.
- B. Where the Grantee is unable to certify to any of the statements in this Contract, the Grantee shall attach an explanation to this Contract.

**GENERAL TERMS AND CONDITIONS
INTERAGENCY AGREEMENT
FEDERAL FUNDS**

D. Notwithstanding the provisions above, the parties agree and acknowledge that Grantee is a public body in the State of Oregon and shall at all times remain subject to Oregon public records law. The parties agree that if Oregon law requires production of records subject to this agreement that such production will not be a breach by the Grantee.

12. CONFLICT OF INTEREST

Notwithstanding any determination by the Executive Ethics Board or other tribunal, COMMERCE may, in its sole discretion, by written notice to the GRANTEE terminate this Grant if it is found after due notice and examination by the COMMERCE that there is a violation of the Ethics in Public Service Act, Chapter 42.52 RCW; or any similar statute involving the GRANTEE in the procurement of, or performance under this Grant.

In the event this Grant is terminated as provided above, the COMMERCE shall be entitled to pursue the same remedies against the GRANTEE as it could pursue in the event of a breach of the Grant by the GRANTEE. The rights and remedies of COMMERCE provided for in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law. The existence of facts upon which COMMERCE makes any determination under this clause shall be an issue and may be reviewed as provided in the "Disputes" clause of this Grant.

13. COPYRIGHT PROVISIONS

Unless otherwise provided, all Materials produced under this Grant shall be considered "works for hire" as defined by the U.S. Copyright Act and shall be owned by COMMERCE. COMMERCE shall be considered the author of such Materials. In the event the Materials are not considered "works for hire" under the U.S. Copyright laws, the Grantee hereby irrevocably assigns all right, title, and interest in all Materials, including all intellectual property rights, moral rights, and rights of publicity to COMMERCE effective from the moment of creation of such Materials.

"Materials" means all items in any format and includes, but is not limited to, data, reports, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films; tapes, and/or sound reproductions. "Ownership" includes the right to copyright, patent, register and the ability to transfer these rights.

For Materials that are delivered under the Grant, but that incorporate pre-existing materials not produced under the Grant, the Grantee hereby grants to COMMERCE a nonexclusive, royalty-free, irrevocable license (with rights to sublicense to others) in such Materials to translate, reproduce, distribute, prepare derivative works, publicly perform, and publicly display. The Grantee warrants and represents that the Grantee has all rights and permissions, including intellectual property rights, moral rights and rights of publicity, necessary to grant such a license to COMMERCE.

The Grantee shall exert all reasonable effort to advise COMMERCE, at the time of delivery of Materials furnished under this Grant, of all known or potential invasions of privacy contained therein and of any portion of such document which was not produced in the performance of this Grant. The Grantee shall provide COMMERCE with prompt written notice of each notice or claim of infringement received by the Grantee with respect to any Materials delivered under this Grant. COMMERCE shall have the right to modify or remove any restrictive markings placed upon the Materials by the Grantee.

14. DISPUTES

Except as otherwise provided in this Grant, when a dispute arises between the parties and it cannot be resolved by direct negotiation, either party may request a dispute hearing with the Director of COMMERCE, who may designate a neutral person to decide the dispute.

The request for a dispute hearing must:

- be in writing;
- state the disputed issues;
- state the relative positions of the parties;
- state the Grantee's name, address, and Contract number; and

**GENERAL TERMS AND CONDITIONS
INTERAGENCY AGREEMENT
FEDERAL FUNDS**

15. GOVERNING LAW AND VENUE

E. This Grant shall be construed and interpreted in accordance with the laws of the State of Washington, and the venue of any action brought hereunder shall be in the Superior Court for Thurston County. Notwithstanding this provision, the parties agree and acknowledge that Grantee is a public body in the State of Oregon and shall at all times remain subject to Oregon law. The parties agree that if Oregon law requires Grantee to act or refrain from acting in any manner, such act or failure to act will not be a breach by the Grantee.

16. INDEMNIFICATION

~~To the fullest extent permitted by law~~ Subject to the limitations provided in the Oregon Tort Claims Act (ORS 30.260 to 30.300), the Grantee shall indemnify, defend, and hold harmless the State of Washington, COMMERCE, agencies of the state and all officials, agents and employees of the state, from and against all claims for injuries or death arising out of or resulting from the Grantee or any Subgrantee's/subcontractor's performance of the contract or failure to perform the contract. "Claim" as used in this contract, means any financial loss, claim, suit, action, damage, or expense, including but not limited to attorney's fees, attributable for bodily injury, sickness, disease, or death, or injury to or the destruction of tangible property including loss of use resulting therefrom.

The Grantee's obligation to indemnify, defend, and hold harmless includes any claim by Grantee's agents, employees, representatives, or any Subgrantee/subcontractor or its employees. ~~GRANTEE'S obligation to indemnify, defend, and hold harmless the State shall not be eliminated or reduced by any actual or alleged concurrent negligence of State or its agents, agencies, employees and officials.~~

~~The Grantee waives its immunity under Title 51 RCW to the extent it is required to indemnify, defend and hold harmless the state and its agencies, officers, agents or employees.~~

17. INDEPENDENT CAPACITY OF THE GRANTEE

The parties intend that an independent Grantee relationship will be created by this Grant. The Grantee and its employees or agents performing under this Grant are not employees or agents of the State of Washington or COMMERCE. The Grantee will not hold itself out as or claim to be an officer or employee of COMMERCE or of the State of Washington by reason hereof, nor will the Grantee make any claim of right, privilege or benefit which would accrue to such officer or employee under law. Conduct and control of the work will be solely with the Grantee.

18. INDUSTRIAL INSURANCE COVERAGE (WORKERS COMPENSATION COVERAGE)

~~The Grantee is subject to and shall comply with all applicable provisions of the State of Oregon workers compensation law. This law is comparable to Title 51 RCW, Industrial Insurance. The parties agree that Grantee's compliance with Oregon workers compensation law shall be in lieu of compliance with Washington industrial insurance law and that compliance with such Washington industrial insurance law is not required. If the Grantee fails to provide industrial insurance coverage or fails to pay premiums or penalties on behalf of its employees as may be required by law, COMMERCE may collect from the Grantee the full amount payable to the Industrial Insurance Accident Fund. COMMERCE may deduct the amount owed by the Grantee to the accident fund from the amount payable to the Grantee by COMMERCE under this Contract, and transmit the deducted amount to the Department of Labor and Industries, (L&I) Division of Insurance Services. This provision does not waive any of L&I's rights to collect from the Grantee.~~

19. LAWS

**GENERAL TERMS AND CONDITIONS
INTERAGENCY AGREEMENT
FEDERAL FUNDS**

Anti-Kickback Act, 18 U.S.C. 874; 40 U.S.C. 276b, 276c; 41 U.S.C. 51-54.

Governmental Guidance for New Restrictions on Lobbying; Interim Final Guidance, Federal Register 1, Vol. 54, No. 243 Wednesday, December 20, 1989.

Hatch Political Activity Act, 5 U.S.C. 1501-8.

Lobbying and Disclosure, 42 USC 3537a and 3545 and 31 USC 1352. (Byrd Anti-Lobbying Amendment). 31 U.S.C. 1352 provides that Grantees who apply or bid for an award of \$100,000 or more must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or other award covered by 31 U.S.C. 1352. Each tier must disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.

Non-Supplanting Federal Funds.

Section 8 Housing Assistance Payments Program.

F. PRIVACY

Privacy Act of 1974, 5 U.S.C. 552a.

Washington State Laws and Regulations

Comment [sc1]: Not sure what to do with this. Would prefer to simply delete as we are already agreeing to be subject to most WA laws.

- A. Affirmative action, RCW 41.06.020 (1).
- B. Boards of directors or officers of non-profit corporations – Liability - Limitations, RCW 4.24.264.
- C. Disclosure-campaign finances-lobbying, Chapter 42.17 RCW.
- D. Discrimination-human rights commission, Chapter 49.60 RCW.
- E. Ethics in public service, Chapter 42.52 RCW.
- F. Office of minority and women's business enterprises, Chapter 39.19 RCW and Chapter 326-02 WAC.
- G. Open public meetings act, Chapter 42.30 RCW.
- H. Public records act, Chapter 42.56 RCW.
- I. State budgeting, accounting, and reporting system, Chapter 43.88 RCW.

20. LICENSING, ACCREDITATION AND REGISTRATION

The Grantee shall comply with all applicable local, state, and federal licensing, accreditation and registration requirements or standards necessary for the performance of this Contract.

21. LIMITATION OF AUTHORITY

Only the Grantee or Grantee's delegate by writing (delegation to be made prior to action) shall have the express, implied, or apparent authority to alter, amend, modify, or waive any clause or condition of this Contract. Furthermore, any alteration, amendment, modification, or waiver of any clause or condition of this contract is not effective or binding unless made in writing and signed by the Grantee.

22. NONCOMPLIANCE WITH NONDISCRIMINATION LAWS

During the performance of this Grant, the Grantee shall comply with all federal, state, and local nondiscrimination laws, regulations and policies. In the event of the Grantee's non-compliance or refusal to comply with any nondiscrimination law, regulation or policy, this Grant may be rescinded, canceled or terminated in whole or in part, and the Grantee may be declared ineligible for further Grants with COMMERCE. The Grantee shall, however, be given a reasonable time in which to cure

**GENERAL TERMS AND CONDITIONS
INTERAGENCY AGREEMENT
FEDERAL FUNDS**

4. Grantee and Subgrantee/subcontractor must receive prior approval from COMMERCE for using funds from this Contract to enter into a sole source contract or a contract where only one bid or proposal is received when value of this Contract is expected to exceed \$5,000.

Prior approval requests shall include a copy of proposed contracts and any related procurement documents and justification for non-competitive procurement, if applicable.

Notwithstanding this provision, the parties agree and acknowledge that Grantee is a public body in the State of Oregon and shall at all times remain subject to Oregon public contracting law as well as local contracting review board rules. The parties agree that if Oregon public contracting law or applicable local contracting review board rules requires Grantee to act or refrain from acting in any manner, such act or failure to act will not be a breach by the Grantee.

Formatted: Font: 10 pt

25. PUBLICITY

The Grantee agrees not to publish or use any advertising or publicity materials in which the State of Washington or COMMERCE's name is mentioned, or language used from which the connection with the State of Washington's or COMMERCE's name may reasonably be inferred or implied, without the prior written consent of COMMERCE.

26. RECAPTURE

In the event that the Grantee fails to perform this Grant in accordance with state laws, federal laws, and/or the provisions of this Grant, COMMERCE reserves the right to recapture funds in an amount to compensate COMMERCE for the noncompliance in addition to any other remedies available at law or in equity.

Repayment by the Grantee of funds under this recapture provision shall occur within the time period specified by COMMERCE. In the alternative, COMMERCE may recapture such funds from payments due under this Grant.

27. REGISTRATION WITH DEPARTMENT OF REVENUE

If required by law, the Grantee shall complete registration with the Washington State Department of Revenue.

28. SAVINGS

In the event funding from state, federal, or other sources is withdrawn, reduced, or limited in any way after the effective date of this Grant and prior to normal completion, COMMERCE may terminate the Grant under the "Termination for Convenience" clause, without the ten calendar day notice requirement. In lieu of termination, the Grant may be amended to reflect the new funding limitations and conditions.

29. SEVERABILITY

The provisions of this Grant are intended to be severable. If any term or provision is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of the Grant.

30. SITE SECURITY

While on COMMERCE premises, GRANTEE, its agents, employees, or subgrantees shall conform in all respects with physical, fire or other security policies or regulations.

31. SUBGRANTING/SUBCONTRACTING

Neither the Grantee nor any Subgrantee/subcontractor shall enter into subgrants/subcontracts for any of the work contemplated under this contract without obtaining prior written approval of COMMERCE. In no event shall the existence of the subgrant/subcontract operate to release or reduce the liability of

**GENERAL TERMS AND CONDITIONS
INTERAGENCY AGREEMENT
FEDERAL FUNDS**

36. TERMINATION PROCEDURES

Upon termination of this Grant, COMMERCE, in addition to any other rights provided in this Grant, may require the Grantee to deliver to COMMERCE any property specifically produced or acquired for the performance of such part of this Grant as has been terminated. The provisions of the "Treatment of Assets" clause shall apply in such property transfer.

The COMMERCE shall pay to the Grantee the agreed upon price, if separately stated, for completed work and services accepted by the COMMERCE, and the amount agreed upon by the Grantee and the COMMERCE for (i) completed work and services for which no separate price is stated, (ii) partially completed work and services, (iii) other property or services that are accepted by the COMMERCE, and (iv) the protection and preservation of property, unless the termination is for default, in which case the Authorized Representative shall determine the extent of the liability of the COMMERCE. Failure to agree with such determination shall be a dispute within the meaning of the "Disputes" clause of this Grant. The COMMERCE may withhold from any amounts due the Grantee such sum as the Authorized Representative determines to be necessary to protect the COMMERCE against potential loss or liability.

The rights and remedies of the COMMERCE provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Grant.

After receipt of a notice of termination, and except as otherwise directed by the AGENT, the Grantee shall:

1. Stop work under the Grant on the date, and to the extent specified, in the notice;
2. Place no further orders or subgrants/subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the work under the Grant that is not terminated;
3. Assign to the COMMERCE, in the manner, at the times, and to the extent directed by the AGENT, all of the rights, title, and interest of the GRANTEE under the orders and subgrants/subcontracts so terminated, in which case the COMMERCE has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and subgrants/subcontracts;
4. Settle all outstanding liabilities and all claims arising out of such termination of orders and subgrants/subcontracts, with the approval or ratification of the Authorized Representative to the extent AGENT may require, which approval or ratification shall be final for all the purposes of this clause;
5. Transfer title to the COMMERCE and deliver in the manner, at the times, and to the extent directed by the Authorized Representative any property which, if the Grant had been completed, would have been required to be furnished to the COMMERCE;
6. Complete performance of, such part of the work as shall not have been terminated by the Authorized Representative; and
7. Take such action as may be necessary, or as the Authorized Representative may direct, for the protection and preservation of the property related to this Grant, which is in the possession of the Grantee and in which the COMMERCE has or may acquire an interest.

37. TREATMENT OF ASSETS

Title to all property furnished by the COMMERCE shall remain in the COMMERCE. Title to all property furnished by the Grantee, for the cost of which the Grantee is entitled to be reimbursed as a direct item of cost under this Grant, shall pass to and vest in the COMMERCE upon delivery of such property by the Grantee. Title to other property, the cost of which is reimbursable to the Grantee under this Grant, shall pass to and vest in the COMMERCE upon (i) issuance for use of such property

Attachment A: Scope of Work & Budget

Schedule of Deliverables for Clackamas County					
Tasks	Period	Deliverables	\$/Unit	Qty	Contract Total
Task 1: Project Management & Reporting - BP1 (M1 - M18)	Q1 - Q6				\$9,200
Refine Workplan. Attend Kickoff Meeting. Join at least one Work Group.	Q1	Final Workplan. Kickoff Meeting Attendance and participation.	\$800	1	\$800
Provide quarterly reports to NWSEED on progress, solar installations, track budget, project deliverables. Use Basecamp Project Management site to share info. Invoice quarterly showing 20% match.	Q1 - Q6	Quarterly reports, Quarterly Invoices due 15 days after end of quarter.	\$900	6	\$5,400
Implement a promotion activity (e.g. webinar presentation, newsletter article) Connect Jurisdiction Website to NWSC Website	Q1 - Q6	Quarterly promotional activity and website update.	\$500	6	\$3,000
Task 2: Refine Expedited Permit Process & Adopt in PJs (M1 - M18)	Q1 - Q6				\$8,000
Attend and participate in quarterly Work Group Meetings. Kickoff Session to identify goals, develop and implement workplan. Track and report on progress toward adoption as outlined in Action Plan.	Q1 - Q6	Attend Work Group meetings. Prepare and follow-up on Participating Jurisdiction Action Plan.	\$1,000	6	\$6,000
Review proposed Permit Packets with menu of 1 Line diagrams, tip sheets and permit process description for jurisdictions. Solicit feedback on packet with stakeholders within your jurisdiction. (Code officials, planners, installers, contractors, elected officials)	Q2	Report of feedback on proposed Permit Packet	\$1,000	1	\$1,000
Attend Recognition Ceremony for Solar Ready Communities in OR and WA	Q4	Invite Elected Officials to Participate in Recognition Ceremony for Solar Ready Communities	\$500	1	\$500
Some PJs: Test online permitting tool and report	Q6	Test Online Permitting Tool and Report Out	\$500	1	\$500
Task 3: Streamline and Standardize Interconnection Process (M1 - M18)	Q1 - Q6				\$1,000

Connect with state-level and utility stakeholders to understand electrical interconnection requirements and streamlining efforts, and share information	Q2 - Q6	Coordinated electrical information collection and dissemination	\$500	1	\$500
Facilitate joint trainings between utility engineers and code officials/inspectors	Q6	Attend a training session where available	\$500	1	\$500
Task 4: Research, Develop, Promote Financing Options BP1 (M7- M18)	Q2 - Q6				\$1,700
Track working group research on financing options at the local government level, and provide a report or presentation for local stakeholders (e.g. bonds, loan loss reserves with local banks, or PACE financing)	by Q6	Provide a summary for Clackamas County stakeholders on future solar financing options.	\$1,700	1	\$1,700
Task 5: Suggest Improvements to Zoning and Planning BP1 (M1 - M18)	Q3 - Q6				\$3,400
Review Planning and Zoning Report and Develop Action Plan to incorporate solar friendly provisions into next plan revision, (Solar Ready, Tree/Landscaping, Orientation)	Q3 - Q6	Action Plan to improve solar friendly planning/zoning at local jurisdiction	\$3,400	1	\$3,400
Task 6: Replicate Expedited Permitting and Interconnection With New Jurisdictions BP1 (M7 - M18)	Q3 - Q6				\$820
Participate in showcasing Solar Ready Toolkit to local governments and utilities in surrounding region	Q3 - Q6	Presentations to Jurisdiction/Utility groups in conjunction with 3 Solar Now Workshops or others	\$820	1	\$820
Budget Period 1 Total	\$24,120	Cost Share (20%)	\$6,030		
Go or No-Go					
Task 7: Project Management & Reporting BP2 (M19 - M30)	Q7 - Q10				\$5,500
Refine Workplan. Attend Kickoff Meeting. Join at least one Work Group.	Q7 - Q10	Refined Workplan	\$500	1	\$500
Provide quarterly reports to NWSEED on progress, solar installations, track budget, project deliverables. Use Basecamp Project Management site to share info. Invoice quarterly showing 20% match.	Q7 - Q10	Quarterly reports, Quarterly invoices due 15 days after end of quarter.	\$500	4	\$2,000

Implement a promotion activity (e.g. webinar presentation, newsletter article) Connect Jurisdiction Website to NWSC Website	Q7 - Q10	Quarterly promotional activity and website update.	\$500	4	\$2,000
Final Report including updates to Solar Market Metrics Model database	Q10	Final Report	\$1,000	1	\$1,000
Task 8: Develop, Promote Financing Options BP2 (M19 - M30)	Q7 - Q10				\$2,000
Some PJs: Host a community solar training in jurisdiction.	Q7 or Q9	Host a community solar or other solar finance training. Identify potential campaign opportunities and partners.	\$2,000	1	\$2,000
Task 9: Adopt Zoning & Planning Improvements BP2 (M19 - M30)	Q7 - Q10				\$3,880
Propose adoption of zoning and planning improvements through education and dialogue with elected officials and planners.	Q7 - Q10	Propose adoption of model solar access language and other zoning code-related improvements as identified.	\$3,880	1	\$3,880
Task 10: Replicate Expedited Permitting & Interconnection BP2 (M19 - M30)	Q7 - Q10				\$500
Participate in showcasing Solar Ready Toolkit to local governments and utilities in surrounding region	Q7 - Q10	Presentations to Jurisdiction/Utility groups (in conjunction with Solar Now Workshops?)	\$800	1	\$500
Adopt online permitting	Q7 - Q10	Adopt Online Permit Platform (or extend Online Permit Platform to include solar)	-		
Budget Period 2 Total	\$11,880	Cost Share (20%)	\$2,970		
Budget Total	\$36,000	Cost Share (20%)	\$9,000		



BOARD OF COUNTY COMMISSIONERS

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

March 19, 2013

Tony Usibelli
Director, State Energy Office
Innovation, Policy, & Priorities Division
Washington Department of Commerce
1011 Plum Street SE
P.O. Box 42525
Olympia, WA 98504-2525

Dear Tony,

Clackamas County is looking to identify ways to improve public service for planning and permitting functions, and make review processes more efficient across their range. We stand to benefit from attention to these processes and technical and collaborative assistance from around the region. Local and regional businesses stand to benefit from greater similarity and simplicity in seeking permits.

Hence, I am approving Clackamas County's participation in the Pacific Northwest Solar Partnership team convened by the Washington Department of Commerce, which is seeking support from the U.S. Department of Energy's Rooftop Solar Challenge.

As a participant in this collaboration, we look forward to working together to improve customer service and streamlining permitting processes. Clackamas County is committed to providing at least 90 dedicated hours of staff time in-kind, at an average rate of \$112 per hour for a total value of \$10,080, over a 20 month period. These rates are fully loaded and include both direct personnel costs and overhead.

Our participation on the Pacific Northwest Solar Partnership team will be spearheaded by Kelly Vecchi in our Department of Transportation and Development. We estimate three to five staff representing primarily the Building Codes and Planning & Zoning Divisions would participate.

In the past several years Clackamas County has taken steps to improve permitting processes generally, for example through Oregon's e-permit system. This initiative will fit within a new five-year audit of our zoning and development ordinance. Local solar projects are getting support in the form of training on Oregon's solar code changes for building code staff, two solar installations to-date on County buildings, and two solarize initiatives that have taken place in the last eighteen months. As a member of the Pacific Northwest Solar Partnership, we will share these successes with our team and learn from them, to implement best practices across the state of Oregon and throughout the Northwest.

Thank you for sharing this opportunity.

Sincerely,

John Ludlow, Chair
Board of Commissioners

8

Approval of Previous Business Meeting Minutes:

October 31, 2013

(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 31, 2013 - 10:00 AM

Public Services Building

2051 Kaen Rd., Oregon City, OR 97045

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

EXCUSED: Commissioner Jim Bernard

I. CALL TO ORDER

- Roll Call
- Pledge of Allegiance

II. CITIZEN COMMUNICATION

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

1. Les Poole, Gladstone – spoke regarding the Oak Grove boat ramp, Oak Grove library and Metro.
2. Richard Langdon, Portland – wanted to complement Dan Chandler for his help.
3. Cyndi Lewis Wolfrum, Milwaukie – asked that the Happy Valley UGMA be delayed – they would like to be included in the process.

~Board Discussion~

III. DISCUSSION ITEMS

~NO DISCUSSION ITEMS SCHEDULED

IV. CONSENT AGENDA

Chair Ludlow asked the Clerk to read the consent agenda by title. He then asked for a motion.

MOTION:

Commissioner Schrader: I move we approve the consent agenda.
Commissioner Savas: Second.
Clerk to call the poll:
Commissioner Schrader: Aye.
Commissioner Smith: Aye.
Commissioner Savas: Aye.
Chair Ludlow: Aye - the motion is approved 4-0.

A. Health, Housing & Human Services

1. Board Order No. **2013-84** Approval of the Mental Health Director's Designees to Authorize a Custody Hold under ORS 426.233 – *Behavioral Health*
2. Approval of Amendment No. 1 to Intergovernmental Agreement No. 140030 with the State of Oregon Department of Human Services, for the Operation of the Food Stamp Employment and Training Program – *Community Solutions*
3. Approval of a Sub-Recipient Agreement with Todos Juntos for Drug and Alcohol Prevention Specialist Services – *Children, Youth & Families*

4. Approval of a New Revenue Grant Agreement No.143912 with the State of Oregon Division of Medical Assistance Programs to Support Outreach and Public Education Regarding Cover Oregon – *Health Centers*

B. Elected Officials

1. Approval of Previous Business Meeting Minutes – *BCC*
2. Approval of a Personal Services contract with Telemate Inc. to Provide Inmate Telephone Services – *Sheriff's Office - Purchasing*

C. Department of Employee Services

1. Approval of Amendments to the Clackamas County Flexible Benefits Plan and Health Care Flexible Spending Account Plan Documents

V. DEVELOPMENT AGENCY

1. Approving Disposition of the Clackamas County Development Agency Property on 92nd Avenue

VI. WATER ENVIRONMENT SERVICES

1. Approval of an Intergovernmental Agreement between Clackamas County Service District No. 1 and the City of Wilsonville for Laboratory and Sampling Services

VII. COUNTY ADMINISTRATOR UPDATE

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

VIII. COMMISSIONERS COMMUNICATION

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

MEETING ADJOURNED – 11:00 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 by the following Saturday. You may also order copies from any library in Clackamas County or the Clackamas County Government Channel.

www.clackamas.us/bcc/business.html



OFFICE OF THE COUNTY ADMINISTRATOR

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

December 12, 2013

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of Design and Construction Services Agreement between
TriMet, Clackamas County
and the North Clackamas Park and Recreation District

Purpose/Outcomes	Approval of Design and Construction Services Agreement, which provides that TriMet will reimburse County and NCPRD staff for time expended reviewing material related to the Portland Milwaukie Light Rail Project
Dollar Amount and Fiscal Impact	This agreement provides reimbursement to the County and NCPRD for staff time up to \$399,000
Funding Source	TriMet
Safety Impact	N/A
Duration	For the life of Portland Milwaukie Light Rail Project construction
Previous Board Action	The Board approved placing this matter on the consent agenda at a November 26, 2013 Study Session.
Contact Person	Dan Chandler, Strategic Policy Administrator 503-742-5394

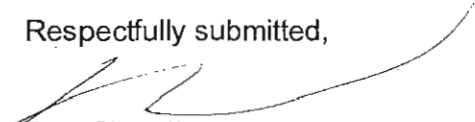
BACKGROUND:

This IGA provides that TriMet will reimburse the County and the NCPRD for up to \$399,000 in staff time expended in reviewing material related to the Portland Milwaukie Light Rail project.

RECOMMENDATION:

Staff requests the Board approve the attached IGA.

Respectfully submitted,


Dan Chandler
Strategic Policy Administrator

**INTERGOVERNMENTAL AGREEMENT
BETWEEN TRIMET, CLACKAMAS COUNTY, AND THE NORTH CLACKAMAS
PARKS AND RECREATION DISTRICT
FOR THE PORTLAND - MILWAUKIE LIGHT RAIL PROJECT
DESIGN AND CONSTRUCTION MANAGEMENT SERVICES**

THIS INTERGOVERNMENTAL AGREEMENT ("IGA" or "Agreement") is entered into as of April 1, 2011 and is between the Tri-County Metropolitan Transportation District of Oregon ("TriMet"), a mass transit district organized under the laws of the State of Oregon; Clackamas County ("County"), a political subdivision of the State of Oregon; and the North Clackamas Parks and Recreation District ("District"), a service district located in Clackamas County. TriMet, the County, and the District are hereunder jointly referred to as the "Parties." The County and the District are hereinafter together referred to as the "Clackamas County Partners".

ARTICLE I - RECITALS

A. TriMet and the Clackamas County Partners are authorized to enter into this Agreement with each other pursuant to the provisions of ORS 190.

B. TriMet owns and operates the public mass transit system serving the Portland, Oregon metropolitan region, which includes an existing light rail system composed of segments commonly known as the Eastside/Banfield, Westside/Hillsboro, Airport, Interstate lines, and the Phase I South Corridor Light Rail Project, consisting of the I-205 Segment and the Portland Mall Segment.

C. TriMet and the Clackamas County Partners have a joint interest in serving north Clackamas County, the City of Milwaukie and the Portland Metro region with high quality, convenient public transit.

D. TriMet is currently constructing the Phase II South Corridor Light Rail Project from Portland to Milwaukie ("Project"). The Project will provide a reliable, high frequency transportation option for north Clackamas County and City of Milwaukie commuters, and will benefit north Clackamas County and City of Milwaukie residents and workers by providing car-free linkages to multiple destinations in the TriMet system.

D. On May 9, 2008, the Federal Transit Administration ("FTA") issued a Supplemental Draft Environmental Impact Statement ("SDEIS") on the Project, in compliance with FTA and National Environmental Protection Act ("NEPA") requirements.

E. In July 2008, Metro adopted the Locally Preferred Alternative ("LPA") and the Land Use Final Order for the Project after local jurisdictions including the cities of Portland, Milwaukie and Oregon City along with Clackamas and Multnomah Counties and TriMet and ODOT recommended the adoption of the LPA.

F. Under the authority of House Bill 3478 (Oregon Laws 1996, Chapter 12, hereinafter the "1996 Act"), on July 24, 2008, the Metro Board adopted a Land Use Final Order for the Project.

G. In March 2010, the Federal Transit Administration ("FTA") authorized TriMet to enter into the preliminary engineering stage of project development.

H. The 1996 Act defines the relationship between TriMet and other governmental entities following the adoption of the Land Use Final Order for the Project, and states "The State and all counties, cities, special districts and political subdivisions shall:

- (a) Amend their comprehensive or function plans, including public facility plans, transportation system plans, and land use regulations, to the extent necessary to make them consistent with the Land Use Final Order, and
- (b) Issue the appropriate development approvals, permits, licenses and certificates necessary for the construction of the project or project extension consistent with the land use final order. Development approvals, permits, licenses and certificates may be subject to reasonable and necessary conditions of approval, but may not, by themselves or cumulatively, prevent implementation of the Land Use Final Order."

I. In March 2011, FTA authorized TriMet to enter into Final Design Phase of project development.

J. In May 2012, FTA and TriMet signed the Full Funding Grant Agreement, committing the federal funding share of the Project.

K. TriMet cannot construct or implement the Project without the use of County streets and right-of-way, and the County is willing to allow TriMet to use County streets and right-of-way without being compensated for reasonable wear and tear.

L. The County has a duty to the general public to provide safe and convenient streets and to protect itself from unreasonable financial burdens imposed by TriMet's use of the streets.

M. The Project is, or will be, subject to budgetary limitations imposed by the Federal Transit Administration (FTA) and Finance Agreements. The Project is, or will be, subject to all terms and conditions of the FTA Full Funding Grant Agreement as a result of Federal participation in the costs of the Project.

N. The parties desire to enter into this Agreement to document each party's understandings and agreements relating to the design and construction phases of the Project.

O. The parties shall enter into a maintenance agreement that will detail each party's obligations with respect to maintenance of the facilities after completion of construction.

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

ARTICLE II – TERM

- A. The term of this Agreement shall be effective from the date set forth below through December 31, 2015, unless terminated or extended under the provisions of this Agreement. Under this Agreement, the parties acknowledge and confirm that TriMet's financial responsibility for Clackamas County Partners' services provided will cover all eligible work done on the Project from April 1, 2011 forward, regardless of the date this Agreement is ultimately signed.

ARTICLE III – TRIMET OBLIGATIONS

- A. **Responsibility for the Project.** Except as otherwise provided, TriMet shall design, construct, operate and bear all costs for the Project, including the costs for street improvements necessitated by transportation issues identified in the Final Environmental Impact Statement as having been caused by the Project, to the extent such costs are grant eligible; except as set forth under separate agreement(s) between the Parties. In the execution of the design and construction, except as otherwise provided, TriMet shall provide for the public's health, safety, and welfare by providing the proper construction, reconstruction, and modifications to those existing public facilities in the right-of-way which are affected by the Project.
- B. **Construction Standards for the Project.** TriMet shall use current standards of design and construction adopted by local agencies located within Clackamas County. These agencies include, but are not limited to:
1. Clackamas County North Clackamas Parks and Recreation District
 2. Oak Lodge Sanitary District: Storm and Sanitary standards
 3. Oak Lodge Water
 4. Oregon Department of Transportation
 5. Clackamas County Service District #5 – Street Lighting
 6. Private Utility Providers

The agencies listed above are hereinafter together referred to as "Local Service Providers". Design, construction, conveyance and documentation shall be consistent with Local Service Providers' adopted standards, guidelines, and policies.

- C. **Conduct of Construction Plan.** TriMet shall work with Clackamas County Partners staff to develop a Conduct of Construction Plan that TriMet will require its contractors to adhere to, seeking to minimize Project impacts on neighborhoods.
- D. **County Requests for Additional Work.** TriMet shall design and construct, at the Clackamas County Partners' expense, any extra work identified and requested by the

Clackamas County Partners that enhances the basic Project or public improvements in the vicinity of the light rail alignment.

- E. Development of Final Plans and Specifications.** TriMet and its contractors shall work in close cooperation with Clackamas County Partners and Local Service Providers during preparation of final engineered documents and will submit all documents, including plans and specifications, for official Clackamas County Partner and Local Service Providers review at the milestones designated for the parties.

Clackamas County Partners and TriMet shall cooperate and exercise good faith efforts to provide documents, review and comment, and resolve comments on plans and specifications so that the project schedule milestones are met. The current milestone project schedule is identified in **Exhibit A – Project Schedule & Milestones**, attached hereto and fully incorporated by this reference. Should the schedule be revised in the future, the parties agree to make best efforts to comply with the updated schedule milestones.

The parties understand that Clackamas County Partners' review times shall not commence until all elements appropriately included at each stage are incorporated into the submission at a level of detail that allows effective and efficient review by Clackamas County Partners. Clackamas County Partners shall use their best efforts to minimize the review times.

The review at the Issued for Construction (IFC) stage is intended only to verify that the revisions identified at the previous review stage have been completed. The 100% review shall be accomplished within 15 working days, unless otherwise agreed between Clackamas County Partners and TriMet. Changes required by Clackamas County Partners at the IFC stage may be incorporated by change order into construction documents. TriMet shall maintain records of all comments received from reviews done by Clackamas County Partners, including TriMet response and action taken.

- F. Preliminary List of Anticipated Project Approvals.** TriMet's Project Manager, or designee, shall work with the County's Project Manager, or designee, to develop an agreed upon list of permits and approvals necessary for Project construction. The list shall include but not be limited to: (1) conditional use approvals, (2) zoning adjustments (3) sign encroachment variances or waivers, (4) design review permits, (5) building and/or construction, (6) parking during construction, (7) variances, and (8) occupancy permits.
- G. Real Property Acquisition/Relocation Assistance.** TriMet shall be solely responsible for the acquisition process of property for the Project, including property that will eventually become County right-of-way. TriMet shall also be responsible for providing any relocation assistance required for the Project, and any relocation assistance shall be pursuant to the Uniform Relocation Assistance Act, and other applicable Federal, State, and local laws.
- H. Relocation of Privately-Owned Utilities.** The County shall use its best efforts to cause relocation of privately-owned utilities without cost to the County or Project, as provided in Article IV, paragraph C below. However, if the County does not have the legal authority or power to cause such relocation, TriMet, without cost to the County, shall effect relocation of

existing privately-owned utility facilities as necessary to conform utilities or facilities to the plans for the Project. The cost of relocating in-kind publicly owned utilities for purposes of the Project shall be at TriMet's expense or shared between the parties as provided in this Agreement. The parties understand that relocation in-kind does not include betterment(s) of the existing facilities.

- I. **Inspecting Relocated Utility Placement.** TriMet shall also allow Clackamas County Partner engineers and/or inspectors or consulting engineers/inspectors to inspect any relocation of utility conduits, lines, poles, mains, pipes, and other facilities (including stray current mitigation measures) in order to determine whether they have been relocated or installed in accordance with the contract documents and this IGA. All abandoned utilities shall be reviewed and approved by Clackamas County Partners engineers and/or inspector consistent with County-standard practices.
- J. **County Fiber Relocation.** TriMet will pay reasonable costs associated with the relocation of Clackamas County's existing fiber optic cable system as set forth in the Agreement between the Parties for Relocation of Fiber Optic Cable, dated September 27, 2013. Any Betterment work related to fiber relocation will be the responsibility of the County under Article V, Paragraph L (Betterments/Cost Sharing) of this Agreement.

ARTICLE IV – CLACKAMAS COUNTY PARTNERS' OBLIGATIONS

- A. **Creating Design Standard.** The Clackamas County Partners and TriMet agree that final design of the Project will utilize the 100% preliminary engineering documents, together with Clackamas County Partners' comments, as the starting point for final design.
- B. **Maintaining Project Schedule.** The Clackamas County Partners agree to use good faith efforts to assist TriMet in maintaining the Project schedule. To this end, Clackamas County Partners' staff shall assist TriMet with all permit/approval processes including, but not limited to, scheduling all hearings and briefings before the Board of County Commissioners, or other necessary entities as provided in the Clackamas County Code.
- C. **Relocations in Right-of-Way.** The Clackamas County Partners, at TriMet's expense unless otherwise apportioned in this Agreement, shall relocate, cause to be relocated, or assist in the relocation of all Clackamas County Partner-owned conduits, lines, poles, mains, pipes, and other facilities, whether located within the public right-of-way or not, as required by the Project. The Project documents shall include all relocations necessary to conform facilities to the Project. The Clackamas County Partners shall endeavor to conduct this relocation work in accordance with the Construction Phasing/Scheduling Plan for the Project as noted in Article VI.

The County shall cause the owners of privately owned utility conduits, lines, poles, mains, pipes and other facilities in or on County streets or rights-of-way to relocate their facilities at the expense of said privately owned utilities as necessary to conform to the Project, to the extent the County has the power to do so. The County shall endeavor to cause this relocation work to be accomplished in accordance with Construction Phasing/Scheduling Plan for the

Project noted in Article VI.

The County shall allow TriMet participation in review of utility relocation plans submitted by public and private utilities for the alignment area. The County shall also allow TriMet engineers or inspectors or consulting engineers or inspectors to inspect any relocation of utility conduits, lines, poles, mains, pipes, and other facilities in order to determine whether they have been relocated in accordance with the plans of the Project and County standard practices.

- D. Issuing Permits.** In accordance with the provisions of this Agreement, the Clackamas County Partners shall issue all necessary permits for the Project, which shall permit Project construction based on the end products referred to in Article VI. The Clackamas County Partners agree to utilize good faith efforts toward this end.
- E. End Products.** The Clackamas County Partners agree to provide the end products identified as their responsibility in Article VI of this Agreement, or a reasonable substitute product as agreed by the parties.
- F. Coordination of Local Partner Issues.** The County Project Manager, or designee, shall coordinate comments from the Clackamas County Partners and shall assist in resolution of all Project issues raised by any Clackamas County Partner.
- G. Managing Services within the Budget.** The County Project Manager, or designee, shall exercise good faith efforts to manage the Clackamas County Partner services within the budget specified in this Agreement.
- H. Trolley Trail Agreement:** TriMet shall, in good faith, negotiate with North Clackamas Parks and Recreation District (NCPRD) to craft a partnering agreement for design, construction, operation, and future maintenance of the Segment 2 of the Trolley Trail.
- I. Park Avenue: Nature in the Neighborhood Grant:** TriMet shall continue to coordinate with Local Partners and citizens to ensure Park Avenue Station, and associated amenities, are designed in a manner to achieve the objectives of Metro's Nature in the Neighborhood grant criteria and the reasonable expectations of the community.

ARTICLE V – LOCAL PARTNER SERVICES TO BE PROVIDED

- A. Ensuring No Adverse Affects to County.** The Clackamas County Partners have and shall provide services in conjunction with the Project's final design and construction as described in this Article. The Clackamas County Partners' services are intended to ensure: (1) that the Clackamas County Partners' facilities and operations within the Project's right-of-way are adequately provided for; (2) that the Clackamas County Partners' facilities and operation outside the Project's right-of-way are not adversely affected; (3) that vehicular, bicycle and pedestrian traffic is adequately provided for; and (4) that the public health, safety, and welfare, including without limitation aesthetic, environmental, and commercial values, are

not adversely affected.

B. Clackamas County Partner Services – General. Each Clackamas County Partner with Code authority or other responsibility over the Project shall provide to TriMet the following services:

1. Supply copies of all available file data on all existing facilities as requested by TriMet for the Project. The Clackamas County Partners have found the completeness and accuracy of this file information to be inadequate when used as the sole basis for design and construction purposes and recommend verification before incorporation into any final design. Any reliance on the data by TriMet shall be at its own risk.
2. Review, comment on and approve Project plans as provided for in this Agreement.
3. Cooperate with the County's Project Manager, TriMet's Project Manager, and Clackamas County Partner and TriMet designated representatives as reasonably necessary to assist in the timely and proper completion of the Project and to perform obligations required under this Agreement.
4. Review, require revisions to, and approve the Project plans as provided for in this Agreement.
5. Cooperate fully with the County's Project Manager, TriMet's Project Manager, and Clackamas County Partner and TriMet designated representatives as reasonably necessary to assist in the timely and proper completion of the Project.
6. Assist TriMet in reviewing, designing, permitting and constructing the Project elements that will be built in Clackamas County. Tasks performed by the Clackamas County Partners may include, but not be limited to, the following:
 - (a) Participate in Technical Advisory Committee meetings;
 - (b) Participate in Project Team Leaders meetings;
 - (c) Participate in Design Team meetings
 - (d) Participate in Project Management Group meetings;
 - (e) Attend and participate in community design meetings associated with the Project, with specific attention related to meetings associated with the Trolley Trail, Park Avenue Station and the park and ride structure at Park Avenue;
 - (f) Participate in other meetings as deemed necessary;
 - (g) Participate in preparation of, and review and comment on, the 60%, 90% and final design, and Issued for Construction drawings; and

C. Compliance with Applicable Laws and Standards. Any obligation to review or issue permits as set forth in this Agreement is subject to the compliance of the proposed permit with applicable laws and standards, and such processes as are required by law, including the 1996 Act. Staff will exercise good faith efforts towards timely issuing approvals and permits.

D. Department of Transportation and Development (DTD).

1. DTD Services - General. Under the coordination of the County's Project Manager, the Department of Transportation and Development shall provide services as described below:
 - (a) Act as the lead County agency in carrying out the County's obligations and exercising the County's rights under this Agreement.
 - (b) Provide as necessary, services of the County's Project Manager and other positions as identified in the Agreement.
 - (c) Assist TriMet in coordinating the relocation of all County publicly owned utilities.
 - (d) Assist in and coordinate all plan reviews, including structures.
 - (e) Assist in resolution of all design and construction issues.
 - (f) Coordinate and track compliance with all County permits.
2. Engineering Division. Under the coordination of the County's Project Manager, the County's Engineering Division shall provide services as described below:
 - (a) Assign a single Project Coordinator/point of contact for all work performed under this Agreement, and coordinate all work and information covered under this Agreement with the County's Project Manager.
 - (b) Review, require revisions to, and approve plans for all traffic signaling devices, parking meter relocations, pavement markings, traffic signs, utility work and any other work in the County right-of-way that affects vehicular, bicycle and/or pedestrian traffic. Notify the County's Project Manager, or designee, of all required revisions, for forwarding to TriMet.
 - (c) Participate in the review and approval of construction phasing plans.
 - (d) Review, require revisions to, and approve plans for all street lighting facilities. Notify the County's Project Manager, or designee, of all required revisions, for forwarding to TriMet.

- (e) Develop, in cooperation with TriMet, a Traffic Diversion Monitoring plan, which includes the County performing baseline data collection and diversion monitoring during construction.
 - (f) Review and approve plans for street trees.
3. Planning Division. Under the coordination of the County's Project Manager, the Planning Division shall provide services as described below:
- (a) Assign a single Project Coordinator/point of contact for all work performed under this Agreement, and coordinate all work and information covered under this Agreement with the County's Project Manager, or designee.
 - (b) Provide additional public involvement and outreach as specifically requested by the County's Project Manager and TriMet at TriMet's expense.
 - (c) Assist in the identification of all Project elements located outside of County right-of-way requiring a land use approval. Assist in the processing of the land use approvals for the Project elements needing those approvals and/or permits. Review of these portions of the system shall be conducted according to the requirements of the pertinent laws. Review times shall conform to the requirements of law. The County shall exercise good faith efforts to review Project plans and specifications in a timely manner, consistent with the Project schedule. Upon satisfactory completion of this and other reviews required by this Agreement, the County shall issue necessary permit(s).
 - (d) Perform design, greenway, environmental reviews and other land use review as required.
 - (e) Perform zoning code enforcement as needed.
 - (f) Assist with assignment of addresses for payphones, buildings and stations.
7. Building Division. Under the coordination of the County's Project Manager, the Building Division shall provide services as described below:
- (a) Assign a single Project Coordinator/point of contact for all work performed under this Agreement, and coordinate all work and information covered under this Agreement with the County's Project Manager, or designee.
 - (b) Assist in the identification of all Project elements located outside of County right-of-way requiring a building, plumbing, electrical, and/or mechanical permit. Assist in the processing of such permits for the Project elements needing those approvals and/or permits. Review of these portions of the system shall be conducted according to the requirements of the Oregon State Specialty Codes, appropriate NFPA standards, and pertinent portions of

County Code Title 9. Review times shall conform to the requirements the County Code. The County shall exercise good faith efforts to review Project plans and specifications in a timely manner, consistent with the Project schedule. Upon satisfactory completion of this and other reviews required by this Agreement, the County shall issue necessary construction permit(s).

- (c) Review and comment on recommended changes to plans for the portion of TriMet's electrical systems subject to state jurisdiction under new electrical rules proposed by the Division of Consumer and Business Services for fixed guideway rail systems.
- (d) Review and issue permits as needed for the Project such as retaining wall, sign, building, plumbing, and electrical.
- (e) Perform building, plumbing and electrical permit inspections, as needed.
- (f) Perform building, plumbing and electrical code enforcement, as needed.

E. North Clackamas Parks and Recreation District (NCPRD). Under coordination with the County's Project Manager, NCPRD shall provide services as described below:

- 1. Assign a single Project Coordinator/point of contact for all elements of design and construction for Segment 2 of the Trolley Trail constructed in conjunction with the Project, and coordinate all work and information covered under this Agreement with the County's Project Manager, or designee. The parties recognize and agree that a separate agreement will be negotiated for the design, construction, operation, and future maintenance of Segment 2 of the Trolley Trail, as referenced in Article IV Section J above.

F. Other County Divisions & Departments. Other County Divisions & Departments with Code authority or other responsibilities over the Project shall provide the required services necessary to carry out their responsibilities as defined by the County Code. Compensation shall be under the County Code on a fee basis or as set forth in this Agreement.

G. COMPENSATION.

- 1. Generally. Except as otherwise provided in this Agreement, compensation to the Clackamas County Partners shall be based on staff time expended rendering the services required by this Agreement, except that in cases where division fees are required by law or specified in an agreement between the parties, compensation for the service shall be based solely on the fees required by law or as specified by agreement.
- 2. Fees Required by Law.

- (a) Permit and application fees will be charged as required by law, and paid in conjunction with issuance of the applicable permits.

3. Final Design and Construction Services.

- (a) Further compensation will be provided for services rendered by the Clackamas County Partners during final design and construction. The Clackamas County Partners' compensation for services provided during final design and construction under this Agreement shall not exceed the amounts listed in subsection (c) below, without prior written authorization from TriMet. This amount is based upon the staffing plan for final design and construction services contained in **Exhibit B**, attached. In the event Clackamas County Partners' actual costs reach these maximum amounts, then the Clackamas County Partners shall be released from performing further services under this Agreement to the extent that TriMet fails to approve an increase in the maximum costs.
- (b) TriMet recognizes that the amounts listed in subsection (c) below are initial budget amounts and may change due to the preliminary nature of the data on which they are based. TriMet agrees not to withhold the timely approval of additional resources without cause, subject to available budget. Additionally, the parties agree that line item budgets may be reallocated within this Agreement when approved by the Clackamas County Partners' and TriMet Project Managers, so long as the overall approved budget amount of this Agreement is not exceeded.
- (c) Estimated Maximum Costs for Clackamas County Partners' Services. Services provided by the Clackamas County Partners and the costs to TriMet under this Agreement, other than permit or application fees set out by law or separate agreement, shall not exceed \$399,743.89 unless the parties execute a modification signed by authorized representatives. Such services shall be provided on a reimbursable cost basis and are estimated as follows:

Project Coordination	\$210,964.96
Building Department	\$3,567.74
Department of Transportation and Development (DTD)	
Administration	\$2,496.20
Land Use & Zoning/Long Range Planning	\$9,321.20
Engineering	\$142,497.54
CCSD #5 – Street Lighting	\$1,276.60
NCPRD	\$9,119.65
Surveyor	<u>\$20,500.00</u>
Total	\$399,743.89

H. Method of Payment. Subject to the limitations stated in this Agreement, TriMet agrees to pay the Clackamas County Partners' actual costs for the performance of the services required herein. The actual cost shall include direct salary costs, fringe benefits, direct non-salary costs, and general overhead to be determined as follows:

- (1) Direct Salary Costs and Fringe Benefits. The cost of salaries, wages, and fringe benefits are determined as follows:
 - (a) Actual time computed at the applicable hourly payroll rate and fringe benefits earned with actual time. The County's salary rates for any time period shall be as set out in the official County Compensation Plan or as amended by the Board of County Commissioners for the particular period.
 - (b) Charges in addition to (a) above for vacation, sick leave, holiday, jury duty, and bereavement leave are authorized but shall be charged to the Project only in proportion to the time devoted to the Project.
- (2) Direct Non-Salary. Those reasonable costs directly incurred in fulfilling the terms of this Agreement, including, but not limited to, reproduction, telephone long distance, equipment rentals, and purchase of outside services requested by TriMet.
- (3) General Overhead. The Clackamas County Partners shall charge for general overhead as provided by the Federal Acquisition Regulations (FARs), as deemed necessary.

I. Invoices. With the exception of those services provided on a fee basis to TriMet's contractor(s), or reimbursement for expenses incurred to date, the County shall submit to TriMet monthly billings for reimbursable costs and fees based upon costs that have been incurred since the previous billings. TriMet shall pay the County the balance due within thirty (30) days of receipt of such billings. Financial reports accompanying requests for reimbursement shall be in accordance with FTA requirements. TriMet shall review records for suitability and provide assistance as necessary to assure compliance with FTA requirements.

- (1) Invoices shall be supported by current time reports for each month. The Project Managers shall review the invoices and billings against the Project budget to provide real time cost tracking and budget management.
- (2) The County Project Manager shall oversee the work of the Clackamas County Partners to the end that their work is completed within the budget for that work.
- (3) Overtime premium (pay in excess of straight time) after Clackamas County Design Review approval for Phase I shall be minimal and will relate to community meetings or inspections outside normal operating hours; or in the event of an emergency (such as structural damage to the sanitary sewer or any event where sewage is released from the sewer system is considered an emergency).

(4) The fringe rate applied to overtime hours shall be an adjusted rate such that items are not included in both the regular hour fringe rate and the overtime fringe rate, unless such allocation is approved by TriMet.

(5) Upon receipt of payment from TriMet, the County will distribute funds to reimburse the Clackamas County Partners under this Agreement.

J. Additional Services. TriMet will not pay any claim for additional services not specifically provided for herein, unless agreed to mutually by written modification of this Agreement.

K. Status of Contractor. The Clackamas County Partners shall perform this Agreement as independent contractors, and their respective staff shall not be deemed employees of TriMet.

L. Betterments/Cost Sharing. The Clackamas County Partners agree to share in certain costs of the Project, as provided in the Project Funding Agreements between the Clackamas County Partners and TriMet, and as further identified in this Agreement. In addition, the Clackamas County Partners agree that they shall specify and provide or pay all costs for any Betterments (defined below) that are incorporated into the Project at the request of the Clackamas County Partners. The parties shall, through modification of this Agreement, negotiate the work scope and cost of such Betterments prior to TriMet proceeding with the design and construction of such Betterments. As used in this Agreement, "Betterment" shall mean:

- a. Replacement of existing infrastructure with new where the existing infrastructure is beyond its useful life; or
- b. Replacement of existing infrastructure materials or facilities with a more costly kind, size or type of material or facility that constitutes an unnecessary upgrade requested by a Clackamas County Partner, but not required for compliance with rules, regulations, laws and standards applicable to the Project. Providing new sleeves for pipeline crossings through TriMet designated future no-dig areas is not considered a betterment. Strengthening pipelines for loads imposed by the Project's facilities is not considered a betterment.
- c. If the facility is near the end of its useful life, "Betterment" shall include that portion of the cost associated with replacing new that is equivalent to the portion of the expended useful life when compared to the entire useful life.

"Betterment" does not include any item identified as a Local Enhancement in the Supplemental Agreement entered into between the County and TriMet in August, 2012.

ARTICLE VI -- END PRODUCTS

A. Purpose. This Agreement is intended to enable TriMet, with Clackamas County Partner assistance, to perform all tasks necessary to ensure the successful design, construction, operation and maintenance of the Project. Additionally, it allows for integration of Project

facilities into the Clackamas County Partners' existing public and private improvements in a manner that ensures the protection of the public health, safety, and welfare. TriMet and the Clackamas County Partners acknowledge that amendments to this Agreement may be necessary to reflect changing conditions.

The purpose of this Article is to identify the end products that TriMet and the Clackamas County Partners cooperatively must produce or accomplish to accommodate construction of the Project. The list of end products identified in this Article is not all-inclusive. The Clackamas County Partners or TriMet may identify other required end products during final design. The parties may produce or accomplish individual end products at any time between the date this Agreement becomes effective and the issuance of the Construction Permit(s). Prior to issuance of the Construction Permit(s), the Clackamas County Partners will require the production or accomplishment and approval of all end products identified herein or added hereto.

B. End Products. The lead agency designated for the following end products shall have primary responsibility for initiating and accomplishing those end products. It is understood, however, that the accomplishment of the end products will require the cooperative efforts of all parties, and TriMet and the Clackamas County Partners agree to utilize their best efforts to this end.

(1) Detailed Final Plans and Specifications

Lead Agency: TriMet

- (a) Baseline Project
- (b) Utility, Water, Sanitary and Storm Sewers relocation, as required.
- (c) Traffic, Parking and Loading Zone Control Facilities
- (d) Public Utility Relocations Plans. Private utility plan and specifications will be completed by the private utilities themselves.
- (e) County Requested Extra Work. Plans, specifications and bid documents for any such extra work shall be structured so that actual bid prices, construction costs, extra billings, post construction claims, and any and all other cost items are clearly separated from the baseline Project costs.

(2) Permitting For Construction

Lead Agency: Clackamas County Partners
and Local Service Providers

Within the framework established by House Bill 3478 (Oregon Laws 1996, Chapter 12), design and permit approvals involving:

- (a) Those Clackamas County Partners with County Charter or County Code Responsibility
- (b) Sewer, Water, Utility Relocations
- (c) Improvements within public right-of-way unrelated to Project
- (d) Private property improvements unrelated to Project
- (e) Board of County Commissioners

(3) Construction Phasing/Scheduling Plan

Lead Agency: TriMet

- (a) Project Overall
- (b) Sewer, Water, Utility Relocations windows
- (c) Improvements within public right-of-way unrelated to Project
- (d) Private property improvements unrelated to Project

(4) Public Information/property owner liaison plan Lead Agency: TriMet

(5) Conduct of Construction Plan Lead Agency: TriMet

- (a) Protection of public and private property provisions
- (b) Dirt/Debris/Noxious Weed/Tree Removal Mitigation Provisions
- (c) Construction Drainage and Erosion Control provisions
- (d) Construction Zone Traffic Control Provisions
 - (1) Traffic Control
 - (2) Temporary street closures
 - (3) Emergency vehicle access
 - (4) Construction staging
- (e) Construction Zone Private Property Access Provisions
 - (1) Through pedestrian/bicycle traffic
 - (2) Building-pedestrian access
 - (3) Driveway/Loading Zone Access
- (f) Provisions to assure the protection of pedestrians, bicycles and vehicles using the LRT corridor
- (g) Provisions for days of the week, hours of the day construction activity may proceed
- (h) County Noise Control Variance Provisions
- (i) Provisions for Construction Restriction during special civic events
- (j) Provisions for conflict resolution between Project contractors and contractors performing public or private work unrelated to the Project

(6) Property owner/TriMet/County three-party agreements Lead Agency: TriMet

(7) Liability/Insurance Agreement Lead Agency: TriMet

- (a) During Construction
- (b) Between construction completion and County acceptance of the Project and assumption of ongoing maintenance responsibilities for components in the public right-of-way

(8) Record Drawings. Lead Agency: TriMet

Record drawings will be produced by TriMet and distributed to the Clackamas County Partners and Local Service Providers within 120 days of completion of the work. Record Drawings for infrastructure accepted by Clackamas County Partners shall be provided with the designations required by the receiving entity and have dimensions in customary "English" units of measure.

ARTICLE VII - PROJECT POLICY AND MANAGEMENT

- A. Project Steering Committee.** The Project Steering Committee will be retained through the design and construction phases of the Project as described in Section 2.2 of the Portland-Milwaukie Light Rail Project Intergovernmental Grant Agreement between TriMet, Clackamas County, Clackamas County Development Agency and North Clackamas Parks and Recreation District, as it may be amended from time to time.
- B. Project Management Group (PMG).** The Project Management Group will be retained through the design and construction phase of the Project as described in Section 2.1 of the Portland-Milwaukie Light Rail Project Intergovernmental Grant Agreement between TriMet, Clackamas County, Clackamas County Development Agency and North Clackamas Parks and Recreation District, as it may be amended from time to time.
- C. Project Management**
- (1) **Project Managers.** TriMet designates Leah Robbins as its Project Manager and the County designates Dan Chandler as its Project Manager. The Project Managers shall be responsible for coordinating all aspects of their respective work scopes for the Project and all the respective employees, consultants and contractors assigned to the Project. The Project Managers shall ensure that the Project and tasks related thereto are completed expeditiously and economically, shall be the contact persons through whom TriMet and the Clackamas County Partners officially communicate, and shall have the authority to make decisions and resolve disputes relating to the Project. In the event that a disagreement or dispute occurs between the Project Managers, they shall refer it to TriMet's Executive Director of Capital Projects and the County's Director of the Department of Transportation for resolution.
 - (2) **Clackamas County Partner project engineers.**
 - (a) The Clackamas County Partners shall assign project engineers, reporting to the County's Project Manager, with the required engineering experience, ability, and skills necessary to perform the following tasks:
 - (1) Have access to the Clackamas County Partner, County Project Manager, and TriMet's Project Director and Manager.
 - (2) Inform the Clackamas County Partner and County Project Manager of TriMet's Project staffs' decisions.
 - (3) Inform Project staff of progress of required Clackamas County Partner approvals and work on end products.
 - (4) Assist TriMet in coordinating privately-owned utility relocation.

- (5) Prepare a schedule interfacing Clackamas County Partner or Clackamas County Partner-permitted work with Project work.
- (6) Assist TriMet in gathering information in a timely manner from Clackamas County Partners' staff and assist TriMet's Project staff in understanding the information.
- (7) Assist TriMet in obtaining required end products and approvals.
- (8) Advise TriMet of documentation necessary to obtain Clackamas County Partner approvals and permits.
- (9) Advise and assist TriMet in accomplishing Clackamas County Partner issuance of the necessary permits.
- (10) Assist assigned TriMet design lead persons as necessary so that final design is accomplished in accordance with Project schedule milestones, budget and identified quality standards.
- (11) Provide field and/or office engineering functions during construction, as part of the assigned TriMet and Clackamas County Partners' resident engineer staff responsible for overseeing a particular construction contract.
- (12) Report to the assigned TriMet design or construction lead and interface with Project consultants or subconsultants only as permitted by the assigned TriMet lead person.

ARTICLE VIII - GENERAL PROVISIONS

- A. Compliance with Law.** The parties recognize that funds provided by FTA will be used to pay for a portion of the Project. Each party agrees to comply with all local, state and federal laws and regulations and fully understands and agrees to comply with all applicable requirements governing work of FTA contractors.
- B. Federal Funding Limitation.** To the extent applicable to each of the respective parties, this Agreement is subject to all federal provisions prescribed for third-party contracts by the federal grant agreement.
- C. Liability.** TriMet shall hold harmless and indemnify the Clackamas County Partners, their officers, directors, agents, and employees against any and all liability, settlements, losses, costs, and expenses in connection with any action, suit, or claim arising out of TriMet's errors, omissions, fault or negligence under this Agreement within the maximum liability limits set forth under the Oregon Tort Claims Act. The Clackamas County Partners shall hold harmless and indemnify TriMet and its officers, directors, agents, and employees against any and all liability, settlements, losses, costs, and expenses in connection with any action, suit, or claim arising out of the errors, omissions, fault or negligence of the Clackamas County

Partners under this Agreement within the maximum liability limits under the Oregon Tort Claims Act.

1. Each party shall give the other immediate written notice of any action or suit filed or any claim made against that party which may result in litigation in any way related to this Agreement.
2. Each party agrees to maintain insurance levels, or self-insurance in accordance with ORS 30.282, for the duration of this Agreement at levels necessary to protect against public body liability as specified in ORS 30.270.

D. Interest of Members of Congress. No member of or delegate to the Congress of the United States shall be admitted to any share or part of this Agreement or to any benefit arising therefrom.

E. Interest of Public Officials. No member, officer, or employee of the Clackamas County Partners or TriMet during his or her tenure or for one year thereafter shall have any interest, direct or indirect, in this Agreement or the proceeds thereof.

F. Disadvantaged Business Enterprise. In connection with the performance of this Agreement, the Clackamas County Partners will cooperate with TriMet in meeting TriMet's commitments and goals with regard to the maximum utilization of disadvantaged business enterprises and will use its best efforts to ensure that disadvantaged business enterprises shall have the maximum practicable opportunity to compete for subcontract work under this Agreement. TriMet and the Clackamas County Partners may desire to enter into an agreement whereby the Clackamas County Partners provide technical assistance for the DBE efforts. In the event an agreement is reached on the scope and budget for this work, the parties will modify this Agreement to provide for such scope and budget.

G. Equal Employment Opportunity. In connection with the execution of this Agreement, neither the Clackamas County Partners nor TriMet shall discriminate against any employee or applicant for employment because of race, religion, color, sex, age, or natural origin. Such actions shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; raise or pay or other forms of compensation; and selection for training, including apprenticeship.

H. Public Contracting Requirements. To the extent applicable, the provisions of ORS Chapter 279 are incorporated by this reference as though fully set forth.

I. Relationship of the Parties. Each of the parties hereto shall be deemed an independent contractor for purposes of this Agreement. No representative, agent, employee or contractor of one party shall be deemed to be a representative, agent, employee or contractor of the other party for any purpose, except to the extent specifically provided herein. Nothing herein is intended, nor shall it be construed, to create between the parties any relationship of principal and agent, partnership, joint venture or any similar relationship, and each party hereby specifically disclaims any such relationship.

J. No Participation. No party or its employees is entitled to participate in a pension plan, insurance, bonus, or similar benefits provided by any other party.

K. Not Used.

L. Termination for Default. If the Clackamas County Partners materially breach this Agreement, TriMet may terminate this Agreement in the manner set forth in this Section. The Clackamas County Partners will be paid only the Agreement price for services performed in accordance with the manner of performance set forth in this Agreement.

If it is later determined by TriMet that the Clackamas County Partners have an excusable reason for not performing, such as a strike, fire, flood, or events which are not the fault of, or are beyond the control of the Clackamas County Partners, TriMet shall establish a new performance schedule, and allow the Clackamas County Partners to continue work.

If TriMet materially breaches this Agreement, the Clackamas County Partners may terminate this Agreement in the manner set forth in this Section.

If it is later determined by the Clackamas County Partners that TriMet has an excusable reason for not performing, such as a strike, fire, flood, or events which are not the fault of, or are beyond the control of TriMet, the Clackamas County Partners shall allow TriMet to continue work.

In the event TriMet fails to pay the Clackamas County Partners for the services provided under this Agreement, such failure shall be deemed a material breach of this Agreement.

Prior to exercising its right to terminate this Agreement for a material breach by the other party, the terminating party must provide 60 calendar days written notice of the material breach to the representative of the other party in accordance with the Notice provision of this Agreement. The notice must include a detailed explanation of the breach, and during this 60 day period, the breaching party may cure the material breach ("Cure Period"). If at the end of the Cure Period the breaching party has not cured the material breach or, if the material breach is one that cannot be cured within 60 days, has not made good faith efforts toward curing the breach, the terminating party may terminate this agreement for default and seek all remedies available at law or in equity.

M. Maintenance of Records. The Clackamas County Partners shall maintain records to show actual time involved in accomplishment of the Project and the cost incurred for the period of time specified. The Clackamas County Partners shall cooperate in good faith with TriMet and the FTA to provide records in a form satisfactory to FTA. TriMet shall take the lead and provide assistance to the Clackamas County Partners as necessary for compliance with FTA requirements. TriMet shall notify the Clackamas County Partners of the date the Project grant ends, to assist them in calculating the length of time they must keep records under the law.

N. Audit and Inspection of Records. The Clackamas County Partners shall permit the

authorized representatives of TriMet, the United States Department of Transportation, and the Comptroller General of the United States to inspect and audit all data and records of the Clackamas County Partners relating to its performance under this Agreement. TriMet shall be responsible for all auditing costs incurred by TriMet or Clackamas County Partners to conduct its audits under this Agreement.

- O. Documents.** All records, reports, data, documents, systems, and concepts, whether in writings, figures, graphs, or models which are prepared or developed in connection with the Project shall become public property. All design drawings and documents prepared by the Clackamas County Partners' staff under this Agreement shall be property of TriMet. Nothing herein shall prevent the Clackamas County Partners from retaining original design drawings and providing reproducible copies to TriMet.
- P. Debt Limits.** To the extent required by law, this Agreement is expressly subject to the debt limitation of Oregon Counties set forth in Article XI, Section 10 of the Oregon Constitution, and is contingent upon funds being appropriated therefore.
- Q. Amendments.** This Agreement embodies the full agreement between the parties with regard to the subject matters set forth herein, unless amended by a writing signed by the parties. The Board of County Commissioners delegates to the Project Manager/Project Representative the authority to sign amendments to this Agreement that affect the total financial commitment up to \$25,000.00. The Board of County Commissioners also delegates to the Project Manager/Project Representative the authority to sign amendments to this Agreement that affect procedural aspects of the delivery of services described in Article V, if necessary.
- R. Authority.** Each party represents that it has the authority to enter into this Agreement on its behalf and the individual signatory for a party represents that it has been authorized by that party to execute and deliver this Agreement.
- S. Third Party Beneficiary.** The Clackamas County Partners and TriMet are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are expressly described as intended beneficiaries of the terms of this Agreement.
- T. Successors and Assigns.** The benefits conferred by this Agreement, and the obligations assumed hereunder, shall inure to the benefit of and bind the successors of the parties. The rights and obligations of each party under this Agreement may not be assigned in whole or in part without the prior written consent of the other party.
- U. Governing Law, Disputes.** This Agreement shall be construed according to the laws of the State of Oregon. TriMet and the Clackamas County Partners shall negotiate in good faith to resolve any dispute arising under this Agreement. Should any dispute arise between the parties concerning this agreement that is not resolved by mutual agreement, it is agreed that it will be submitted to mediated negotiation prior to any party commencing litigation. In such an event, the parties to this agreement agree to participate in good faith in a non-binding mediation process. The mediation shall take place in Portland, Oregon.

The mediator shall be selected by mutual agreement of the parties, but in the absence of such agreement each party shall select a temporary mediator and those mediators shall jointly select the permanent mediator. Each party shall bear its own costs and expenses, but the mediator's fees and costs shall be borne equally by the Parties. In the event mediation is unsuccessful, the Parties are free to pursue any legal remedies that may be available. Any litigation between the Clackamas County Partners and TriMet arising under this Agreement or out of work performed pursuant to this Agreement shall occur, if in the state courts, in the Multnomah County Circuit Court, and if in the federal courts, in the United States District Court for the District of Oregon located in Portland, Oregon.

V. Survival. If any clause, sentence, or portion of the terms and conditions of this Agreement becomes illegal, null, or void for any reason, the remaining portions will remain in full force and effect to the fullest extent permitted by law. All provisions concerning indemnity survive the termination of this Agreement for any cause.

W. Headings. Any titles of the sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

X. Remedies. Except as otherwise expressly provided herein, the rights and remedies expressly afforded under the provisions of this Agreement shall not be deemed exclusive, and shall be in addition to and cumulative with any and all rights and remedies otherwise available at law or in equity. The exercise by either party of any one or more of such remedies shall not preclude the exercise by it, at the same or different times, of any other remedies for the same default or breach, or for any other default or breach, by the other party.

Y. Notice. All routine correspondence and communication regarding this Agreement shall be between the following representatives of the Parties:

TriMet: Leah Robbins
710 NE Holladay Street
Portland, OR 97232
Telephone: (503) 962-2264
Fax: (503) 962-2283

With copy to: TriMet Legal Department
710 NE Holladay Street
Portland, OR 97232
Attn: Lance Erz
Telephone: (503) 962-2108
Fax: (503) 962-2299

The Clackamas County Partners:
Clackamas County
Administration
Public Service Building
Attn: Dan Chandler
2051 Kaen Road

Oregon City, OR 97045
Telephone: (503) 742-5918

With copy to:

Clackamas County Counsel
Public Service Building
2051 Kaen Rd.
Oregon City, OR 97045

Either party may change the foregoing notice address by giving prior written notice thereof to the other party at its notice address.

**Board of Commissioners
County of Clackamas**

**Tri-County Metropolitan Transportation
District of Oregon**

By: _____
John Ludlow, Chair

By: _____
Daniel W. Blocher, P.E., Executive Director

Date: _____

Date: _____

Mary Raethke, Recording Secretary

Approved as to Form:

Approved as to Form:

By: _____
Clackamas County Counsel

By: _____
TriMet Legal Department

**Board of County Commissioners
Acting as the Governing Body of the
North Clackamas Parks and Recreation
District**

By: _____
John Ludlow, Chair

Date: _____

Mary Raethke, Recording Secretary

Approved as to Form:

By: _____
District Counsel

Exhibit List

- Exhibit A – Project Schedule & Milestones**
- Exhibit B – Clackamas County Staffing Plan**

Exhibit A – Project Schedule and Timeline

Activity	Date (1)
Complete Preliminary Engineering	March 2010
FTA Issues Final Environmental Impact Statement	Oct 2010
FTA Issues Record of Decision	Nov 2010
FTA Approval to Start Final Design, and Letter of No Prejudice, Construction Starts under LONP	December 2010
Full Funding Grant Agreement Executed by FTA	May 2012
Construction Complete	May 2015
Operations Starts	September 2015

(1) Subject to change based on Final Design, FFGA, and FTA requirements.

Exhibit B
 Portland Milwaukie Light Rail
 Clackamas County Staffing Plan
 June 2011

Division / Position	Total Employee Cost Estimated	10/11 Job Cost Invoice Totals	11/12 Job Cost Invoice Totals	12/13 Job Cost Invoice Totals	13/14 YTD Job Cost Invoice Totals	Total Employee Cost To Date	Remaining Staffing Plan Balance
PROJECT COORDINATION							
PROJECT COORDINATION TOTALS:	\$ 120,464.05	\$ 3,487.53	\$ 33,869.44	\$ 13,492.07	\$ 1,908.07	\$ (52,757.11)	\$ 67,706.94
BUILDING DEPT.							
* BUILDING DEPARTMENT TOTALS:	\$ 3,567.74	\$ -	\$ -	\$ 247.92	\$ -	\$ (247.92)	\$ 3,319.82
DTD ADMINISTRATION							
DTD ADMINISTRATION TOTALS:	\$ 25,121.43	\$ 4,650.00	\$ 18,038.20	\$ 11,510.04	\$ -	\$ (34,198.24)	\$ (9,076.81)
LAND USE & ZONING / LONG RANGE PLANNING							
* LAND USE & ZONING TOTALS:	\$ 9,321.20	\$ 1,539.88	\$ 2,029.45	\$ -	\$ -	\$ (3,569.13)	\$ 5,751.87
ENGINEERING							
DTD ENGINEERING TOTALS:	\$ 210,373.22	\$ 22,085.57	\$ 79,333.90	\$ 82,303.57	\$ 20,895.19	\$ (204,618.23)	\$ 5,754.99
CCSDHS - STREET LIGHTING							
CCSDHS TOTALS:	\$ 1,276.60	\$ 31.91	\$ 1,271.60	\$ 414.31	\$ -	\$ (1,717.82)	\$ (441.22)
NCPRD							
NCPRD TOTALS:	\$ 9,119.65	\$ 4,875.12	\$ 16,712.57	\$ 7,680.43	\$ -	\$ (29,268.12)	\$ (20,148.47)
SURVEYOR							
SURVEYOR TOTALS:	\$ 20,500.00	\$ 3,947.25	\$ 471.25	\$ -	\$ -	\$ (4,418.50)	\$ 16,081.50
GRAND TOTAL:	\$ 399,743.89	\$ 40,617.26	\$ 151,726.41	\$ 115,648.34	\$ 22,803.26	\$ (330,793.27)	\$ 68,948.62

* This amount covers pre-permit coordination. Additional permit fees will be applicable.



10

OFFICE OF THE COUNTY ADMINISTRATOR

PUBLIC SERVICES BUILDING

2051 KAEN ROAD | OREGON CITY, OR 97045

December 12, 2013

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of Continuing Control Agreement
Between Trimet, Clackamas County
and the North Clackamas Park and Recreation District

Purpose/Outcomes	Approval of Agreement Providing Permission for Portland Milwaukie Light Rail to occupy County Right of Way and NCPRD property
Dollar Amount and Fiscal Impact	No fiscal impact to the County or NCPRD -- neither entity claims any ownership of subject property
Funding Source	N/A
Safety Impact	N/A
Duration	For life of Portland Milwaukie Light Rail Project
Previous Board Action	The Board approved placing this matter on the consent agenda at a November 26, 2013 Study Session.
Contact Person	Dan Chandler, Strategic Policy Administrator 503-742-5394

BACKGROUND:

This IGA provides that the Portland Milwaukie Light Rail project can occupy certain rights of way. County staff have determined that neither the County nor NCPRD own any of the affected property. However, the agreement provides some certainty to TriMet, and is required by the Circuit Court decision in TriMetropolitan Service District v. Clackamas County.

RECOMMENDATION:

Staff requests the Board approve the attached IGA.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Dan Chandler".

Dan Chandler
Strategic Policy Administrator

CONTINUING CONTROL PERMIT FOR THE PORTLAND-MILWAUKIE LIGHT RAIL PROJECT

This Continuing Control Permit ("Permit") is issued by Clackamas County ("County") and the North Clackamas Parks and Recreation District ("District") to the Tri-County Metropolitan Transportation District of Oregon ("TriMet") for the construction, operation, and maintenance of the Portland-Milwaukie Light Rail Project ("Project"), under the terms and condition set forth below. TriMet, the County and the District are collectively referred to herein as the "Parties."

PERMIT RECITALS

- A. In July 2008, Metro adopted the Locally Preferred Alternative ("LPA") and the Land Use Final Order for the Project after local jurisdictions including the cities of Portland, Milwaukie and Oregon County along with Clackamas and Multnomah Counties and TriMet and ODOT recommended the adoption of the LPA.
- B. Under the authority of House Bill 3478 (Oregon Laws 1996, Chapter 12, hereinafter the "Act"), on July 24, 2008, the Metro Board adopted a Land Use Final Order for the Project.
- C. On or about October 22, 2010, the Federal Transit Administration ("FTA"), Metro, and TriMet published the Final Environmental Impact Statement ("FEIS") for the Project.
- D. On November 29, 2010, the FTA issued a Record of Decision finding that the requirements of the National Environmental Policy Act have been satisfied for the construction and operation of the project.
- E. On March 29, 2011, the FTA approved the Project's entry into the final design stage of Project development. The design reached 90 percent design in December 2011, and 100 percent design in May 2012.
- F. In May, 2012, TriMet entered into a Full Funding Grant Agreement ("FFGA") with the FTA for acquisition, construction, operation, and maintenance of the Project.
- G. The Project is now under construction, and is scheduled to open for revenue service in September 2015. Upon completion of the Project, TriMet will commence light rail service to areas under the County's jurisdiction.
- H. On February 4, 2010, the County, District, and TriMet entered an intergovernmental agreement ("IGA") regarding the funding, development, and operation of the Project.

- I. In Section 6.2 of the IGA the County, District, and TriMet acknowledged and agreed to comply with FTA's continuing control requirements.
- J. In compliance with Section 6.2 of the IGA, on January 4, 2013 TriMet notified the County Representative that it required a continuing control permit in compliance with FTA requirements.
- K. This Permit is required to be issued pursuant to the Land Use Final Order for the Project.

NOW THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the County and the District issue this Permit under the following terms and conditions:

TERMS AND CONDITIONS

1. To satisfy the continuing control requirements of the FTA as set forth in 49 U.S.C. § 5307(c)(1)(B), the County and the District hereby grant to TriMet a permanent permit over, under, and above only those portions of right-of-way and properties owned by the County and the District, upon which the Project's facilities, features, or both are sited (the "Project Property"), which property is needed for the purpose of construction, operation, and maintenance of the Project. The Project Property is generally set forth in Exhibit A, and does not include any property to be transferred between the District and TriMet under separate agreement.
2. The Parties understand that some of the Project Property set forth in Exhibit A may be under the ownership or control of the City of Milwaukie, and the County and the District make no warranties or representations that they own or control any of the Project Property. However, to the extent that the Project Property is under the ownership or control of the County or District, the County and District agree, subject to the terms of this Permit, to take no action that would interfere with TriMet's continuing control of the Project structures, equipment, or facilities, provided that use by TriMet will be subject to any additional and applicable permit processes with respect to construction and maintenance within the Project Property as provided in this Permit. This grant is irrevocable, except that, in the event TriMet intends to permanently cease to operate the Project on the Project Property, TriMet shall give 60 days prior written notice to County and the District of such intent. Upon receipt of such notice, the County and the District may revoke the continuing control rights granted herein.
3. The Parties agree that the purpose of this Permit is to enable TriMet to construct, maintain, and operate the Project in accordance with Project plans and specifications and the terms of this Permit. The Parties agree that the Project has been constructed utilizing, in part, federal funds provided to TriMet

by FTA pursuant to the FFGA No. OR-03-0126-000, and that the federal government retains a continuing interest in all structures, equipment, and other facilities acquired or constructed with federal funds that may be located in or upon the Project Property generally shown in Exhibit A. TriMet's interest in the Project Property may not be assigned or transferred without FTA's written concurrence.

4. To the extent that the Project Property is under the ownership or control of the County or District, the County and the District shall retain ownership of their respective property and, to the extent permitted by 49 U.S.C. § 5307(c)(1)(B), control of utility easements, property leases, private crossing agreements, and utility franchise rights.
5. TriMet shall include in any third party contract under this Permit a provision to the effect that the contractor shall fully indemnify, hold harmless and defend County, its officers, employees and agents from and against all claims, suits, actions of whatsoever nature, damages or losses, and all expenses and costs incidental to the investigations and defense thereof, including reasonable attorney fees, resulting from or arising out of the activities of such contractor, subcontractor and their officers, employees and agents with respect to the Project Property.
6. Neither the County nor the District shall charge TriMet or the Project a fee for use of or access to the Project Property. However, the Parties acknowledge and agree that if TriMet were to pay for the Project Property, the payments would be costs allowable under a Federal grant. In consideration for the continuing control rights granted herein, TriMet agrees to maintain the Project Property in a reasonable operating condition that does not threaten the health or safety of the general public so long as it operates under this Permit; provided however such maintenance obligations may be assigned to the County and/or District in subsequent agreement(s).
7. To the extent that the Project Property is under the ownership or control of the County or District, the County and the District agree to grant TriMet authority to construct, operate and maintain the Project upon the Property in accordance with the rights afforded herein. The Parties do not anticipate that any ordinances, rules or regulations are necessary to effectuate the rights granted by this Permit, other than the approval of the County Commission and the District Board of Directors. However, in the event that the Parties determine such ordinances, rules or regulations are necessary, prior to adopting or amending such ordinances, rules or regulations, the County and District shall give TriMet an opportunity for review, and to be heard regarding their contents. To the extent not provided in existing ordinances, rules, or regulations, to satisfy the continuing control requirements granted herein, the County and District staff agree to propose for enactment regulations that would:

- A. To the extent feasible, restrict interference associated with impeding or preventing the safe and efficient operation of the Project caused by construction and maintenance activities of private parties on private property and public right-of-way to only temporary interference necessitated by construction activity of the County, District or others.
 - B. Allow TriMet to review and comment on design plans and specifications before permitting construction of any private property driveways or other access ways that turn into or intersect the Project Property. Neither the County nor District shall approve any plan or specification that would prohibit TriMet from constructing, operating, or maintaining light rail on the Property or Project alignment.
 - C. Allow TriMet to review and comment on design plans and specifications before constructing any street or way that turns into or intersects the Project Property. Neither the County nor District shall approve any plan or specification that would prohibit TriMet from constructing, operating, or maintaining light rail on the Project Property or Project alignment.
 - D. Protect the light rail line from interference by parked or other encroaching vehicles. Parking immediately adjacent to the light rail line shall be prohibited.
 - E. Notify TriMet of any proposed future changes by the County or District, or which are proposed to be approved through permit by the County or District, including traffic control measures, that may affect the operation and continuing control of the light rail alignment, and work with TriMet to mitigate the impact of such change on operation of the system.
 - F. Require any utility construction within the light rail system to use methods that, to the extent feasible, allow light rail system operations to continue during construction.
 - G. Grant authority to TriMet to have immediate access to the light rail system in order to perform all required construction, operation, and maintenance of the system, subject to the County or District's design review and permitting process, which may include reasonable and necessary conditions of approval, provided that such process will not prevent the implementation and continuing control of the Project.
8. The Parties understand that temporary interferences for emergencies, construction repairs, and maintenance of streets and other public or private facilities, parades, or civic events may occur, provided that the County or District shall, except in emergency situations where no notice is feasible, provide TriMet with reasonable notice of temporary interference and shall cooperate with TriMet representatives to minimize the interference and, if

possible for portions of the Light Rail alignment that are double-track, provide that only one track is affected by the interference at any one time.

9. This Permit, including any interests herein, shall not be assignable without the County's or District's prior written consent, as applicable. However, if any public body acquires or succeeds TriMet, TriMet's interest, right, and obligations created by this Permit will be assignable by TriMet, with FTA written approval, to the public body that acquires or succeeds TriMet.
10. All notices required under this Permit will be deemed to be properly served if sent by U.S. mail to the last representative of the Party identified below in this paragraph. Until hereafter changed by the Parties by notice in writing, notices shall be sent:

IF TO THE COUNTY:

Dan Chandler
Strategic Policy Administrator
Public Services Building
2051 Kaen Rd
Oregon City, OR 97045

IF TO TRIMET:

Manager of Real Property Acquisition
TriMet
Capital Projects and Facilities Division
1800 SW First Ave., Ste. 300
Portland, OR 97201

11. Any modification to this Permit shall be mutually agreed upon and reduced to writing, and will not be effective until signed by the Parties hereto.
12. Within the limits of the Oregon Constitution and the Oregon Tort Claims Act, codified at ORS 30.260 through 30.300, each of the parties shall hold harmless, indemnify and defend the other and its officers, employees and agents from and against all claims, demands, penalties, and causes of action of any kind or character relating to or arising from this Permit (including the cost of defense thereof, including attorney fees) in favor of any person on account of personal injury, death, damage to property, or violation of law, which arises out of, or results from, the acts or omissions of the indemnitor, its officers, employees, or agents.
13. This Permit may not be terminated, except as set forth in Paragraph 1, above. However, the Parties agree that each party and its respective successors or assigns may avail itself of other remedies at law or in equity to enforce or preserve the rights conferred and obligations assumed by the respective parties herein, and to obtain compensation for any damages or loss incurred as a result of breach by the other party of any provision contained herein, but only if the other party fails to cure the breach within 60 days of receipt of written notice specifying the breach.
14. The provisions of this Permit shall be construed according to the applicable provisions of Oregon law. Litigation to enforce any provision of this Permit

shall be conducted in the Circuit Court of the State of Oregon for Clackamas County.

15. If any provision of this Permit is in conflict with any applicable statute, rule of law, or regulation, then such provision shall be deemed to be null and void to the extent that it may conflict therewith but without invalidating the remaining provisions hereof.

IN WITNESS HEREOF, the Parties hereto have executed this Permit as of the date signed by both Parties.

CLACKAMAS COUNTY

By: _____

Name:

Title:

Date: _____

**TRI-COUNTY METROPOLITAN
TRANSPORTATION DISTRICT OF
OREGON**

By _____

Daniel W. Blocher, P.E., Executive
Director

Date _____

**NORTH CLACKAMAS PARKS AND
RECREATION DISTRICT**

By _____

Chair, NCPRD Board of Directors

Date _____

**APPROVED AS FORM FOR COUNTY
AND DISTRICT**

By _____

County Counsel

Date _____

APPROVED AS FORM FOR TRIMET

By _____

TriMet Legal Department

Date _____

Exhibit "A"

File 3723
Clackamas County-Light
Rail Continuing Control
Agreement

Portland-Milwaukie LRT Project
Jack Carlson, Otak, Inc., 3/14/2013
Amended:

3723-001 Easement for Continuing Control

A variable width strip of land in the vicinity of Blocks 1 and 10, ROBERTSON, in the southeast one-quarter of Section 35, Township 1 South, Range 1 East, Willamette Meridian, Clackamas County, Oregon, to wit:

Those portions of the rights of way of 1st Street (now known as Eagle Street) and Sixth Avenue (now known as 22nd Avenue) as dedicated to the Public in the plat of ROBERTSON lying on the southwesterly side of a line which is parallel with and 60 feet southwesterly from, when measured at right angles to, the right of way centerline of McLoughlin Boulevard, and lying on the northeasterly (left) side of the following described line:

Beginning at a point which bears South, a distance of 455.89 feet, and West, a distance of 98.49 feet from the northeast corner of the southeast one-quarter of said Section 35; thence southeasterly on the arc of a 345.80 foot radius curve to the left (the radius point of which bears N.75°33'42"E.) through a central angle of 06°20'27", a distance of 38.27 feet (chord bears S.17°36'31"E., a distance of 38.25 feet) to the point of curve left of a 457.52 foot radius curve; thence along the arc of said curve left through a central angle of 05°59'10", a distance of 47.80 feet (chord bears S.23°46'20"E., a distance of 47.78 feet); thence S.26°45'55"E., a distance of 200.46 feet to the terminus of this line.

Bearings are based on the Oregon Coordinate System of 1983, North Zone.

The strip of land to which this description applies contains 2,918 square feet, more or less.

3723-002 Easement for Continuing Control

A variable width strip of land in the vicinity of Blocks 1 and 2, ROBERTSON, in the southwest one-quarter of Section 36, Township 1 South, Range 1 East, Willamette Meridian, Clackamas County, Oregon, to wit:

That portion of the right of way of 2nd Street (now known as Bluebird Street) as dedicated to the Public in the plat of ROBERTSON lying on the southwesterly side of a line which is parallel with and 60 feet southwesterly from, when measured at right angles to, the right of way centerline of McLoughlin Boulevard, and lying on the northeasterly (left) side of the following described line:

Beginning at a point which bears South, a distance of 455.89 feet, and West, a distance of 98.49 feet from the northwest corner of the southwest one-quarter of said Section 36; thence southeasterly on the arc of a 345.80 foot radius curve to the left (the radius point of which bears N.75°33'42"E.) through a central angle of 06°20'27", a distance of 38.27 feet (chord bears S.17°36'31"E., a distance of 38.25 feet) to the point of curve left of a 457.52 foot radius curve; thence along the arc of said curve left through a central angle of 05°59'10", a distance of 47.80 feet (chord bears S.23°46'20"E., a distance of 47.78 feet); thence S.26°45'55"E., a distance of 200.46 feet to the point of curve left of a 3,696.15 foot radius curve; thence along the arc of said curve left through a central angle of 01°11'31", a distance of 76.89 feet (chord bears S.27°21'41"E., a distance of 76.89 feet) to the point of curve left of a 2,774.80 foot radius curve; thence along the arc of said curve left through a central angle of 11°07'10", a distance of 538.51 feet (chord bears S.33°31'01"E., a distance of 537.67 feet) to the terminus of this line.

Bearings are based on the Oregon Coordinate System of 1983, North Zone.

The strip of land to which this description applies contains 1,540 square feet, more or less.

3723-003 Easement for Continuing Control

A variable width strip of land in the vicinity of Block 2, ROBERTSON, and Block 4, BIRKEMEIER ADDITION TO MILWAUKIE HEIGHTS, in the southwest one-quarter of Section 36, Township 1 South, Range 1 East, Willamette Meridian, Clackamas County, Oregon, to wit:

That portion of the right of way of Seventh Avenue (now known as River Road) as dedicated to the Public in the plat of ROBERTSON lying on the southwesterly side of a line which is parallel with and 60 feet southwesterly from, when measured at right angles to, the right of way centerline of McLoughlin Boulevard, and lying on the northeasterly (left) side of the following described line:

Beginning at a point which bears South, a distance of 455.89 feet, and West, a distance of 98.49 feet from the northwest corner of the southwest one-quarter of said Section 36; thence southeasterly on the arc of a 345.80 foot radius curve to the left (the radius point of which bears N.75°33'42"E.) through a central angle of 06°20'27", a distance of 38.27 feet (chord bears S.17°36'31"E., a distance of 38.25 feet) to the point of curve left of a 457.52 foot radius curve; thence along the arc of said curve left through a central angle of 05°59'10", a distance of 47.80 feet (chord bears S.23°46'20"E., a distance of 47.78 feet); thence S.26°45'55"E., a distance of 200.46 feet to the point of curve left of a 3,696.15 foot radius curve; thence along the arc of said curve left through a central angle of 01°11'31", a distance of 76.89 feet (chord bears S.27°21'41"E., a distance of 76.89 feet) to the point of curve left of a 2,774.80 foot radius curve; thence along the arc of said curve left through a central angle of 11°07'10", a distance of 538.51 feet (chord bears S.33°31'01"E., a distance of 537.67 feet) to the terminus of this line.

Bearings are based on the Oregon Coordinate System of 1983, North Zone.

The strip of land to which this description applies contains 2,490 square feet, more or less.

3723-004 Easement for Continuing Control

A variable width strip of land in the vicinity of Block 4, BIRKEMEIER ADDITION TO MILWAUKIE HEIGHTS, in the southwest one-quarter of Section 36, Township 1 South, Range 1 East, Willamette Meridian, Clackamas County, Oregon, to wit:

That portion of the right of way of Lakeview Drive as dedicated to the Public in the plat of BIRKEMEIER ADDITION TO MILWAUKIE HEIGHTS lying on the northeasterly side of Block 4, said BIRKEMEIER ADDITION, and lying on the southwesterly side of a line which is parallel with and 60 feet southwesterly from, when measured at right angles to, the right of way centerline of McLoughlin Boulevard.

The strip of land to which this description applies contains 2,996 square feet, more or less.

3723-005 Easement for Continuing Control

A variable width strip of land in the vicinity of Blocks 3 and 4, BIRKEMEIER ADDITION TO MILWAUKIE HEIGHTS, in the southwest one-quarter of Section 36, Township 1 South, Range 1 East, Willamette Meridian, Clackamas County, Oregon, to wit:

That portion of the right of way of Third Street (now known as Bobwhite Street) as dedicated to the Public in the plat of BIRKEMEIER ADDITION TO MILWAUKIE HEIGHTS, lying on the southwesterly side of a line which is parallel with and 60 feet southwesterly from, when measured at right angles to, the right of way centerline of McLoughlin Boulevard, and lying on the northeasterly (left) side of the following described line:

Beginning at a point which bears South, a distance of 455.89 feet, and West, a distance of 98.49 feet from the northwest corner of the southwest one-quarter of said Section 36; thence southeasterly on the arc of a 345.80 foot radius curve to the left (the radius point of which bears N.75°33'42"E.) through a central angle of 06°20'27", a distance of 38.27 feet (chord bears S.17°36'31"E., a distance of 38.25 feet) to the point of curve left of a 457.52 foot radius curve; thence along the arc of said curve left through a central angle of 05°59'10", a distance of 47.80 feet (chord bears S.23°46'20"E., a distance of 47.78 feet); thence S.26°45'55"E., a distance of 200.46 feet to the point of curve left of a 3,696.15 foot radius curve; thence along the arc of said curve left through a central angle of 01°11'31", a distance of 76.89 feet (chord bears S.27°21'41"E., a distance of 76.89 feet) to the point of curve left of a 2,774.80 foot radius curve; thence along the arc of said curve left through a central angle of 11°07'10", a distance of 538.51 feet (chord bears S.33°31'01"E., a distance of 537.67 feet) to the point of curve left of a 3,696.15 foot radius curve; thence along the arc of said curve left through a central angle of 01°11'31", a distance of 76.89 feet (chord bears S.39°40'22"E., a distance of 76.89 feet) and the terminus of this line.

Bearings are based on the Oregon Coordinate System of 1983, North Zone.

The strip of land to which this description applies contains 1,570 square feet, more or less.

3723-006 Easement for Continuing Control

A variable width strip of land in the vicinity of Block 3, BIRKEMEIER ADDITION TO MILWAUKIE HEIGHTS, in the southwest one-quarter of Section 36, Township 1 South, Range 1 East, Willamette Meridian, Clackamas County, Oregon, to wit:

That portion of the right of way of Lakeview Drive as dedicated to the Public in the plat of BIRKEMEIER ADDITION TO MILWAUKIE HEIGHTS lying on the easterly side of Block 3, said BIRKEMEIER ADDITION, lying on the southwesterly side of a line which is parallel with and 60 feet southwesterly from, when measured at right angles to, the right of way centerline of McLoughlin Boulevard, and lying on the northeasterly (left) side of the following described line:

Beginning at a point which bears South, a distance of 455.89 feet, and West, a distance of 98.49 feet from the northwest corner of the southwest one-quarter of said Section 36; thence southeasterly on the arc of a 345.80 foot radius curve to the left (the radius point of which bears N.75°33'42"E.) through a central angle of 06°20'27", a distance of 38.27 feet (chord bears S.17°36'31"E., a distance of 38.25 feet) to the point of curve left of a 457.52 foot radius curve; thence along the arc of said curve left through a central angle of 05°59'10", a distance of 47.80 feet (chord bears S.23°46'20"E., a distance of 47.78 feet); thence S.26°45'55"E., a distance of 200.46 feet to the point of curve left of a 3,696.15 foot radius curve; thence along the arc of said curve left through a central angle of 01°11'31", a distance of 76.89 feet (chord bears S.27°21'41"E., a distance of 76.89 feet) to the point of curve left of a 2,774.80 foot radius curve; thence along the arc of said curve left through a central angle of 11°07'10", a distance of 538.51 feet (chord bears S.33°31'01"E., a distance of 537.67 feet) to the point of curve left of a 3,696.15 foot radius curve; thence along the arc of said curve left through a central angle of 01°11'31", a distance of 76.89 feet (chord bears S.39°40'22"E., a distance of 76.89 feet); thence S.40°16'07"E., a distance of 312.95 feet to the terminus of this line.

Bearings are based on the Oregon Coordinate System of 1983, North Zone.

The strip of land to which this description applies contains 1,535 square feet, more or less.

3723-007 Easement for Continuing Control

A variable width strip of land in the vicinity of Blocks 42 and 49, MILWAUKIE HEIGHTS, in the southwest one-quarter of Section 36, Township 1 South, Range 1 East, Willamette Meridian, Clackamas County, Oregon, to wit:

That portion of the right of way of Tenth Avenue (now known as 26th Avenue) as dedicated to the Public in the plat of MILWAUKIE HEIGHTS lying on the southwesterly side of a line which is parallel with and 60 feet southwesterly from, when measured at right angles to, the right of way centerline of McLoughlin Boulevard, and lying on the northeasterly (left) side of the following described line:

Beginning at a point which bears South, a distance of 1,834.78 feet, and East, a distance of 864.76 feet from the northwest corner of the southwest one-quarter of said Section 36; thence S.40°16'07"E., a distance of 56.94 feet to the point of curve right of a 2,456.07 foot radius curve; thence along the arc of said curve right through a central angle of 02°19'22", a distance of 99.57 feet (chord bears S.39°06'26"E., a distance of 99.56 feet) to the point of curve right of a 1,839.20 foot radius curve; thence along the arc of said curve right through a central angle of 20°04'58", a distance of 644.66 feet (chord bears S.27°54'16"E., a distance of 641.36 feet) to the terminus of this line.

Bearings are based on the Oregon Coordinate System of 1983, North Zone.

The strip of land to which this description applies contains 2,412 square feet, more or less.

3723-008 Easement for Continuing Control

A variable width strip of land in the vicinity of Blocks 48 and 49, MILWAUKIE HEIGHTS, in the southwest one-quarter of Section 36, Township 1 South, Range 1 East, Willamette Meridian, Clackamas County, Oregon, to wit:

That portion of the right of way of 5th Street (now known as Sparrow Street) as dedicated to the Public in the plat of MILWAUKIE HEIGHTS lying on the southwesterly side of a line which is parallel with and 60 feet southwesterly from, when measured at right angles to, the right of way centerline of McLoughlin Boulevard, and lying on the northeasterly (left) side of the following described line:

Beginning at a point which bears South, a distance of 1,834.78 feet, and East, a distance of 864.76 feet from the northwest corner of the southwest one-quarter of said Section 36; thence S.40°16'07"E., a distance of 56.94 feet to the point of curve right of a 2,456.07 foot radius curve; thence along the arc of said curve right through a central angle of 02°19'22", a distance of 99.57 feet (chord bears S.39°06'26"E., a distance of 99.56 feet) to the point of curve right of a 1,839.20 foot radius curve; thence along the arc of said curve right through a central angle of 20°04'58", a distance of 644.66 feet (chord bears S.27°54'16"E., a distance of 641.36 feet) to the terminus of this line.

Bearings are based on the Oregon Coordinate System of 1983, North Zone.

The strip of land to which this description applies contains 2,139 square feet, more or less.

3723-009 Easement for Continuing Control

A variable width strip of land in the vicinity of Blocks 48, 50 and 51, MILWAUKIE HEIGHTS, in the southwest one-quarter of Section 36, Township 1 South, Range 1 East, Willamette Meridian, Clackamas County, Oregon, to wit:

Those portions of the rights of way of Eleventh Avenue (now known as 27th Avenue) and 6th Street (now known as Lark Street) as dedicated to the Public in the plat of MILWAUKIE HEIGHTS lying on the southwesterly side of a line which is parallel with and 60 feet southwesterly from, when measured at right angles to, the right of way centerline of McLoughlin Boulevard, and lying on the northeasterly (left) side of the following described line:

Beginning at a point which bears South, a distance of 1,834.78 feet, and East, a distance of 864.76 feet from the northwest corner of the southwest one-quarter of said Section 36; thence S.40°16'07"E., a distance of 56.94 feet to the point of curve right of a 2,456.07 foot radius curve; thence along the arc of said curve right through a central angle of 02°19'22", a distance of 99.57 feet (chord bears S.39°06'26"E., a distance of 99.56 feet) to the point of curve right of a 1,839.20 foot radius curve; thence along the arc of said curve right through a central angle of 20°04'58", a distance of 644.66 feet (chord bears S.27°54'16"E., a distance of 641.36 feet) to the terminus of this line.

Bearings are based on the Oregon Coordinate System of 1983, North Zone.

The strip of land to which this description applies contains 5,804 square feet, more or less.

3723-010 Easement for Continuing Control

A variable width strip of land in the vicinity of Blocks 52 and 53, MILWAUKIE HEIGHTS, in the northwest one-quarter of Section 1, Township 2 South, Range 1 East, Willamette Meridian, Clackamas County, Oregon, to wit:

That portion of the right of way of Railway Avenue as dedicated to the Public in the plat of MILWAUKIE HEIGHTS lying on the southwesterly side of a line which is parallel with and 60 feet southwesterly from, when measured at right angles to, the right of way centerline of McLoughlin Boulevard, and lying on the easterly (left) side of the following described line:

Beginning at a point which bears South, a distance of 2,726.51 feet, and East, a distance of 1,304.77 feet from the northwest corner of the southwest one-quarter of Section 36, Township 1 South, Range 1 East, Willamette Meridian; thence southeasterly on the arc of a 1,483.00 foot radius curve to the right (the radius point of which bears S.80°47'07"W.) through a central angle of 03°41'06", a distance of 95.38 feet (chord bears S.07°22'20"E., a distance of 95.37 feet) to the point of curve right of a 1,976.68 foot radius curve; thence along the arc of said curve right through a central angle of 01°26'30", a distance of 49.73 feet (chord bears S.04°48'32"E., a distance of 49.73 feet); thence S.04°05'18"E., a distance of 125.35 feet to the point of curve right of a 508.00 foot radius curve; thence along the arc of said curve right through a central angle of 08°38'05", a distance of 76.56 feet (chord bears S.00°13'45"W., a distance of 76.49 feet); thence S.04°32'48"W., a distance of 20.50 feet to the terminus of this line.

Bearings are based on the Oregon Coordinate System of 1983, North Zone.

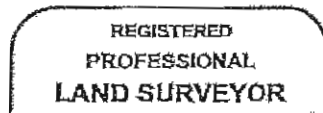
The strip of land to which this description applies contains 11,499 square feet, more or less.

3723-011 Easement for Continuing Control

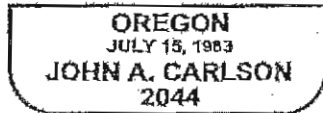
A tract of land in Block 53, MILWAUKIE HEIGHTS, in the northwest one-quarter of Section 1, Township 2 South, Range 1 East, Willamette Meridian, Clackamas County, Oregon, to wit:

That portion of Block 53, MILWAUKIE HEIGHTS lying on the westerly side of a line which is parallel with and 60 feet westerly from, when measured at right angles to, the right of way centerline of McLoughlin Boulevard.

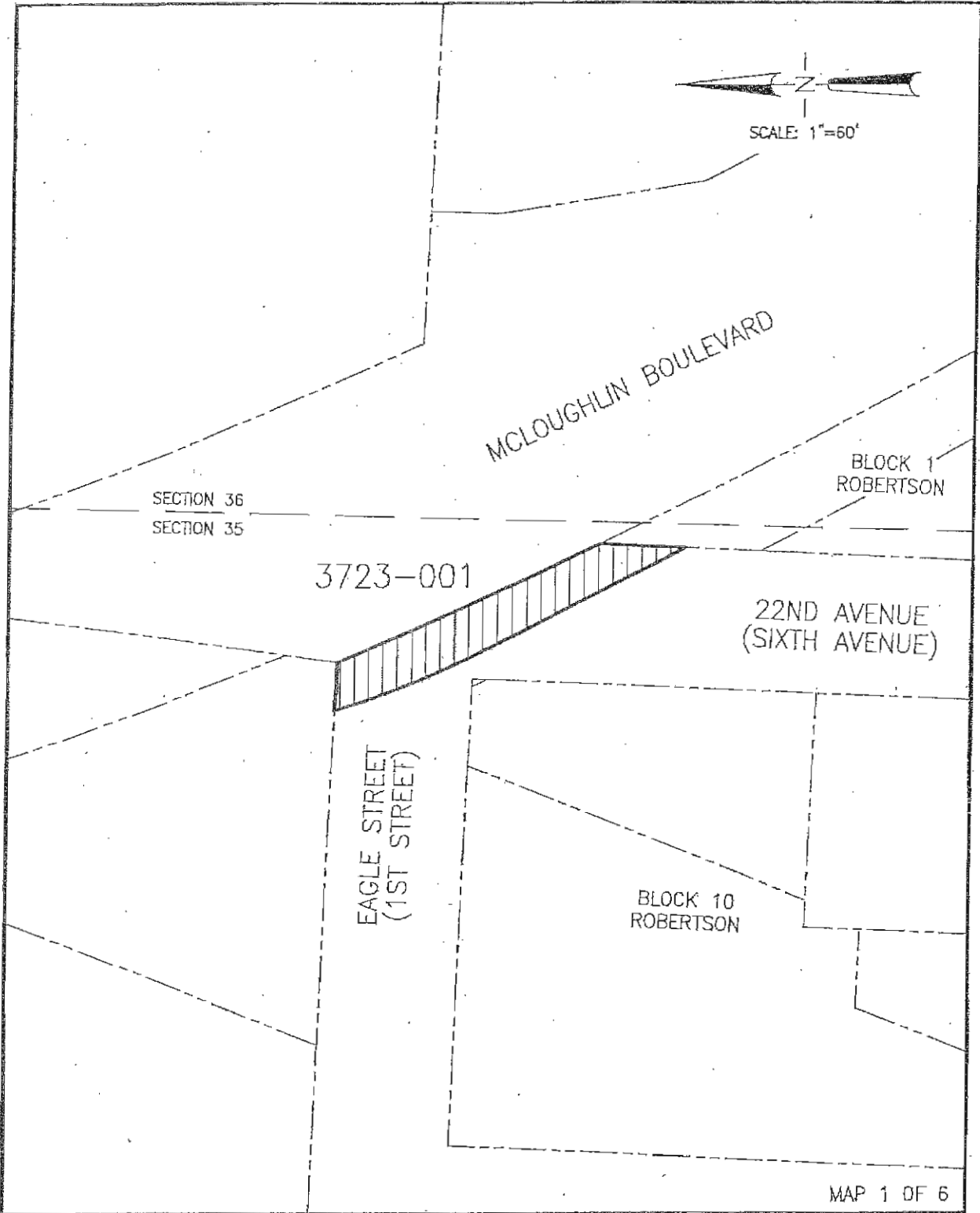
The tract of land to which this description applies contains 3,515 square feet, more or less.



John A. Carlson



RENEWS 12/31/13



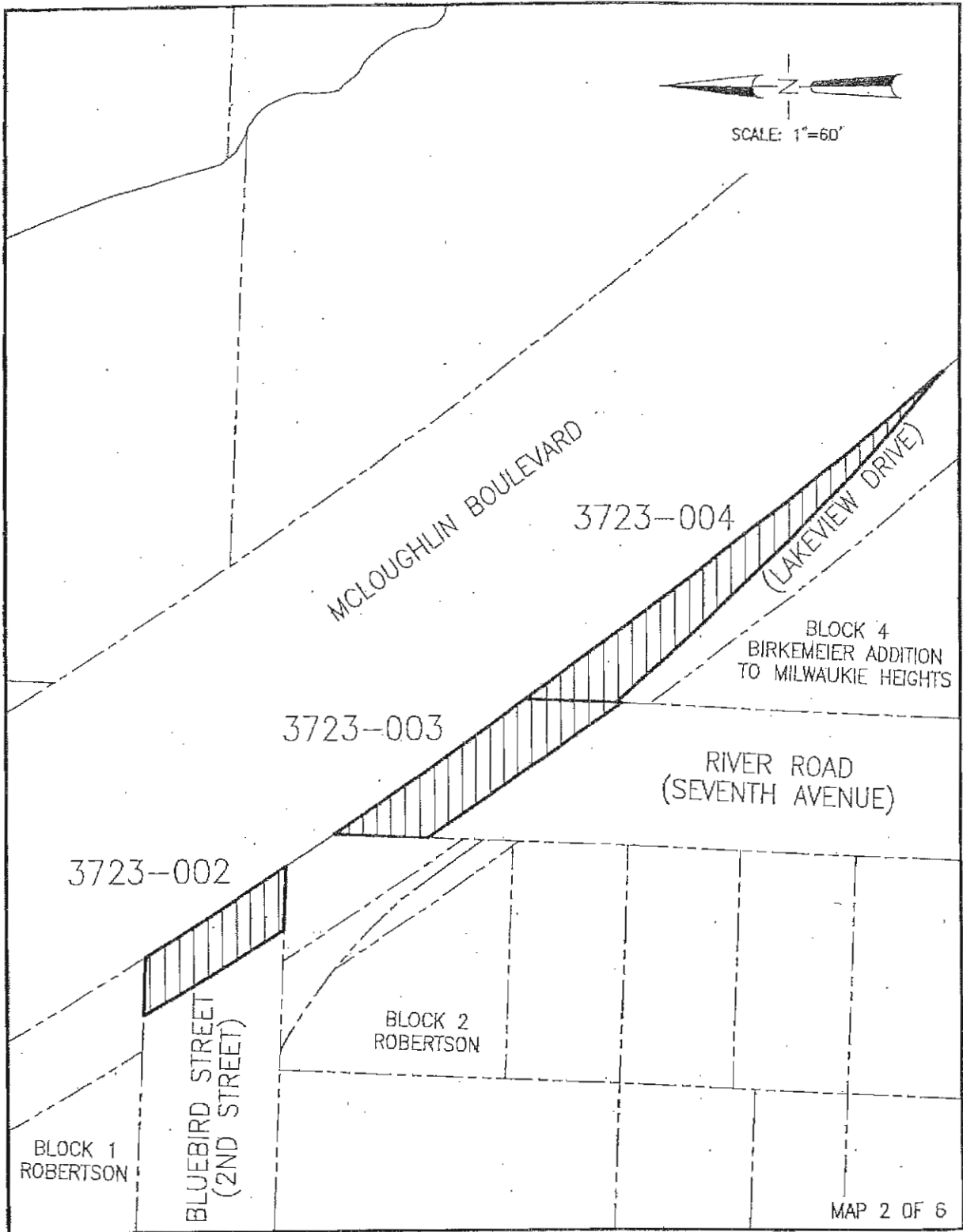
TRIOMET
 CAPITAL PROJECTS
 AND
 FACILITIES DIVISION
 710 N.E. HOLLADAY STREET
 PORTLAND, OREGON 97232

CONTINUING CONTROL SKETCH
 PORTLAND TO MILWAUKIE LRT
 FILE NOS. 3722 & 3723



17355 S.W. BOONES FERRY ROAD
 LAKE OSWEGO, OREGON 97035
 (503)635-3618 FAX (503)635-5395

DATE	REVISION NO.	DRAWN BY	CHECKED BY
3/14/2013	000	J. CARLSON	G. PAUL



SCALE: 1"=60'

MCLOUGHLIN BOULEVARD

3723-004

(LAKEVIEW DRIVE)

BLOCK 4
BIRKEMEIER ADDITION
TO MILWAUKIE HEIGHTS

3723-003

RIVER ROAD
(SEVENTH AVENUE)

3723-002

BLUEBIRD STREET
(2ND STREET)

BLOCK 2
ROBERTSON

BLOCK 1
ROBERTSON

MAP 2 OF 6

TRIMET
CAPITAL PROJECTS
AND
FACILITIES DIVISION
710 N.E. HOLLADAY STREET
PORTLAND, OREGON 97232

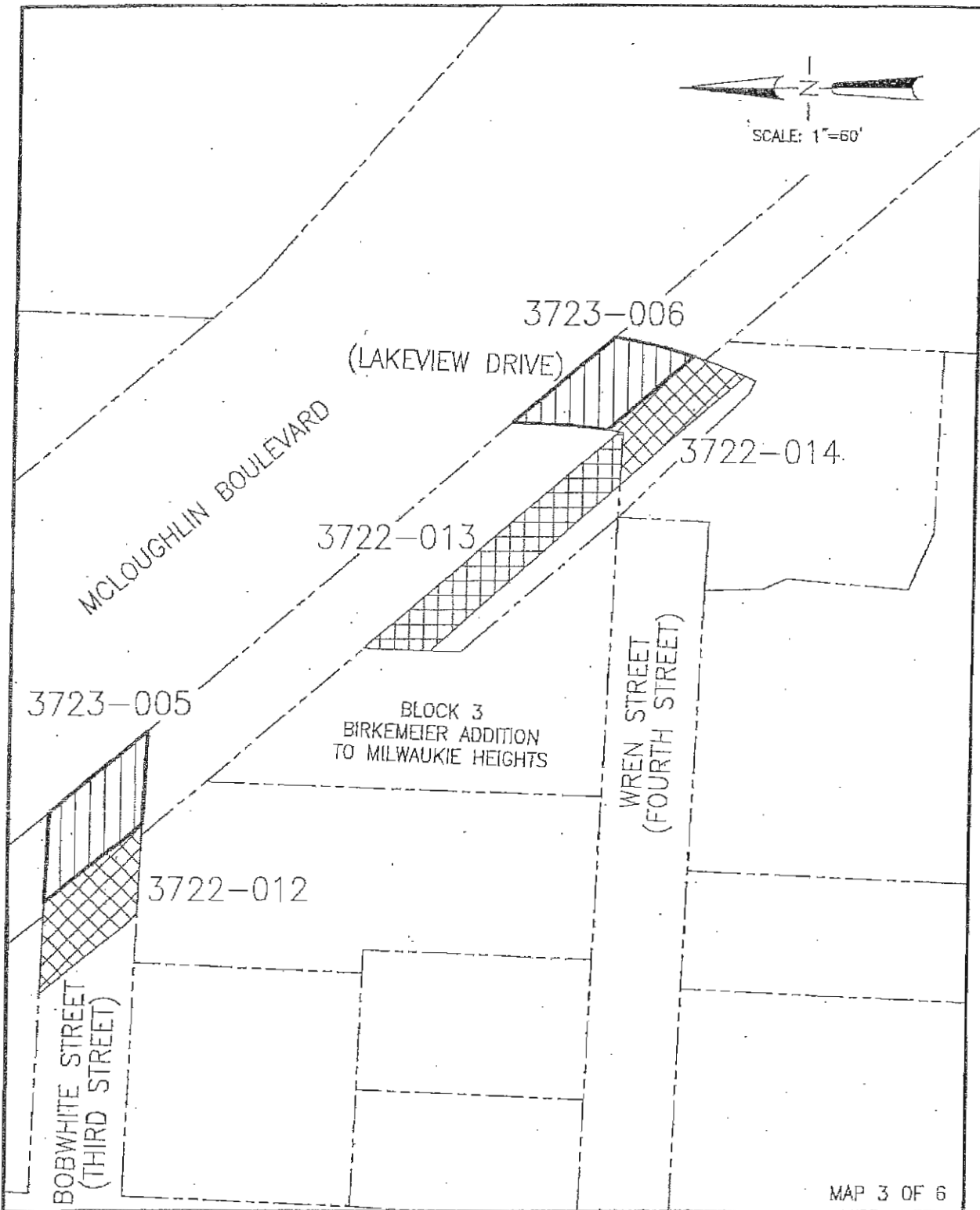
CONTINUING CONTROL SKETCH
PORTLAND TO MILWAUKIE LRT

FILE NOS. 3722 & 3723



17355 S.W. BOONES FERRY ROAD
LAKE OSWEGO, OREGON 97035
(503)635-3618 FAX (503)635-5395

DATE	REVISION NO.	DRAWN BY	CHECKED BY
3/14/2013	000	J. CARLSON	G. PAUL



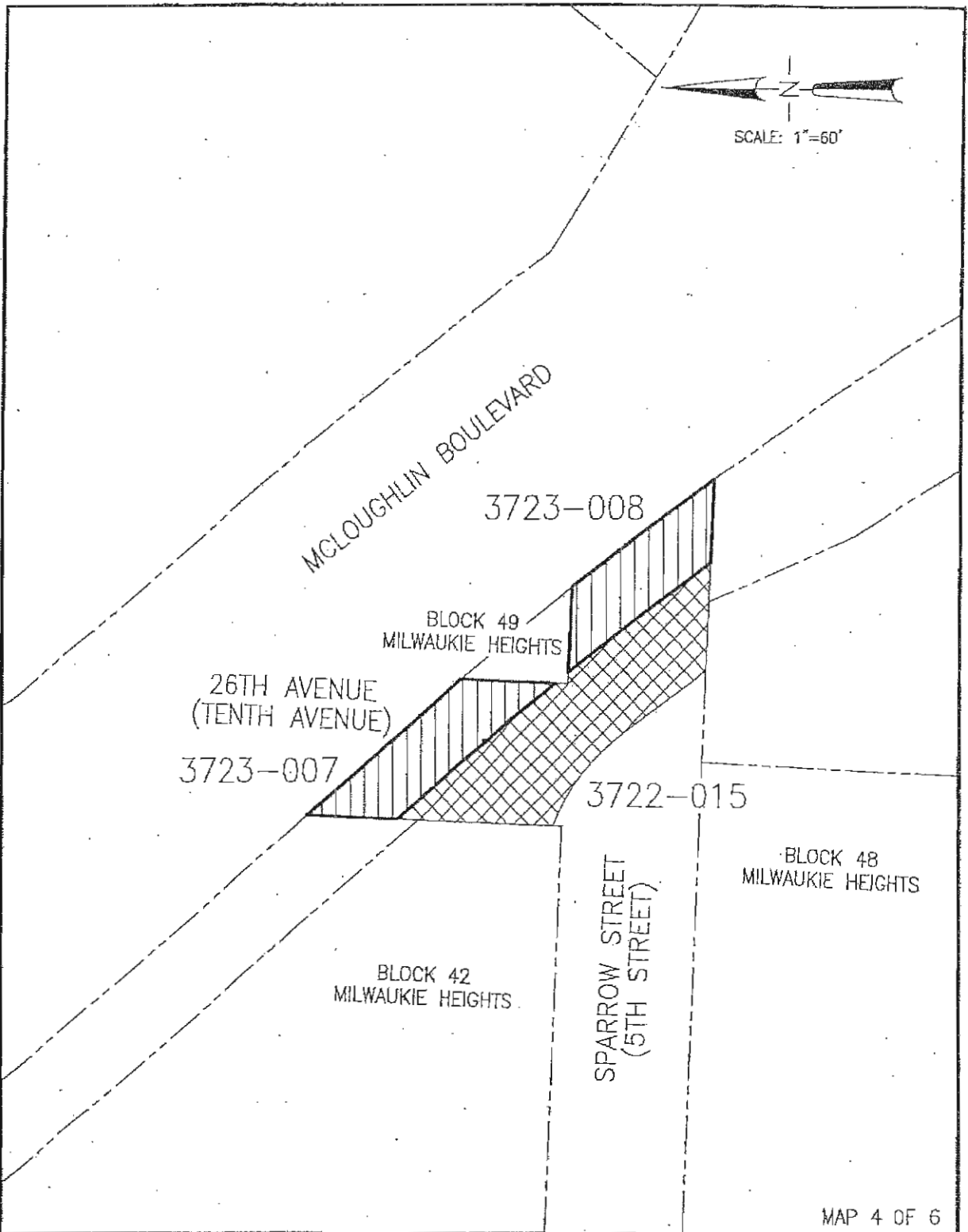
MAP 3 OF 6

TRIMET
 CAPITAL PROJECTS
 AND
 FACILITIES DIVISION
 710 N.E. HOLLADAY STREET
 PORTLAND, OREGON 97232

CONTINUING CONTROL SKETCH
 PORTLAND TO MILWAUKIE LRT
 FILE NOS. 3722 & 3723

DATE	REVISION NO.	DRAWN BY	CHECKED BY
3/14/2013	001	J. CARLSON	G. PAUL

otak
 17355 S.W. BOONES FERRY ROAD
 LAKE OSWEGO, OREGON 97035
 (503)635-3618 FAX (503)635-5395

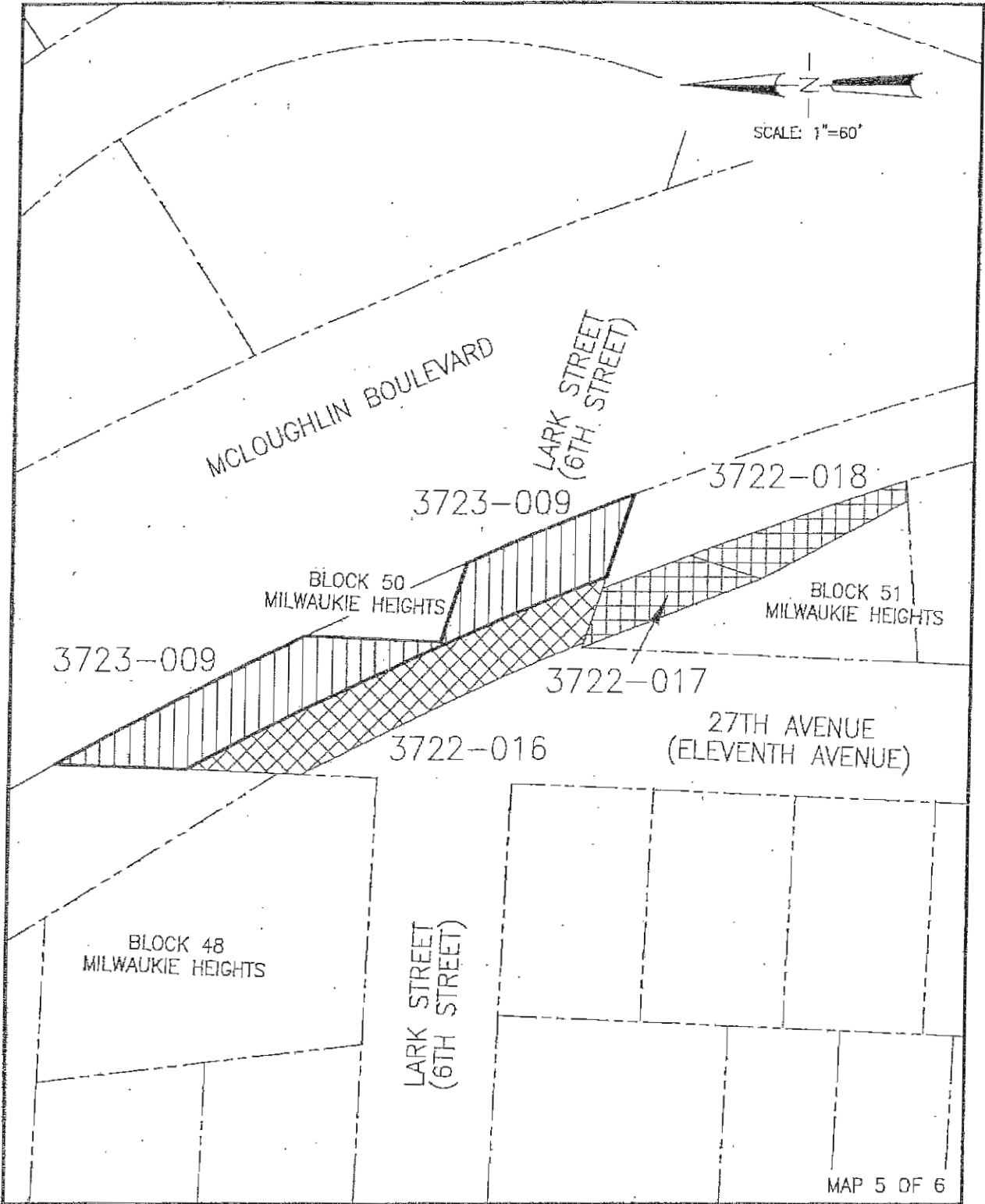


TRIMET
 CAPITAL PROJECTS
 AND
 FACILITIES DIVISION
 710 N.E. HOLLADAY STREET
 PORTLAND, OREGON 97232

CONTINUING CONTROL SKETCH
 PORTLAND TO MILWAUKIE LRT
 FILE NOS. 3722 & 3723

DATE	REVISION NO.	DRAWN BY	CHECKED BY
3/14/2013	000	J. CARLSON	G. PAUL

otak
 17355 S.W. BOONES FERRY ROAD
 LAKE OSWEGO, OREGON 97035
 (503)635-3618 FAX (503)635-5395

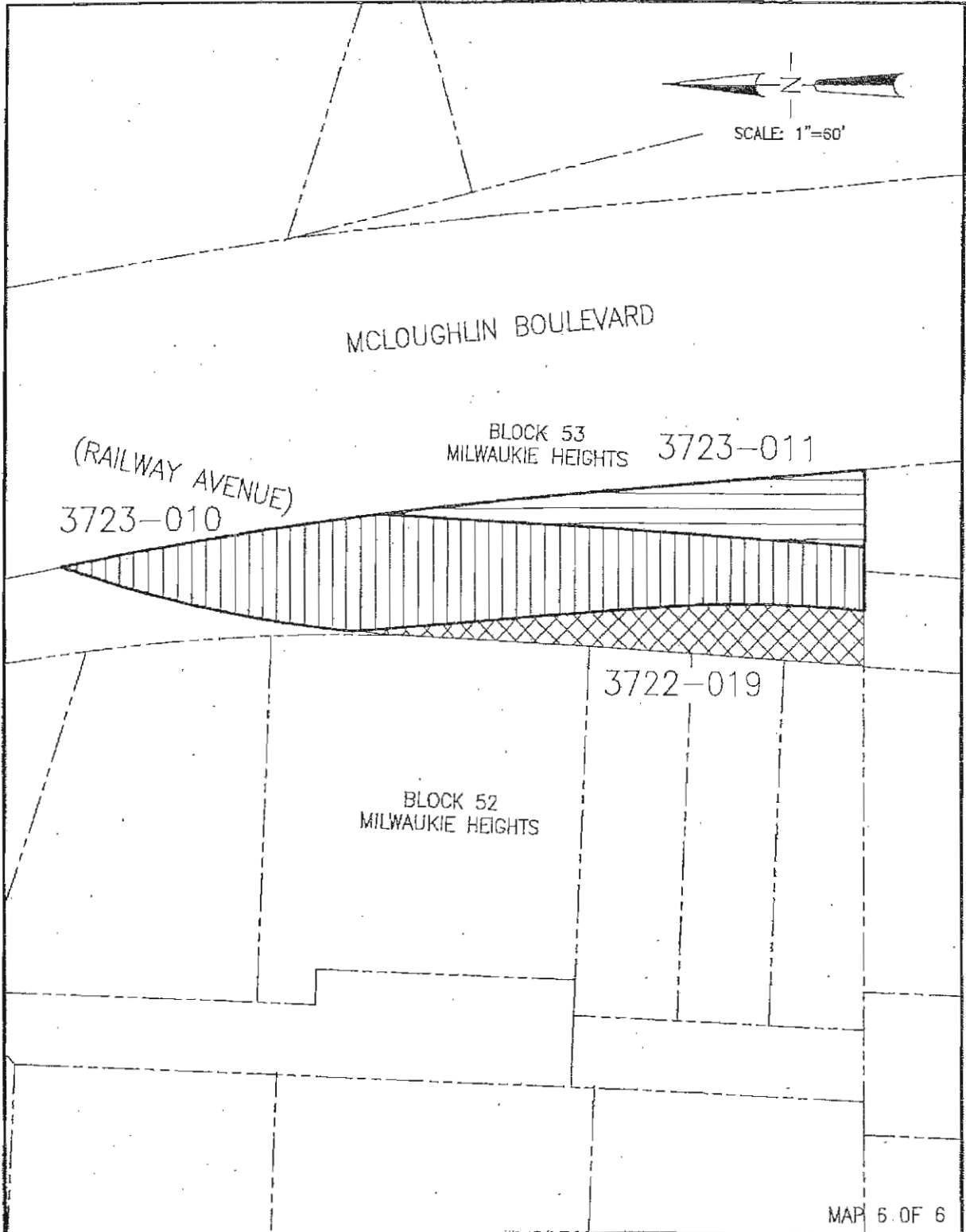


TRIMET
 CAPITAL PROJECTS
 AND
 FACILITIES DIVISION
 710 N.E. HOLLADAY STREET
 PORTLAND, OREGON 97232

CONTINUING CONTROL SKETCH
 PORTLAND TO MILWAUKIE LRT
 FILE NOS. 3722 & 3723

DATE	REVISION NO.	DRAWN BY	CHECKED BY
3/14/2017	001	J. CARLSON	G. PAUL

otak
 17355 S.W. BOONES FERRY ROAD
 LAKE OSWEGO, OREGON 97035
 (503)635-3618 FAX (503)635-5305



TRIMET
 CAPITAL PROJECTS
 AND
 FACILITIES DIVISION
 710 N.E. HOLLADAY STREET
 PORTLAND, OREGON 97232

CONTINUING CONTROL SKETCH
 PORTLAND TO MILWAUKIE LRT
 FILE NOS. 3722 & 3723

DATE	REVISION NO.	DRAWN BY	CHECKED BY
3/14/2013	000	J. CARLSON	G. PAUL

oiaK

17355 S.W. BOONES FERRY ROAD
 LAKE OSWEGO, OREGON 97035
 (503)635-3618 FAX (503)635-5395



11

OFFICE OF THE COUNTY ADMINISTRATOR

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

December 12, 2013

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of Agreement with TriMet for County Funding of Road Improvements
in the vicinity of Park Ave. and Oatfield Road.

Purpose/Outcomes	Approval of Agreement Providing for County funding of Road Improvements in the Vicinity of Park Ave. and Oatfield Rd.
Dollar Amount and Fiscal Impact	The County will fund \$1.274 million in road improvements to be constructed in conjunction with the Portland Milwaukie Light Rail project.
Funding Source	\$1 million will come from the County Road Fund. \$274,000 will come from Transportation Systems Development Charges paid by TriMet
Safety Impact	N/A
Duration	One time payment within 60 days of execution of the agreement.
Previous Board Action	The Board approved placing this matter on the consent agenda at a November 26, 2013 Study Session.
Contact Person	Dan Chandler, Strategic Policy Administrator 503-742-5394

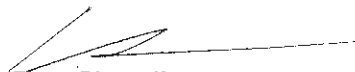
BACKGROUND:

This IGA provides that Clackamas County will contribute \$1.274 million toward certain defined road improvements in the vicinity of Park Avenue and Oatfield Road. The improvements are to be constructed by TriMet as part of the Portland Milwaukie Light Rail project. Completion of this agreement is required by the circuit court decision in TriMet v. Clackamas County.

RECOMMENDATION:

Staff requests the Board approve the attached IGA.

Respectfully submitted,


Dan Chandler
Strategic Policy Administrator

**AGREEMENT BETWEEN CLACKAMAS COUNTY AND THE TRI-COUNTY
METROPOLITAN TRANSPORTATION DISTRICT OF OREGON FOR
COUNTY ROAD PROGRAM WORK**

THIS AGREEMENT ("Agreement"), dated this ____ day of, _____ 2013, is made by and between the Tri-County Metropolitan Transportation District of Oregon ("TriMet") and Clackamas County ("County") (collectively "Parties").

Recitals

A. TriMet is constructing the Portland-Milwaukie Light Rail Transit Project ("Project"), which is a 7.3 mile light rail project between Portland State University and north Clackamas County. The Project will terminate at Park Avenue in unincorporated Clackamas County.

B. On February 4, 2010, the Parties entered into an Intergovernmental Funding Agreement which obligated the County to pay twenty-five million and no/100 (\$25,000,000) dollars for its share of TriMet's final design and construction of the Project.

C. On August 29, 2012, the Parties entered into a Supplemental Agreement which changed the County's funding contribution to \$19,934,038, and also included other County contributions to the Project, including County Transportation Program funds in the amount of \$1,279,740 for road and signalization improvements in the vicinity of SE Park Avenue and SE Oatfield Road ("Road Program Improvements," further defined below).

D. TriMet, has completed the design of the Road Program Improvements, and the Road Program Improvements are included within the scope of the Project.

E. Paragraph 4 of the Supplemental Agreement requires the Parties to execute an agreement specifying the management, scope, and schedule for the Road Program Improvements by October 30, 2012.

F. The Parties desire to execute this Agreement to satisfy the requirements of the Supplemental Agreement, and clarify the rights and responsibilities of the Parties regarding the Road Program Improvements, funding, and revenue tracking responsibilities.

NOW, THEREFORE, based on the foregoing and in consideration of the mutual promises and covenants contained herein, the adequacy of which is hereby acknowledged, the Parties agree as follows:

1. County Road Program

A. The County has agreed to provide \$1,279,740 to TriMet to perform certain road and signalization improvements within the County, at the intersection of SE Park and SE Oatfield. This intersection is identified in the County Capital Improvement Plan and is also identified in the Countywide Transportation System Development Charge methodology report as an eligible intersection

improvement.

B. The amount provided by the County will be funded in part by gas tax proceeds distributed to the County as part of the Oregon State Highway Fund allocation (\$1,000,000), and in part by Countywide Transportation System Development Charges (\$279,740). TriMet agrees to utilize these funds for the intersection outlined above, and to track expenditures separately under this Agreement to confirm that the funds are used for eligible purposes under the regulating law for the two different revenue sources.

C. Gas tax proceeds are subject to the restrictions of Article IX, Section 3a of the Oregon Constitution, and the Transportation System Development Charges ("TSDC") are subject to the restrictions set forth in the Clackamas County Code Section 11.03.

2. Road Program Improvements

A. Certain improvements to the Project are included in the Supplemental Agreement as Exhibit F, Local Enhancements. The list of Local Enhancements is incorporated by this reference herein. These Local Enhancements shall not be eliminated from the scope of the Project without the consent of the County.

B. The Local Enhancements include improvements to the Oatfield Road/Park Avenue intersection area, which are further illustrated on Exhibit A. Expenditures for this intersection will be eligible for funding under this Road Improvement Agreement, and include those items set out in Exhibit B. Exhibits A and B are incorporated into this Agreement by this reference.

3. TriMet Construction Obligations

A. TriMet shall manage the design and construction of the Road Program Improvements in accordance with its responsibilities under the Design and Construction Agreement between the Parties. The Road Program Improvements will be constructed by the Project's CM/GC contractor, and completed by September 2015. TriMet and the County are parties to a conduct of construction plan that includes provisions to minimize disruption to area residents, businesses, and local traffic during the construction phase.

B. TriMet agrees to provide data to the County illustrating construction of Gas Tax and TSDC eligible improvements equaling or exceeding \$1,279,740. Upon submission of any of the Road Program Improvements for acceptance by the County, TriMet will provide the County with an accounting of TriMet's costs for the improvement(s) in order to allow the County to record the contributed capital and total cost of the capital assets.

C. In the event the County develops an alternate scope of work and design for a betterment that would upgrade the current design of a flashing beacon to a fully signalized intersection (as set forth in Paragraph 4(C), below), TriMet agrees to present such design to its contractor for pricing.

4. Payment Obligations

A. In accordance with Paragraph 6 of the Supplemental Agreement, TriMet shall pay \$279,740 in Systems Development charges within 60 days of receipt of an invoice for such charges from County. County will provide such invoice to TriMet within 10 days to the execution of this Agreement.

B. In accordance with Paragraph 4 of the Supplemental Agreement, County shall pay TriMet \$1,279,740 for the Road Program Improvements within 60 days of execution of this Agreement.

C. In the event County desires that TriMet present a fully signalized intersection design to its contractor for pricing as described in Paragraph 3(C), above, County agrees that it is responsible for completing the design of such scope of work to a level that allows the contractor to provide pricing information with certainty. If County elects to proceed with construction of such scope of work, it will be treated as a Betterment under the Design and Construction Services Agreement between the Parties.

D. County will review the design and scope of work of the Road Program Improvements being funded by Countywide Transportation System Development Charges to ensure compliance with all applicable laws, including County Code.

5. Miscellaneous

A. **Compliance with Law.** The parties recognize that funds provided by FTA will be used to pay for a portion of the Project. Each party agrees to comply with all local, state and federal laws and regulations and fully understands and agrees to comply with all applicable requirements governing work of FTA contractors, and the limitations on the use of gas tax and TSDC funds.

B. **Federal Funding Limitation.** To the extent applicable to each of the respective parties, this Agreement is subject to all federal provisions prescribed for third-party contracts by the federal grant agreement.

C. **Governing Law, Disputes.** This Agreement shall be construed according to the laws of the State of Oregon. TriMet and the Clackamas County Partners shall negotiate in good faith to resolve any dispute arising under this Agreement. Should any dispute arise between the parties concerning this agreement that is not resolved by mutual agreement, it is agreed that it will be submitted to mediated negotiation prior to any party commencing litigation. In such an event, the parties to this agreement agree to participate in good faith in a non-binding mediation process. The mediation shall take place in Portland, Oregon. The mediator shall be selected by mutual agreement of the parties, but in the absence of such agreement each party shall select a temporary mediator and those mediators shall jointly select the permanent mediator. Each party shall bear its own costs and expenses, but the mediator's fees and costs shall be borne equally by the Parties. In the event mediation is unsuccessful, the Parties are free to pursue any legal remedies that may be available. Any litigation between the Clackamas County Partners and TriMet arising under this Agreement or out of work performed pursuant to this Agreement shall occur, if in the state courts, in the Multnomah County Circuit Court, and if in the federal courts, in the United States District Court for the District of Oregon located in Portland, Oregon.

D. **Indemnity.** Within the limits of the Oregon Constitution and the Oregon Tort Claims Act, codified at ORS 30.260 through 30.300, each of the Parties shall hold harmless, indemnify and defend the other and its directors, officers, employees and agents from and against all claims, demands, penalties, and causes of action of any kind or character relating to or arising from this Agreement (including the cost of defense thereof, including attorney fees) in favor of any person on account of personal injury, death, damage to property, or violation of law, which arises out of, or results from, the negligent acts or omissions of the indemnitor, its officers, employees, or agents.

E. Breach. This Agreement may be terminated by either party in the event of material breach. Prior to either party terminating this Agreement, the terminating party must provide 60 calendar days written notice of the material breach to the representative of the other party in accordance with the Notices provision of this Agreement. The notice must include a detailed explanation of the breach, and during this 60 day period, the breaching party may cure the material breach ("Cure Period"). If at the end of the Cure Period the breaching party has not cured the material breach or, if the material breach is one that cannot be cured within 60 days, has not made good faith efforts toward curing the breach, the terminating party may terminate this agreement and seek all remedies available at law or in equity. Any disputes related to material breach will be handled in accordance with Paragraph 7(C) of this Agreement.

F. Notices. All routine correspondence and notices regarding this Agreement shall be between the following representatives of the Parties:

TriMet: Leah Robbins
TriMet Capital Projects
710 NE Holladay Street
Portland, OR 97232
Telephone: (503) 962-2264
Fax: (503) 962-2282

With copy to: TriMet Legal Department
710 NE Holladay Street
Portland, OR 97232
Attn: Lance Erz
Telephone: (503) 962-2108
Fax: (503) 962-2299

County: Dan Chandler
Clackamas County Administration
2051 Kaen Road
Oregon City, OR 97045
Telephone: (503) 742-5394

With a copy to: Chris Storey
Senior Assistant County Counsel
2051 Kaen Road
Oregon City, OR 97045
Telephone: (503) 655-8362

CLACKAMAS COUNTY

**TRI-COUNTY METROPOLITAN
TRANSPORTATION DISTRICT OF
OREGON**

By: _____

By: _____
Daniel W. Blocher, P.E., Executive Director

Date: _____

Date: _____

APPROVED AS TO FORM:

APPROVED AS TO FORM:

Clackamas County Counsel

TriMet Legal Department

CONTINUING CONTROL PERMIT FOR THE PORTLAND-MILWAUKIE LIGHT RAIL PROJECT

This Continuing Control Permit ("Permit") is issued by Clackamas County ("County") and the North Clackamas Parks and Recreation District ("District") to the Tri-County Metropolitan Transportation District of Oregon ("TriMet") for the construction, operation, and maintenance of the Portland-Milwaukie Light Rail Project ("Project"), under the terms and condition set forth below. TriMet, the County and the District are collectively referred to herein as the "Parties."

PERMIT RECITALS

- A. In July 2008, Metro adopted the Locally Preferred Alternative ("LPA") and the Land Use Final Order for the Project after local jurisdictions including the cities of Portland, Milwaukie and Oregon County along with Clackamas and Multnomah Counties and TriMet and ODOT recommended the adoption of the LPA.
- B. Under the authority of House Bill 3478 (Oregon Laws 1996, Chapter 12, hereinafter the "Act"), on July 24, 2008, the Metro Board adopted a Land Use Final Order for the Project.
- C. On or about October 22, 2010, the Federal Transit Administration ("FTA"), Metro, and TriMet published the Final Environmental Impact Statement ("FEIS") for the Project.
- D. On November 29, 2010, the FTA issued a Record of Decision finding that the requirements of the National Environmental Policy Act have been satisfied for the construction and operation of the project
- E. On March 29, 2011, the FTA approved the Project's entry into the final design stage of Project development. The design reached 90 percent design in December 2011, and 100 percent design in May 2012.
- F. In May, 2012, TriMet entered into a Full Funding Grant Agreement ("FFGA") with the FTA for acquisition, construction, operation, and maintenance of the Project.
- G. The Project is now under construction, and is scheduled to open for revenue service in September 2015. Upon completion of the Project, TriMet will commence light rail service to areas under the County's jurisdiction.
- H. On February 4, 2010, the County, District, and TriMet entered an intergovernmental agreement ("IGA") regarding the funding, development, and operation of the Project.

- I. In Section 6.2 of the IGA the County, District, and TriMet acknowledged and agreed to comply with FTA's continuing control requirements.
- J. In compliance with Section 6.2 of the IGA, on January 4, 2013 TriMet notified the County Representative that it required a continuing control permit in compliance with FTA requirements.
- K. This Permit is required to be issued pursuant to the Land Use Final Order for the Project.

NOW THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the County and the District issue this Permit under the following terms and conditions:

TERMS AND CONDITIONS

1. To satisfy the continuing control requirements of the FTA as set forth in 49 U.S.C. § 5307(c)(1)(B), the County and the District hereby grant to TriMet a permanent permit over, under, and above only those portions of right-of-way and properties owned by the County and the District, upon which the Project's facilities, features, or both are sited (the "Project Property"), which property is needed for the purpose of construction, operation, and maintenance of the Project. The Project Property is generally set forth in Exhibit A, and does not include any property to be transferred between the District and TriMet under separate agreement.
2. The Parties understand that some of the Project Property set forth in Exhibit A may be under the ownership or control of the City of Milwaukie, and the County and the District make no warranties or representations that they own or control any of the Project Property. However, to the extent that the Project Property is under the ownership or control of the County or District, the County and District agree, subject to the terms of this Permit, to take no action that would interfere with TriMet's continuing control of the Project structures, equipment, or facilities, provided that use by TriMet will be subject to any additional and applicable permit processes with respect to construction and maintenance within the Project Property as provided in this Permit. This grant is irrevocable, except that, in the event TriMet intends to permanently cease to operate the Project on the Project Property, TriMet shall give 60 days prior written notice to County and the District of such intent. Upon receipt of such notice, the County and the District may revoke the continuing control rights granted herein.
3. The Parties agree that the purpose of this Permit is to enable TriMet to construct, maintain, and operate the Project in accordance with Project plans and specifications and the terms of this Permit. The Parties agree that the Project has been constructed utilizing, in part, federal funds provided to TriMet

by FTA pursuant to the FFGA No. OR-03-0126-000, and that the federal government retains a continuing interest in all structures, equipment, and other facilities acquired or constructed with federal funds that may be located in or upon the Project Property generally shown in Exhibit A. TriMet's interest in the Project Property may not be assigned or transferred without FTA's written concurrence.

4. To the extent that the Project Property is under the ownership or control of the County or District, the County and the District shall retain ownership of their respective property and, to the extent permitted by 49 U.S.C. § 5307(c)(1)(B), control of utility easements, property leases, private crossing agreements, and utility franchise rights.
5. TriMet shall include in any third party contract under this Permit a provision to the effect that the contractor shall fully indemnify, hold harmless and defend County, its officers, employees and agents from and against all claims, suits, actions of whatsoever nature, damages or loses, and all expenses and costs incidental to the investigations and defense thereof, including reasonable attorney fees, resulting from or arising out of the activities of such contractor, subcontractor and their officers, employees and agents with respect to the Project Property.
6. Neither the County nor the District shall charge TriMet or the Project a fee for use of or access to the Project Property. However, the Parties acknowledge and agree that if TriMet were to pay for the Project Property, the payments would be costs allowable under a Federal grant. In consideration for the continuing control rights granted herein, TriMet agrees to maintain the Project Property in a reasonable operating condition that does not threaten the health or safety of the general public so long as it operates under this Permit; provided however such maintenance obligations may be assigned to the County and/or District in subsequent agreement(s).
7. To the extent that the Project Property is under the ownership or control of the County or District, the County and the District agree to grant TriMet authority to construct, operate and maintain the Project upon the Property in accordance with the rights afforded herein. The Parties do not anticipate that any ordinances, rules or regulations are necessary to effectuate the rights granted by this Permit, other than the approval of the County Commission and the District Board of Directors. However, in the event that the Parties determine such ordinances, rules or regulations are necessary, prior to adopting or amending such ordinances, rules or regulations, the County and District shall give TriMet an opportunity for review, and to be heard regarding their contents. To the extent not provided in existing ordinances, rules, or regulations, to satisfy the continuing control requirements granted herein, the County and District staff agree to propose for enactment regulations that would:

- A. To the extent feasible, restrict interference associated with impeding or preventing the safe and efficient operation of the Project caused by construction and maintenance activities of private parties on private property and public right-of-way to only temporary interference necessitated by construction activity of the County, District or others.
 - B. Allow TriMet to review and comment on design plans and specifications before permitting construction of any private property driveways or other access ways that turn into or intersect the Project Property. Neither the County nor District shall approve any plan or specification that would prohibit TriMet from constructing, operating, or maintaining light rail on the Property or Project alignment.
 - C. Allow TriMet to review and comment on design plans and specifications before constructing any street or way that turns into or intersects the Project Property. Neither the County nor District shall approve any plan or specification that would prohibit TriMet from constructing, operating, or maintaining light rail on the Project Property or Project alignment.
 - D. Protect the light rail line from interference by parked or other encroaching vehicles. Parking immediately adjacent to the light rail line shall be prohibited.
 - E. Notify TriMet of any proposed future changes by the County or District, or which are proposed to be approved through permit by the County or District, including traffic control measures, that may affect the operation and continuing control of the light rail alignment, and work with TriMet to mitigate the impact of such change on operation of the system.
 - F. Require any utility construction within the light rail system to use methods that, to the extent feasible, allow light rail system operations to continue during construction.
 - G. Grant authority to TriMet to have immediate access to the light rail system in order to perform all required construction, operation, and maintenance of the system, subject to the County or District's design review and permitting process, which may include reasonable and necessary conditions of approval, provided that such process will not prevent the implementation and continuing control of the Project.
8. The Parties understand that temporary interferences for emergencies, construction repairs, and maintenance of streets and other public or private facilities, parades, or civic events may occur, provided that the County or District shall, except in emergency situations where no notice is feasible, provide TriMet with reasonable notice of temporary interference and shall cooperate with TriMet representatives to minimize the interference and, if

possible for portions of the Light Rail alignment that are double-track, provide that only one track is affected by the interference at any one time.

9. This Permit, including any interests herein, shall not be assignable without the County's or District's prior written consent, as applicable. However, if any public body acquires or succeeds TriMet, TriMet's interest, right, and obligations created by this Permit will be assignable by TriMet, with FTA written approval, to the public body that acquires or succeeds TriMet.
10. All notices required under this Permit will be deemed to be properly served if sent by U.S. mail to the last representative of the Party identified below in this paragraph. Until hereafter changed by the Parties by notice in writing, notices shall be sent:

IF TO THE COUNTY:

Dan Chandler
Strategic Policy Administrator
Public Services Building
2051 Kaen Rd
Oregon City, OR 97045

IF TO TRIMET:

Manager of Real Property Acquisition
TriMet
Capital Projects and Facilities Division
1800 SW First Ave., Ste. 300
Portland, OR 97201

11. Any modification to this Permit shall be mutually agreed upon and reduced to writing, and will not be effective until signed by the Parties hereto.
12. Within the limits of the Oregon Constitution and the Oregon Tort Claims Act, codified at ORS 30.260 through 30.300, each of the parties shall hold harmless, indemnify and defend the other and its officers, employees and agents from and against all claims, demands, penalties, and causes of action of any kind or character relating to or arising from this Permit (including the cost of defense thereof, including attorney fees) in favor of any person on account of personal injury, death, damage to property, or violation of law, which arises out of, or results from, the acts or omissions of the indemnitor, its officers, employees, or agents.
13. This Permit may not be terminated, except as set forth in Paragraph 1, above. However, the Parties agree that each party and its respective successors or assigns may avail itself of other remedies at law or in equity to enforce or preserve the rights conferred and obligations assumed by the respective parties herein, and to obtain compensation for any damages or loss incurred as a result of breach by the other party of any provision contained herein, but only if the other party fails to cure the breach within 60 days of receipt of written notice specifying the breach.
14. The provisions of this Permit shall be construed according to the applicable provisions of Oregon law. Litigation to enforce any provision of this Permit

shall be conducted in the Circuit Court of the State of Oregon for Clackamas County.

- 15. If any provision of this Permit is in conflict with any applicable statute, rule of law, or regulation, then such provision shall be deemed to be null and void to the extent that it may conflict therewith but without invalidating the remaining provisions hereof.

IN WITNESS HEREOF, the Parties hereto have executed this Permit as of the date signed by both Parties.

CLACKAMAS COUNTY

By: _____
Name:
Title:
Date: _____

**TRI-COUNTY METROPOLITAN
TRANSPORTATION DISTRICT OF
OREGON**

By _____
Daniel W. Blocher, P.E., Executive
Director

Date _____

**NORTH CLACKAMAS PARKS AND
RECREATION DISTRICT**

By _____
Chair, NCPRD Board of Directors

Date _____

**APPROVED AS FORM FOR COUNTY
AND DISTRICT**

By _____
County Counsel

Date _____

APPROVED AS FORM FOR TRIMET

By _____
TriMet Legal Department

Date _____



FAIR COST ESTIMATE

Exhibit B

To: Leah Robbins

Project: PMLR East Revised included sheets

Estimate # 13274 R1

Description: Clackamas County Design Review
Value of work on Park Ave McLoughlin to Oatfield

By: RAV

11/14/2013

Item	Description	Quantity	Units	Unit price	Total
	General Conditions	1	LS	\$ 455,258.86	\$455,258.86
	Site Maintenance	1	LS	\$ 70,039.82	\$70,039.82
	Architectural drawings	1	LS	\$ 110,516.42	\$110,516.42
	Civil drawings	1	LS	\$ 871,754.67	\$871,754.67
	Structural drawings (walls)	1	LS	\$ 506,937.47	\$506,937.47
	Signage/Striping/Traffic drawings	1	LS	\$ 261,787.06	\$261,787.06
Total Price					\$2,276,294.30

Drawing list reference

	ARCH	CIVIL	WALLS
SIGNAGE/STRIPING	A15E-232H	C15E-432H	S15E-842
T15E-232H	A15E-232L	C15E-432J	S15E-843
T15E-232L	A15E-232P	C15E-432P	S15E-844
T15E-232P	A15E-525	C15E-432Q	S15E-845
T15E-432H	A15E-549	C15E-432R	S15E-846
T15E-432L		C15E-432S	
T153-432P		C15E-432T	
		C15E-432U	
	UTILITIES	C15E-487A	
	U15E-166D	C15E-488	
	U15E-166E	C15E-491	
		C15E-616	
		C15E-617	
		C15E-618	
		C15E-930	



12

Gary Barth
Director

North Clackamas Parks and Recreation District
Development Services Building
150 Beaver Creek Road
Oregon City, OR 97045

December 12, 2013

Board of County Commissioners
Clackamas County
Sitting as the Board of the North Clackamas Park and Recreation District

Members of the Board:

Approval of Design and Construction Services Agreement between
TriMet, Clackamas County
and the North Clackamas Park and Recreation District

Purpose/Outcomes	Approval of Design and Construction Services Agreement, which provides that TriMet will reimburse County and NCPRD staff for time expended reviewing material related to the Portland Milwaukie Light Rail Project
Dollar Amount and Fiscal Impact	This agreement provides reimbursement to the County and NCPRD for staff time up to \$399,000
Funding Source	TriMet
Safety Impact	N/A
Duration	For the life of Portland Milwaukie Light Rail Project construction
Previous Board Action	The Board approved placing this matter on the consent agenda at a November 26, 2013 Study Session.
Contact Person	Gary Barth, Director, North Clackamas Parks and Recreation District 503-742-4299

BACKGROUND:

This IGA provides that TriMet will reimburse the County and the NCPRD for up to \$399,000 in staff time expended in reviewing material related to the Portland Milwaukie Light Rail project.

RECOMMENDATION:

Staff requests the Board approve the attached IGA.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Gary Barth".

Gary Barth
Director, North Clackamas Park and Recreation District

**INTERGOVERNMENTAL AGREEMENT
BETWEEN TRIMET, CLACKAMAS COUNTY, AND THE NORTH CLACKAMAS
PARKS AND RECREATION DISTRICT
FOR THE PORTLAND - MILWAUKIE LIGHT RAIL PROJECT
DESIGN AND CONSTRUCTION MANAGEMENT SERVICES**

THIS INTERGOVERNMENTAL AGREEMENT ("IGA" or "Agreement") is entered into as of April 1, 2011 and is between the Tri-County Metropolitan Transportation District of Oregon ("TriMet"), a mass transit district organized under the laws of the State of Oregon; Clackamas County ("County"), a political subdivision of the State of Oregon; and the North Clackamas Parks and Recreation District ("District"), a service district located in Clackamas County. TriMet, the County, and the District are hereunder jointly referred to as the "Parties." The County and the District are hereinafter together referred to as the "Clackamas County Partners".

ARTICLE I - RECITALS

A. TriMet and the Clackamas County Partners are authorized to enter into this Agreement with each other pursuant to the provisions of ORS 190.

B. TriMet owns and operates the public mass transit system serving the Portland, Oregon metropolitan region, which includes an existing light rail system composed of segments commonly known as the Eastside/Banfield, Westside/Hillsboro, Airport, Interstate lines, and the Phase I South Corridor Light Rail Project, consisting of the I-205 Segment and the Portland Mall Segment.

C. TriMet and the Clackamas County Partners have a joint interest in serving north Clackamas County, the City of Milwaukie and the Portland Metro region with high quality, convenient public transit.

D. TriMet is currently constructing the Phase II South Corridor Light Rail Project from Portland to Milwaukie ("Project"). The Project will provide a reliable, high frequency transportation option for north Clackamas County and City of Milwaukie commuters, and will benefit north Clackamas County and City of Milwaukie residents and workers by providing car-free linkages to multiple destinations in the TriMet system.

D. On May 9, 2008, the Federal Transit Administration ("FTA") issued a Supplemental Draft Environmental Impact Statement ("SDEIS") on the Project, in compliance with FTA and National Environmental Protection Act ("NEPA") requirements.

E. In July 2008, Metro adopted the Locally Preferred Alternative ("LPA") and the Land Use Final Order for the Project after local jurisdictions including the cities of Portland, Milwaukie and Oregon City along with Clackamas and Multnomah Counties and TriMet and ODOT recommended the adoption of the LPA.

F. Under the authority of House Bill 3478 (Oregon Laws 1996, Chapter 12, hereinafter the "1996 Act"), on July 24, 2008, the Metro Board adopted a Land Use Final Order for the Project.

G. In March 2010, the Federal Transit Administration ("FTA") authorized TriMet to enter into the preliminary engineering stage of project development.

H. The 1996 Act defines the relationship between TriMet and other governmental entities following the adoption of the Land Use Final Order for the Project, and states "The State and all counties, cities, special districts and political subdivisions shall:

(a) Amend their comprehensive or function plans, including public facility plans, transportation system plans, and land use regulations, to the extent necessary to make them consistent with the Land Use Final Order, and

(b) Issue the appropriate development approvals, permits, licenses and certificates necessary for the construction of the project or project extension consistent with the land use final order. Development approvals, permits, licenses and certificates may be subject to reasonable and necessary conditions of approval, but may not, by themselves or cumulatively, prevent implementation of the Land Use Final Order."

I. In March 2011, FTA authorized TriMet to enter into Final Design Phase of project development.

J. In May 2012, FTA and TriMet signed the Full Funding Grant Agreement, committing the federal funding share of the Project.

K. TriMet cannot construct or implement the Project without the use of County streets and right-of-way, and the County is willing to allow TriMet to use County streets and right-of-way without being compensated for reasonable wear and tear.

L. The County has a duty to the general public to provide safe and convenient streets and to protect itself from unreasonable financial burdens imposed by TriMet's use of the streets.

M. The Project is, or will be, subject to budgetary limitations imposed by the Federal Transit Administration (FTA) and Finance Agreements. The Project is, or will be, subject to all terms and conditions of the FTA Full Funding Grant Agreement as a result of Federal participation in the costs of the Project.

N. The parties desire to enter into this Agreement to document each party's understandings and agreements relating to the design and construction phases of the Project.

O. The parties shall enter into a maintenance agreement that will detail each party's obligations with respect to maintenance of the facilities after completion of construction.

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

ARTICLE II – TERM

- A. The term of this Agreement shall be effective from the date set forth below through December 31, 2015, unless terminated or extended under the provisions of this Agreement. Under this Agreement, the parties acknowledge and confirm that TriMet's financial responsibility for Clackamas County Partners' services provided will cover all eligible work done on the Project from April 1, 2011 forward, regardless of the date this Agreement is ultimately signed.

ARTICLE III – TRIMET OBLIGATIONS

- A. **Responsibility for the Project.** Except as otherwise provided, TriMet shall design, construct, operate and bear all costs for the Project, including the costs for street improvements necessitated by transportation issues identified in the Final Environmental Impact Statement as having been caused by the Project, to the extent such costs are grant eligible; except as set forth under separate agreement(s) between the Parties. In the execution of the design and construction, except as otherwise provided, TriMet shall provide for the public's health, safety, and welfare by providing the proper construction, reconstruction, and modifications to those existing public facilities in the right-of-way which are affected by the Project.
- B. **Construction Standards for the Project.** TriMet shall use current standards of design and construction adopted by local agencies located within Clackamas County. These agencies include, but are not limited to:
1. Clackamas County North Clackamas Parks and Recreation District
 2. Oak Lodge Sanitary District: Storm and Sanitary standards
 3. Oak Lodge Water
 4. Oregon Department of Transportation
 5. Clackamas County Service District #5 – Street Lighting
 6. Private Utility Providers

The agencies listed above are hereinafter together referred to as "Local Service Providers". Design, construction, conveyance and documentation shall be consistent with Local Service Providers' adopted standards, guidelines, and policies.

- C. **Conduct of Construction Plan.** TriMet shall work with Clackamas County Partners staff to develop a Conduct of Construction Plan that TriMet will require its contractors to adhere to, seeking to minimize Project impacts on neighborhoods.
- D. **County Requests for Additional Work.** TriMet shall design and construct, at the Clackamas County Partners' expense, any extra work identified and requested by the

Clackamas County Partners that enhances the basic Project or public improvements in the vicinity of the light rail alignment.

- E. Development of Final Plans and Specifications.** TriMet and its contractors shall work in close cooperation with Clackamas County Partners and Local Service Providers during preparation of final engineered documents and will submit all documents, including plans and specifications, for official Clackamas County Partner and Local Service Providers review at the milestones designated for the parties.

Clackamas County Partners and TriMet shall cooperate and exercise good faith efforts to provide documents, review and comment, and resolve comments on plans and specifications so that the project schedule milestones are met. The current milestone project schedule is identified in **Exhibit A – Project Schedule & Milestones**, attached hereto and fully incorporated by this reference. Should the schedule be revised in the future, the parties agree to make best efforts to comply with the updated schedule milestones.

The parties understand that Clackamas County Partners' review times shall not commence until all elements appropriately included at each stage are incorporated into the submission at a level of detail that allows effective and efficient review by Clackamas County Partners. Clackamas County Partners shall use their best efforts to minimize the review times.

The review at the Issued for Construction (IFC) stage is intended only to verify that the revisions identified at the previous review stage have been completed. The 100% review shall be accomplished within 15 working days, unless otherwise agreed between Clackamas County Partners and TriMet. Changes required by Clackamas County Partners at the IFC stage may be incorporated by change order into construction documents. TriMet shall maintain records of all comments received from reviews done by Clackamas County Partners, including TriMet response and action taken.

- F. Preliminary List of Anticipated Project Approvals.** TriMet's Project Manager, or designee, shall work with the County's Project Manager, or designee, to develop an agreed upon list of permits and approvals necessary for Project construction. The list shall include but not be limited to: (1) conditional use approvals, (2) zoning adjustments (3) sign encroachment variances or waivers, (4) design review permits, (5) building and/or construction, (6) parking during construction, (7) variances, and (8) occupancy permits.
- G. Real Property Acquisition/Relocation Assistance.** TriMet shall be solely responsible for the acquisition process of property for the Project, including property that will eventually become County right-of-way. TriMet shall also be responsible for providing any relocation assistance required for the Project, and any relocation assistance shall be pursuant to the Uniform Relocation Assistance Act, and other applicable Federal, State, and local laws.
- H. Relocation of Privately-Owned Utilities.** The County shall use its best efforts to cause relocation of privately-owned utilities without cost to the County or Project, as provided in Article IV, paragraph C below. However, if the County does not have the legal authority or power to cause such relocation, TriMet, without cost to the County, shall effect relocation of

existing privately-owned utility facilities as necessary to conform utilities or facilities to the plans for the Project. The cost of relocating in-kind publicly owned utilities for purposes of the Project shall be at TriMet's expense or shared between the parties as provided in this Agreement. The parties understand that relocation in-kind does not include betterment(s) of the existing facilities.

- I. **Inspecting Relocated Utility Placement.** TriMet shall also allow Clackamas County Partner engineers and/or inspectors or consulting engineers/inspectors to inspect any relocation of utility conduits, lines, poles, mains, pipes, and other facilities (including stray current mitigation measures) in order to determine whether they have been relocated or installed in accordance with the contract documents and this IGA. All abandoned utilities shall be reviewed and approved by Clackamas County Partners engineers and/or inspector consistent with County standard practices.
- J. **County Fiber Relocation.** TriMet will pay reasonable costs associated with the relocation of Clackamas County's existing fiber optic cable system as set forth in the Agreement between the Parties for Relocation of Fiber Optic Cable, dated September 27, 2013. Any Betterment work related to fiber relocation will be the responsibility of the County under Article V, Paragraph L (Betterments/Cost Sharing) of this Agreement.

ARTICLE IV – CLACKAMAS COUNTY PARTNERS' OBLIGATIONS

- A. **Creating Design Standard.** The Clackamas County Partners and TriMet agree that final design of the Project will utilize the 100% preliminary engineering documents, together with Clackamas County Partners' comments, as the starting point for final design.
- B. **Maintaining Project Schedule.** The Clackamas County Partners agree to use good faith efforts to assist TriMet in maintaining the Project schedule. To this end, Clackamas County Partners' staff shall assist TriMet with all permit/approval processes including, but not limited to, scheduling all hearings and briefings before the Board of County Commissioners, or other necessary entities as provided in the Clackamas County Code.
- C. **Relocations in Right-of-Way.** The Clackamas County Partners, at TriMet's expense unless otherwise apportioned in this Agreement, shall relocate, cause to be relocated, or assist in the relocation of all Clackamas County Partner-owned conduits, lines, poles, mains, pipes, and other facilities, whether located within the public right-of-way or not, as required by the Project. The Project documents shall include all relocations necessary to conform facilities to the Project. The Clackamas County Partners shall endeavor to conduct this relocation work in accordance with the Construction Phasing/Scheduling Plan for the Project as noted in Article VI.

The County shall cause the owners of privately owned utility conduits, lines, poles, mains, pipes and other facilities in or on County streets or rights-of-way to relocate their facilities at the expense of said privately owned utilities as necessary to conform to the Project, to the extent the County has the power to do so. The County shall endeavor to cause this relocation work to be accomplished in accordance with Construction Phasing/Scheduling Plan for the

Project noted in Article VI.

The County shall allow TriMet participation in review of utility relocation plans submitted by public and private utilities for the alignment area. The County shall also allow TriMet engineers or inspectors or consulting engineers or inspectors to inspect any relocation of utility conduits, lines, poles, mains, pipes, and other facilities in order to determine whether they have been relocated in accordance with the plans of the Project and County standard practices.

- D. Issuing Permits.** In accordance with the provisions of this Agreement, the Clackamas County Partners shall issue all necessary permits for the Project, which shall permit Project construction based on the end products referred to in Article VI. The Clackamas County Partners agree to utilize good faith efforts toward this end.
- E. End Products.** The Clackamas County Partners agree to provide the end products identified as their responsibility in Article VI of this Agreement, or a reasonable substitute product as agreed by the parties.
- F. Coordination of Local Partner Issues.** The County Project Manager, or designee, shall coordinate comments from the Clackamas County Partners and shall assist in resolution of all Project issues raised by any Clackamas County Partner.
- G. Managing Services within the Budget.** The County Project Manager, or designee, shall exercise good faith efforts to manage the Clackamas County Partner services within the budget specified in this Agreement.
- H. Trolley Trail Agreement:** TriMet shall, in good faith, negotiate with North Clackamas Parks and Recreation District (NCPRD) to craft a partnering agreement for design, construction, operation, and future maintenance of the Segment 2 of the Trolley Trail.
- I. Park Avenue: Nature in the Neighborhood Grant:** TriMet shall continue to coordinate with Local Partners and citizens to ensure Park Avenue Station, and associated amenities, are designed in a manner to achieve the objectives of Metro's Nature in the Neighborhood grant criteria and the reasonable expectations of the community.

ARTICLE V – LOCAL PARTNER SERVICES TO BE PROVIDED

- A. Ensuring No Adverse Affects to County.** The Clackamas County Partners have and shall provide services in conjunction with the Project's final design and construction as described in this Article. The Clackamas County Partners' services are intended to ensure: (1) that the Clackamas County Partners' facilities and operations within the Project's right-of-way are adequately provided for; (2) that the Clackamas County Partners' facilities and operation outside the Project's right-of-way are not adversely affected; (3) that vehicular, bicycle and pedestrian traffic is adequately provided for; and (4) that the public health, safety, and welfare, including without limitation aesthetic, environmental, and commercial values, are

not adversely affected.

B. Clackamas County Partner Services – General. Each Clackamas County Partner with Code authority or other responsibility over the Project shall provide to TriMet the following services:

1. Supply copies of all available file data on all existing facilities as requested by TriMet for the Project. The Clackamas County Partners have found the completeness and accuracy of this file information to be inadequate when used as the sole basis for design and construction purposes and recommend verification before incorporation into any final design. Any reliance on the data by TriMet shall be at its own risk.
2. Review, comment on and approve Project plans as provided for in this Agreement.
3. Cooperate with the County's Project Manager, TriMet's Project Manager, and Clackamas County Partner and TriMet designated representatives as reasonably necessary to assist in the timely and proper completion of the Project and to perform obligations required under this Agreement.
4. Review, require revisions to, and approve the Project plans as provided for in this Agreement.
5. Cooperate fully with the County's Project Manager, TriMet's Project Manager, and Clackamas County Partner and TriMet designated representatives as reasonably necessary to assist in the timely and proper completion of the Project.
6. Assist TriMet in reviewing, designing, permitting and constructing the Project elements that will be built in Clackamas County. Tasks performed by the Clackamas County Partners may include, but not be limited to, the following:
 - (a) Participate in Technical Advisory Committee meetings;
 - (b) Participate in Project Team Leaders meetings;
 - (c) Participate in Design Team meetings
 - (d) Participate in Project Management Group meetings;
 - (e) Attend and participate in community design meetings associated with the Project, with specific attention related to meetings associated with the Trolley Trail, Park Avenue Station and the park and ride structure at Park Avenue;
 - (f) Participate in other meetings as deemed necessary;
 - (g) Participate in preparation of, and review and comment on, the 60%, 90% and final design, and Issued for Construction drawings; and

C. Compliance with Applicable Laws and Standards. Any obligation to review or issue permits as set forth in this Agreement is subject to the compliance of the proposed permit with applicable laws and standards, and such processes as are required by law, including the 1996 Act. Staff will exercise good faith efforts towards timely issuing approvals and permits.

D. Department of Transportation and Development (DTD).

1. DTD Services - General. Under the coordination of the County's Project Manager, the Department of Transportation and Development shall provide services as described below:

- (a) Act as the lead County agency in carrying out the County's obligations and exercising the County's rights under this Agreement.
- (b) Provide as necessary, services of the County's Project Manager and other positions as identified in the Agreement.
- (c) Assist TriMet in coordinating the relocation of all County publicly owned utilities.
- (d) Assist in and coordinate all plan reviews, including structures.
- (e) Assist in resolution of all design and construction issues.
- (f) Coordinate and track compliance with all County permits.

2. Engineering Division. Under the coordination of the County's Project Manager, the County's Engineering Division shall provide services as described below:

- (a) Assign a single Project Coordinator/point of contact for all work performed under this Agreement, and coordinate all work and information covered under this Agreement with the County's Project Manager.
- (b) Review, require revisions to, and approve plans for all traffic signaling devices, parking meter relocations, pavement markings, traffic signs, utility work and any other work in the County right-of-way that affects vehicular, bicycle and/or pedestrian traffic. Notify the County's Project Manager, or designee, of all required revisions, for forwarding to TriMet.
- (c) Participate in the review and approval of construction phasing plans.
- (d) Review, require revisions to, and approve plans for all street lighting facilities. Notify the County's Project Manager, or designee, of all required revisions, for forwarding to TriMet.

- (e) Develop, in cooperation with TriMet, a Traffic Diversion Monitoring plan, which includes the County performing baseline data collection and diversion monitoring during construction.
 - (f) Review and approve plans for street trees.
3. Planning Division. Under the coordination of the County's Project Manager, the Planning Division shall provide services as described below:
- (a) Assign a single Project Coordinator/point of contact for all work performed under this Agreement, and coordinate all work and information covered under this Agreement with the County's Project Manager, or designee.
 - (b) Provide additional public involvement and outreach as specifically requested by the County's Project Manager and TriMet at TriMet's expense.
 - (c) Assist in the identification of all Project elements located outside of County right-of-way requiring a land use approval. Assist in the processing of the land use approvals for the Project elements needing those approvals and/or permits. Review of these portions of the system shall be conducted according to the requirements of the pertinent laws. Review times shall conform to the requirements of law. The County shall exercise good faith efforts to review Project plans and specifications in a timely manner, consistent with the Project schedule. Upon satisfactory completion of this and other reviews required by this Agreement, the County shall issue necessary permit(s).
 - (d) Perform design, greenway, environmental reviews and other land use review as required.
 - (e) Perform zoning code enforcement as needed.
 - (f) Assist with assignment of addresses for payphones, buildings and stations.
7. Building Division. Under the coordination of the County's Project Manager, the Building Division shall provide services as described below:
- (a) Assign a single Project Coordinator/point of contact for all work performed under this Agreement, and coordinate all work and information covered under this Agreement with the County's Project Manager, or designee.
 - (b) Assist in the identification of all Project elements located outside of County right-of-way requiring a building, plumbing, electrical, and/or mechanical permit. Assist in the processing of such permits for the Project elements needing those approvals and/or permits. Review of these portions of the system shall be conducted according to the requirements of the Oregon State Specialty Codes, appropriate NFPA standards, and pertinent portions of

County Code Title 9. Review times shall conform to the requirements the County Code. The County shall exercise good faith efforts to review Project plans and specifications in a timely manner, consistent with the Project schedule. Upon satisfactory completion of this and other reviews required by this Agreement, the County shall issue necessary construction permit(s).

- (c) Review and comment on recommended changes to plans for the portion of TriMet's electrical systems subject to state jurisdiction under new electrical rules proposed by the Division of Consumer and Business Services for fixed guideway rail systems.
- (d) Review and issue permits as needed for the Project such as retaining wall, sign, building, plumbing, and electrical.
- (e) Perform building, plumbing and electrical permit inspections, as needed.
- (f) Perform building, plumbing and electrical code enforcement, as needed.

E. North Clackamas Parks and Recreation District (NCPRD). Under coordination with the County's Project Manager, NCPRD shall provide services as described below:

1. Assign a single Project Coordinator/point of contact for all elements of design and construction for Segment 2 of the Trolley Trail constructed in conjunction with the Project, and coordinate all work and information covered under this Agreement with the County's Project Manager, or designee. The parties recognize and agree that a separate agreement will be negotiated for the design, construction, operation, and future maintenance of Segment 2 of the Trolley Trail, as referenced in Article IV Section J above.

F. Other County Divisions & Departments. Other County Divisions & Departments with Code authority or other responsibilities over the Project shall provide the required services necessary to carry out their responsibilities as defined by the County Code. Compensation shall be under the County Code on a fee basis or as set forth in this Agreement.

G. COMPENSATION.

1. Generally. Except as otherwise provided in this Agreement, compensation to the Clackamas County Partners shall be based on staff time expended rendering the services required by this Agreement, except that in cases where division fees are required by law or specified in an agreement between the parties, compensation for the service shall be based solely on the fees required by law or as specified by agreement.
2. Fees Required by Law.

- (a) Permit and application fees will be charged as required by law, and paid in conjunction with issuance of the applicable permits.

3. Final Design and Construction Services.

- (a) Further compensation will be provided for services rendered by the Clackamas County Partners during final design and construction. The Clackamas County Partners' compensation for services provided during final design and construction under this Agreement shall not exceed the amounts listed in subsection (c) below, without prior written authorization from TriMet. This amount is based upon the staffing plan for final design and construction services contained in **Exhibit B**, attached. In the event Clackamas County Partners' actual costs reach these maximum amounts, then the Clackamas County Partners shall be released from performing further services under this Agreement to the extent that TriMet fails to approve an increase in the maximum costs.
- (b) TriMet recognizes that the amounts listed in subsection (c) below are initial budget amounts and may change due to the preliminary nature of the data on which they are based. TriMet agrees not to withhold the timely approval of additional resources without cause, subject to available budget. Additionally, the parties agree that line item budgets may be reallocated within this Agreement when approved by the Clackamas County Partners' and TriMet Project Managers, so long as the overall approved budget amount of this Agreement is not exceeded.
- (c) Estimated Maximum Costs for Clackamas County Partners' Services. Services provided by the Clackamas County Partners and the costs to TriMet under this Agreement, other than permit or application fees set out by law or separate agreement, shall not exceed \$399,743.89 unless the parties execute a modification signed by authorized representatives. Such services shall be provided on a reimbursable cost basis and are estimated as follows:

Project Coordination	\$210,964.96
Building Department	\$3,567.74
Department of Transportation and Development (DTD)	
Administration	\$2,496.20
Land Use & Zoning/Long Range Planning	\$9,321.20
Engineering	\$142,497.54
CCSD #5 – Street Lighting	\$1,276.60
NCPRD	\$9,119.65
Surveyor	<u>\$20,500.00</u>
Total	\$399,743.89

H. Method of Payment. Subject to the limitations stated in this Agreement, TriMet agrees to pay the Clackamas County Partners' actual costs for the performance of the services required herein. The actual cost shall include direct salary costs, fringe benefits, direct non-salary costs, and general overhead to be determined as follows:

(1) Direct Salary Costs and Fringe Benefits. The cost of salaries, wages, and fringe benefits are determined as follows:

(a) Actual time computed at the applicable hourly payroll rate and fringe benefits earned with actual time. The County's salary rates for any time period shall be as set out in the official County Compensation Plan or as amended by the Board of County Commissioners for the particular period.

(b) Charges in addition to (a) above for vacation, sick leave, holiday, jury duty, and bereavement leave are authorized but shall be charged to the Project only in proportion to the time devoted to the Project.

(2) Direct Non-Salary. Those reasonable costs directly incurred in fulfilling the terms of this Agreement, including, but not limited to, reproduction, telephone long distance, equipment rentals, and purchase of outside services requested by TriMet.

(3) General Overhead. The Clackamas County Partners shall charge for general overhead as provided by the Federal Acquisition Regulations (FARs), as deemed necessary.

I. Invoices. With the exception of those services provided on a fee basis to TriMet's contractor(s), or reimbursement for expenses incurred to date, the County shall submit to TriMet monthly billings for reimbursable costs and fees based upon costs that have been incurred since the previous billings. TriMet shall pay the County the balance due within thirty (30) days of receipt of such billings. Financial reports accompanying requests for reimbursement shall be in accordance with FTA requirements. TriMet shall review records for suitability and provide assistance as necessary to assure compliance with FTA requirements.

(1) Invoices shall be supported by current time reports for each month. The Project Managers shall review the invoices and billings against the Project budget to provide real time cost tracking and budget management.

(2) The County Project Manager shall oversee the work of the Clackamas County Partners to the end that their work is completed within the budget for that work.

(3) Overtime premium (pay in excess of straight time) after Clackamas County Design Review approval for Phase I shall be minimal and will relate to community meetings or inspections outside normal operating hours; or in the event of an emergency (such as structural damage to the sanitary sewer or any event where sewage is released from the sewer system is considered an emergency).

(4) The fringe rate applied to overtime hours shall be an adjusted rate such that items are not included in both the regular hour fringe rate and the overtime fringe rate, unless such allocation is approved by TriMet.

(5) Upon receipt of payment from TriMet, the County will distribute funds to reimburse the Clackamas County Partners under this Agreement.

J. Additional Services. TriMet will not pay any claim for additional services not specifically provided for herein, unless agreed to mutually by written modification of this Agreement.

K. Status of Contractor. The Clackamas County Partners shall perform this Agreement as independent contractors, and their respective staff shall not be deemed employees of TriMet.

L. Betterments/Cost Sharing. The Clackamas County Partners agree to share in certain costs of the Project, as provided in the Project Funding Agreements between the Clackamas County Partners and TriMet, and as further identified in this Agreement. In addition, the Clackamas County Partners agree that they shall specify and provide or pay all costs for any Betterments (defined below) that are incorporated into the Project at the request of the Clackamas County Partners. The parties shall, through modification of this Agreement, negotiate the work scope and cost of such Betterments prior to TriMet proceeding with the design and construction of such Betterments. As used in this Agreement, "Betterment" shall mean:

- a. Replacement of existing infrastructure with new where the existing infrastructure is beyond its useful life; or
- b. Replacement of existing infrastructure materials or facilities with a more costly kind, size or type of material or facility that constitutes an unnecessary upgrade requested by a Clackamas County Partner, but not required for compliance with rules, regulations, laws and standards applicable to the Project. Providing new sleeves for pipeline crossings through TriMet designated future no-dig areas is not considered a betterment. Strengthening pipelines for loads imposed by the Project's facilities is not considered a betterment.
- c. If the facility is near the end of its useful life, "Betterment" shall include that portion of the cost associated with replacing new that is equivalent to the portion of the expended useful life when compared to the entire useful life.

"Betterment" does not include any item identified as a Local Enhancement in the Supplemental Agreement entered into between the County and TriMet in August, 2012.

ARTICLE VI -- END PRODUCTS

A. Purpose. This Agreement is intended to enable TriMet, with Clackamas County Partner assistance, to perform all tasks necessary to ensure the successful design, construction, operation and maintenance of the Project. Additionally, it allows for integration of Project

facilities into the Clackamas County Partners' existing public and private improvements in a manner that ensures the protection of the public health, safety, and welfare. TriMet and the Clackamas County Partners acknowledge that amendments to this Agreement may be necessary to reflect changing conditions.

The purpose of this Article is to identify the end products that TriMet and the Clackamas County Partners cooperatively must produce or accomplish to accommodate construction of the Project. The list of end products identified in this Article is not all-inclusive. The Clackamas County Partners or TriMet may identify other required end products during final design. The parties may produce or accomplish individual end products at any time between the date this Agreement becomes effective and the issuance of the Construction Permit(s). Prior to issuance of the Construction Permit(s), the Clackamas County Partners will require the production or accomplishment and approval of all end products identified herein or added hereto.

B. End Products. The lead agency designated for the following end products shall have primary responsibility for initiating and accomplishing those end products. It is understood, however, that the accomplishment of the end products will require the cooperative efforts of all parties, and TriMet and the Clackamas County Partners agree to utilize their best efforts to this end.

(1) Detailed Final Plans and Specifications

Lead Agency: TriMet

- (a) Baseline Project
- (b) Utility, Water, Sanitary and Storm Sewers relocation, as required.
- (c) Traffic, Parking and Loading Zone Control Facilities
- (d) Public Utility Relocations Plans. Private utility plan and specifications will be completed by the private utilities themselves.
- (e) County Requested Extra Work. Plans, specifications and bid documents for any such extra work shall be structured so that actual bid prices, construction costs, extra billings, post construction claims, and any and all other cost items are clearly separated from the baseline Project costs.

(2) Permitting For Construction

Lead Agency: Clackamas County Partners
and Local Service Providers

Within the framework established by House Bill 3478 (Oregon Laws 1996, Chapter 12), design and permit approvals involving:

- (a) Those Clackamas County Partners with County Charter or County Code Responsibility
- (b) Sewer, Water, Utility Relocations
- (c) Improvements within public right-of-way unrelated to Project
- (d) Private property improvements unrelated to Project
- (e) Board of County Commissioners

(3) Construction Phasing/Scheduling Plan

Lead Agency: TriMet

- (a) Project Overall
 - (b) Sewer, Water, Utility Relocations windows
 - (c) Improvements within public right-of-way unrelated to Project
 - (d) Private property improvements unrelated to Project
- (4) Public Information/property owner liaison plan Lead Agency: TriMet
- (5) Conduct of Construction Plan Lead Agency: TriMet
- (a) Protection of public and private property provisions
 - (b) Dirt/Debris/Noxious Weed/Tree Removal Mitigation Provisions
 - (c) Construction Drainage and Erosion Control provisions
 - (d) Construction Zone Traffic Control Provisions
 - (1) Traffic Control
 - (2) Temporary street closures
 - (3) Emergency vehicle access
 - (4) Construction staging
 - (e) Construction Zone Private Property Access Provisions
 - (1) Through pedestrian/bicycle traffic
 - (2) Building-pedestrian access
 - (3) Driveway/Loading Zone Access
 - (f) Provisions to assure the protection of pedestrians, bicycles and vehicles using the LRT corridor
 - (g) Provisions for days of the week, hours of the day construction activity may proceed
 - (h) County Noise Control Variance Provisions
 - (i) Provisions for Construction Restriction during special civic events
 - (j) Provisions for conflict resolution between Project contractors and contractors performing public or private work unrelated to the Project
- (6) Property owner/TriMet/County three-party agreements Lead Agency: TriMet
- (7) Liability/Insurance Agreement Lead Agency: TriMet
- (a) During Construction
 - (b) Between construction completion and County acceptance of the Project and assumption of ongoing maintenance responsibilities for components in the public right-of-way
- (8) Record Drawings. Lead Agency: TriMet

Record drawings will be produced by TriMet and distributed to the Clackamas County Partners and Local Service Providers within 120 days of completion of the work. Record Drawings for infrastructure accepted by Clackamas County Partners shall be provided with the designations required by the receiving entity and have dimensions in customary "English" units of measure.

ARTICLE VII - PROJECT POLICY AND MANAGEMENT

- A. Project Steering Committee.** The Project Steering Committee will be retained through the design and construction phases of the Project as described in Section 2.2 of the Portland-Milwaukie Light Rail Project Intergovernmental Grant Agreement between TriMet, Clackamas County, Clackamas County Development Agency and North Clackamas Parks and Recreation District, as it may be amended from time to time.
- B. Project Management Group (PMG).** The Project Management Group will be retained through the design and construction phase of the Project as described in Section 2.1 of the Portland-Milwaukie Light Rail Project Intergovernmental Grant Agreement between TriMet, Clackamas County, Clackamas County Development Agency and North Clackamas Parks and Recreation District, as it may be amended from time to time.
- C. Project Management**
- (1) Project Managers. TriMet designates Leah Robbins as its Project Manager and the County designates Dan Chandler as its Project Manager. The Project Managers shall be responsible for coordinating all aspects of their respective work scopes for the Project and all the respective employees, consultants and contractors assigned to the Project. The Project Managers shall ensure that the Project and tasks related thereto are completed expeditiously and economically, shall be the contact persons through whom TriMet and the Clackamas County Partners officially communicate, and shall have the authority to make decisions and resolve disputes relating to the Project. In the event that a disagreement or dispute occurs between the Project Managers, they shall refer it to TriMet's Executive Director of Capital Projects and the County's Director of the Department of Transportation for resolution.
- (2) Clackamas County Partner project engineers.
- (a) The Clackamas County Partners shall assign project engineers, reporting to the County's Project Manager, with the required engineering experience, ability, and skills necessary to perform the following tasks:
- (1) Have access to the Clackamas County Partner, County Project Manager, and TriMet's Project Director and Manager.
 - (2) Inform the Clackamas County Partner and County Project Manager of TriMet's Project staffs' decisions.
 - (3) Inform Project staff of progress of required Clackamas County Partner approvals and work on end products.
 - (4) Assist TriMet in coordinating privately-owned utility relocation.

- (5) Prepare a schedule interfacing Clackamas County Partner or Clackamas County Partner-permitted work with Project work.
- (6) Assist TriMet in gathering information in a timely manner from Clackamas County Partners' staff and assist TriMet's Project staff in understanding the information.
- (7) Assist TriMet in obtaining required end products and approvals.
- (8) Advise TriMet of documentation necessary to obtain Clackamas County Partner approvals and permits.
- (9) Advise and assist TriMet in accomplishing Clackamas County Partner issuance of the necessary permits.
- (10) Assist assigned TriMet design lead persons as necessary so that final design is accomplished in accordance with Project schedule milestones, budget and identified quality standards.
- (11) Provide field and/or office engineering functions during construction, as part of the assigned TriMet and Clackamas County Partners' resident engineer staff responsible for overseeing a particular construction contract.
- (12) Report to the assigned TriMet design or construction lead and interface with Project consultants or subconsultants only as permitted by the assigned TriMet lead person.

ARTICLE VIII - GENERAL PROVISIONS

- A. Compliance with Law.** The parties recognize that funds provided by FTA will be used to pay for a portion of the Project. Each party agrees to comply with all local, state and federal laws and regulations and fully understands and agrees to comply with all applicable requirements governing work of FTA contractors.
- B. Federal Funding Limitation.** To the extent applicable to each of the respective parties, this Agreement is subject to all federal provisions prescribed for third-party contracts by the federal grant agreement.
- C. Liability.** TriMet shall hold harmless and indemnify the Clackamas County Partners, their officers, directors, agents, and employees against any and all liability, settlements, losses, costs, and expenses in connection with any action, suit, or claim arising out of TriMet's errors, omissions, fault or negligence under this Agreement within the maximum liability limits set forth under the Oregon Tort Claims Act. The Clackamas County Partners shall hold harmless and indemnify TriMet and its officers, directors, agents, and employees against any and all liability, settlements, losses, costs, and expenses in connection with any action, suit, or claim arising out of the errors, omissions, fault or negligence of the Clackamas County

Partners under this Agreement within the maximum liability limits under the Oregon Tort Claims Act.

1. Each party shall give the other immediate written notice of any action or suit filed or any claim made against that party which may result in litigation in any way related to this Agreement.
2. Each party agrees to maintain insurance levels, or self-insurance in accordance with ORS 30.282, for the duration of this Agreement at levels necessary to protect against public body liability as specified in ORS 30.270.

D. Interest of Members of Congress. No member of or delegate to the Congress of the United States shall be admitted to any share or part of this Agreement or to any benefit arising therefrom.

E. Interest of Public Officials. No member, officer, or employee of the Clackamas County Partners or TriMet during his or her tenure or for one year thereafter shall have any interest, direct or indirect, in this Agreement or the proceeds thereof.

F. Disadvantaged Business Enterprise. In connection with the performance of this Agreement, the Clackamas County Partners will cooperate with TriMet in meeting TriMet's commitments and goals with regard to the maximum utilization of disadvantaged business enterprises and will use its best efforts to ensure that disadvantaged business enterprises shall have the maximum practicable opportunity to compete for subcontract work under this Agreement. TriMet and the Clackamas County Partners may desire to enter into an agreement whereby the Clackamas County Partners provide technical assistance for the DBE efforts. In the event an agreement is reached on the scope and budget for this work, the parties will modify this Agreement to provide for such scope and budget.

G. Equal Employment Opportunity. In connection with the execution of this Agreement, neither the Clackamas County Partners nor TriMet shall discriminate against any employee or applicant for employment because of race, religion, color, sex, age, or natural origin. Such actions shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; raise or pay or other forms of compensation; and selection for training, including apprenticeship.

H. Public Contracting Requirements. To the extent applicable, the provisions of ORS Chapter 279 are incorporated by this reference as though fully set forth.

I. Relationship of the Parties. Each of the parties hereto shall be deemed an independent contractor for purposes of this Agreement. No representative, agent, employee or contractor of one party shall be deemed to be a representative, agent, employee or contractor of the other party for any purpose, except to the extent specifically provided herein. Nothing herein is intended, nor shall it be construed, to create between the parties any relationship of principal and agent, partnership, joint venture or any similar relationship, and each party hereby specifically disclaims any such relationship.

J. No Participation. No party or its employees is entitled to participate in a pension plan, insurance, bonus, or similar benefits provided by any other party.

K. Not Used.

L. Termination for Default. If the Clackamas County Partners materially breach this Agreement, TriMet may terminate this Agreement in the manner set forth in this Section. The Clackamas County Partners will be paid only the Agreement price for services performed in accordance with the manner of performance set forth in this Agreement.

If it is later determined by TriMet that the Clackamas County Partners have an excusable reason for not performing, such as a strike, fire, flood, or events which are not the fault of, or are beyond the control of the Clackamas County Partners, TriMet shall establish a new performance schedule, and allow the Clackamas County Partners to continue work.

If TriMet materially breaches this Agreement, the Clackamas County Partners may terminate this Agreement in the manner set forth in this Section.

If it is later determined by the Clackamas County Partners that TriMet has an excusable reason for not performing, such as a strike, fire, flood, or events which are not the fault of, or are beyond the control of TriMet, the Clackamas County Partners shall allow TriMet to continue work.

In the event TriMet fails to pay the Clackamas County Partners for the services provided under this Agreement, such failure shall be deemed a material breach of this Agreement.

Prior to exercising its right to terminate this Agreement for a material breach by the other party, the terminating party must provide 60 calendar days written notice of the material breach to the representative of the other party in accordance with the Notice provision of this Agreement. The notice must include a detailed explanation of the breach, and during this 60 day period, the breaching party may cure the material breach ("Cure Period"). If at the end of the Cure Period the breaching party has not cured the material breach or, if the material breach is one that cannot be cured within 60 days, has not made good faith efforts toward curing the breach, the terminating party may terminate this agreement for default and seek all remedies available at law or in equity.

M. Maintenance of Records. The Clackamas County Partners shall maintain records to show actual time involved in accomplishment of the Project and the cost incurred for the period of time specified. The Clackamas County Partners shall cooperate in good faith with TriMet and the FTA to provide records in a form satisfactory to FTA. TriMet shall take the lead and provide assistance to the Clackamas County Partners as necessary for compliance with FTA requirements. TriMet shall notify the Clackamas County Partners of the date the Project grant ends, to assist them in calculating the length of time they must keep records under the law.

N. Audit and Inspection of Records. The Clackamas County Partners shall permit the

authorized representatives of TriMet, the United States Department of Transportation, and the Comptroller General of the United States to inspect and audit all data and records of the Clackamas County Partners relating to its performance under this Agreement. TriMet shall be responsible for all auditing costs incurred by TriMet or Clackamas County Partners to conduct its audits under this Agreement.

- O. Documents.** All records, reports, data, documents, systems, and concepts, whether in writings, figures, graphs, or models which are prepared or developed in connection with the Project shall become public property. All design drawings and documents prepared by the Clackamas County Partners' staff under this Agreement shall be property of TriMet. Nothing herein shall prevent the Clackamas County Partners from retaining original design drawings and providing reproducible copies to TriMet.
- P. Debt Limits.** To the extent required by law, this Agreement is expressly subject to the debt limitation of Oregon Counties set forth in Article XI, Section 10 of the Oregon Constitution, and is contingent upon funds being appropriated therefore.
- Q. Amendments.** This Agreement embodies the full agreement between the parties with regard to the subject matters set forth herein, unless amended by a writing signed by the parties. The Board of County Commissioners delegates to the Project Manager/Project Representative the authority to sign amendments to this Agreement that affect the total financial commitment up to \$25,000.00. The Board of County Commissioners also delegates to the Project Manager/Project Representative the authority to sign amendments to this Agreement that affect procedural aspects of the delivery of services described in Article V, if necessary.
- R. Authority.** Each party represents that it has the authority to enter into this Agreement on its behalf and the individual signatory for a party represents that it has been authorized by that party to execute and deliver this Agreement.
- S. Third Party Beneficiary.** The Clackamas County Partners and TriMet are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are expressly described as intended beneficiaries of the terms of this Agreement.
- T. Successors and Assigns.** The benefits conferred by this Agreement, and the obligations assumed hereunder, shall inure to the benefit of and bind the successors of the parties. The rights and obligations of each party under this Agreement may not be assigned in whole or in part without the prior written consent of the other party.
- U. Governing Law, Disputes.** This Agreement shall be construed according to the laws of the State of Oregon. TriMet and the Clackamas County Partners shall negotiate in good faith to resolve any dispute arising under this Agreement. Should any dispute arise between the parties concerning this agreement that is not resolved by mutual agreement, it is agreed that it will be submitted to mediated negotiation prior to any party commencing litigation. In such an event, the parties to this agreement agree to participate in good faith in a non-binding mediation process. The mediation shall take place in Portland, Oregon.

The mediator shall be selected by mutual agreement of the parties, but in the absence of such agreement each party shall select a temporary mediator and those mediators shall jointly select the permanent mediator. Each party shall bear its own costs and expenses, but the mediator's fees and costs shall be borne equally by the Parties. In the event mediation is unsuccessful, the Parties are free to pursue any legal remedies that may be available. Any litigation between the Clackamas County Partners and TriMet arising under this Agreement or out of work performed pursuant to this Agreement shall occur, if in the state courts, in the Multnomah County Circuit Court, and if in the federal courts, in the United States District Court for the District of Oregon located in Portland, Oregon.

V. Survival. If any clause, sentence, or portion of the terms and conditions of this Agreement becomes illegal, null, or void for any reason, the remaining portions will remain in full force and effect to the fullest extent permitted by law. All provisions concerning indemnity survive the termination of this Agreement for any cause.

W. Headings. Any titles of the sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

X. Remedies. Except as otherwise expressly provided herein, the rights and remedies expressly afforded under the provisions of this Agreement shall not be deemed exclusive, and shall be in addition to and cumulative with any and all rights and remedies otherwise available at law or in equity. The exercise by either party of any one or more of such remedies shall not preclude the exercise by it, at the same or different times, of any other remedies for the same default or breach, or for any other default or breach, by the other party.

Y. Notice. All routine correspondence and communication regarding this Agreement shall be between the following representatives of the Parties:

TriMet: Leah Robbins
710 NE Holladay Street
Portland, OR 97232
Telephone: (503) 962-2264
Fax: (503) 962-2283

With copy to: TriMet Legal Department
710 NE Holladay Street
Portland, OR 97232
Attn: Lance Erz
Telephone: (503) 962-2108
Fax: (503) 962-2299

The Clackamas County Partners:
Clackamas County
Administration
Public Service Building
Attn: Dan Chandler
2051 Kaen Road

Oregon City, OR 97045
Telephone: (503) 742-5918

With copy to:

Clackamas County Counsel
Public Service Building
2051 Kaen Rd.
Oregon City, OR 97045

Either party may change the foregoing notice address by giving prior written notice thereof to the other party at its notice address.

**Board of Commissioners
County of Clackamas**

**Tri-County Metropolitan Transportation
District of Oregon**

By: _____
John Ludlow, Chair

By: _____
Daniel W. Blocher, P.E., Executive Director

Date: _____

Date: _____

Mary Raethke, Recording Secretary

Approved as to Form:

Approved as to Form:

By: _____
Clackamas County Counsel

By: _____
TriMet Legal Department

**Board of County Commissioners
Acting as the Governing Body of the
North Clackamas Parks and Recreation
District**

By: _____
John Ludlow, Chair

Date: _____

Mary Raethke, Recording Secretary

Approved as to Form:

By: _____
District Counsel

Exhibit List

- Exhibit A – Project Schedule & Milestones**
- Exhibit B – Clackamas County Staffing Plan**

Exhibit A – Project Schedule and Timeline

Activity	Date (1)
Complete Preliminary Engineering	March 2010
FTA Issues Final Environmental Impact Statement	Oct 2010
FTA Issues Record of Decision	Nov 2010
FTA Approval to Start Final Design, and Letter of No Prejudice, Construction Starts under LONP	December 2010
Full Funding Grant Agreement Executed by FTA	May 2012
Construction Complete	May 2015
Operations Starts	September 2015

(1) Subject to change based on Final Design, FFGA, and FTA requirements.

Exhibit B
 Portland Milwaukie Light Rail
 Clackamas County Staffing Plan
 June 2011

Division / Position	Total Employee Cost Estimated	10/11 Job Cost Invoice Totals	11/12 Job Cost Invoice Totals	12/13 Job Cost Invoice Totals	13/14 YTD Job Cost Invoice Totals	Total Employee Cost To Date	Remaining Staffing Plan Balance
PROJECT COORDINATION							
PROJECT COORDINATION TOTALS:	\$ 120,464.05	\$ 3,487.53	\$ 33,869.44	\$ 13,492.07	\$ 1,908.07	\$ 152,757.11	\$ 67,706.94
BUILDING DEPT.							
* BUILDING DEPARTMENT TOTALS:	\$ 3,567.74	\$ -	\$ -	\$ 247.92	\$ -	\$ (247.92)	\$ 3,319.82
DTD ADMINISTRATION							
DTD ADMINISTRATION TOTALS:	\$ 25,121.43	\$ 4,650.00	\$ 18,038.20	\$ 11,510.04	\$ -	\$ (34,198.24)	\$ (9,076.81)
LAND USE & ZONING / LONG RANGE PLANNING							
* LAND USE & ZONING TOTALS:	\$ 5,321.20	\$ 1,539.88	\$ 2,029.45	\$ -	\$ -	\$ (3,589.33)	\$ 5,751.87
ENGINEERING							
DTD ENGINEERING TOTALS:	\$ 210,373.22	\$ 22,085.57	\$ 79,333.90	\$ 82,303.57	\$ 20,895.19	\$ (204,618.23)	\$ 5,754.99
CCSD/IS - STREET LIGHTING							
CCSD/IS TOTALS:	\$ 1,276.60	\$ 31.91	\$ 1,271.60	\$ 414.31	\$ -	\$ (1,717.82)	\$ (441.22)
NCPRD							
NCPRD TOTALS:	\$ 9,119.65	\$ 4,875.12	\$ 16,712.57	\$ 7,680.43	\$ -	\$ (29,266.12)	\$ (20,148.47)
SURVEYOR							
SURVEYOR TOTALS:	\$ 20,500.00	\$ 3,947.25	\$ 471.25	\$ -	\$ -	\$ (4,418.50)	\$ 16,081.50
GRAND TOTAL:	\$ 399,743.89	\$ 40,617.26	\$ 151,726.41	\$ 115,648.34	\$ 22,803.26	\$ (330,795.27)	\$ 68,948.62

* This amount covers pre-permit coordination. Additional permit fees will be applicable.



B

Gary Barth
Director

North Clackamas Parks and Recreation District
Development Services Building
150 Beaver Creek Road
Oregon City, OR 97045

December 12, 2013

Board of County Commissioners
Clackamas County
Sitting as the Board of the North Clackamas Park and Recreation District

Members of the Board:

Approval of Continuing Control Agreement
Between TriMet, Clackamas County
and the North Clackamas Park and Recreation District

Purpose/Outcomes	Approval of Agreement Providing Permission for Portland Milwaukie Light Rail to occupy County Right of Way and NCPRD property
Dollar Amount and Fiscal Impact	No fiscal impact to the County or NCPRD -- neither entity claims any ownership of subject property
Funding Source	N/A
Safety Impact	N/A
Duration	For life of Portland Milwaukie Light Rail Project
Previous Board Action	The Board approved placing this matter on the consent agenda at a November 26, 2013 Study Session.
Contact Person	Gary Barth, Director, North Clackamas Park and Recreation District 503-724-4299

BACKGROUND:

This IGA provides that the Portland Milwaukie Light Rail project can occupy certain rights of way, described in the agreement. County staff have determined that neither the County nor NCPRD own any of the property described in the agreement. However, the agreement provides some certainty to TriMet, and is required by the Circuit Court decision in Tri Metropolitan Service District v. Clackamas County.

RECOMMENDATION:

Staff requests the Board approve the attached IGA.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Gary Barth".

Gary Barth
Director, North Clackamas Park and Recreation District

CONTINUING CONTROL PERMIT FOR THE PORTLAND-MILWAUKIE LIGHT RAIL PROJECT

This Continuing Control Permit ("Permit") is issued by Clackamas County ("County") and the North Clackamas Parks and Recreation District ("District") to the Tri-County Metropolitan Transportation District of Oregon ("TriMet") for the construction, operation, and maintenance of the Portland-Milwaukie Light Rail Project ("Project"), under the terms and condition set forth below. TriMet, the County and the District are collectively referred to herein as the "Parties."

PERMIT RECITALS

- A. In July 2008, Metro adopted the Locally Preferred Alternative ("LPA") and the Land Use Final Order for the Project after local jurisdictions including the cities of Portland, Milwaukie and Oregon County along with Clackamas and Multnomah Counties and TriMet and ODOT recommended the adoption of the LPA.
- B. Under the authority of House Bill 3478 (Oregon Laws 1996, Chapter 12, hereinafter the "Act"), on July 24, 2008, the Metro Board adopted a Land Use Final Order for the Project.
- C. On or about October 22, 2010, the Federal Transit Administration ("FTA"), Metro, and TriMet published the Final Environmental Impact Statement ("FEIS") for the Project.
- D. On November 29, 2010, the FTA issued a Record of Decision finding that the requirements of the National Environmental Policy Act have been satisfied for the construction and operation of the project
- E. On March 29, 2011, the FTA approved the Project's entry into the final design stage of Project development. The design reached 90 percent design in December 2011, and 100 percent design in May 2012.
- F. In May, 2012, TriMet entered into a Full Funding Grant Agreement ("FFGA") with the FTA for acquisition, construction, operation, and maintenance of the Project.
- G. The Project is now under construction, and is scheduled to open for revenue service in September 2015. Upon completion of the Project, TriMet will commence light rail service to areas under the County's jurisdiction.
- H. On February 4, 2010, the County, District, and TriMet entered an intergovernmental agreement ("IGA") regarding the funding, development, and operation of the Project.

- I. In Section 6.2 of the IGA the County, District, and TriMet acknowledged and agreed to comply with FTA's continuing control requirements.
- J. In compliance with Section 6.2 of the IGA, on January 4, 2013 TriMet notified the County Representative that it required a continuing control permit in compliance with FTA requirements.
- K. This Permit is required to be issued pursuant to the Land Use Final Order for the Project.

NOW THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the County and the District issue this Permit under the following terms and conditions:

TERMS AND CONDITIONS

1. To satisfy the continuing control requirements of the FTA as set forth in 49 U.S.C. § 5307(c)(1)(B), the County and the District hereby grant to TriMet a permanent permit over, under, and above only those portions of right-of-way and properties owned by the County and the District, upon which the Project's facilities, features, or both are sited (the "Project Property"), which property is needed for the purpose of construction, operation, and maintenance of the Project. The Project Property is generally set forth in Exhibit A, and does not include any property to be transferred between the District and TriMet under separate agreement.
2. The Parties understand that some of the Project Property set forth in Exhibit A may be under the ownership or control of the City of Milwaukie, and the County and the District make no warranties or representations that they own or control any of the Project Property. However, to the extent that the Project Property is under the ownership or control of the County or District, the County and District agree, subject to the terms of this Permit, to take no action that would interfere with TriMet's continuing control of the Project structures, equipment, or facilities, provided that use by TriMet will be subject to any additional and applicable permit processes with respect to construction and maintenance within the Project Property as provided in this Permit. This grant is irrevocable, except that, in the event TriMet intends to permanently cease to operate the Project on the Project Property, TriMet shall give 60 days prior written notice to County and the District of such intent. Upon receipt of such notice, the County and the District may revoke the continuing control rights granted herein.
3. The Parties agree that the purpose of this Permit is to enable TriMet to construct, maintain, and operate the Project in accordance with Project plans and specifications and the terms of this Permit. The Parties agree that the Project has been constructed utilizing, in part, federal funds provided to TriMet

by FTA pursuant to the FFGA No. OR-03-0126-000, and that the federal government retains a continuing interest in all structures, equipment, and other facilities acquired or constructed with federal funds that may be located in or upon the Project Property generally shown in Exhibit A. TriMet's interest in the Project Property may not be assigned or transferred without FTA's written concurrence.

4. To the extent that the Project Property is under the ownership or control of the County or District, the County and the District shall retain ownership of their respective property and, to the extent permitted by 49 U.S.C. § 5307(c)(1)(B), control of utility easements, property leases, private crossing agreements, and utility franchise rights.
5. TriMet shall include in any third party contract under this Permit a provision to the effect that the contractor shall fully indemnify, hold harmless and defend County, its officers, employees and agents from and against all claims, suits, actions of whatsoever nature, damages or losses, and all expenses and costs incidental to the investigations and defense thereof, including reasonable attorney fees, resulting from or arising out of the activities of such contractor, subcontractor and their officers, employees and agents with respect to the Project Property.
6. Neither the County nor the District shall charge TriMet or the Project a fee for use of or access to the Project Property. However, the Parties acknowledge and agree that if TriMet were to pay for the Project Property, the payments would be costs allowable under a Federal grant. In consideration for the continuing control rights granted herein, TriMet agrees to maintain the Project Property in a reasonable operating condition that does not threaten the health or safety of the general public so long as it operates under this Permit; provided however such maintenance obligations may be assigned to the County and/or District in subsequent agreement(s).
7. To the extent that the Project Property is under the ownership or control of the County or District, the County and the District agree to grant TriMet authority to construct, operate and maintain the Project upon the Property in accordance with the rights afforded herein. The Parties do not anticipate that any ordinances, rules or regulations are necessary to effectuate the rights granted by this Permit, other than the approval of the County Commission and the District Board of Directors. However, in the event that the Parties determine such ordinances, rules or regulations are necessary, prior to adopting or amending such ordinances, rules or regulations, the County and District shall give TriMet an opportunity for review, and to be heard regarding their contents. To the extent not provided in existing ordinances, rules, or regulations, to satisfy the continuing control requirements granted herein, the County and District staff agree to propose for enactment regulations that would:

- A. To the extent feasible, restrict interference associated with impeding or preventing the safe and efficient operation of the Project caused by construction and maintenance activities of private parties on private property and public right-of-way to only temporary interference necessitated by construction activity of the County, District or others.
 - B. Allow TriMet to review and comment on design plans and specifications before permitting construction of any private property driveways or other access ways that turn into or intersect the Project Property. Neither the County nor District shall approve any plan or specification that would prohibit TriMet from constructing, operating, or maintaining light rail on the Property or Project alignment.
 - C. Allow TriMet to review and comment on design plans and specifications before constructing any street or way that turns into or intersects the Project Property. Neither the County nor District shall approve any plan or specification that would prohibit TriMet from constructing, operating, or maintaining light rail on the Project Property or Project alignment.
 - D. Protect the light rail line from interference by parked or other encroaching vehicles. Parking immediately adjacent to the light rail line shall be prohibited.
 - E. Notify TriMet of any proposed future changes by the County or District, or which are proposed to be approved through permit by the County or District, including traffic control measures, that may affect the operation and continuing control of the light rail alignment, and work with TriMet to mitigate the impact of such change on operation of the system.
 - F. Require any utility construction within the light rail system to use methods that, to the extent feasible, allow light rail system operations to continue during construction.
 - G. Grant authority to TriMet to have immediate access to the light rail system in order to perform all required construction, operation, and maintenance of the system, subject to the County or District's design review and permitting process, which may include reasonable and necessary conditions of approval, provided that such process will not prevent the implementation and continuing control of the Project.
8. The Parties understand that temporary interferences for emergencies, construction repairs, and maintenance of streets and other public or private facilities, parades, or civic events may occur, provided that the County or District shall, except in emergency situations where no notice is feasible, provide TriMet with reasonable notice of temporary interference and shall cooperate with TriMet representatives to minimize the interference and, if

possible for portions of the Light Rail alignment that are double-track, provide that only one track is affected by the interference at any one time.

9. This Permit, including any interests herein, shall not be assignable without the County's or District's prior written consent, as applicable. However, if any public body acquires or succeeds TriMet, TriMet's interest, right, and obligations created by this Permit will be assignable by TriMet, with FTA written approval, to the public body that acquires or succeeds TriMet.
10. All notices required under this Permit will be deemed to be properly served if sent by U.S. mail to the last representative of the Party identified below in this paragraph. Until hereafter changed by the Parties by notice in writing, notices shall be sent:

IF TO THE COUNTY:

Dan Chandler
Strategic Policy Administrator
Public Services Building
2051 Kaen Rd
Oregon City, OR 97045

IF TO TRIMET:

Manager of Real Property Acquisition
TriMet
Capital Projects and Facilities Division
1800 SW First Ave., Ste. 300
Portland, OR 97201

11. Any modification to this Permit shall be mutually agreed upon and reduced to writing, and will not be effective until signed by the Parties hereto.
12. Within the limits of the Oregon Constitution and the Oregon Tort Claims Act, codified at ORS 30.260 through 30.300, each of the parties shall hold harmless, indemnify and defend the other and its officers, employees and agents from and against all claims, demands, penalties, and causes of action of any kind or character relating to or arising from this Permit (including the cost of defense thereof, including attorney fees) in favor of any person on account of personal injury, death, damage to property, or violation of law, which arises out of, or results from, the acts or omissions of the indemnitor, its officers, employees, or agents.
13. This Permit may not be terminated, except as set forth in Paragraph 1, above. However, the Parties agree that each party and its respective successors or assigns may avail itself of other remedies at law or in equity to enforce or preserve the rights conferred and obligations assumed by the respective parties herein, and to obtain compensation for any damages or loss incurred as a result of breach by the other party of any provision contained herein, but only if the other party fails to cure the breach within 60 days of receipt of written notice specifying the breach.
14. The provisions of this Permit shall be construed according to the applicable provisions of Oregon law. Litigation to enforce any provision of this Permit

shall be conducted in the Circuit Court of the State of Oregon for Clackamas County.

15. If any provision of this Permit is in conflict with any applicable statute, rule of law, or regulation, then such provision shall be deemed to be null and void to the extent that it may conflict therewith but without invalidating the remaining provisions hereof.

IN WITNESS HEREOF, the Parties hereto have executed this Permit as of the date signed by both Parties.

CLACKAMAS COUNTY

By: _____
Name:
Title:

Date: _____

**TRI-COUNTY METROPOLITAN
TRANSPORTATION DISTRICT OF
OREGON**

By _____
Daniel W. Blocher, P.E., Executive
Director

Date _____

**NORTH CLACKAMAS PARKS AND
RECREATION DISTRICT**

By _____
Chair, NCPRD Board of Directors

Date _____

**APPROVED AS FORM FOR COUNTY
AND DISTRICT**

By _____
County Counsel

Date _____

APPROVED AS FORM FOR TRIMET

By _____
TriMet Legal Department

Date _____

Exhibit "A"

File 3723
Clackamas County-Light
Rail Continuing Control
Agreement

Portland-Milwaukie LRT Project
Jack Carlson, Otak, Inc., 3/14/2013
Amended:

3723-001 Easement for Continuing Control

A variable width strip of land in the vicinity of Blocks 1 and 10, ROBERTSON, in the southeast one-quarter of Section 35, Township 1 South, Range 1 East, Willamette Meridian, Clackamas County, Oregon, to wit:

Those portions of the rights of way of 1st Street (now known as Eagle Street) and Sixth Avenue (now known as 22nd Avenue) as dedicated to the Public in the plat of ROBERTSON lying on the southwesterly side of a line which is parallel with and 60 feet southwesterly from, when measured at right angles to, the right of way centerline of McLoughlin Boulevard, and lying on the northeasterly (left) side of the following described line:

Beginning at a point which bears South, a distance of 455.89 feet, and West, a distance of 98.49 feet from the northeast corner of the southeast one-quarter of said Section 35; thence southeasterly on the arc of a 345.80 foot radius curve to the left (the radius point of which bears N.75°33'42"E.) through a central angle of 06°20'27", a distance of 38.27 feet (chord bears S.17°36'31"E., a distance of 38.25 feet) to the point of curve left of a 457.52 foot radius curve; thence along the arc of said curve left through a central angle of 05°59'10", a distance of 47.80 feet (chord bears S.23°46'20"E., a distance of 47.78 feet); thence S.26°45'55"E., a distance of 200.46 feet to the terminus of this line.

Bearings are based on the Oregon Coordinate System of 1983, North Zone.

The strip of land to which this description applies contains 2,918 square feet, more or less.

3723-002 Easement for Continuing Control

A variable width strip of land in the vicinity of Blocks 1 and 2, ROBERTSON, in the southwest one-quarter of Section 36, Township 1 South, Range 1 East, Willamette Meridian, Clackamas County, Oregon, to wit:

That portion of the right of way of 2nd Street (now known as Bluebird Street) as dedicated to the Public in the plat of ROBERTSON lying on the southwesterly side of a line which is parallel with and 60 feet southwesterly from, when measured at right angles to, the right of way centerline of McLoughlin Boulevard, and lying on the northeasterly (left) side of the following described line:

Beginning at a point which bears South, a distance of 455.89 feet, and West, a distance of 98.49 feet from the northwest corner of the southwest one-quarter of said Section 36; thence southeasterly on the arc of a 345.80 foot radius curve to the left (the radius point of which bears N.75°33'42"E.) through a central angle of 06°20'27", a distance of 38.27 feet (chord bears S.17°36'31"E., a distance of 38.25 feet) to the point of curve left of a 457.52 foot radius curve; thence along the arc of said curve left through a central angle of 05°59'10", a distance of 47.80 feet (chord bears S.23°46'20"E., a distance of 47.78 feet); thence S.26°45'55"E., a distance of 200.46 feet to the point of curve left of a 3,696.15 foot radius curve; thence along the arc of said curve left through a central angle of 01°11'31", a distance of 76.89 feet (chord bears S.27°21'41"E., a distance of 76.89 feet) to the point of curve left of a 2,774.80 foot radius curve; thence along the arc of said curve left through a central angle of 11°07'10", a distance of 538.51 feet (chord bears S.33°31'01"E., a distance of 537.67 feet) to the terminus of this line.

Bearings are based on the Oregon Coordinate System of 1983, North Zone.

The strip of land to which this description applies contains 1,540 square feet, more or less.

3723-003 Easement for Continuing Control

A variable width strip of land in the vicinity of Block 2, ROBERTSON, and Block 4, BIRKEMEIER ADDITION TO MILWAUKIE HEIGHTS, in the southwest one-quarter of Section 36, Township 1 South, Range 1 East, Willamette Meridian, Clackamas County, Oregon, to wit:

That portion of the right of way of Seventh Avenue (now known as River Road) as dedicated to the Public in the plat of ROBERTSON lying on the southwesterly side of a line which is parallel with and 60 feet southwesterly from, when measured at right angles to, the right of way centerline of McLoughlin Boulevard, and lying on the northeasterly (left) side of the following described line:

Beginning at a point which bears South, a distance of 455.89 feet, and West, a distance of 98.49 feet from the northwest corner of the southwest one-quarter of said Section 36; thence southeasterly on the arc of a 345.80 foot radius curve to the left (the radius point of which bears N.75°33'42"E.) through a central angle of 06°20'27", a distance of 38.27 feet (chord bears S.17°36'31"E., a distance of 38.25 feet) to the point of curve left of a 457.52 foot radius curve; thence along the arc of said curve left through a central angle of 05°59'10", a distance of 47.80 feet (chord bears S.23°46'20"E., a distance of 47.78 feet); thence S.26°45'55"E., a distance of 200.46 feet to the point of curve left of a 3,696.15 foot radius curve; thence along the arc of said curve left through a central angle of 01°11'31", a distance of 76.89 feet (chord bears S.27°21'41"E., a distance of 76.89 feet) to the point of curve left of a 2,774.80 foot radius curve; thence along the arc of said curve left through a central angle of 11°07'10", a distance of 538.51 feet (chord bears S.33°31'01"E., a distance of 537.67 feet) to the terminus of this line.

Bearings are based on the Oregon Coordinate System of 1983, North Zone.

The strip of land to which this description applies contains 2,490 square feet, more or less.

3723-004 Easement for Continuing Control

A variable width strip of land in the vicinity of Block 4, BIRKEMEIER ADDITION TO MILWAUKIE HEIGHTS, in the southwest one-quarter of Section 36, Township 1 South, Range 1 East, Willamette Meridian, Clackamas County, Oregon, to wit:

That portion of the right of way of Lakeview Drive as dedicated to the Public in the plat of BIRKEMEIER ADDITION TO MILWAUKIE HEIGHTS lying on the northeasterly side of Block 4, said BIRKEMEIER ADDITION, and lying on the southwesterly side of a line which is parallel with and 60 feet southwesterly from, when measured at right angles to, the right of way centerline of McLoughlin Boulevard.

The strip of land to which this description applies contains 2,996 square feet, more or less.

3723-005 Easement for Continuing Control

A variable width strip of land in the vicinity of Blocks 3 and 4, BIRKEMEIER ADDITION TO MILWAUKIE HEIGHTS, in the southwest one-quarter of Section 36, Township 1 South, Range 1 East, Willamette Meridian, Clackamas County, Oregon, to wit:

That portion of the right of way of Third Street (now known as Bobwhite Street) as dedicated to the Public in the plat of BIRKEMEIER ADDITION TO MILWAUKIE HEIGHTS, lying on the southwesterly side of a line which is parallel with and 60 feet southwesterly from, when measured at right angles to, the right of way centerline of McLoughlin Boulevard, and lying on the northeasterly (left) side of the following described line:

Beginning at a point which bears South, a distance of 455.89 feet, and West, a distance of 98.49 feet from the northwest corner of the southwest one-quarter of said Section 36; thence southeasterly on the arc of a 345.80 foot radius curve to the left (the radius point of which bears N.75°33'42"E.) through a central angle of 06°20'27", a distance of 38.27 feet (chord bears S.17°36'31"E., a distance of 38.25 feet) to the point of curve left of a 457.52 foot radius curve; thence along the arc of said curve left through a central angle of 05°59'10", a distance of 47.80 feet (chord bears S.23°46'20"E., a distance of 47.78 feet); thence S.26°45'55"E., a distance of 200.46 feet to the point of curve left of a 3,696.15 foot radius curve; thence along the arc of said curve left through a central angle of 01°11'31", a distance of 76.89 feet (chord bears S.27°21'41"E., a distance of 76.89 feet) to the point of curve left of a 2,774.80 foot radius curve; thence along the arc of said curve left through a central angle of 11°07'10", a distance of 538.51 feet (chord bears S.33°31'01"E., a distance of 537.67 feet) to the point of curve left of a 3,696.15 foot radius curve; thence along the arc of said curve left through a central angle of 01°11'31", a distance of 76.89 feet (chord bears S.39°40'22"E., a distance of 76.89 feet) and the terminus of this line.

Bearings are based on the Oregon Coordinate System of 1983, North Zone.

The strip of land to which this description applies contains 1,570 square feet, more or less.

3723-006 Easement for Continuing Control

A variable width strip of land in the vicinity of Block 3, BIRKEMEIER ADDITION TO MILWAUKIE HEIGHTS, in the southwest one-quarter of Section 36, Township 1 South, Range 1 East, Willamette Meridian, Clackamas County, Oregon, to wit:

That portion of the right of way of Lakeview Drive as dedicated to the Public in the plat of BIRKEMEIER ADDITION TO MILWAUKIE HEIGHTS lying on the easterly side of Block 3, said BIRKEMEIER ADDITION, lying on the southwesterly side of a line which is parallel with and 60 feet southwesterly from, when measured at right angles to, the right of way centerline of McLoughlin Boulevard, and lying on the northeasterly (left) side of the following described line:

Beginning at a point which bears South, a distance of 455.89 feet, and West, a distance of 98.49 feet from the northwest corner of the southwest one-quarter of said Section 36; thence southeasterly on the arc of a 345.80 foot radius curve to the left (the radius point of which bears N.75°33'42"E.) through a central angle of 06°20'27", a distance of 38.27 feet (chord bears S.17°36'31"E., a distance of 38.25 feet) to the point of curve left of a 457.52 foot radius curve; thence along the arc of said curve left through a central angle of 05°59'10", a distance of 47.80 feet (chord bears S.23°46'20"E., a distance of 47.78 feet); thence S.26°45'55"E., a distance of 200.46 feet to the point of curve left of a 3,696.15 foot radius curve; thence along the arc of said curve left through a central angle of 01°11'31", a distance of 76.89 feet (chord bears S.27°21'41"E., a distance of 76.89 feet) to the point of curve left of a 2,774.80 foot radius curve; thence along the arc of said curve left through a central angle of 11°07'10", a distance of 538.51 feet (chord bears S.33°31'01"E., a distance of 537.67 feet) to the point of curve left of a 3,696.15 foot radius curve; thence along the arc of said curve left through a central angle of 01°11'31", a distance of 76.89 feet (chord bears S.39°40'22"E., a distance of 76.89 feet); thence S.40°16'07"E., a distance of 312.95 feet to the terminus of this line.

Bearings are based on the Oregon Coordinate System of 1983, North Zone.

The strip of land to which this description applies contains 1,535 square feet, more or less.

3723-007 Easement for Continuing Control

A variable width strip of land in the vicinity of Blocks 42 and 49, MILWAUKIE HEIGHTS, in the southwest one-quarter of Section 36, Township 1 South, Range 1 East, Willamette Meridian, Clackamas County, Oregon, to wit:

That portion of the right of way of Tenth Avenue (now known as 26th Avenue) as dedicated to the Public in the plat of MILWAUKIE HEIGHTS lying on the southwesterly side of a line which is parallel with and 60 feet southwesterly from, when measured at right angles to, the right of way centerline of McLoughlin Boulevard, and lying on the northeasterly (left) side of the following described line:

Beginning at a point which bears South, a distance of 1,834.78 feet, and East, a distance of 864.76 feet from the northwest corner of the southwest one-quarter of said Section 36; thence S.40°16'07"E., a distance of 56.94 feet to the point of curve right of a 2,456.07 foot radius curve; thence along the arc of said curve right through a central angle of 02°19'22", a distance of 99.57 feet (chord bears S.39°06'26"E., a distance of 99.56 feet) to the point of curve right of a 1,839.20 foot radius curve; thence along the arc of said curve right through a central angle of 20°04'58", a distance of 644.66 feet (chord bears S.27°54'16"E., a distance of 641.36 feet) to the terminus of this line.

Bearings are based on the Oregon Coordinate System of 1983, North Zone.

The strip of land to which this description applies contains 2,412 square feet, more or less.

3723-008 Easement for Continuing Control

A variable width strip of land in the vicinity of Blocks 48 and 49, MILWAUKIE HEIGHTS, in the southwest one-quarter of Section 36, Township 1 South, Range 1 East, Willamette Meridian, Clackamas County, Oregon, to wit:

That portion of the right of way of 5th Street (now known as Sparrow Street) as dedicated to the Public in the plat of MILWAUKIE HEIGHTS lying on the southwesterly side of a line which is parallel with and 60 feet southwesterly from, when measured at right angles to, the right of way centerline of McLoughlin Boulevard, and lying on the northeasterly (left) side of the following described line:

Beginning at a point which bears South, a distance of 1,834.78 feet, and East, a distance of 864.76 feet from the northwest corner of the southwest one-quarter of said Section 36; thence S.40°16'07"E., a distance of 56.94 feet to the point of curve right of a 2,456.07 foot radius curve; thence along the arc of said curve right through a central angle of 02°19'22", a distance of 99.57 feet (chord bears S.39°06'26"E., a distance of 99.56 feet) to the point of curve right of a 1,839.20 foot radius curve; thence along the arc of said curve right through a central angle of 20°04'58", a distance of 644.66 feet (chord bears S.27°54'16"E., a distance of 641.36 feet) to the terminus of this line.

Bearings are based on the Oregon Coordinate System of 1983, North Zone.

The strip of land to which this description applies contains 2,139 square feet, more or less.

3723-009 Easement for Continuing Control

A variable width strip of land in the vicinity of Blocks 48, 50 and 51, MILWAUKIE HEIGHTS, in the southwest one-quarter of Section 36, Township 1 South, Range 1 East, Willamette Meridian, Clackamas County, Oregon, to wit:

Those portions of the rights of way of Eleventh Avenue (now known as 27th Avenue) and 6th Street (now known as Lark Street) as dedicated to the Public in the plat of MILWAUKIE HEIGHTS lying on the southwesterly side of a line which is parallel with and 60 feet southwesterly from, when measured at right angles to, the right of way centerline of McLoughlin Boulevard, and lying on the northeasterly (left) side of the following described line:

Beginning at a point which bears South, a distance of 1,834.78 feet, and East, a distance of 864.76 feet from the northwest corner of the southwest one-quarter of said Section 36; thence S.40°16'07"E., a distance of 56.94 feet to the point of curve right of a 2,456.07 foot radius curve; thence along the arc of said curve right through a central angle of 02°19'22", a distance of 99.57 feet (chord bears S.39°06'26"E., a distance of 99.56 feet) to the point of curve right of a 1,839.20 foot radius curve; thence along the arc of said curve right through a central angle of 20°04'58", a distance of 644.66 feet (chord bears S.27°54'16"E., a distance of 641.36 feet) to the terminus of this line.

Bearings are based on the Oregon Coordinate System of 1983, North Zone.

The strip of land to which this description applies contains 5,804 square feet, more or less.

3723-010 Easement for Continuing Control

A variable width strip of land in the vicinity of Blocks 52 and 53, MILWAUKIE HEIGHTS, in the northwest one-quarter of Section 1, Township 2 South, Range 1 East, Willamette Meridian, Clackamas County, Oregon, to wit:

That portion of the right of way of Railway Avenue as dedicated to the Public in the plat of MILWAUKIE HEIGHTS lying on the southwesterly side of a line which is parallel with and 60 feet southwesterly from, when measured at right angles to, the right of way centerline of McLoughlin Boulevard, and lying on the easterly (left) side of the following described line:

Beginning at a point which bears South, a distance of 2,726.51 feet, and East, a distance of 1,304.77 feet from the northwest corner of the southwest one-quarter of Section 36, Township 1 South, Range 1 East, Willamette Meridian; thence southeasterly on the arc of a 1,483.00 foot radius curve to the right (the radius point of which bears S.80°47'07"W.) through a central angle of 03°41'06", a distance of 95.38 feet (chord bears S.07°22'20"E., a distance of 95.37 feet) to the point of curve right of a 1,976.68 foot radius curve; thence along the arc of said curve right through a central angle of 01°26'30", a distance of 49.73 feet (chord bears S.04°48'32"E., a distance of 49.73 feet); thence S.04°05'18"E., a distance of 125.35 feet to the point of curve right of a 508.00 foot radius curve; thence along the arc of said curve right through a central angle of 08°38'05", a distance of 76.56 feet (chord bears S.00°13'45"W., a distance of 76.49 feet); thence S.04°32'48"W., a distance of 20.50 feet to the terminus of this line.

Bearings are based on the Oregon Coordinate System of 1983, North Zone.

The strip of land to which this description applies contains 11,499 square feet, more or less.

3723-011 Easement for Continuing Control

A tract of land in Block 53, MILWAUKIE HEIGHTS, in the northwest one-quarter of Section 1, Township 2 South, Range 1 East, Willamette Meridian, Clackamas County, Oregon, to wit:

That portion of Block 53, MILWAUKIE HEIGHTS lying on the westerly side of a line which is parallel with and 60 feet westerly from, when measured at right angles to, the right of way centerline of McLoughlin Boulevard.

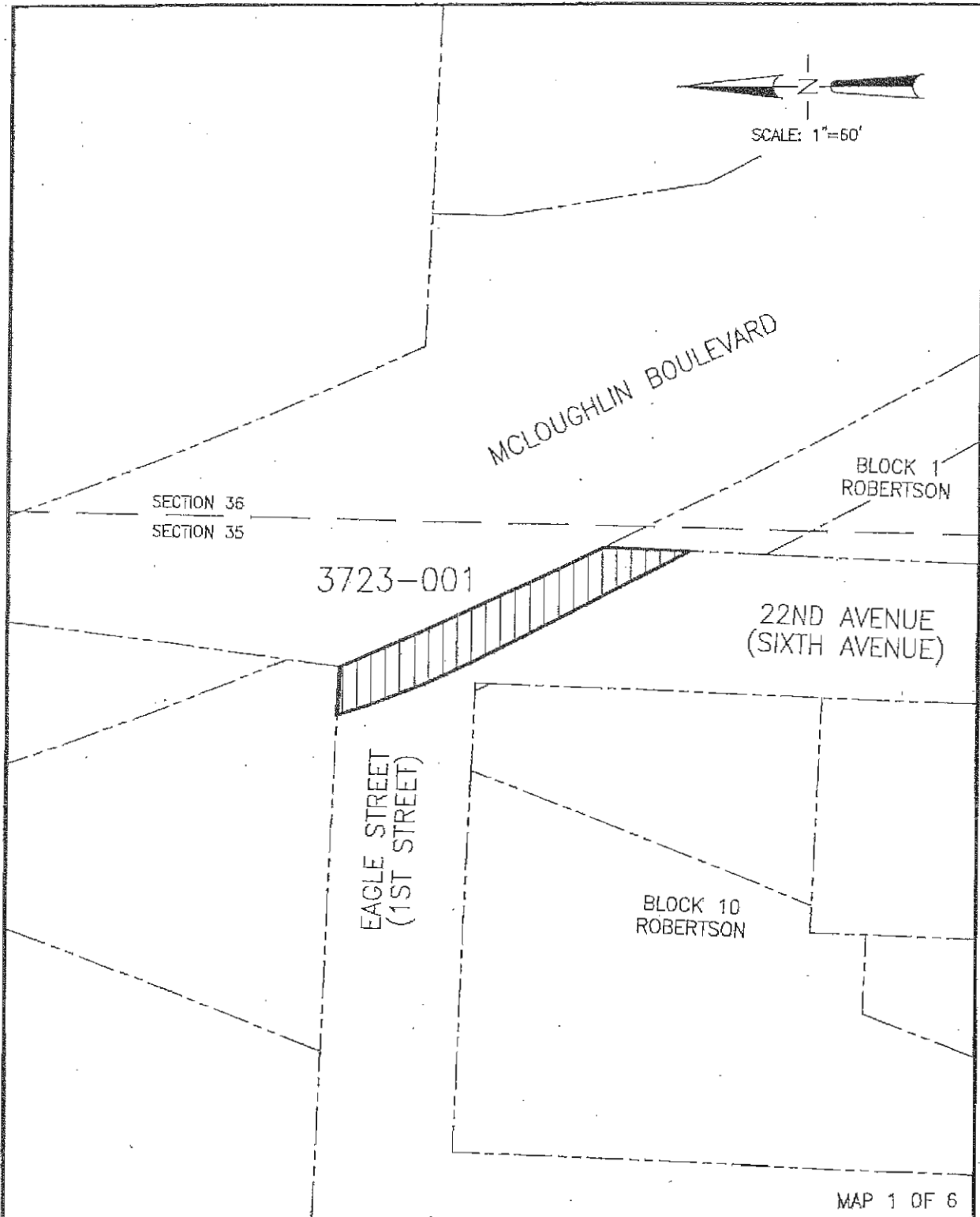
The tract of land to which this description applies contains 3,515 square feet, more or less.

REGISTERED
PROFESSIONAL
LAND SURVEYOR

John A. Carlson

OREGON
JULY 15, 1983
JOHN A. CARLSON
2044

RENEWS 12/31/13



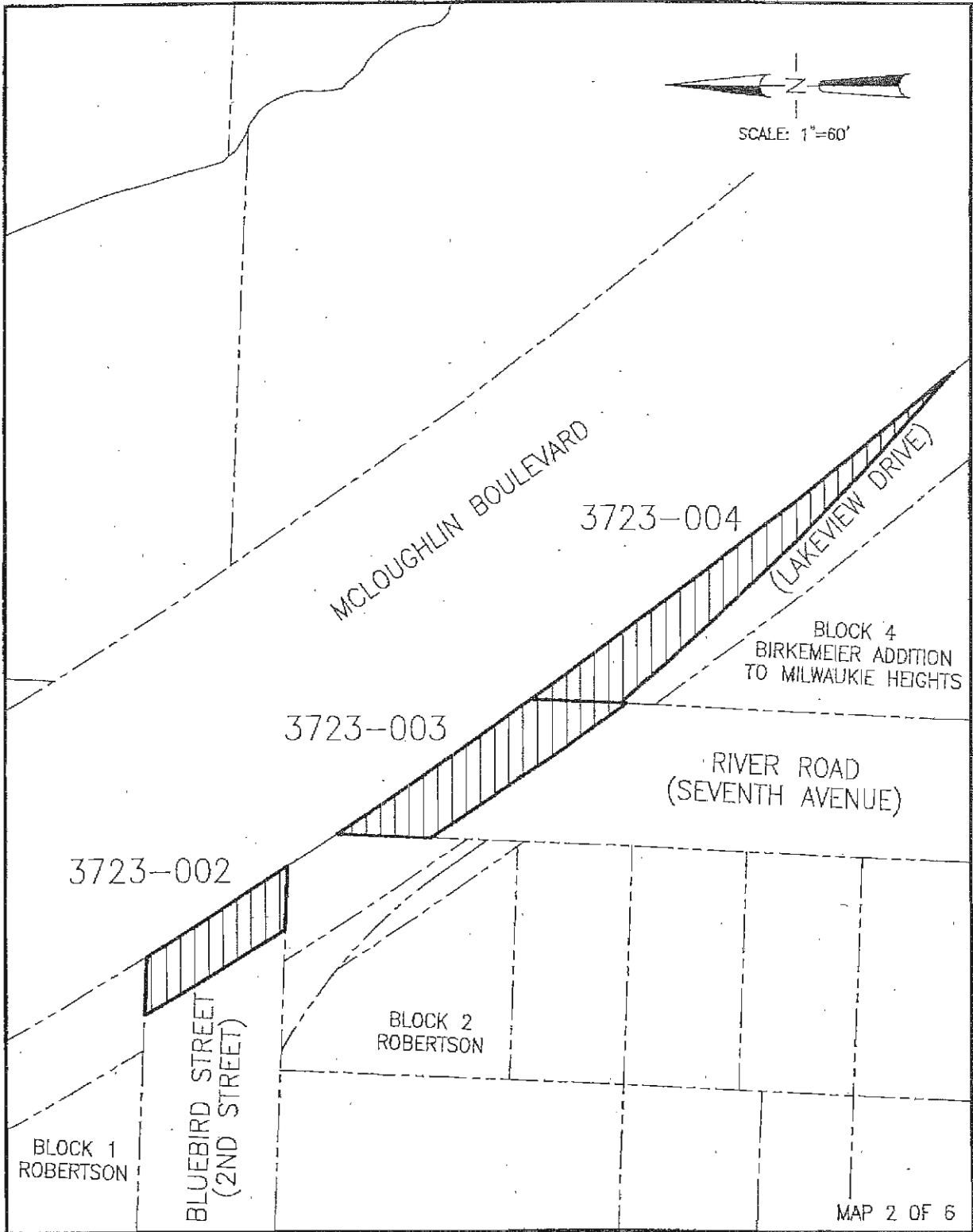
TRIMET
 CAPITAL PROJECTS
 AND
 FACILITIES DIVISION
 710 N.E. HOLLADAY STREET
 PORTLAND, OREGON 97232

CONTINUING CONTROL SKETCH
 PORTLAND TO MILWAUKIE LRT
 FILE NOS. 3722 & 3723



17355 S.W. BOONES FERRY ROAD
 LAKE OSWEGO, OREGON 97035
 (503)635-3618 FAX (503)635-5395

DATE	REVISION NO.	DRAWN BY	CHECKED BY
3/14/2013	000	J. CARLSON	G. PALIL



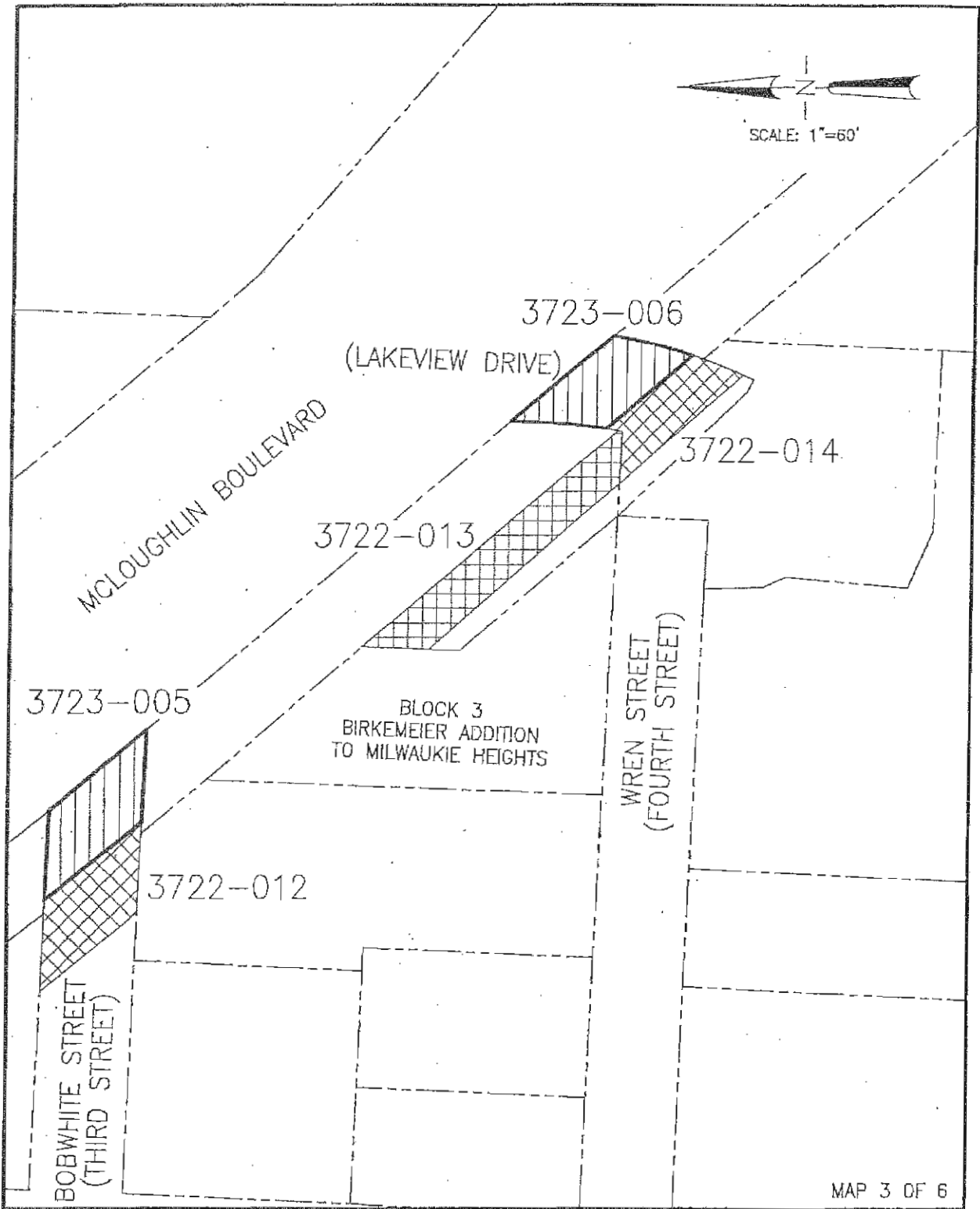
TRIMET
 CAPITAL PROJECTS
 AND
 FACILITIES DIVISION
 710 N.E. HOLLADAY STREET
 PORTLAND, OREGON 97232

CONTINUING CONTROL SKETCH
 PORTLAND TO MILWAUKIE LRT
 FILE NOS. 3722 & 3723



17355 S.W. BOONES FERRY ROAD
 LAKE OSWEGO, OREGON 97035
 (503)635-3618 FAX (503)635-5395

DATE	REVISION NO.	DRAWN BY	CHECKED BY
3/14/2013	000	J. CARLSON	G. PAUL

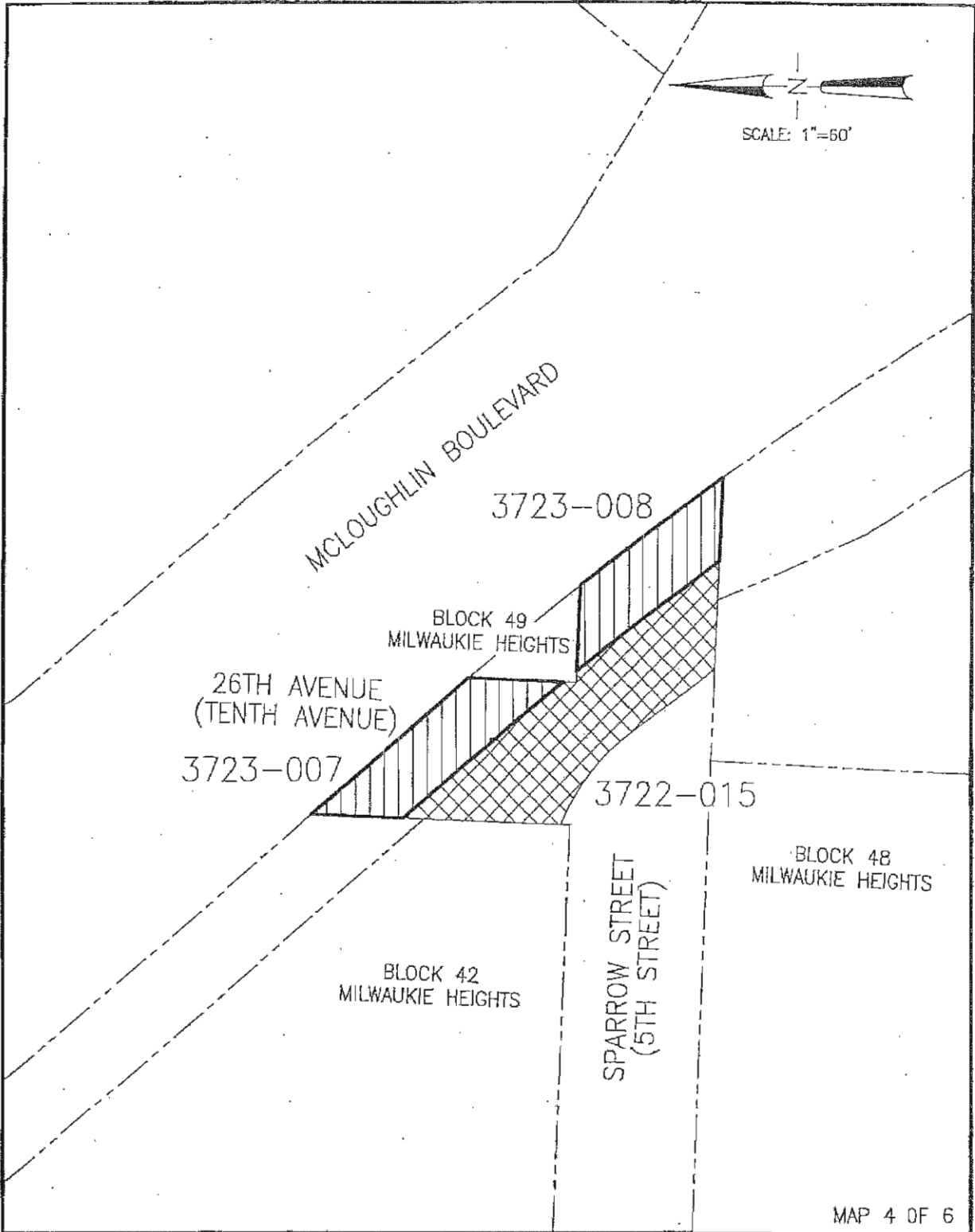


TRIMET
 CAPITAL PROJECTS
 AND
 FACILITIES DIVISION
 710 N.E. HOLLADAY STREET
 PORTLAND, OREGON 97232

CONTINUING CONTROL SKETCH
 PORTLAND TO MILWAUKIE LRT
 FILE NOS. 3722 & 3723

DATE	REVISION NO.	DRAWN BY	CHECKED BY
3/14/2013	000	J. CARLSON	G. PAIHL

otak
 17355 S.W. BOONES FERRY ROAD
 LAKE OSWEGO, OREGON 97035
 (503)635-3618 FAX (503)635-5395

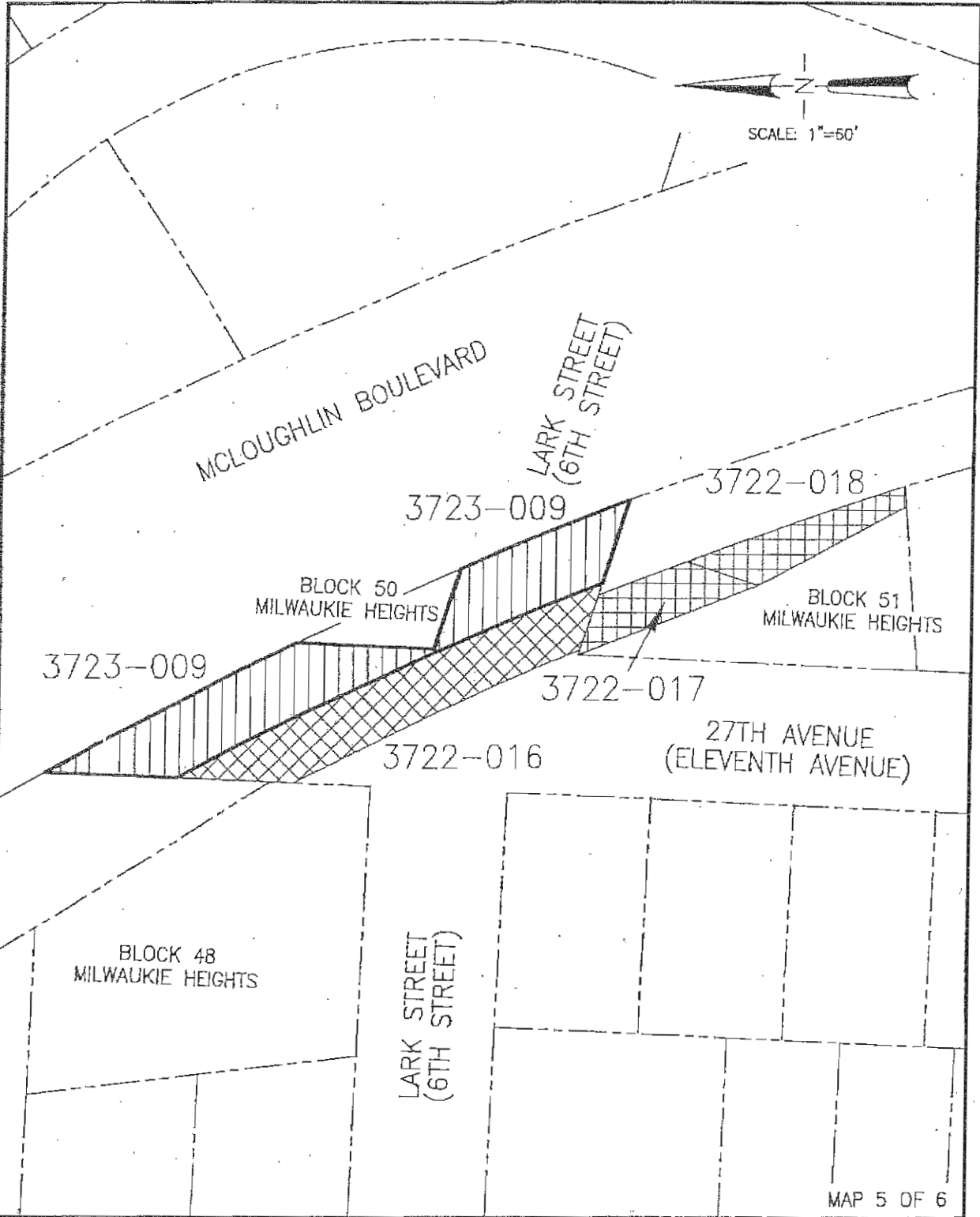


TRIOMET
 CAPITAL PROJECTS
 AND
 FACILITIES DIVISION
 710 N.E. HOLLADAY STREET
 PORTLAND, OREGON 97232

CONTINUING CONTROL SKETCH
 PORTLAND TO MILWAUKIE LRT
 FILE NOS. 3722 & 3723

otak
 17355 S.W. BOONES FERRY ROAD
 LAKE OSWEGO, OREGON 97035
 (503)635-3618 FAX (503)635-5395

DATE	REVISION NO.	DRAWN BY	CHECKED BY
3/14/2013	000	J. CARLSON	G. PAUL



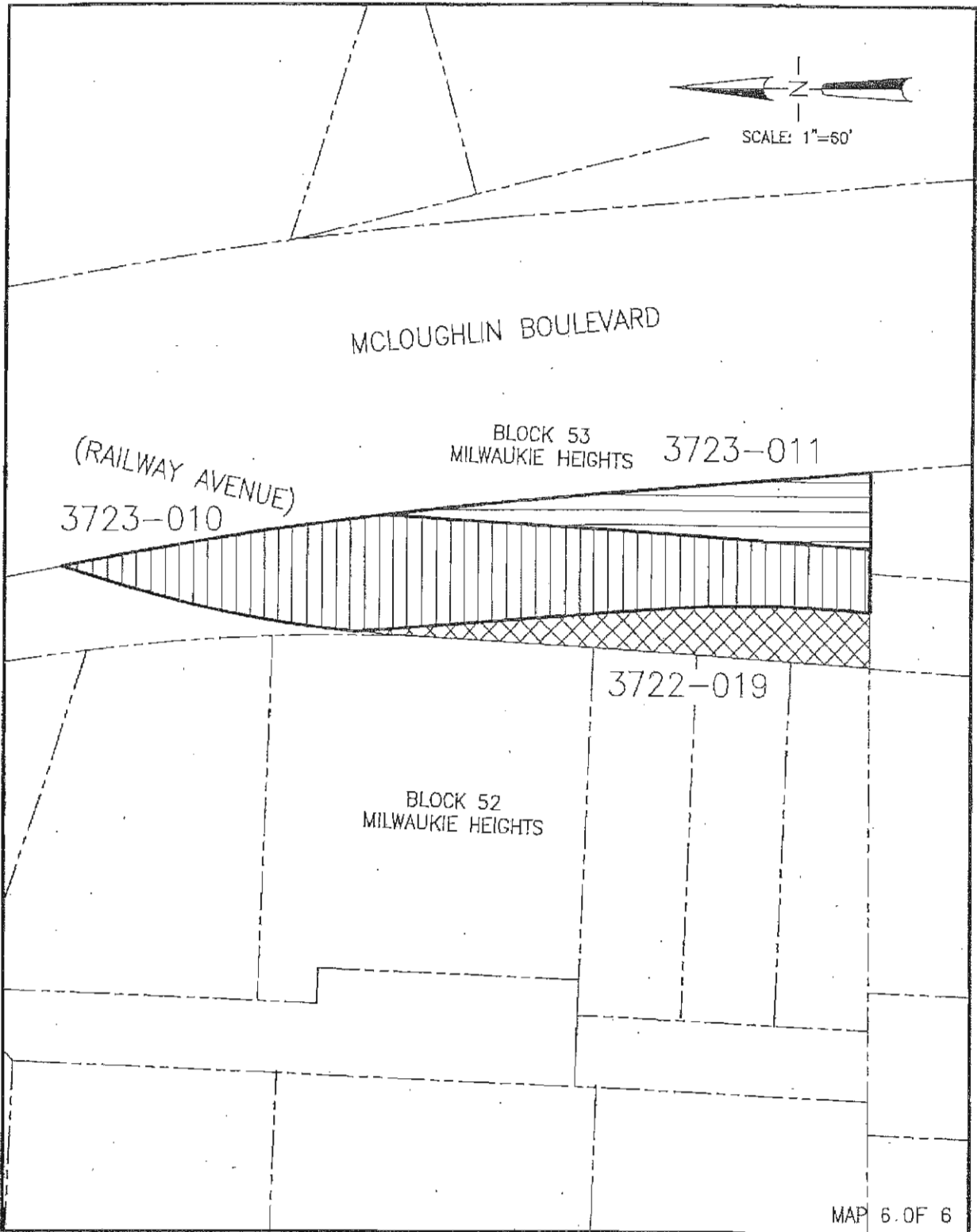
MAP 5 OF 6

TRI MET
 CAPITAL PROJECTS
 AND
 FACILITIES DIVISION
 710 N.E. HOLLADAY STREET
 PORTLAND, OREGON 97232

CONTINUING CONTROL SKETCH
 PORTLAND TO MILWAUKIE LRT
 FILE NOS. 3722 & 3723

DATE	REVISION NO.	DRAWN BY	CHECKED BY
3/14/2013	000	J. CARLSON	G. PAUL

otak
 1735 S.W. BOONES FERRY ROAD
 LAKE OSWEGO, OREGON 97035
 (503) 675-7618 FAX (503) 675-5395



TRI MET
 CAPITAL PROJECTS
 AND
 FACILITIES DIVISION
 710 N.E. HOLLADAY STREET
 PORTLAND, OREGON 97232

CONTINUING CONTROL SKETCH
 PORTLAND TO MILWAUKIE LRT
 FILE NOS. 3722 & 3723

DATE	REVISION NO.	DRAWN BY	CHECKED BY
3/14/2013	000	J. CARLSON	G. PAUL

otak

17355 S.W. BOONES FERRY ROAD
 LAKE OSWEGO, OREGON 97035
 (503)635-3618 FAX (503)635-5395



WATER
ENVIRONMENT
SERVICES

Beyond clean water.

14

Water Quality Protection
Surface Water Management
Wastewater Collection & Treatment

Michael S. Kuenzi, P.E.
Director

December 12, 2013

Board of County Commissioners
Clackamas County

Members of the Board:

**APPROVAL OF A PARTNERSHIP AGREEMENT BETWEEN CLACKAMAS COUNTY
SERVICE DISTRICT NO. 1 (CCSD#1) AND CLACKAMAS RIVER BASIN COUNCIL FOR THE
ROCK CREEK CONFLUENCE RESTORATION**

Purpose/Outcomes	Leverage CCSD#1 and community resources to facilitate the restoration of degraded riparian and in-stream habitat on Rock Creek where it joins the Clackamas River.
Dollar Amount and Fiscal Impact	Total partnership commitment is \$425,000 of which CCSD#1 will provide \$225,000 in funds and provide Metro grant funding of 200,000.
Funding Source	\$100,000 from the approved CCSD#1 FY13-14 budget, \$300,000 from the proposed CCSD#1 FY14-15 budget, no County General Funds are involved.
Safety Impact	None.
Duration	N/A
Previous Board Action/Review	The IGA between CCSD#1 and Metro was approved by the Board of County Commissioners on July 18, 2013 – 071813-IX.1.
Contact Person	Gail Shaloum – Environmental Policy Specialist - Water Environment Services – 503-742-4597.
Contract No.	None.

BACKGROUND

The Rock Creek Confluence Restoration Project has been identified to enhance the resiliency of a major Clackamas River tributary. Rock Creek ultimately contributes to and influences the quality to the drinking water supply for many of the regional potable water service suppliers. Pending development in the upper watershed (East Happy Valley expansion area) will adversely impact Rock Creek via significant increases in stormwater runoff and associated pollutant loads.

In June 2013, the Board of County Commissioners (BCC) approved the FY13-14 budget for CCSD#1 that set aside \$100K to initiate the streamside restoration work on Rock Creek. Additional funds have been identified in the District’s Capital Improvement Plan for 2014-15 and will be proposed in the FY14-15 budget to complete the restoration effort and CCSD#1’s funding commitments. CCSD#1’s total commitment has been established at \$225,000. In addition, the BCC approved an IGA between CCSD#1-Metro on July 18, 2013. This IGA provides CCSD#1 and the project with a matching grant up to \$209,000. WES partners including the Nature Conservancy and Clackamas River Basin Council will contribute additional funding to the project if they can secure grant funds from other sources. The total CCSD#1 project budget for this effort has been established at \$425,000, including \$225,000 from CCSD#1 surface water funds, and the matching Metro grant as specified in the July 18, 2013 IGA with Metro. The District is the owner of the land.

In June 2013, staff published a Request for Proposals to solicit potential community partners with the effort. Staff received only one response, that being the proposal from the Clackamas River Basin Council (CRBC). The scope of CRBC's effort herein includes managing the restoration effort, contracting with subcontractors, securing additional grant funding and coordinating planned efforts with the permitting agencies. This partnership agreement has been reviewed and approved by County Counsel.

RECOMMENDATION

Staff recommends that:

1. The Board of County Commissioners, acting as the governing body of Clackamas County Service District No. 1 (the "District") approve the Partnership Agreement to between the District and the Clackamas River Basin Council for the Rock Creek Confluence Restoration, and;
2. The Director of Water Environment Services be authorized to execute the agreement between the District and Clackamas River Basin Council without further Board action.

Respectfully submitted,



Michael S. Kuenzi
Director

**PARTNERSHIP AGREEMENT
BETWEEN
CLACKAMAS COUNTY SERVICE DISTRICT NO. 1
FOR
ROCK CREEK CONFLUENCE RESTORATION**

THIS PARTNERSHIP AGREEMENT (this "Agreement") is made and entered into on this _____ day of _____ in the year 2013 by and between CLACKAMAS COUNTY SERVICE DISTRICT NO. 1, a county service district formed under Oregon Revised Statutes ("ORS") 451 (the "DISTRICT") and CLACKAMAS RIVER BASIN COUNCIL, an Oregon non-profit corporation (the "PARTNER").

RECITALS

WITNESSETH: WHEREAS DISTRICT owns real property known as the Rock Creek Confluence site (the "Property"), identified more specifically as Tax Lot 22E12 00303;

WHEREAS, pending development in the upper watershed is expected to adversely impact Rock Creek, which contributes to and influences the quality of the drinking water supply for many of the regional potable water service suppliers, by causing increases in stormwater runoff and associated pollutant loads;

WHEREAS, the District has determined a need to enhance the resiliency of this major Clackamas River tributary through the Rock Creek Confluence Restoration Project;

WHEREAS, partnering with other organizations is critical to the success of this project, providing additional resources and operational efficiencies to ensure the greatest impact on Rock Creek;

WHEREAS, the DISTRICT desires to engage PARTNER to provide third-party project management services for stream restoration on the Property;

WHEREAS, the DISTRICT intends to engage the PARTNER to perform the professional services described on Exhibit A, on the schedule set forth on Exhibit B, each as attached hereto and incorporated by reference, hereinafter called the "PROJECT;"

WHEREAS, the PARTNER services will include hiring and managing a sub-contractor to complete design and permitting, a construction contractor to complete the installation, and a contractor to complete vegetation establishment; managing work with adjacent private property owner; coordinating between partners (DISTRICT, ODFW, SOLVE, City of Happy Valley); managing grant budgets; and ensuring the project is completed on time and on budget.

NOW, THEREFORE, the DISTRICT and the PARTNER for the considerations hereinafter set forth agree as follows:

ARTICLE 1 - SERVICES OF THE PARTNER

The PARTNER agrees to perform, in accordance with applicable DISTRICT, local, state and federal laws, statutes, ordinances, rules and regulations, professional services in connection with the PROJECT as stated and defined in Exhibit A (the "Services").

ARTICLE 2 - DISTRICT'S RESPONSIBILITIES

Unless otherwise specifically modified in Exhibit A, the DISTRICT will:

- 2.1 Provide adequate information to the PARTNER regarding the DISTRICT's requirements for the PROJECT.
- 2.2 Assist the PARTNER by making available all reasonably available information and technical data pertinent to the PROJECT.
- 2.3 Obtain approvals and permits from governmental authorities having jurisdiction over the PROJECT, and such approvals and consents from others as may be necessary for completion of the PROJECT (excepting any personal qualifications or certifications required for PARTNER to perform the work contemplated hereunder).

ARTICLE 3 - PARTNER'S RESPONSIBILITIES

3.1 The PARTNER agrees to complete the Services according to the schedule set forth in Exhibit B (the "Schedule"). If the DISTRICT has requested significant modifications or changes in the scope of the Services pursuant to Section 3.3, the Schedule of the PARTNER's services shall be adjusted accordingly, if necessary.

3.2 Standards of Performance

3.2.1 The standard of care for all professional services performed or furnished by PARTNER under this Agreement will be the care and skill ordinarily used by a competent member of PARTNER's profession in the locale where the Project is located.

3.2.2 PARTNER shall be responsible for the accuracy of its services and documents resulting there from, and DISTRICT shall not be responsible for discovering deficiencies therein. PARTNER shall correct such deficiencies without additional compensation, except to the extent such action is solely attributable to deficiencies in DISTRICT-furnished information.

3.2.3 PARTNER and DISTRICT shall comply with applicable Laws or Regulations and DISTRICT-mandated standards. Any changes to these requirements during the term of this Agreement shall not be the basis for any modifications to PARTNER's scope of services, times of performance, or compensation.

3.3 Notice of Changes

In the normal course of administering the work under this Agreement, the DISTRICT may give directives to the PARTNER, in writing, which may constitute a change to the Services or Schedule. If an instruction, directive or decision is given that the PARTNER believes will result in a change in scope or schedule, the PARTNER shall notify the DISTRICT within seven (7) calendar days of receiving such directive or instruction. The notice shall state the general nature of the change, but need not include a detailed cost or impact estimate. Failure to give timely written notice relieves the DISTRICT from any obligation to adjust the contract amount, scope or schedule as an amendment to the Agreement. To the extent DISTRICT agrees that a change in the Services, Schedule, and/or compensation is required, the parties shall agree to an amendment to this Agreement pursuant to the process set forth in Paragraph 6.24 hereof.

3.4 PARTNER's Project Manager

The PARTNER shall assign personnel to do the work in the capacities and amounts designated in Exhibit A. The PARTNER shall not change these personnel assignments without the prior written consent of the DISTRICT's Project Manager (as defined in Paragraph 4.3), which consent shall not be unreasonably withheld.

ARTICLE 4 - AUTHORIZATION AND PROJECT MANAGER

4.3 Specific authorization to proceed with the Services shall be granted in writing by the DISTRICT within a reasonable time after the execution of this Agreement. The PARTNER shall not proceed with the work without such authorization. The DISTRICT's Project Manager shall have authority to give such authorizations.

4.4 This Agreement shall be effective as of the PARTNER's receipt of the written authorization to proceed and shall be completed as set forth in the Schedule.

4.3 DISTRICT's Project Manager

The DISTRICT's Project Manager is authorized to approve work and billings hereunder, approve subcontractors, give notices referred to herein, terminate this Agreement as provided herein and carry out any other DISTRICT actions referred to herein. The DISTRICT's Project Manager shall be Gail Shaloum.

ARTICLE 5 - PAYMENTS TO PARTNER

In accordance with the terms and conditions of this Agreement, the DISTRICT shall compensate the PARTNER as follows:

5.1 Compensation

5.1.1 The DISTRICT agrees to pay the PARTNER an amount equal to Four Hundred Thousand and 00/100 Dollars (\$400,000.00) for the Services as billed monthly. Notwithstanding anything else to the contrary herein, the total compensation under this Agreement shall not exceed Four Hundred Thousand and 00/100 Dollars

(\$400,000.00) without prior written approval of the DISTRICT.

5.1.2 The PARTNER is entitled to no compensation for the correction or revision of any errors or deficiencies in the services provided.

5.1.3 The DISTRICT may withhold from payments due the PARTNER such sums as are necessary, in the DISTRICT's sole and absolute discretion, to protect the DISTRICT against any loss or damage which may result from known negligence or unsatisfactory work by the PARTNER, the failure of the PARTNER to perform as required under this Agreement, or claims filed against the PARTNER or the DISTRICT relating to the PARTNER's services or work under this Agreement.

5.2 Billing and Payment Procedure

5.2.4 The PARTNER will provide monthly or quarterly percentage complete invoices to the DISTRICT for work performed during the preceding month or quarter. The percentage complete invoices will be accompanied with a summary cost itemization and supported by a monthly progress report tied to the milestones indicated in the Schedule. The PARTNER shall maintain detailed records to support these charges and such records shall be available to the DISTRICT for audit and copying. The DISTRICT shall pay monthly payments to the PARTNER within 30 days of the DISTRICT's receipt of the PARTNER's monthly statement. Interest on unpaid payments due shall accrue at the rate of 1% per month beginning the 60th day after the DISTRICT's receipt of the PARTNER's statement. No interest shall be paid on disputed amounts.

ARTICLE 6 - GENERAL CONDITIONS

6.5 Early Termination of Agreement

6.5.5 The DISTRICT and the PARTNER, by mutual written agreement, may terminate this Agreement at any time.

6.5.6 The DISTRICT, on thirty (30) days' prior written notice to the PARTNER, may terminate this Agreement for any reason deemed appropriate in its sole discretion.

6.5.7 Either the DISTRICT or the PARTNER may terminate this Agreement in the event of a breach of the Agreement by the other. Prior to such termination, however, the party seeking the termination shall give to the other party written notice of the breach and of the party's intent to terminate. If the party has not entirely cured the breach within fifteen (15) days of deemed or actual receipt of the notice, then the party giving notice may terminate the Agreement at any time thereafter by giving a written notice of termination stating the effective date of the termination, provided, however, if breach cannot be entirely cured within such 15 day period the breaching party shall commence cure within 15 days and diligently pursue curative action through completion.

6.6 Payment on Early Termination

- 6.6.8 In the event of termination under Paragraphs 6.1.1 or 6.1.2 or a breach by DISTRICT under Paragraph 6.1.3, hereof, the DISTRICT shall pay the PARTNER for:
- (i.) Work performed in accordance with the Agreement prior to the termination date;
 - (ii.) Costs and expenses arising out of PARTNERS termination of subcontracts entered into in order to perform its obligations under this Agreement (e.g., any mitigation, cleanup, or remediation of ongoing in-water work); and
 - (iii.) Other reasonable early termination fees associated with such subcontracts.
- 6.6.9 In the event of termination under Paragraph 6.1.3 hereof by the PARTNER due to a breach by the DISTRICT, then the DISTRICT shall pay the PARTNER as provided in Paragraph 6.3.3.
- 6.6.10 In the event of termination under Paragraph 6.1.3 hereof by the DISTRICT due to a breach by the PARTNER, then the DISTRICT shall pay the PARTNER for the work performed in accordance with the Agreement prior to the termination date, subject to set off of excess costs, as provided for in Paragraphs 5.1.3 and 6.3.
- 6.6.11 In the event of early termination, all of the PARTNER's work product will become and remain property of the DISTRICT.

6.7 Remedies

- 6.7.12 In the event of termination under Paragraph 6.1.3 by the DISTRICT due to a breach by the PARTNER, the DISTRICT may complete the work either itself, or by agreement with another contractor or by a combination thereof. In the event that the cost of completing the work exceeds the remaining unpaid balance of the compensation provided under Paragraph 5.1.1 hereof, then the PARTNER shall promptly pay to the DISTRICT the amount of the excess, up to a maximum of One Hundred Twelve Thousand Two Hundred Eighty-Six and 00/100 Dollars (\$112,286.00).
- 6.7.13 The remedies provided to the DISTRICT under Paragraph, 6.1, 6.2, and 6.3 hereof for a breach by the PARTNER shall not be exclusive. The DISTRICT also shall be entitled to any other equitable and legal remedies that may be available.
- 6.7.14 In the event of breach of this Agreement by the DISTRICT, then the PARTNER's remedy shall be limited to termination of the Agreement and receipt of payment as provided in Paragraphs 6.1 and 6.2 hereof.

6.8 Indemnification and Insurance

- 6.8.15 The PARTNER agrees to indemnify, save harmless and defend the DISTRICT, its officers, commissioners, agents and employees from and against all costs, losses, damages, claims or actions and all expenses incidental to the investigation and defense thereof (including legal and other professional fees) arising out of or based upon damages or injuries to persons or property caused by the negligent or willful acts, errors, or omissions of the PARTNER or PARTNER's officers, owners, employees, agents, or its subcontractors or anyone over which PARTNER has a right to control.
- 6.8.16 The PARTNER agrees to furnish the DISTRICT evidence of comprehensive general (including contractual liability) and automobile liability insurance in the amount of not less than \$1,000,000 combined single limit for personal injury and property damage for the protection of the DISTRICT, its officers, commissioners, agents, and employees against liability for damages because of personal injury, bodily injury, death or damage to property, including loss of use thereof, in any way related to the PARTNER's, or any subcontractors, in the performance of this Agreement. The insurance shall include the DISTRICT, its officers, commissioners, agents and employees, as additional insureds and refer to and support the PARTNER's obligation to hold harmless the DISTRICT, its officers, commissioners, agents, and employees.
- 6.8.17 The PARTNER agrees that it will require any sub-contractor which holds a professional license to furnish the PARTNER and DISTRICT evidence of professional liability insurance coverage (errors and omissions, on a claims-made basis) in the amount of not less than \$1,000,000 because of personal injury, bodily injury, death or damage to property and will name PARTNER and DISTRICT as additional insureds for purposes of the Project.
- 6.4.4 Coverages provided by the PARTNER or its Sub-contractors must be underwritten by an insurance company deemed acceptable by the DISTRICT. Insurance coverage shall be provided by companies admitted to do business in Oregon or, in the alternative, rated A- or better by Best's Insurance Rating. The DISTRICT reserves the right to reject all or any insurance carrier(s) with an unacceptable financial rating.

6.9 Oregon Law and Forum

- 6.9.18 This Agreement shall be construed according to the laws of the State of Oregon, without giving effect to the conflict of law provisions thereof.
- 6.9.19 Any litigation between the DISTRICT and the PARTNER arising under this Agreement or out of work performed under this Agreement shall occur, if in the state courts, in the Clackamas County Court having jurisdiction thereof, and if in the federal courts, in the United States District Court for the District of Oregon. The parties agree, however, to resolve any disputes between the parties in the

manner described in Paragraph 6.23.

6.10 Workers' Compensation Coverage Requirements

The PARTNER is an independent contractor for purposes of the Oregon Workers' Compensation Law, as set forth in ORS Chapter 656 ("Workers' Comp Law") and is solely liable for any workers' compensation coverage under this Agreement. If the PARTNER hires subcontractors for the performance of this Agreement, the PARTNER agrees to require that the subcontractor(s) shall comply with ORS Chapter 656. The signing of this Agreement shall constitute the declaration of independent contractor status by the PARTNER.

6.10.20 The PARTNER will be solely responsible for payment of any local, state or federal taxes required as a result of this Agreement.

6.10.21 This Agreement is not intended to entitle the PARTNER to any benefits generally granted to DISTRICT, officers, or employees. Without limitation, but by way of illustration, the benefits not intended to be extended by this contract to the PARTNER are vacation, holiday and sick leave, other leaves with pay, tenure, medical and dental coverage, life and disability insurance, overtime pay, Social Security, workers' compensation, unemployment compensation, or retirement benefits (except so far as benefits are required by law if the PARTNER is presently a member of the Public Employees Retirement System).

6.11 Subcontracts

The PARTNER shall not subcontract its work under this Agreement, in whole or in part, without the prior written approval of the DISTRICT. The PARTNER shall require subcontractor to agree, as to the portion subcontracted, to fulfill all obligations of the PARTNER as specified in this Agreement. Notwithstanding DISTRICT approval of a subcontractor, the PARTNER shall remain obligated for full performance hereunder, and the DISTRICT shall incur no obligation other than its obligations to the PARTNER hereunder. The PARTNER agrees that if subcontractors are employed in the performance of this Agreement, the PARTNER and its subcontractors are subject to the requirements of the Workers' Comp Law.

6.12 Assignment

The PARTNER shall not assign this Agreement, in whole or in part, or any right or obligation hereunder, without the prior written approval of the DISTRICT which may be granted or withheld in its sole and absolute discretion. The DISTRICT may assign this Agreement at any time and shall provide PARTNER with notice of such assignment within thirty (30) days of such assignment.

6.13 Notice

Any notice provided for under this Agreement shall be sufficient if in writing and delivered personally to the following addressee or deposited in the United States Mail, postage prepaid,

certified mail, return receipt requested, addressed as follows, or to such other address as the receiving party hereafter shall specify in writing with such notice deemed delivered either upon actual receipt or three (3) days after deposit in U.S. Mail, whichever shall first occur:

If to the DISTRICT: Clackamas County Service District No. 1
c/o Water Environment Services
150 Beavercreek Road, 4th Floor
Oregon City, Oregon 97045
ATTN: Gail Shaloum

Copy to: County Counsel
c/o Water Environment Services
150 Beavercreek Road
Oregon City, Oregon 97045
ATTN: Amanda Keller

If to the PARTNER: Clackamas River Basin Council
PO Box 1869
Clackamas, OR 97015
ATTN: Jenny Dezso

6.14 Severability

If any provision of this Agreement is found to be unconstitutional, illegal or unenforceable, this Agreement nevertheless shall remain in full force and effect and the offending provision shall be stricken. The Court or other authorized body finding such provision unconstitutional, illegal or unenforceable shall construe this Agreement without such provision to give effect to the maximum extent possible the intentions of the parties.

6.15 Integration

This Agreement contains the entire agreement between the DISTRICT and the PARTNER and supersedes all prior written or oral discussions or agreements.

6.16 Funds

The DISTRICT certifies that up to \$100,000 is available and authorized for expenditure pursuant to this Agreement in Fiscal Year 2013-14 from DISTRICT funds plus up to \$50,000 from Nature in Neighborhood Capital Grant Funds. The funds needed for the balance of the Agreement are subject to appropriation by the Board of County Commissioners, acting as the governing body of the DISTRICT (the "Board"), during budget processes. If the Board does not appropriate funds for subsequent fiscal years for the balance of this contract, the DISTRICT may immediately terminate this Agreement by giving written notice of termination to the PARTNER. The PARTNER shall not be entitled to compensation for any work performed after the date of such written termination notice. The DISTRICT shall also have the right to accelerate or decelerate the work to match funding limitations. Any termination for lack of funds shall not constitute an "Early Termination" as such term is used in Paragraph 6.1.

6.17 Estimates of Cost

The estimates of cost for a PROJECT provided for herein are to be prepared by the PARTNER through exercise of experience and judgment in applying currently available cost data. The PARTNER will keep the DISTRICT apprised of changes throughout the PROJECT that significantly impact the estimated costs provided.

6.18 Ownership of Documents

6.18.22 All work the PARTNER performs under this Agreement shall be considered work made for hire and shall be the sole and exclusive property of the DISTRICT. The DISTRICT shall own any and all data, documents, plans, copyrights, specifications, working papers and any other materials the PARTNER produces in connection with this Agreement. On completion or termination of the Agreement the PARTNER shall promptly deliver these materials to the Project Manager.

6.18.23 The PARTNER may retain for its own records and at its own cost copies of the materials referred to in Paragraph 6.14.1 hereof.

6.18.24 Any use the DISTRICT makes of the materials referred to in Paragraph 6.14.1 hereof, except for purposes of the work contemplated by this Agreement, shall be at the DISTRICT's risk.

6.19 Commencement of Work

The PARTNER agrees that work being done pursuant to this Agreement will not be commenced until after:

6.19.25 Workers' compensation insurance is obtained, as specified in Paragraph 6.6.

6.19.26 This Agreement is fully executed by all parties and approved by the Board and/or Director when applicable.

6.19.3 The receipt of a written authorization to proceed from the Project Manager.

6.20 Release of Information

No information relative to the PROJECT shall be released by the PARTNER for publication, advertising, communication with the media, the public, other clients of the PARTNER, or any other person for any other purpose, without prior written approval of the DISTRICT.

6.21 Maintenance of Records

The PARTNER shall maintain books and accounts of payroll costs, travel, subsistence, field contracted services of others and reimbursable expenses pertaining to each PROJECT in accordance with generally accepted professional practices, appropriate accounting procedures and applicable local, state or federal laws, statutes, ordinances, or rules and regulations. The DISTRICT or its authorized representative shall have the authority to inspect, audit and copy, on reasonable notice and from time to time, any records of the PARTNER regarding its billings or any record arising from or related to this Agreement. Records shall be maintained and available until three (3) years after the date of final PROJECT billing or until three (3) years after the date of resolution of any litigation or claim.

6.22 Audit of Payments

- 6.22.27 The DISTRICT, either directly or through a designated representative, may audit the records of the PARTNER at any time during the three (3) year period established by Paragraph 6.17.
- 6.22.28 If an audit discloses that payments to the PARTNER were in excess of the amount to which the PARTNER was entitled, then the PARTNER shall immediately repay the amount of the excess to the DISTRICT.

6.23 Public Contracting Law

Pursuant to the requirements of ORS Chapters 279A and 279C, the following terms and conditions are made a part of this Agreement:

- 6.23.29 The PARTNER agrees that it shall:
 - 6.23.29.1 Make payments promptly, as due, to all persons supplying to PARTNER labor or materials for the performance of work contemplated by this Agreement.
 - 6.23.29.2 Pay all contributions or amounts due the Industrial Accident Fund incurred in the performance of this Agreement.
 - 6.23.29.3 Pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167 or its successor statutes.
 - 6.19.1.4 Not permit any lien or claim to be filed or prosecuted against the State of Oregon, Clackamas County, the DISTRICT, any municipality, municipal corporation, or subdivision thereof, on account of any labor or material furnished for the performance of work contemplated by this Agreement.
- 6.23.30 If the PARTNER fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to the PARTNER by any person in connection with this Agreement, as such claim becomes due, the proper office representing DISTRICT may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due the

PARTNER by reason of this Agreement. Further, the PARTNER or any first-tier subcontractor under this Agreement fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to the PARTNER by any person in connection with this Agreement within thirty (30) days after receipt of payment from DISTRICT or the PARTNER, as applicable, then such person shall owe the unpaid person the amount due plus interest charges commencing at the end of the ten (10) day period under ORS 279C.580(4) and ending upon final payment unless subject to a good faith dispute as defined in ORS 279C.580. The rate of interest shall be as set forth in ORS 279C.515(2).

- 6.23.31 No person shall be employed for more than eight (8) hours in any one day, or more than forty (40) hours in any one week, except in cases of necessity, emergency, or where the public policy absolutely requires it, and in such cases, except in cases of contracts for personal services as defined in ORS 279C.100(5) or as defined in the DISTRICT's Contract Review Board Rules, the laborer shall be paid at least time and a half pay for all overtime in excess of eight (8) hours a day and for work performed on Saturday and on any legal holiday, as specified in ORS 279C.
- 6.23.32 If this Agreement is for personal services as defined in ORS 279C or as defined in the DISTRICT's Contract Review Board Rules, the laborer shall be paid at least time and a half for all overtime worked in excess of 40 hours in any one week, except for individuals under these contracts who are excluded under ORS 653.010 to 653.261 or under 29 U.S.C. sections 201 to 209 from receiving overtime.
- 6.23.33 The PARTNER shall promptly, as due, make payment to any person, partnership, association, corporation, or other entity furnishing medical, surgical and hospital care or other needed care and attention, incident to sickness or injury, to the employees of the PARTNER, of all sums which the PARTNER agrees to pay for such services and all moneys and sums which the PARTNER collected or deducted from the wages of employees pursuant to any law, contract or agreement for the purpose of providing or paying for such services.
- 6.23.34 The PARTNER and all employers working under this Agreement are subject employers under ORS 656.017.
- 6.19.7 The PARTNER shall demonstrate that an employee drug testing program is in place before commencing work on the Project.

6.24 Equal Employment Opportunity

During the performance of this Agreement, the PARTNER agrees as follows:

- 6.24.35 The PARTNER will not discriminate against any employee or applicant for employment because of race, color, religion, sex, marital status, age, mental or physical handicap or a national origin. The PARTNER agrees that applicants are employed, and that employees are treated during employment, without regard to

their race, color, religion, sex, marital status, age, mental or physical handicap, or national origin. The PARTNER agrees to post in conspicuous places, available to employees and applicants for employment notices to be provided setting forth the provisions of this Equal Opportunity Clause.

6.24.36 The PARTNER will, in all solicitations or advertisements for employees placed by or on behalf of the PARTNER state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, marital status, age, physical or mental handicap or national origin.

6.24.37 The PARTNER will send to each labor union or representative of workers with which PARTNER has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the labor union or workers' representative of the PARTNER's commitments under this Equal Opportunity Clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

6.21 Survival

All express representations, indemnifications or limitations of liability included in this Agreement shall survive its completion and/or termination for any reason.

6.22 Headings

The headings used in this Agreement are for general reference only and are not part of the contract language. This Agreement should be construed without giving any meaning to any headings included herein.

6.23 Dispute Resolution

Any controversy or claim arising out of or relating to this Agreement or any related agreement shall be settled by arbitration in accordance with the following provisions:

6.23.1 Disputes Covered. The parties agree to arbitrate all disputes of every kind relating to or arising out of this Agreement. Disputes include actions for breach of contract with respect to this Agreement, as well as any claim based upon tort or any other causes of action relating to the Agreement or the PROJECT, such as claims based upon an allegation of fraud or misrepresentation and claims based upon a federal or state statute. In addition, the arbitrator selected according to procedures set forth below shall determine the arbitrability of any matter brought to them, and their decision shall be final and binding on the parties.

6.23.2 Forum. The forum for the arbitration shall be Clackamas County, Oregon.

6.23.3 Law. The governing law for the arbitration shall be the law of the State of Oregon, without reference to its conflicts of laws provisions.

6.23.4 Selection. There shall be three arbitrators, unless the parties are able to agree on a single arbitrator. In the absence of such agreement within ten (10) days after the initiation of an arbitration proceeding, DISTRICT shall select one arbitrator and PARTNER shall select one arbitrator, and those two arbitrators shall then select, within ten (10) days, a third arbitrator. If those two arbitrators are unable to select a third arbitrator within such ten (10)-day period, a third arbitrator shall be appointed by the commercial panel of the Arbitration Service of Portland. The decision in writing of the arbitrator shall be final and binding upon the parties.

6.23.5 Administration. The arbitration shall be administered by the Arbitration Service of Portland.

6.23.6 Rules. The rules of arbitration shall be the Commercial Arbitration Rules of the Arbitration Service of Portland, as modified by any other instructions that the parties may agree upon at the time, except that each party shall have the right to conduct discovery in any manner and to the extent authorized by the Federal Rules of Civil Procedure as interpreted by the federal courts. If there is any conflict between those Rules and the provisions of this section, the provisions of this section shall prevail.

6.23.7 Substantive Law. The arbitrators shall be bound by and shall strictly enforce the terms of this Agreement and may not limit, expand or otherwise modify its terms. The arbitrators shall make a good faith effort to apply substantive applicable law, but an arbitration decision shall not be subject to review because of errors of law. The arbitrators shall be bound to honor claims of privilege or work-product doctrine recognized at law, but the arbitrators shall have the discretion to determine whether any such claim of privilege or work product doctrine applies.

6.23.8 Decision. The arbitrators' decision shall provide a reasoned basis for the resolution of each dispute and for any award. The arbitrators shall not have power to award damages in connection with any dispute in excess of actual compensatory damages and shall not multiply actual damages or award consequential or punitive damages.

6.23.9 Expenses. Each party shall bear its own fees and expenses with respect to the arbitration and any proceeding related thereto and the parties shall share equally the fees and expenses of the Arbitration Service of Portland and the arbitrators.

6.23.10 Remedies; Award. The arbitrators shall have power and authority to award any remedy or judgment that could be awarded by a court of law in the State of Oregon. The award rendered by arbitration shall be final and binding upon the parties, and judgment upon the award may be entered in any court of competent jurisdiction in the United States.

6.24 Amendments

The DISTRICT and the PARTNER may amend this Agreement at any time only by written amendment executed by the DISTRICT and the PARTNER. Any amendment that increases the amount of compensation payable to the PARTNER in excess of the amounts authorized in prior

Board approvals shall be subject to approval by the Board. The Director or person designated by Board order may execute amendments to the Agreement to increase compensation within the limits of the authority established by the DISTRICT's Contract Review Board Rules and within the limits authorized by prior Board approvals. The Project Manager may agree to and execute any other amendment on behalf of the DISTRICT.

6.25 Waiver

The DISTRICT and the PARTNER 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.

6.26 Notice of Cancellation

There shall be no cancellation, material change, exhaustion of aggregate limits or intent not to renew insurance coverage without 60 days written notice by the PARTNER to the DISTRICT.

6.27 Time is of the essence of this Agreement.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in duplicate by their duly authorized officers or representatives as of the day and year first above written.

PARTNER:

CLACKAMAS COUNTY SERVICE
DISTRICT NO. 1

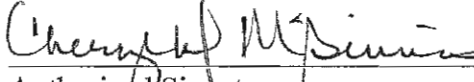
Clackamas River Basin Council
Company

Michael S. Kuenzi, Director

P.O. Box 1869
Address

Date

Clackamas, OR 97015
City, State, Zip Code


Authorized Signature

Cheryl D. McGinnis
Executive Director

91-1838169
Federal Tax ID Number

11/27/13
Date

Exhibit A Scope of Work

Responsibilities of the District:

- 1.1. Permit the Project to occur on the District's property and certify that they are the owner of the property identified by Clackamas County as Taxlot 22E12 00303.
- 1.2. Review and approve work (plans, permit documents, construction activities, etc.) and final decision approval for activities on its property
- 1.3. Permit Partner and their officers, agents, employees, contractors, invitees and funders to enter and access properties where the Project work is taking place or has occurred for the purposes of implementing or monitoring the Project. Said entry shall be at times reasonably agreeable to the District.
- 1.4. Manage the project area, in cooperation with the parties herein, in a manner to meet the purposes set forth in this Agreement and take full ownership of the improvements made to District's property.
- 1.5. District acknowledges information pertaining to the Project is a matter of public record, and Project photos or information may be used in marketing materials by Partner and/or Partner's funders to promote restoration activities.
- 1.6. District acknowledges that they have read the grant agreements related to the Project.
- 1.7. The District shall hold harmless the Partner and their officers, agents, employees, contractors, invitees, and funders from all liability arising out of the performance of this Project.

Responsibilities of the Partner:

Task 1: Completion of Design and Permitting: CRBC will subcontract and oversee the application development for the necessary permits and the completion of the design plans.

Deliverables:

- Hiring of design-permitting consultant or design-build firm
- Oversight of design and permitting efforts
- Permit applications submitted to DSL, USACOE and city of Happy Valley with responses to requested changes
- Design drawings as necessary to construct project, anticipated to include:
 - Cover sheet, graphics legend and abbreviations
 - Existing conditions
 - Proposed site plan
 - Access and staging plan
 - Revegetation plan (showing planting zones only, CRBC to develop plant list)
 - Detail sheets as needed for various LWD structures, channel deflectors, connections, boulder installations, etc.
 - Erosion, sediment & pollution control plan

Task 2: Working With Private Landowner and Stakeholders: CRBC will work closely with the private landowner and project partners to inform, coordinate, and facilitate project activities throughout the duration of the project.

Deliverables:

- Perform outreach to private landowner and secure landowner agreements for properties where in-stream and/or revegetation project work will occur.
- Coordinate project activities with landowners, partners and stakeholders
- Coordinate project activities with education contractor

Task 3: Construction: CRBC will subcontract construction contractors to implement the project design and oversee in-stream construction activities.

Deliverables:

- Hire construction contractor or design-build firm
- Oversee construction, which shall be guided by the 30 percent plans including all materials, supplies, labor and installation

Task 4: Vegetation Establishment: CRBC will design site vegetation management plans and contract with and coordinate revegetation contractors to implement treatments and planting activities. This will include the implementation of CRBC's Shade Our Streams riparian revegetation program.

Deliverables:

- Site Treatment and Planting Plan
- Manage vegetation on 9.3-12 acres (dependent on landowner access) including site prep, plant installation and maintenance phases. (Note: This contract includes 3 years of post-planting maintenance. Additional years of plant maintenance are expected to be necessary but fall outside the term of this contract).
- Monitoring report including: 1. Areas (ac) of site prep, planting, and maintenance. 2. Number of plants planted. 3. Plant survival rate (%).

Task 5: Budget Management: CRBC will work to manage overall project budgets and individual sources of funding. This will include tracking expenditures and project revenues by source, and ensuring that each project task and goal is met and within budget.

Deliverable:

- Budget status updates approximately 2 times per year, grant monies spent on activities and areas allowed by each grant. Update to include summary of total budget, amount spent, and amount remaining compared to % work completed.

Task 6: Invoicing and reporting: CRBC will provide expenditure details and project status with each invoice.

Deliverable:

- Invoices with description of work completed and backup for expenses. These invoices will be submitted to WES no more than once per month, and as needed. Final invoice each fiscal year must include work completed by June 30 and invoice must be received by WES no later than July 15.

Other:

1. CRBC will implement project using available funding from grants awarded to CRBC as stated in the proposal. Grants awarded to CRBC for project activities include: The Nature Conservancy, PGE Salmon Habitat Fund Grant, the PGE Shade Our Streams funding, and OWEB Rock Creek Confluence Restoration Project grant (if awarded).
2. CRBC will be responsible for meeting grant reporting requirements from The Nature Conservancy, PGE Shade Our Streams program and OWEB, dependent on funding award.
3. WES will be responsible for meeting grant reporting requirements from the Metro Nature in Neighborhoods capital grant.

Exhibit B Schedule

Proposed Work Plan Schedule

Task #/Project Element	Start Date	End Date	Description
Task 1: Permit Applications	Nov 2013	April 2013	Complete permit applications for DSL, ACOE, and local permitting agencies (to be submitted by WES)
Task 1: Final Design	Nov 2013	April 2014	60%-100% level design (with approval by WES)
Task 2: Landowner Agreements	Nov 2013	June 2014	Formalize written agreements (with input from WES)
Task 2: Coordinate Partners	Nov 2013	Ongoing	Facilitate project partners
Task 5: Budget Management	Nov 2013	Ongoing	Confirm funding sources/amounts and manage project expenses (including WES allocated funding and WES'NIN grant funding)
Task 4: Planting Site Prep (2 years)	Nov 2013	Nov 2014	Contracted site prep treatments along with volunteer weed management
Task 3: Contracting	Jan 2014	May 2014	Secure construction contracts
Task 3: Materials Acquisition	Jan 2014	June 2014	Mobilize logs and boulders to site, as materials and staging areas are available
Task 3: Construction	July 15, 2014	Aug 31, 2014	In-stream construction of aquatic habitat structures (with oversight from WES)
Task 4: Planting	Jan 2015	March 2015	Contract with and oversee crew planting
Task 6: Project Inspection	July 2014	March 2015	In-stream and planting quality assurance (with WES)
Task 4: Plant Establishment	May 2015	June 30, 2018	Includes 3 years of post-planting maintenance, (additional maintenance is expected beyond the term of this contract).
Task 6: Project Reporting and Invoicing	Nov 2013	Ongoing to project completion	Fulfill grant reporting and invoicing per agreements.



15

Water Quality Protection
 Surface Water Management
 Wastewater Collection & Treatment
 Michael S. Kuenzi, P.E.
 Director

December 12, 2013

Board of County Commissioner
 Clackamas County

Members of the Board:

APPROVAL OF A PROFESSIONAL SERVICES AGREEMENT BETWEEN CLACKAMAS COUNTY SERVICE DISTRICT NO. 1 AND BROWN AND CALDWELL, INC. FOR THE KELLOGG CREEK WATER POLLUTION CONTROL PLANT AERATION BASIN DIFFUSER REBUILD PROJECT

Purpose/Outcomes	Assist the District in designing the necessary upgrades to the Kellogg Creek WPCP aeration basin treatment processes.
Dollar Amount and Fiscal Impact	Total amount not to exceed \$244,375 - funds for professional engineering services are budgeted in the FY13-14 budget.
Funding Source	Clackamas County Service District No.1 FY13-14 Budget – no County General Funds are Involved.
Safety Impact	None
Duration	December 12, 2013 to November 30, 2014.
Previous Board Action	None
Contact Person	Michael S. Kuenzi, Director – Water Environment Services – 503-742-4560
Contract No.	To be established

BACKGROUND

The Kellogg Creek Water pollution Control Plant (WPCP) uses large amounts of air in the aeration basin segment of the wastewater treatment process. The more efficiently this air is dispersed in the wastewater being treated, the better the biological breakdown and removal of harmful organisms in the wastewater.

The existing air diffusers are nearing the end of their useful life and require increasing levels of maintenance; new styles of diffusers have been shown to greatly increase air dispersion and overall treatment efficiencies. Upgrading the aeration basin treatment processes will assist in continued conformance to DEQ permit parameters.

In August 2013, the District publicly advertised a request for proposals from qualified firms to provide professional services to the District in designing these necessary upgrades to the aeration basin process, in accordance with local contract review board rules. Proposals were to be received by September 24, 2013. Staff only received one proposal and that firm, Brown and Caldwell, Inc. was selected to complete this upgrade work for the District.

An Asset Management task related to the aeration basin process was added to project scope during fee negotiations; that being the identified need to evaluate reliability of the current blower system and to replace ventilation and cooling for the air blowers and associated control panels. During warmer weather, temperatures around these air blower systems becomes so high it causes the air blowers to cut out, greatly limiting aeration basin capabilities to adequately process wastewater flows.

A Request for Proposals was published to solicit potential vendors. Only one response was received, that being the proposal from Brown and Caldwell, Inc. District staff has negotiated the scope and fees for this agreement with Brown and Caldwell for an amount not to exceed \$244,375 (\$191,880 for the aeration basin diffuser rebuild and \$52,495 for the blower system cooling improvements).

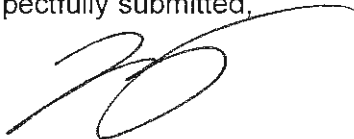
The agreement with Brown and Caldwell, Inc. to furnish professional services has been reviewed and approved by County Counsel.

RECOMMENDATIONS

For these reasons, Staff recommends:

- 1) The Board of County Commissioners, acting as the governing body of Clackamas County Service District No.1 (the "District"), approve the agreement between the District and Brown and Caldwell, Inc. for an amount not to exceed \$244,375; and
- 2) The Director of Water Environment Services be authorized to execute the agreement between Brown and Caldwell, Inc. and the District without further Board action.

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'MK', written over a horizontal line.

Michael Kuenzi
Director

**AGREEMENT TO FURNISH PROFESSIONAL SERVICES
TO
CLACKAMAS COUNTY SERVICE DISTRICT NO. 1
FOR
KELLOGG CREEK WPCP AERATION BASIN DIFFUSER REBUILD PROJECT**

THIS AGREEMENT TO FURNISH PROFESSIONAL SERVICES (this "Agreement"), made and entered into on this _____ day of _____ in the year 20____ by and between CLACKAMAS COUNTY SERVICE DISTRICT NO. 1, a county service district formed under Oregon Revised Statutes ("ORS") 451 (the "DISTRICT") and Brown and Caldwell, Inc., a California corporation (the "CONSULTANT").

RECITALS

WITNESSETH: That whereas the DISTRICT intends to engage the CONSULTANT to perform the professional services described on Exhibit A, on the schedule set forth on Exhibit B, each as attached hereto and incorporated by reference, hereinafter called the "PROJECT."

WHEREAS, the District desires to engage Consultant's services to provide engineering services for improvements to the aeration basins (replacement of diffusers, replacement of construction joint sealants, closure of openings in air distribution channels, replacement of divider walls between aeration cells 3 and 4) and for HVAC improvements in the Blower Building.

NOW, THEREFORE, the DISTRICT and the CONSULTANT for the considerations hereinafter set forth agree as follows:

ARTICLE 1 - SERVICES OF THE CONSULTANT

The CONSULTANT agrees to perform, in accordance with applicable District, local, state and federal laws, statutes, ordinances, rules and regulations, professional services in connection with the PROJECT as stated and defined in Exhibit A (the "Services").

ARTICLE 2 - DISTRICT'S RESPONSIBILITIES

Unless otherwise specifically modified in Exhibit A the DISTRICT will:

- 2.1 Provide adequate information to the CONSULTANT regarding the DISTRICT's requirements for the PROJECT.
- 2.2 Assist the CONSULTANT by making available all reasonably available information and technical data pertinent to the PROJECT.
- 2.3 Obtain approvals and permits from governmental authorities having jurisdiction over the PROJECT, and such approvals and consents from others as may be necessary for

completion of the PROJECT (excepting any personal qualifications or certifications required for CONSULTANT to perform the work contemplated hereunder).

ARTICLE 3 – CONSULTANT’S RESPONSIBILITIES

3.1 The CONSULTANT agrees to complete the Services according to the schedule set forth in Exhibit B (the “Schedule”). If the DISTRICT has requested significant modifications or changes in the scope of the PROJECT pursuant to Section 3.3, the time of performance of the CONSULTANT's services shall be adjusted accordingly.

3.2 Standards of Performance

3.2.1 The standard of care for all professional services performed or furnished by CONSULTANT under this Agreement will be the care and skill ordinarily used by a competent member of CONSULTANT’s profession.

3.2.2 CONSULTANT shall be responsible for the accuracy of its services and documents resulting there from, and DISTRICT shall not be responsible for discovering deficiencies therein. CONSULTANT shall correct such deficiencies without additional compensation, except to the extent such action is solely attributable to deficiencies in DISTRICT-furnished information.

3.2.3 CONSULTANT and DISTRICT shall comply with applicable Laws or Regulations and DISTRICT-mandated standards. Any changes to these requirements during the term of this Agreement shall not be the basis for any modifications to CONSULTANT’s scope of services, times of performance, or compensation.

3.3 Notice of Changes

In the normal course of administering the work under this Agreement, the DISTRICT may give written directives to the CONSULTANT, which may constitute a change to the Services or Schedule. If an instruction, directive or decision is given that the CONSULTANT believes is a change in scope or schedule, the CONSULTANT shall notify the DISTRICT within seven (7) calendar days of receiving such directive or instruction. The notice shall state the general nature of the change, but need not include a detailed cost or impact estimate. To the extent District agrees that a change in the Services required or the Schedule has occurred, the parties shall agree to an amendment to this Agreement pursuant to the process set forth in Paragraph 6.24 hereof.

3.4 CONSULTANT's Project Manager

The CONSULTANT shall assign personnel, identified as critical to the PROJECT, as designated in Exhibit A. The CONSULTANT shall not change these personnel assignments without the prior written consent of the DISTRICT’s Project Manager (as defined in Paragraph 4.3), which consent shall not be unreasonably withheld.

ARTICLE 4 - AUTHORIZATION AND PROJECT MANAGER

- 4.1 Specific authorization to proceed with the Services shall be granted in writing by the DISTRICT within a reasonable time after the execution of this Agreement. The CONSULTANT shall not proceed with the work without such authorization. The DISTRICT's Project Manager shall have authority to give such authorizations.
- 4.2 This Agreement shall be effective as of the CONSULTANT's receipt of the written authorization to proceed and shall be completed as set forth in the Schedule.
- 4.3 **DISTRICT's Project Manager**

The DISTRICT's Project Manager is authorized to approve work and billings hereunder, approve sub-consultants, give notices referred to herein, terminate this Agreement as provided herein and carry out any other DISTRICT actions referred to herein. The DISTRICT's Project Manager shall be Dewayne Kliewer.

ARTICLE 5 - PAYMENTS TO CONSULTANT

In accordance with the terms and conditions of this Agreement, the DISTRICT shall compensate the CONSULTANT as follows:

5.1 Compensation

- 5.1.1 The DISTRICT agrees to pay the CONSULTANT on a time and materials basis with a not to exceed amount equal to Two Hundred, Forty-Four Thousand, Three Hundred Seventy-Five and 00/100 Dollars (\$244,375) for the Services as billed monthly. Notwithstanding anything else to the contrary herein, the total compensation under this Agreement shall not exceed Two Hundred, Forty-Four Thousand, Three Hundred Seventy-Five and 00/100 Dollars (\$244,375) without prior written approval of the DISTRICT.
- 5.1.2 The CONSULTANT is entitled to no compensation for the correction or revision of any errors or deficiencies in the services provided.
- 5.1.3 The DISTRICT may withhold from payments due the CONSULTANT such sums as are necessary, in the DISTRICT's sole and absolute discretion, to protect the DISTRICT against any loss or damage which may result from negligence or unsatisfactory work by the CONSULTANT, the failure of the CONSULTANT to perform as required under this Agreement, or claims filed against the CONSULTANT or the DISTRICT relating to the CONSULTANT's services or work under this Agreement.

5.2 Billing and Payment Procedure

- 5.2.1 The CONSULTANT will provide monthly invoices to the DISTRICT for work

performed during the preceding month. The invoices will be accompanied with a summary cost itemization and supported by a monthly progress report. The CONSULTANT shall maintain detailed records to support these charges and such records shall be available to the DISTRICT for audit and copying. The DISTRICT shall pay monthly payments to the CONSULTANT within 30 days of the DISTRICT's receipt of the CONSULTANT's monthly statement. Interest on unpaid payments due shall accrue at the rate of 1% per month beginning the 60th day after the DISTRICT's receipt of the CONSULTANT's statement. No interest shall be paid on disputed amounts.

ARTICLE 6 - GENERAL CONDITIONS

6.1 Early Termination of Agreement

- 6.1.1 The DISTRICT and the CONSULTANT, by mutual written agreement, may terminate this Agreement at any time.
- 6.1.2 The DISTRICT, on thirty (30) days' prior written notice to the CONSULTANT, may terminate this Agreement for any reason deemed appropriate in its sole discretion.
- 6.1.3 Either the DISTRICT or the CONSULTANT may terminate this Agreement in the event of a breach of the Agreement by the other. Prior to such termination, however, the party seeking the termination shall give to the other party written notice of the breach and of the party's intent to terminate. If the party has not entirely cured the breach within fifteen (15) days of deemed or actual receipt of the notice, then the party giving notice may terminate the Agreement at any time thereafter by giving a written notice of termination stating the effective date of the termination.

6.2 Payment on Early Termination

- 6.2.1 In the event of termination under Paragraphs 6.1.1 or 6.1.2, hereof, the DISTRICT shall pay the CONSULTANT for work performed in accordance with the Agreement prior to the termination date.
- 6.2.2 In the event of termination under Paragraph 6.1.3 hereof by the CONSULTANT due to a breach by the DISTRICT, then the DISTRICT shall pay the CONSULTANT as provided in Paragraph 6.3.1.
- 6.2.3 In the event of termination under Paragraph 6.1.3 hereof by the DISTRICT due to a breach by the CONSULTANT, then the DISTRICT shall pay the CONSULTANT as provided in Paragraph 6.3.1, subject to set off of excess costs, as provided for in Paragraphs 5.1.3 and 6.3.
- 6.2.4 In the event of early termination, all of the CONSULTANT's work product will

become and remain property of the DISTRICT.

6.3 Remedies

- 6.3.1 In the event of termination under Paragraph 6.1.3 by the DISTRICT due to a breach by the CONSULTANT, then the DISTRICT may complete the work either itself, or by agreement with another consultant or by a combination thereof. In the event the cost of completing the work exceeds the remaining unpaid balance of the compensation provided under Paragraph 5.1.1 hereof, then the CONSULTANT shall promptly pay to the DISTRICT the amount of the excess.
- 6.3.2 The remedies provided to the DISTRICT under Paragraph, 6.1, 6.2, and 6.3 hereof for a breach by the CONSULTANT shall not be exclusive. The DISTRICT also shall be entitled to any other equitable and legal remedies that may be available.
- 6.3.3 In the event of breach of this Agreement by the DISTRICT, then the CONSULTANT's remedy shall be limited to termination of the Agreement and receipt of payment as provided in Paragraphs 6.1 and 6.2 hereof.

6.4 Indemnification and Insurance

- 6.4.1 The CONSULTANT agrees to indemnify, save harmless and defend the DISTRICT, its officers, commissioners, agents and employees from and against all costs, losses, damages, claims or actions and all expenses incidental to the investigation and defense thereof (including legal and other professional fees) arising out of or based upon damages or injuries to persons or property to the extent caused by the negligent or willful acts, errors, or omissions of the CONSULTANT or CONSULTANT's officers, owners, employees, agents, or its subcontractors or anyone over which CONSULTANT has a right to control.
- 6.4.2 The CONSULTANT agrees to furnish the DISTRICT evidence of commercial general (including contractual liability) and automobile liability insurance in the amount of not less than \$1,000,000 combined single limit for personal injury and property damage for the protection of the DISTRICT, its officers, commissioners, agents, and employees against liability for damages because of personal injury, bodily injury, death or damage to property, including loss of use thereof, in any way related to the CONSULTANT's, or any subcontractors, in the performance of this Agreement. The insurance shall include the DISTRICT, its officers, commissioners, agents and employees, as additional insureds.
- 6.4.3 The CONSULTANT agrees to furnish the DISTRICT evidence of professional liability insurance coverage (errors and omissions, on a claims-made basis) in the amount of not less than \$1,000,000 because of personal injury, bodily injury, death or damage to property.

6.5 Oregon Law and Forum

- 6.5.1 This Agreement shall be construed according to the laws of the State of Oregon, without giving effect to the conflict of law provisions thereof.
- 6.5.2 Any litigation between the DISTRICT and the CONSULTANT arising under this Agreement or out of work performed under this Agreement shall occur, if in the state courts, in the Clackamas County Court having jurisdiction thereof, and if in the federal courts, in the United States District Court for the District of Oregon. The parties agree, however, to resolve any disputes between the parties in the manner described in Paragraph 6.23

6.6 Workers' Compensation Coverage Requirements

The CONSULTANT is an independent contractor for purposes of the Oregon Workers' Compensation Law, as set forth in ORS Chapter 656 ("Workers' Comp Law") and is solely liable for any workers' compensation coverage under this Agreement. If the CONSULTANT hires sub-consultants for the performance of this Agreement, the CONSULTANT agrees to require that the sub-consultant(s) shall comply with ORS Chapter 656. The signing of this Agreement shall constitute the declaration of independent contractor status by the CONSULTANT.

- 6.6.1 The CONSULTANT will be solely responsible for payment of any local, state or federal taxes required as a result of this Agreement.
- 6.6.2 This Agreement is not intended to entitle the CONSULTANT to any benefits generally granted to DISTRICT, officers, or employees. Without limitation, but by way of illustration, the benefits not intended to be extended by this contract to the CONSULTANT are vacation, holiday and sick leave, other leaves with pay, tenure, medical and dental coverage, life and disability insurance, overtime pay, Social Security, workers' compensation, unemployment compensation, or retirement benefits (except so far as benefits are required by law if the CONSULTANT is presently a member of the Public Employees Retirement System).

6.7 Subcontracts

The CONSULTANT shall not subcontract its work under this Agreement, in whole or in part, without the prior written approval of the DISTRICT. The CONSULTANT shall require subcontractor to agree, as to the portion subcontracted, to fulfill all obligations of the CONSULTANT as specified in this Agreement. Notwithstanding DISTRICT approval of a subcontractor, the CONSULTANT shall remain obligated for full performance hereunder, and the DISTRICT shall incur no obligation other than its obligations to the CONSULTANT hereunder. The CONSULTANT agrees that if subcontractors are employed in the performance of this Agreement, the CONSULTANT and its subcontractors are subject to the requirements of the Workers' Comp Law.

6.8 Assignment

The CONSULTANT shall not assign this Agreement, in whole or in part, or any right or obligation hereunder, without the prior written approval of the DISTRICT which may be granted or withheld in its sole and absolute discretion. The DISTRICT may assign this Agreement at any time and shall provide CONSULTANT with notice of such assignment within thirty (30) days of such assignment.

6.9 Notice

Any notice provided for under this Agreement shall be sufficient if in writing and delivered personally to the following addressee or deposited in the United States Mail, postage prepaid, certified mail, return receipt requested, addressed as follows, or to such other address as the receiving party hereafter shall specify in writing with such notice deemed delivered either upon actual receipt or three (3) days after deposit in U.S. Mail, whichever shall first occur:

If to the DISTRICT: Clackamas County Service District No. 1
c/o Water Environment Services
150 Beaver Creek Rd.
Oregon City, Oregon 97045
ATTN: Dewayne Kliever

Copy to: County Counsel
c/o Water Environment Services
150 Beaver Creek Road
Oregon City, Oregon 97045
ATTN: Amanda Keller

If to the CONSULTANT: Brown and Caldwell, Inc.
6500 SW Macadam Ave., Suite 200
Portland, Oregon 97239
ATTN: Brett Teel

6.10 Severability

If any provision of this Agreement is found to be unconstitutional, illegal or unenforceable, this Agreement nevertheless shall remain in full force and effect and the offending provision shall be stricken. The Court or other authorized body finding such provision unconstitutional, illegal or unenforceable shall construe this Agreement without such provision to give effect to the maximum extent possible the intentions of the parties.

6.11 Integration

This Agreement contains the entire agreement between the DISTRICT and the CONSULTANT

and supersedes all prior written or oral discussions or agreements.

6.12 Funds

The DISTRICT certifies that sufficient funds are available and authorized for expenditure pursuant to this Agreement in Fiscal Year 2013/2014. The funds needed for the balance of the Agreement are subject to appropriation by the Board of County Commissioners, acting as the governing body of the DISTRICT (the "Board"), during budget processes. If the Board does not appropriate funds for subsequent fiscal years for the balance of this contract, the DISTRICT may immediately terminate this Agreement by giving written notice of termination to the CONSULTANT. The CONSULTANT shall not be entitled to compensation for any work performed after the date of such written termination notice. The DISTRICT shall also have the right to accelerate or decelerate the work to match funding limitations. Any termination for lack of funds shall not constitute an "Early Termination" as such term is used in Paragraph 6.1.

6.13 Estimates of Cost

The estimates of cost for a PROJECT provided for herein are to be prepared by the CONSULTANT through exercise of experience and judgment in applying currently available cost data. The CONSULTANT will keep the DISTRICT apprised of changes throughout the PROJECT that significantly impact the estimated costs provided.

6.14 Ownership of Documents

6.14.1 All work the CONSULTANT performs under this Agreement shall be considered work made for hire and shall be the sole and exclusive property of the DISTRICT, after payment to CONSULTANT for work completed. The DISTRICT shall own any and all data, documents, plans, copyrights, specifications, working papers and any other materials the CONSULTANT produces in connection with this Agreement. On completion or termination of the Agreement the CONSULTANT shall promptly deliver these materials to the Project Manager.

6.14.2 The CONSULTANT may retain for its own records and at its own cost copies of the materials referred to in Paragraph 6.14.1 hereof.

6.14.3 Any use the DISTRICT makes of the materials referred to in Paragraph 6.14.1 hereof, except for purposes of the work contemplated by this Agreement, shall be at the DISTRICT's risk.

6.15 Commencement of Work

The CONSULTANT agrees that work being done pursuant to this Agreement will not be commenced until after:

6.15.1 Workers' compensation insurance is obtained, as specified in Paragraph 6.6.

- 6.15.2 This Agreement is fully executed by all parties and approved by the Board and/or Director when applicable.
- 6.15.3 The receipt of a written authorization to proceed from the Project Manager.

6.16 Release of Information

No information relative to the PROJECT shall be released by the CONSULTANT for publication, advertising, communication with the media, the public, other clients of the CONSULTANT, or any other person for any other purpose, without prior written approval of the DISTRICT.

6.17 Maintenance of Records

The CONSULTANT shall maintain books and accounts of payroll costs, travel, subsistence, field contracted services of others and reimbursable expenses pertaining to each PROJECT in accordance with generally accepted professional practices, appropriate accounting procedures and applicable local, state or federal laws, statutes, ordinances, or rules and regulations. The DISTRICT or its authorized representative shall have the authority to inspect, audit and copy, on reasonable notice and from time to time, any records of the CONSULTANT regarding its billings or any record arising from or related to this Agreement. Records shall be maintained and available until three (3) years after the date of final PROJECT billing or until three (3) years after the date of resolution of any litigation or claim.

6.18 Audit of Payments

- 6.18.1 The DISTRICT, either directly or through a designated representative, may audit the records of the CONSULTANT at any time during the three (3) year period established by Paragraph 6.17.
- 6.18.2 If an audit discloses that payments to the CONSULTANT were in excess of the amount to which the CONSULTANT was entitled, then the CONSULTANT shall immediately repay the amount of the excess to the DISTRICT.

6.19 Public Contracting Law

Pursuant to the requirements of ORS Chapters 279A and 279C, the following terms and conditions are made a part of this Agreement:

- 6.19.1 The CONSULTANT agrees that it shall:
 - 6.19.1.1 Make payments promptly, as due, to all persons supplying to CONSULTANT labor or materials for the performance of work contemplated by this Agreement.
 - 6.19.1.2 Pay all contributions or amounts due the Industrial Accident Fund incurred in the performance of this Agreement.

- 6.19.1.3 Pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167 or its successor statutes.
- 6.19.1.4 Not permit any lien or claim to be filed or prosecuted against the State of Oregon, Clackamas County, the DISTRICT, any municipality, municipal corporation, or subdivision thereof, on account of any labor or material furnished for the performance of work contemplated by this Agreement.
- 6.19.2 If the CONSULTANT fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to the CONSULTANT by any person in connection with this Agreement, as such claim becomes due, the proper office representing DISTRICT may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due the CONSULTANT by reason of this Agreement. Further, the CONSULTANT or any first-tier subcontractor under this Agreement fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to the CONSULTANT by any person in connection with this Agreement within thirty (30) days after receipt of payment from DISTRICT or the CONSULTANT, as applicable, then such person shall owe the unpaid person the amount due plus interest charges commencing at the end of the ten (10) day period under ORS 279C.580(4) and ending upon final payment unless subject to a good faith dispute as defined in ORS 279C.580. The rate of interest shall be as set forth in ORS 279C.515(2).
- 6.19.3 No person shall be employed for more than eight (8) hours in any one day, or more than forty (40) hours in any one week, except in cases of necessity, emergency, or where the public policy absolutely requires it, and in such cases, except in cases of contracts for personal services as defined in ORS 279C.100(5) or as defined in the DISTRICT's Contract Review Board Rules, the laborer shall be paid at least time and a half pay for all overtime in excess of eight (8) hours a day and for work performed on Saturday and on any legal holiday, as specified in ORS 279C.
- 6.19.4 If this Agreement is for personal services as defined in ORS 279C or as defined in the DISTRICT's Contract Review Board Rules, the laborer shall be paid at least time and a half for all overtime worked in excess of 40 hours in any one week, except for individuals under these contracts who are excluded under ORS 653.010 to 653.261 or under 29 U.S.C. sections 201 to 209 from receiving overtime.
- 6.19.5 The CONSULTANT shall promptly, as due, make payment to any person, partnership, association, corporation, or other entity furnishing medical, surgical and hospital care or other needed care and attention, incident to sickness or injury, to the employees of the CONSULTANT, of all sums which the CONSULTANT agrees to pay for such services and all moneys and sums which the CONSULTANT collected or deducted from the wages of employees pursuant to any law, contract or agreement for the purpose of providing or paying for such services.

- 6.19.6 The CONSULTANT and all employers working under this Agreement are subject employers under ORS 656.017.
- 6.19.7 The CONSULTANT shall demonstrate that an employee drug testing program is in place before commencing work on the Project.

6.20 Equal Employment Opportunity

During the performance of this Agreement, the CONSULTANT agrees as follows:

- 6.20.1 The CONSULTANT will not discriminate against any employee or applicant for employment because of race, color, religion, sex, marital status, age, mental or physical handicap or a national origin. The CONSULTANT agrees that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, marital status, age, mental or physical handicap, or national origin. The CONSULTANT agrees to post in conspicuous places, available to employees and applicants for employment notices to be provided setting forth the provisions of this Equal Opportunity Clause.
- 6.20.2 The CONSULTANT will, in all solicitations or advertisements for employees placed by or on behalf of the CONSULTANT state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, marital status, age, physical or mental handicap or national origin.
- 6.20.3 The CONSULTANT will send to each labor union or representative of workers with which CONSULTANT has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the labor union or workers' representative of the CONSULTANT's commitments under this Equal Opportunity Clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

6.21 Survival

All express representations, indemnifications or limitations of liability included in this Agreement shall survive its completion and/or termination for any reason.

6.22 Headings

The headings used in this Agreement are for general reference only and are not part of the contract language. This Agreement should be construed without giving any meaning to any headings included herein.

6.23 Dispute Resolution

Any controversy or claim arising out of or relating to this Agreement or any related agreement shall be settled by arbitration in accordance with the following provisions:

- 6.23.1 Disputes Covered. The parties agree to arbitrate all disputes of every kind relating to or arising out of this Agreement. Disputes include actions for breach of contract with respect to this Agreement, as well as any claim based upon tort or any other causes of action relating to the Agreement or the PROJECT, such as claims based upon an allegation of fraud or misrepresentation and claims based upon a federal or state statute. In addition, the arbitrators selected according to procedures set forth below shall determine the arbitrability of any matter brought to them, and their decision shall be final and binding on the parties.
- 6.23.2 Forum. The forum for the arbitration shall be Clackamas County, Oregon.
- 6.23.3 Law. The governing law for the arbitration shall be the law of the State of Oregon, without reference to its conflicts of laws provisions.
- 6.23.4 Selection. There shall be three arbitrators, unless the parties are able to agree on a single arbitrator. In the absence of such agreement within ten (10) days after the initiation of an arbitration proceeding, DISTRICT shall select one arbitrator and CONSULTANT shall select one arbitrator, and those two arbitrators shall then select, within ten (10) days, a third arbitrator. If those two arbitrators are unable to select a third arbitrator within such ten (10)-day period, a third arbitrator shall be appointed by the commercial panel of the American Arbitration Association. The decision in writing of at least two of the three arbitrators shall be final and binding upon the parties.
- 6.23.5 Administration. The arbitration shall be administered by the American Arbitration Association.
- 6.23.6 Rules. The rules of arbitration shall be the Commercial Arbitration Rules of the American Arbitration Association, as modified by any other instructions that the parties may agree upon at the time, except that each party shall have the right to conduct discovery in any manner and to the extent authorized by the Federal Rules of Civil Procedure as interpreted by the federal courts. If there is any conflict between those Rules and the provisions of this section, the provisions of this section shall prevail.
- 6.23.7 Substantive Law. The arbitrators shall be bound by and shall strictly enforce the terms of this Agreement and may not limit, expand or otherwise modify its terms. The arbitrators shall make a good faith effort to apply substantive applicable law, but an arbitration decision shall not be subject to review because of errors of law. The arbitrators shall be bound to honor claims of privilege or work-product doctrine recognized at law, but the arbitrators shall have the discretion to determine whether any such claim of privilege or work product doctrine applies.
- 6.23.8 Decision. The arbitrators' decision shall provide a reasoned basis for the resolution of each dispute and for any award. The arbitrators shall not have power to award damages in connection with any dispute in excess of actual compensatory damages

and shall not multiply actual damages or award consequential or punitive damages.

6.23.9 Expenses. Each party shall bear its own fees and expenses with respect to the arbitration and any proceeding related thereto and the parties shall share equally the fees and expenses of the American Arbitration Association and the arbitrators.

6.23.10 Remedies; Award. The arbitrators shall have power and authority to award any remedy or judgment that could be awarded by a court of law in the State of Oregon. The award rendered by arbitration shall be final and binding upon the parties, and judgment upon the award may be entered in any court of competent jurisdiction in the United States.

6.24 Amendments

The DISTRICT and the CONSULTANT may amend this Agreement at any time only by written amendment executed by the DISTRICT and the CONSULTANT. Any amendment that increases the amount of compensation payable to the CONSULTANT in excess of the amounts authorized in prior Board approvals shall be subject to approval by the Board. The Director or person designated by Board order may execute amendments to the Agreement to increase compensation within the limits of the authority established by the DISTRICT's Contract Review Board Rules and within the limits authorized by prior Board approvals. The Project Manager may agree to and execute any other amendment on behalf of the DISTRICT.

6.25 Waiver

The DISTRICT and the CONSULTANT 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.

6.26 Time is of the essence of this Agreement.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in duplicate by their duly authorized officers or representatives as of the day and year first above written.

CONSULTANT:

CLACKAMAS COUNTY SERVICE
DISTRICT NO. 1

Brown and Caldwell, Inc.

Company

Michael S. Kuenzi, Director

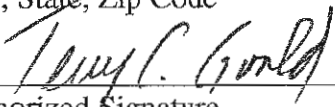
6500 SW Macadam Ave., Suite 200

Address

Date

Portland, Oregon 97239

City, State, Zip Code


Authorized Signature

Vice President

Title

94-1446346

Federal Tax ID Number

Date

Exhibit A

Scope of Services

Clackamas County Service District No. 1 (District) has identified the need to replace Kellogg Creek Water Pollution Control Plant's (WPCP) existing aeration basin diffuser system with a more reliable and efficient fine-bubble system. The District is also in need of HVAC improvements in the blower building. This Scope of Services is for engineering services through design, bidding, and construction.

Phase 1. Initial Investigations – Aeration Basin

Objective: To investigate major assumptions so that a better defined Scope of Services can be established.

Activities: This phase includes the following activities:

- Coordinate with the Energy Trust of Oregon (ETO) on an action plan for funding.
- Discuss high-speed blower operation at high temperatures with equipment supplier.
- Develop a list of aeration basin improvement additions and document a high level cost/benefits to implementation with this project.
- Coordinate with current District planning discussions to determine flow and load design basis.

Phase 2A. Initial Investigations – HVAC

Objective: To investigate major assumptions so that a better defined Scope of Services can be established.

Activities: Discuss high-speed blower operation at high temperatures with equipment supplier.

Phase 2B. Initial Investigations – Existing Blowers

Objective: To investigate replacement of the existing high speed turbo blowers with alternate blower equipment. The existing blower manufacturer has gone out of business, and the new owner is not providing service. The existing blowers have had recent failures attributed to excessive start-stop cycles.

Activities: This phase includes the following activities:

- Discuss the feasibility of a new service agreement with the company who purchased the technology from the original blower manufacturer.
- Identify risks associated with keeping the existing blowers and the potential of stranded investments in constructing HVAC improvements in the Blower Building.
- Consult with WES operation and maintenance staff.
- Prepare a brief memorandum (2-3 pages) to the District summarizing findings and obtain direction from the District regarding HVAC improvements described in Phase 4 – Preliminary Design – HVAC.

Assumptions: The District and Consultant agree that in the event the District decides to proceed with replacement of the existing blowers, associated engineering services will be amended to this Scope of Work.

Phase 3. Preliminary Design – Aeration Basin

Objective: To select the diffuser type and advance the blower building design to 60 percent complete.

Activities: This phase includes the following activities:

- Design blower building ventilation improvements to 60 percent complete (drawings and specifications).
- Confirm design criteria for diffuser replacement.
- Evaluate the pros and cons of the Sanitaire® Gold Series diffusers.
- Recommend diffuser type for this project.
- Develop construction sequencing plan including supervisory control and data acquisition (SCADA) and manual operation adjustments.
- Discuss land use permitting and meet with the City of Milwaukie.
- Investigate aeration basin improvements including replacement of the redwood walls, sealing wall openings, replacing expansion joint filler, and investigate the aeration header pipe metal thickness.

Assumptions: The following general assumptions are made:

- The District will provide a single design-loading scenario for the peak condition.
- The District agrees with the blower building HVAC improvements described in the conceptual design technical memorandum.
- The design will be based on a Sanitaire Gold Series (plate) diffuser or Sanitaire membrane disk diffusers.
- Additional process modeling is not required, and the number of diffusers will be installed to support blower design capacity.
- Confined space entry is not required.
- District staff will provide access to aeration header piping.
- Design for replacement of the aeration header piping is not included.

Phase 4. Preliminary Design – HVAC

Objective: To select the diffuser type and advance the blower building design to 60 percent complete.

Activities: Design blower building ventilation improvements to 60 percent complete (drawings and specifications).

Assumptions: The District agrees with the blower building HVAC improvements described in the conceptual design technical memorandum.

Phase 5. Final Design – Aeration Basin

Objective: To complete the design to produce bid documents.

Activities: This phase includes the following activities:

- Calculate pressure loss with new diffuser system, and HVAC calculations.
- Identify SCADA changes and develop control strategies.
- Develop Divisions 0 and 1 specifications for each package.
- Finalize technical specifications.
- Produce 90 percent plans and specifications.
- Perform quality checks and value engineering (VE) review using a senior engineer who is not affiliated with this project.

Assumptions: The following general assumptions are made:

- A single diffuser type will be selected prior to progressing to final design.
- Divisions 0 and 1 specifications will be based on the specifications used for the recent digester project work at the Tri-City and Kellogg Creek WPCPs.
- VE and quality checks will be performed by senior Brown and Caldwell (BC) engineering staff.

Phase 6. Final Design – HVAC

Objective: To complete the design to produce bid documents.

Activities: This phase includes the following activities:

- Produce 90 percent plans and specifications.
- Perform quality checks and VE using a senior engineer who is not affiliated with this project.

Assumptions: VE and quality checks will be performed by senior BC engineering staff.

Phase 7. Product Production – Aeration Basin

Objective: To produce packages for VE, bidding, and grant funding. This project likely will be divided into multiple bid packages to manage construction restrictions.

Activities: This phase includes the following activities:

- Produce project VE package – aeration basin.
- Produce aeration basin construction bid package.
- Prepare Oregon Department of Energy (DOE) grant applications.
- Complete ETO documentation and study update.
- Prepare cost opinions for the HVAC, aeration basin, and equipment pre-purchase packages.

Phase 8. Product Production – HVAC

Objective: To produce packages for VE, bidding, and grant funding. This project likely will be divided into multiple bid packages to manage construction restrictions.

Activities: This phase includes the following activities:

- Produce project VE package – blower HVAC.
- Produce HVAC bid package.

- Produce equipment pre-purchase bid package.

Assumption: The District has pre-purchase bidding documents from other projects that can be used as a guideline.

Phase 9. Energy Funding

Objective: To coordinate communications with the ETO and produce documentation.

Activities: This phase includes the following activities:

- Conduct initial meetings.
- Investigate the feasibility of Oregon DOE grants.
- Provide updated technical information for the high-efficiency blower.
- Produce draft funding package for the District's review and submittal to ETO.
- Meet with the District to review funding package with ETO.
- Finalize funding package for the District's submittal to ETO.
- Develop detailed bid form for ETO reporting requirements.

Assumption: The ETO needs the District to provide only the information needed to support the existing ETO study, and an updated or redone study is not required.

Phase 10. Meetings

Objective: To hold meetings and workshops so design work can be presented and input gathered from the District.

Activities: This phase includes the following activities:

- Workshop #1
 - Present blower HVAC 60 percent design.
 - Present recommendations for including aeration basin rehabilitation phases.
 - Identify energy savings, potential grant funding, and operation and maintenance (O&M) challenges associated with strip diffusers.
 - Present evaluation of diffuser types.
 - Present construction sequencing plan.
- Workshop #2
 - Review 90 percent blower building HVAC drawings and specifications.
 - Review 60 percent aeration basin drawings and specifications.
- Workshop #3
 - Review 90 percent aeration basin drawings and specifications.
 - Prepare agendas and meeting minutes.

Assumptions: The following general assumptions are made:

- Input gathered during these workshops will be used to develop the design.
- The District's project manager will coordinate participation of necessary decision-makers.

Phase 11. Bid Phase – Aeration Basin

Objective: To provide technical assistance to the District during the bidding process.

Activities: This phase includes the following activities:

- Answer technical questions related to the design.
- Produce technical content for addenda.
- Facilitate pre-bid meeting.
- Assist with reporting ETO bid cost data to ETO.

Assumptions: The following general assumptions are made:

- The District will advertise, provide documents to bidders, communicate with bidders during the bid period, and issue addendum.
- One addendum is estimated for each of the three bid packages.
- The District will be the point of contact for bidder communications, and answer all non-technical questions.

Phase 12. Bid Phase – Blower Building HVAC

Objective: To provide technical assistance to the District during the construction process.

Activities: This phase includes the following activities:

- Answer technical questions related to the design.
- Produce technical content for addenda.
- Facilitate pre-bid meeting.

Assumptions: The following general assumptions are made:

- The District will advertise, provide documents to bidders, communicate with bidders during the bid period, and issue addendum.
- One addendum is estimated for each of the three bid packages.
- The District will be the point of contact for bidder communications, and answer all non-technical questions.

Phase 13. Construction Phase – Aeration Basin

Objective: To provide technical assistance to the District during the construction process.

Activities: This phase includes the following activities:

- Conduct one preconstruction meeting.
- Provide technical responses to contractor's request for information (RFI).
- Review technical submittals.
- Provide operational field support during diffuser change-out (13 hours).
- Assist with construction changes, substitutions, and unknown conditions.
- Provide startup services.
- Attend weekly site meetings for a 3-month construction period.

Assumptions: The following general assumptions are made:

- For a project of this size, BC based the fee on an estimated six RFIs (4 hours each), and an estimated eight technical submittals (four hours each) with one resubmittal each (2 hours each).
- A project budget allowance is included for construction changes, substitutions, and unknown conditions.
- The District will provide construction management to coordinate activities, and administer the contract.
- The District will be the point of contact for contractor communications, and answer non-technical questions.
- Some of the specifications will not require technical review. The District will manage the informational (product data) submittals for the project.

Phase 14. Construction Phase – HVAC

Objective: To provide technical assistance to the District during the construction process.

Activities: This phase includes the following activities:

- Conduct one preconstruction meeting.
- Provide technical responses to contractor's RFI.
- Review technical submittals.
- Assist with construction changes, substitutions, and unknown conditions.
- Provide startup services.
- Attend two site meetings.

Assumptions: The following general assumptions are made:

- For a project of this size, BC based the fee on an estimated two RFIs (4 hours each), and an estimated two technical submittals (4 hours each) with one resubmittal each (2 hours each).
- A project budget allowance is included for construction changes, substitutions, and unknown conditions.
- The District will provide construction management to coordinate activities, and administer the contract.
- The District will be the point of contact for contractor communications, and answer non-technical questions.
- Some of the specifications will not require technical review. The District will manage the informational (product data) submittals for the project.
- The District will make arrangements for temporary HVAC if needed.

Phase 15. O&M Documentation and Record Drawings – Aeration Basin

Objective: To document O&M changes and produce record drawings.

Activities: This phase includes the following activities:

- Provide an update to the existing Kellogg Creek WPCP O&M manual using the existing Microsoft® Word O&M files.
- Produce record drawings based on construction contractor markups.
- Present to plant staff on the O&M aspects of the project.

Assumptions: The following general assumptions are made:

- Existing Word files are available for O&M manual updates.
- Record drawings will be provided as one full-sized set of signed drawings, one 11- by 17-inch set of reproduced drawings, and a CD with AutoCAD and PDF drawings, record drawings, and Word files for bid document specifications.

Phase 16. O&M Documentation and Record Drawings – HVAC

Objective: To document O&M changes and produce record drawings.

Activities: This phase includes the following activities:

- Provide an update to the existing Kellogg Creek WPCP O&M manual using the existing Microsoft® Word O&M files.
- Produce record drawings based on construction contractor markups.

Assumptions: The following general assumptions are made:

- Existing Word files are available for O&M manual updates.
- Record drawings will be provided as one full-sized set of signed drawings, one 11- by 17-inch set of reproduced drawings, and a CD with AutoCAD and PDF drawings, record drawings, and Word files for bid document specifications.

Phase 17. Project Management

Objective: To manage the design contract, and communicate with the project team.

Activities: This phase includes the following activities:

- Develop scope of services and project plan.
- Produce a project management plan.
- Coordinate with BC internal team.
- Produce monthly invoices.

Assumption: A letter and summary table reporting the percent complete for each project phase and amount invoiced will be used for monthly invoicing.

Monthly expenditures will be invoiced as shown in Table 1-1.

Clackamas County Service District No. 1 - Kellogg Creek Aeration Basin Improvements			
Phase	Phase Description	Base Project Costs	Blower Building HVAC
001	Initial Investigations - AB	2,752	
002	Initial Investigations - HVAC/Existing Blowers		7,542
003	Preliminary Design - AB	23,734	
004	Preliminary Design - HVAC		14,746
005	Final Design - AB	55,153	
006	Final Design - HVAC		12,970
007	Product Production - AB	14,720	
008	Product Production - HVAC		4,140
009	Energy Funding	13,410	
010	Meetings	7,990	
011	Bid Phase - AB	13,506	
012	Bid Phase - HVAC		4,546
013	Construction Phase - AB	33,031	
014	Construction Phase - HVAC		6,795
015	O&M and Record dwgs - AB	8,334	
016	O&M and Record dwgs - HVAC		1,756
017	Project Management	19,250	
TOTAL (\$)		191,880	52,495

Table 1-1. Invoice summary table

Key BC Personnel

In accordance with Agreement Paragraph 3.4, BC shall assign the following personnel identified as critical to Project. BC shall not change these personnel without prior written consent of the District's Project Manager (as identified in Paragraph 4.3) and will not be changed without District approval, which consent shall not be unreasonably withheld. (1) Brett Teel, Project Manager, (2) Tim Mills, Project Engineer.

District / Consultant Understandings

The DISTRICT and the CONSULTANT have the following understandings concerning the PROJECT.



1. DISTRICT will require the construction contractor to indemnify and hold harmless CONSULTANT, its officers, employees, agents, and subcontractors against claims, suits, demands, liabilities, losses, damages, and costs, including reasonable attorneys' fees and all other costs of defense, arising out of the performance of the work of the contractor, breach of contract, or willful misconduct of the contractor or its subcontractors, employees, and agents. The CONSULTANT will incorporate these provisions into Section 00805 – Supplementary Conditions of the construction contracts.
2. DISTRICT will require the construction contractor to name CONSULTANT, its directors, officers and employees as additional insureds on the contractor's general liability insurance and/or DISTRICT's and Contractor's Protective policy (OCP), and any builder's risk, or other property insurance purchased by CONSULTANT or the contractor to protect work in progress or any materials, supplies, or equipment purchased for installation therein. The CONSULTANT will incorporate these provisions into Section 00805 – Supplementary Conditions of the construction contracts.
3. DISTRICT will furnish construction contractor's certificates of insurance to the CONSULTANT evidencing that CONSULTANT, its officers, employees, agents, and subcontractors are named as additional insureds on general contractor's general liability and property insurance applicable to the Project. General Contractor's policies shall be primary and any such insurance carried by the CONSULTANT shall be excess and noncontributory. The certificates shall provide that CONSULTANT be given 30 days' written notice prior to any cancellation thereof. The CONSULTANT will incorporate these provisions into Section 00805 - Supplementary Conditions of the construction contracts.
4. CONSULTANT's Opinion of Probable Costs (Cost Estimate): DISTRICT acknowledges that construction cost estimates, financial analyses and feasibility projections are subject to many influences including, but not limited to, price of labor and materials, unknown or latent conditions of existing equipment or structures, and time or quality of performance by third parties. CONSULTANT acknowledges that such influences may not be precisely forecasted and are beyond the control of CONSULTANT and that actual costs incurred may vary substantially from the estimates prepared by CONSULTANT. CONSULTANT does not warrant or guarantee the accuracy of construction or development cost estimates. [Note: The Scope-of-Services does not include cost estimating services. The above understanding applies to any cost estimating services if any are amended to CONSULTANT's Scope-of Services.]
5. CONSULTANT's Activities at Construction Site. The presence of CONSULTANT's personnel at a construction site, whether as on-site representative, resident Consultant, construction manager, or otherwise, does not make CONSULTANT responsible for those duties that belong to construction contractors or others, and does not relieve construction contractors or others of their obligations, duties, and responsibilities, including, but not limited to, construction methods, means, techniques, sequences, and procedures necessary for completing all portions of the construction work in accordance with the contract documents, any health or safety programs and precautions required by such construction work, and any compliance with applicable laws and regulations. Any inspection or observation of the contractor's work is solely for the purpose of determining that the work is generally proceeding in conformance with the intent of the project specifications and

contract documents. CONSULTANT makes no warranty or guarantee with respect to the performance guarantee with respect to the performance of a contractor. CONSULTANT has no authority to exercise control over any construction contractor in connection with their work or health or safety programs and precautions. Except to protect CONSULTANT's own personnel and except as may be expressly required elsewhere in the scope of services, CONSULTANT has no duty to inspect, observe, correct, or report on health or safety deficiencies of the construction contractor.

6. Shop Drawing and Technical Submittal Review. CONSULTANT shall review contractor shop drawings and technical submittals for general conformance with the intent of the contract documents. CONSULTANT shall not be required to verify dimensions, contractor's shop drawings or submittals, nor to coordinate shop drawings or other submittals with other shop drawings or submittals provided by contractor.

Record Drawings. Record drawings, if required, will be prepared, in part, on the basis of information compiled and furnished by others, and may not always represent the exact location, type of various components, or exact manner in which the Project was finally constructed. CONSULTANT is not responsible for any errors or omissions in the information from others that are incorporated into the record drawings.

Exhibit B

Clackamas County Service District No. 1 Kellogg Creek WPCP– Aeration Diffuser Rebuild Project

Schedule

The Project Schedule in this Exhibit B is based on the District issuing Notice to Proceed (NTP) on or before November 27, 2013.

BC will perform services to accommodate the District's schedule objectives as described below.

1. Perform the Aeration Basin related design and bid document preparation services to accommodate installation of replacement diffusers during the low flow season of 2014; the period of July through September 15, 2014 is the targeted low flow period.
Target for Aeration Basin Improvement Bid Package: March 17, 2014
Target for Bid/Award/Notice to Construct: April 27, 2104
2. Perform Energy Trust of Oregon (ETO) grant funding study update for District and ETO administrative approval prior to District awarding the Aeration Basin Improvement construction contract.
Target for ETO grant funding study update: February 17, 2014
Target for ETO confirmation and administrative approval of grant funding: April 17, 2014
3. Perform the Blower Building HVAC improvement design and bid document preparation services to accommodate procurement and installation of HVAC related improvements by July 7, 2014.
Target for Blower Building HVAC Equipment Pre-Purchase Package: January 27, 2014 (*)
Target date for Blower Building HVAC Improvement Package: January 27, 2014 (*)
(*) Following BC receipt of NTP from the District, BC and the District will explore the potential merit of accomplishing Blower Building HVAC improvements in a single bid package using alternate procurement methods.

The schedule may be adjusted upon mutual agreement between the District and BC project managers.



16

Water Quality Protection
 Surface Water Management
 Wastewater Collection & Treatment
 Michael S. Kuenzi, P.E.
 Director

December 12, 2013

Board of County Commissioners
 Clackamas County

Members of the Board:

**PURCHASE OF A LOADER FOR CLACKAMAS COUNTY SERVICE DISTRICT NO. 1
 EASTERN OREGON BIOSOLIDS OPERATIONS**

Purpose/Outcomes	To increase biosolids distribution capacity in our Eastern Oregon operations.
Dollar Amount and Fiscal Impact	Total contract not to exceed \$176,437.00. Funds were allocated in the CCSD#1 FY13-14 Budget. Procurement will be executed through the State Procurement contract.
Funding Source	CCSD#1 FY13-14 Budget – no County General Funds are involved.
Safety Impact	None.
Duration	20 yrs
Previous Board Action	None.
Contact Person	Mike Kuenzi, Director – Water Environment Services – 503-742-4566
Contract No.	N/A

BACKGROUND

WES continues to increase the amount of dry cake biosolids hauled from the Kellogg Creek Water Pollution Control Plant to our Eastern Oregon operations. On February 7, 2013, the Board of County Commissioners approved the purchase of a larger cake hauling truck that provides twice the capacity of existing trucks. Staff is proposing to procure a new front end loader to improve production efficiency and support the additional volume shipped with the new double trailer truck, the loader is needed to transfer biosolids into the Terragator® for application of biosolids to the field. The existing 1998 tractor and conveyor loading systems are undersized for current operations and have been flagged as a safety hazard by our risk management staff. Staff intends to utilize the State procurement contract for the purchase.

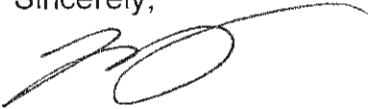
RECOMMENDATION

Staff respectfully recommends:

1. The Board of County Commissioners acting as the governing body of Clackamas County Service District No. 1 (the "District") approve the Contract for the Purchase of the Loader not to exceed \$176,437.00, and;

2. The Director of Water Environment Services be authorized to execute the contract without further Board action.

Sincerely,

A handwritten signature in black ink, appearing to be 'MSK', written in a cursive style.

Michael S. Kuenzi
Director

**Clackamas County Water Environment Services
Project Initiation Request Form**

Project No: P112099 District(s): CCSD#1 Fund(s): 119
 Project Title: Loader - Eastern OR loader Form Prepared By: K. Spencer
 Project Manager: K. Spencer Program: Biosolids
 Budget Year(s) 2013-2014
 Not in Budget O & M Budgeted Item Account Line Item 1

Capital Budgeted Item
 Budgeted Project Title (As listed in Budget book) Biosolids Distribution Improvements
 Yes No Asset Management Funded (From Annual Allocation)
 Yes No Operations Capital Funded (From Annual Allocation)

Project Schedule

Phase	Phase Start Date	Phase Finish Date	Life Budget Amount
Pre-Design			
Design			
Construction			
Project Completion	<u>Ancillary costs</u>		<u>5,000.00</u>
Purchase Only	<u>11/21/2013</u>	<u>01/30/2014</u>	<u>\$ 171,437.00</u>
TOTAL			<u>\$ 176,437.00</u>

Asset Data	Project Partners
<input checked="" type="checkbox"/> Creates New Assets	<input type="checkbox"/> Bill Other Entity
<input checked="" type="checkbox"/> Retires Assets	Entity Name: _____
<input type="checkbox"/> Easement Purchases	<input type="checkbox"/> Pay Other Entity
<input type="checkbox"/> Land Purchases	Entity Name: _____
<input type="checkbox"/> Donated Assets	

TYPE OF PROJECT REQUESTED

Request	Type of Project	Number Assigned	SDC%
<input type="checkbox"/>	Work Order (W)		
<input type="checkbox"/>	Reimbursable Work Order (R)		
<input checked="" type="checkbox"/>	Capital (P)		<u>P112099</u>
<input type="checkbox"/>	Industry (I)		
<input checked="" type="checkbox"/>	Equipment (E)		<u>100%</u>

SYSTEM SET UP (Finance Use Only)

Setup Task	Completed By	Completion Date
PeopleSoft Chart Fields	<u>MS</u>	<u>12/3/13</u>
Work Force Time Entry System	<u>MS</u>	<u>12/3/13</u>
PeopleSoft Allocation Tables		
n/Vision Reports	<u>MS</u>	<u>12/3/13</u>
Email to Requestor	<u>MS</u>	<u>12/3/13</u>

Program Manager K. Spencer Date 11-19-13 Capital & Financial Planning Manager [Signature] Date 11/19/13
 Functional Manager (District Support Project Only) _____ Date _____

NARRATIVE SECTION [PLEASE ATTACH ADDITIONAL PAGES AS NEEDED]

Project Background/History

As we continue to increase the amount of cake biosolids from KC to Eastern Oregon, we are building a fleet to manage this. WES recently purchased a new cake hauling truck that provides twice the capacity of the old trucks. To support this additional volume, a loader is needed to transfer biosolids from the ground to the Terragator for application. The tractor (not a loader) in current use is inadequate to meet this increase in biosolids from KC.

Project Description (*Concisely describe the project details, objectives, benefits to districts and success criteria*)

Purchase new loader, obtain necessary paperwork and transport to Eastern Oregon.

Estimated Project Cost:

Capital cost \$ 171,437.00

Long-term operating/maintenance cost \$ 25,000.00

Coordination with Other Projects:

NA

Partner/Participating Agencies:

Name: NA

Contact information:

Billing address:

Other Information

Ancillary costs include transportation, decals, staff time.

3 Signed



Quote 114662-01

November 15, 2013

**CLACKAMAS COUNTY WATER
ENVIRONMENT SERVICES
15941 S AGNES AVE
OREGON CITY
Oregon
97045**

Attention: Russ Weber

Dear Russ,

We would like to thank you for your interest in our company and our products, and are pleased to quote the following for your consideration.

One (1) New CATERPILLAR Model: 924K Wheel Loaders

YEAR:2013

This Quote is valid for 30 days, after which time we reserve the right to re-quote. If there are any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink that reads "Joe Lindberg".

Joe Lindberg
Machine Sales Representative
Peterson CAT

JALindberg@petersoncat.com



Quote 114662-01

November 15, 2013

**CLACKAMAS COUNTY WATER
ENVIRONMENT SERVICES
15941 S AGNES AVE
OREGON CITY
Oregon
97045**

Attention: Russ Weber

Dear Russ,

We would like to thank you for your interest in our company and our products, and are pleased to quote the following for your consideration.

One (1) New CATERPILLAR Model: 924K Wheel Loaders

YEAR:2013

This Quote is valid for 30 days, after which time we reserve the right to re-quote. If there are any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Joe Lindberg", written over a white background.

Joe Lindberg
Machine Sales Representative
Peterson CAT

JALindberg@petersoncat.com

One (1) New CATERPILLAR Model: 924K Wheel Loaders**STANDARD EQUIPMENT**

POWERTRAIN-Axle seal guards-Hydrostatic transmission with electronic-Brake/decelerator pedal-speed range control (4 speed ranges)-Caterpillar C6.6 ACERT engine-Rimpull control-Tier 4/Stage 3B compliant-Creeper control-Turbocharged and aftercooled-Lubed for life driveshafts-Filtered crankcase breather-Parking brake, Electric-Diesel particulate filter-Single plane cooling system with remote-Coolant protection to -34C (-29F)-coolant reservoir-Differential lock in front axle-SOS port.Engine,Coolant,Transmission Oil-Differential rear open-Thermal starting aid (Glow plugs)-Dry type air cleaner-Throttle lock-Enclosed wet disc full hydraulic brakes-Transmission directional control on-Fuel priming pump, Automatic-Implement joystick-Fuel water separator-Transmission sight gauge-Hydraulically driven demand cooling fan

HYDRAULICS-Heavy duty hydraulic cooler-Hydraulic sight gauge, Visible-Hydraulic diagnostic connectors and-Load sensing hydraulics and steering-SOS ports-Seat mounted hydraulic controls with FNR

ELECTRICAL-110A heavy duty alternator-Emergency shutdown switch-12v power supply in cab (2)-Halogen work lights front and rear-2 x 1000 CCA batteries-Heavy duty gear reduction starter-24 volt system-LED rear stop tail turn lights-Back up alarm-Remote jump start post-Battery disconnect switch-Resettable main and critical-Beacon ready-function breakers-Diagnostic connector-Roading lights front and rear-Directional signals front and rear

OPERATOR ENVIRONMENT-3 in (75mm) retractable seatbelt-Interior rear view mirrors (2)-Automatic temperature control-Lunch box storage-Cab. enclosed ROPS/FOPS pressurized-Operator warning system indicators-and sound suppressed-Radio ready inc. speakers-Cup holder-Rear window defrost, Electric-External heated mirrors-Removable floormat-Ground level cab door release-Seat mounted electronic implement-Gauges-controls. Adjustable-Digital direction indicator-Sliding glass on the side windows-Digital hourmeter and odometer-Steering column mounted multi function-Digital speedometer-control. Lights wipers turn signal-Engine coolant temperature gauge-Suspension seat, Fabric-Fuel level indicator-Tilt and telescope steering wheel-Hydraulic oil temperature gauge-Tinted front glass-Tachometer-Wet arm wiper washer 2 speed and-Hydraulic control lockout-intermittent front-Interior cab lighting door and dome-Wet arm wiper washer, Rear

OTHER STANDARD EQUIPMENT-Automatic bucket / fork positioner.-Parallel lift loader linkage with-In cab adjustable-sealed pins-Automatic lift and bucket kickouts.-Recovery hitch with pin-In cab adjustable-Remote mounted lubrication points-Fenders-Toolbox, Lockable-Large-access enclosure doors with-Vandalism protection:-adjustable close/open force-Lockable compartments

MACHINE SPECIFICATIONS

Description	Reference No	List Amount
924K WHEEL LOADER	333-6522	\$157,160.00
LIGHTS, AUX, HALOGEN / HALOGEN	333-1427	\$200.00
CAMERA, REAR VIEW	333-1450	\$1,000.00
PRODUCT LINK, SATELLITE-PL321	333-1452	\$2,169.00
DIFFERENTIAL,LIMITED SLIP REAR	333-6526	\$2,850.00
STEERING, STANDARD	333-6850	
QUICK COUPLER, FUSION	333-6865	\$3,920.00
RADIO, READY	342-0130	
CAB, DELUXE	342-0200	\$2,060.00
TOOLBOX GROUP	347-8059	\$400.00
BUCKET, 2.7CYD (HO) BOCE	360-3321	\$7,706.00
TIRES, 20.5R25 XHA2 L3, MI	366-6879	\$17,130.00
ENVIRONMENT, HIGH DEBRIS	366-6127	\$3,625.00
WEATHER, COLD START 120V	366-8129	\$1,980.00
FENDERS, EXTENDED COVER	366-8149	\$2,000.00
HYD,3V,COUPLER READY,HIGH LIFT	366-8183	\$8,500.00
KIT, RADIO, CD PLAYER	374-5846	\$590.00
RIDE CONTROL	384-6282	\$3,770.00
JUMPER LINES, 3RD FUNCTION	441-3367	\$550.00
COUNTERWEIGHT HEAVY	419-1675	\$2,500.00

Sell Price	\$218,110.00
NJPA DISCOUNT AT 26% OF CAT CONTENT	(\$56,709.00)
FREIGHT AT ZONE 8	\$10,036.00
After Tax Balance	\$171,437.00

WARRANTY

Standard Warranty: 12 Month, Unlimited Hours

F.O.B./TERMS

Clackamas County or Wasco site

ADDITIONAL CONSIDERATIONS

* Please allow 2-3 weeks delivery from order date

Accepted by Kathryn Spencer on Nov. 14, 2013



Signature



December 12, 2013

Board of County Commissioner
 Clackamas County

Members of the Board:

**PURCHASE OF A NEW COMBINATION CLEANER VACUUM TRUCK FOR
 CLACKAMAS COUNTY SERVICE DISTRICT NO. 1 (CCSD#1)**

Purpose/Outcomes	Acquisition of a new Combination Cleaner utilized for cleaning catch basins in both sanitary and surface water management infrastructure
Dollar Amount and Fiscal Impact	Total contract not to exceed \$420,000. Funds were allocated in the CCSD#1 FY13-14 Budget.
Funding Source	CCSD#1 FY 2013-14 Budget – no General County funds are involved.
Safety Impact	Crew safety will be improved through reduced confined space entries into man holes. Staff estimates that the total number confined space entries will be reduced to between 5 and 10 per year. Staff currently averages 50 entries per year.
Duration	Effective through June 30, 2014.
Previous Board Action	None.
Contact Person	Michael S. Kuenzi, Director – Water Environment Services – 503-742-4560.
Contract No.	None.

BACKGROUND

This purchase will replace one of our aging and failing hydro cleaners with a combination hydro cleaning/vacuum suction truck. Staff conducts routine preventative maintenance on the sanitary and storm collections systems. The hydro cleaning portion of the operation is accomplished by using a high pressure water jet cleaner to scour pipes in the collection system and move the debris down the pipes, where it accumulates at a manhole. The vacuum portion of the combination cleaner then removes debris from the manhole through high velocity suction. The new combination cleaner will optimize our operation with the ability to use both hydro cleaning technologies to clean grease and debris from the collection system and the vacuum system to remove the grease and debris without the need for a confined space entry. This operation is faster, more efficient, and safer for crew members. This replacement will also modernize our fleet with a more efficient cleaning machine that requires fewer staff hours to operate. The new combination cleaner will replace the existing aging piece of equipment, built in 1991, which has become very expensive to operate and maintain for daily operations, and has out lasted the industry standard for a piece of heavy equipment of this type. The existing unit will be placed in CCSD#1's reserve fleet until such time as staff designates it for surplus.

RECOMMENDATION

Staff recommends that:

1. The Board of County Commissioners, acting as the governing body of Clackamas County Service District No. 1 (the District) approve the Purchase of a new Combination Cleaner Vacuum Truck, and;
2. The Director of Water Environment Services be authorized to execute the agreement without further Board action.

Respectfully,



Michael S. Kuenzi
Director



Presents a Proposal Summary

of the



2100 Plus

Combination Single Engine Sewer Cleaner with Positive Displacement Vacuum System Mounted on a Heavy Duty Truck Chassis

for

Water Environmental Services

15941 S Agnes Ave

Oregon City, OR

PRODUCT DESCRIPTION

1100 PLUS with Roots 824-18" Hg. Blower, 12 Yard Debris body, 1500 Gallons of Fresh Water

STANDARD FEATURES

18" x 22" x 24" Curb Side Aluminum Toolbox
Aluminum Fenders
Mud Flaps
Electric/Hydraulic Four Way Boom
Color Coded Sealed Electrical System
Remote Pendant Control w/35' Cord
Vansco-Electronic Package
Double Acting Dump Hoist Cylinder
Handgun Assy. w/1/2" x 35' Hose w/Quick Disconnects
2" Y-Strainer w/25' Fill Hose
3" Y-Strainer at Water Pump Inlet
3x-Ten Steel Cylindrical Debris Tank
Flexible Hose Guide
60 Deg. Sand Nozzle w/Carbide Inserts
60 Deg. Sanitary Nozzle w/Carbide Inserts
45 Deg. Penetrator Nozzle w/Carbide Inserts
Nozzle Storage Rack
Vacuum Tube Storage: Curbside (2) Pipe, Rear Door (2) Pipe
12" Nozzle
Flat Rear Door w/Hydraulic Locks and Door Power-up/Down, Open/Close Feature
Dual 10" Stainless Steel Float Shut Off System/Rear Mounted
Debris Body Vacuum Relief System
Debris Deflector Plate
60" Dump Height
Water Sight Gauge DS/PS
Liquid Float Level Indicator
Boom Transport Post Storage
3" Y-Strainer @ Water Pump w/3" Drain Valve
Performance Package: (Hyd Variable Flow, Dual PTO's, Dual Hyd. Pumps)
12" Water Relief Valve for Vactor Water Pump
Stainless Steel Microstrainer
Blower Air Shift Controls
Hydraulic Cooling Package
Midship Handgun Coupling
Side Mounted Water Pump
Hose Wind Guide (Dual Roller)
Hose Footage Counter - Mechanical
Hose Reel Manual Hyd. Extend/Retract
Hose Reel Chain Cover (Full)
Tachometer/Chassis Engine W/Hourmeter
Circuit Breakers
LED Lights. Clearance, Back-Up, Stop, Tail & Turn
Tow Hooks, Front and Rear
Electronic Back-Up Alarm
Module Paint, Dupont Imron Elite - Wet on Wet
12" Vacuum Pipe Package
Emergency Flare Kit
Fire Extinguisher 5 Lbs.
Water Pump Hour Meter
PTO Hour Meter

- Vactor 2100 Plus Body Decal - Multi-Colored
- Chassis Modifications
- Vactor Manual, Partial Manual and USB Version - 1 + Dealer

ADDITIONAL FEATURES

- Roots 824-18" Hg. Blower
- 180 Degree Rotation, 8 Ft. Hydraulic Telescoping Boom, Front Loading 8" Suction Hose
- 80 GPM Variable Flow Water System
- 2500 PSI Water Pressure
- 1" x 800' Piranha Sewer Hose, 2500 PSI
- Hydraulic Extending/Rotating 15" Hose Reel (1" x 800') Capacity
- Debris Body Flush Out System
- Debris Body Load Limit Alarm functionally tied to Vacuum Relief
- 6" Butterfly Valve, Rear Door, 6:00 Position
- 6" Rear Door Knife Valve w/Camlock, Air Actuated, 3:00 Position
- Rear Door Valve Flushout
- Externally Mounted Trash Pump w/Screen
- Full Rear Door Swinging Screen
- Pump Off Plumbing to Back of Cab
- Centrifugal Separators
- Folding Pipe Rack, Curbside
- Folding Pipe Rack, Streetside
- Folding Pipe Rack, Rear Door
- Rear Door Splash Shield
- Lube Manifold
- Laminated Lube Chart
- Low Water Light w/Alarm and Water Pump Flow Indicator
- Air Purge
- Hot Shift Blower Drive
- Front Joystick Boom Control
- Wireless Controls, including hose reel controls
- Rotatable Boom Inlet Hose, Telescoping Boom
- Jet Rodder Water System Accumulator
- Handgun Couplers, Front and Rear
- Hydro Excavation Kit/Retract Reel w/1/2" X 50' Hose and Nozzle
- Automatic Hose Level Wind Guide, Indexing
- Digital Hose Footage Counter
- Hose Reel Manual Rewind
- Handgun Hose Reel w/Spring Retract
- Lateral Cleaning Kit w/150' Hose and Nozzle, 25 GPM/2000 PSI
- Hydraulic Tank Shutoff Valves
- Rodder Pump Drain Valves
- Washington State DOT Legal Front Bump
- LED Mid-Ship Turn Signals
- Worklights (2), LED, Telescoping Boom
- Worklights (2), LED, Rear Door
- Worklight, LED, Operators Station
- Worklight, LED, Hose Reel Manhole
- Worklight, LED, Curb Side
- Worklight, LED, Street Side
- Hose Reel Wrapped for Delivery
- Toolbox, Front Bumper Mounted, 16 x 12 x 18 w/(2) LED Side Markers
- Toolbox, Behind Cab
- Toolbox, Driver Side Chassis Frame, 24w x 24h x 24d
- Toolbox, Driver Side Subframe, 18w x 24h x 24d

Camera System, Front, Rear and Both Sides
Blower High Temperature Safety Shutdown
Printed Full Vector Manuals

Chassis Source - Customer Supplied
Module Paint Match Cab - Yes
Module Paint Color - White
Cab Color - White
Door Stripe Color - None
Chassis Axle - Tandem
Certified Unit Weight Required - No

	Factory Total:	\$306,544.00
NJPA Discount:		-\$9200.00
Chassis Price:		\$118,500.00
Total Price:		\$415,844.00

Price valid for 30 Days from date of 11/25/2013

Product Model: 2100PLUS
Product Model: 2100PLUS

Proposal Date: 11/25/2013

Quote Number: 2013-8396
Price List Date: 1/1/2014
P.O. Number:

Payment Terms:

Proposal Notes:

1. Multiple unit orders will be identical to signed proposal. Changes or deviations to any unit of a multiple unit order will require a new signed proposal.
2. Chassis specifications and data codes for customer supplied chassis must be submitted to and approved by Vactor Manufacturing prior to submittal of customer purchase order
3. All prices quoted are in US Dollars unless otherwise noted.

SIGNED BY:

_____ Date: _____

LIMITED WARRANTY

Limited Warranty. Each machine manufactured by VACTOR/GUZZLER MANUFACTURING (or, "the Company") is warranted against defects in material and workmanship for a period of 12 months, provided the machine is used in a normal and reasonable manner and in accordance with all operating instructions. In addition, certain machines and components of certain machines have extended warranties as set forth below. If sold to an end user, the applicable warranty period commences from the date of delivery to the end user. If used for rental purposes, the applicable warranty period commences from the date the machine is first made available for rental by the Company or its representative. This limited warranty may be enforced by any subsequent transferee during the warranty period. This limited warranty is the sole and exclusive warranty given by the Company.

STANDARD EXTENDED WARRANTIES (Total Warranty Duration)

<u>Tractor Recovery Vehicles</u>	18 months – all components
<u>00 Series, HXX Series and Jetters</u>	10 years against water tank leakage due to rust-through
<u>00 Series and HXX only</u>	5 years against leakage of debris tank, centrifugal compressor or housing due to rust-through.

Exclusive Remedy. Should any warranted product fail during the warranty period, the Company will cause to be repaired or replaced, as the Company may elect, any part or parts of such machine that the Company's examination discloses to be defective in material or factory workmanship. Repairs or replacements are to be made at the selling Vactor/Guzzler distributor's location or at other locations approved by the Company. In lieu of repair or replacement, the Company may elect, at its sole discretion, to refund the purchase price of any product found defective. The foregoing remedies shall be the sole and exclusive remedies of any party making a valid warranty claim. This Limited Warranty shall not apply to (and the Company shall not be responsible for):

Major components or trade accessories that have a separate warranty from their original manufacturer, such as, but not limited to, tractors, engines, hydraulic pumps and motors, tires and batteries.

Normal adjustments and maintenance services.

Normal wear parts such as, but not limited to, brooms, oils, fluids, vacuum hose, light bulbs, fuses, gaskets.

Failures resulting from the machine being operated in a manner or for a purpose not recommended by the Company.

Repairs, modifications or alterations without the express written consent of the Company, which in the Company's sole judgment, have adversely affected the machine's stability, operation or reliability as originally designed and manufactured.

Items subject to misuse, negligence, accident or improper maintenance.

OTE* The use in the product of any part other than parts approved by the Company may invalidate this warranty. The Company reserves the right to determine, in its sole discretion, if the use of non-approved parts operates to invalidate the warranty. Nothing contained in this warranty shall make the Company liable for loss, injury, or damage of any kind to any person or entity resulting from any defect or failure in the machine.

THIS WARRANTY SHALL BE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ALL OF WHICH ARE DISCLAIMED.

This warranty is in lieu of all other obligations or liabilities, contractual and otherwise, on the part of the Company. For the avoidance of doubt, the Company shall not be liable for any indirect, special, incidental or consequential damages, including, but not limited to, loss of use or lost profits. The Company makes no representation that the machine has the capacity to perform any functions other than as stated in the Company's written literature, catalogs or specifications accompanying delivery of the machine. No person or affiliated company representative is authorized to alter the terms of this warranty, to give any other warranties or to assume any other liability on behalf of the Company in connection with the sale, servicing or repair of any machine manufactured by the Company. Any legal action brought hereon must be commenced within eighteen (18) months of the event or facts giving rise to such action.

The Company reserves the right to make design changes or improvements in its products without imposing any obligation upon itself to upgrade or improve previously manufactured products.

VACTOR/GUZZLER MANUFACTURING

21 S. Illinois Street

Deerfield, IL 61364

Oregon



OR. REV. STAT. §279A.200. Definitions

(1) As used in ORS 279A.200 to 279A.225:

(a) "Administering contracting agency" means a governmental body in this state or in another jurisdiction that solicits and establishes the original contract for the procurement of goods, services or public improvements in a cooperative procurement.

(b) "Cooperative procurement" means a procurement conducted on behalf of more than one governmental body. "Cooperative procurement" includes but is not limited to multiagency contracts and price agreements. "Cooperative procurement" does not include an agreement formed among only governmental bodies under ORS chapter 190 or by a statute, charter provision, ordinance or other authority for establishing agreements between or among governmental bodies or agencies or tribal governing bodies or agencies.

(c) "Cooperative procurement group" means a group of governmental bodies joined through an intergovernmental agreement for the purpose of facilitating cooperative procurements.

(d) "Interstate cooperative procurement" means a permissive cooperative procurement in which the administering contracting agency is a governmental body, domestic or foreign, that is authorized under the governmental body's laws, rules or regulations to enter into public contracts and in which one or more of the participating governmental bodies are located outside this state.

(e) "Joint cooperative procurement" means a cooperative procurement in which the participating governmental bodies or the cooperative procurement group and the bodies' or group's contract requirements or estimated contract requirements for price agreements are identified.

(f) "Original contract" means the initial contract or price agreement solicited and awarded during a cooperative procurement by an administering contracting agency.

(g) "Permissive cooperative procurement" means a cooperative procurement in which the purchasing contracting agencies are not identified.

(h) "Purchasing contracting agency" means a governmental body that procures goods, services or public improvements from a contractor based on the original contract established by an administering contracting agency.

OR. REV. STAT. §279A.205 Cooperative procurements authorized.

(1) A contracting agency may participate in, sponsor, conduct or administer a joint cooperative procurement for the procurement of any goods, services or public improvements.

(2) A contracting agency may participate in, sponsor, conduct or administer a permissive or interstate cooperative procurement for the procurement of any goods or services, but not public improvements.

OR. REV. STAT. §279A.220. Interstate cooperative procurements

(1) A contracting agency may establish a contract or price agreement through an interstate cooperative procurement only if:

(a) The administering contracting agency's solicitation and award process for the original contract is an open and impartial competitive process and uses source selection methods substantially equivalent to those specified in ORS 279B.055 or 279B.060;

(b) The administering contracting agency's solicitation and the original contract allows other governmental bodies to establish contracts or price agreements under the terms, conditions and prices of the original contract; and

(c) The administering contracting agency permits the contractor to extend the use of the terms, conditions and prices of the original contract to the purchasing contracting agency.

(2) In addition to the requirements in subsection (1) of this section:

(a) The purchasing contracting agency, or the cooperative procurement group of which the purchasing contracting agency is a member, must be listed in the solicitation of the administering contracting agency as a party that may establish contracts or price agreements under the terms, conditions and prices of the original contract, and the solicitation must be advertised in Oregon; or

(b)(A) The purchasing contracting agency, or the cooperative procurement group of which the purchasing contracting agency is a member, shall advertise a notice of intent to establish a contract or price agreement through an interstate cooperative procurement.

(B) The notice of intent must include:

(i) A description of the procurement;

(ii) An estimated amount of the procurement;

(iii) The name of the administering contracting agency; and

(iv) A time, place and date by which comments must be submitted to the purchasing contracting agency regarding the intent to establish a contract or price agreement through an interstate cooperative procurement.

(C) Public notice of the intent to establish a contract or price agreement through an interstate cooperative procurement must be given in the same manner as provided in ORS 279B.055 (4)(b) and (c).

(D) Unless otherwise specified in rules adopted under ORS 279A.070, the purchasing contracting agency shall give public notice at least seven days before the deadline for submission of comments regarding the intent to establish a contract or price agreement through an interstate cooperative procurement.

(3) If a purchasing contracting agency is required to provide notice of intent to establish a contract or price agreement through an interstate cooperative procurement under subsection (2) of this section:

(a) The purchasing contracting agency shall provide vendors who would otherwise be prospective bidders or proposers on the contract or price agreement, if the procurement were competitively procured under ORS chapter 279B, an opportunity to comment on the intent to establish a contract or price agreement through an interstate cooperative procurement.

(b) Vendors must submit comments within seven days after the notice of intent is published.

(c) And if the purchasing contracting agency receives comments on the intent to establish a contract or price agreement through an interstate cooperative procurement, before the purchasing contracting agency may establish a contract or price agreement through the interstate cooperative procurement, the purchasing contracting agency shall make a written determination that establishing a contract or price agreement through an interstate cooperative procurement is in the best interest of the purchasing contracting agency. The purchasing contracting agency shall provide a copy of the written determination to any vendor that submitted comments.

(4) For purposes of this section, an administering contracting agency may be any governmental body, domestic or foreign, authorized under its laws, rules or regulations to enter into contracts for the procurement of goods and services for use by a governmental body.

NJPA Analysis: The Statute authorizes 'contracting agencies' to participate in cooperative purchasing agreements with contracting agencies in other states. A 'contracting agency' is defined as a governmental body in this state or in another jurisdiction that solicits and establishes the original contract for the procurement of goods, services or public improvements in a cooperative procurement. NJPA engages in cooperative purchasing pursuant to Minn. Stat. §123A.21, subd. 7(23).

Our 11-Step Procurement Process

It is the desire of NJPA to meet our Members' procurement requirements, but it is ultimately our Members' responsibility to interpret local purchasing laws to determine their own ability to access and participate with NJPA contracts. Our request for proposal (RFP) process is continuously being refined to meet the changing needs of our Members. The desired result is a national, competitively bid procurement and contract process that is not only valued by Members but meets or exceeds local requirements—offering exceptional products and services from nationally acclaimed Vendors.

1) RESEARCHING MEMBER NEEDS

Carried out at numerous national trade shows, we take the opportunity to not only display our current offerings, but also listen to our Members' needs in an effort to refine our current and future product and service offerings.

2) RESEARCHING THE SOLUTIONS AVAILABLE IN THE MARKET PLACE

Constant research helps us develop the best approach for each offering. Some industries lend themselves to a manufacturer's response because that manufacturer provides a complete industry solution through their authorized dealers. Other industries lend themselves to a distributor response because they are able to provide the most complete industry solutions through the large number of manufacturers they represent.

3) REQUESTING PERMISSION FROM THE NJPA BOARD OF DIRECTORS

After establishing the existence of both a viable need and a viable NJPA style solution to that need, permission from the NJPA Board of Directors is sought and must be granted to officially begin the development of the solicitation and overall procurement process.

4) DRAFTING AND ADVERTISING A RFP

Our solicitation document is our cornerstone of cooperative contract purchasing. The consistency of that solicitation document, its response forms and evaluation criteria are some of our greatest assets. NJPA advertises each RFP:

- For at least two consecutive weeks in the Star Tribune
- For at least two weeks in **Daily Journal of Commerce** within the State of Oregon (<http://dicoregon.com/>)
- On the NJPA website
- On NoticeToBidders.com and on other appropriate e-commerce sites such as BidSync and Ornvia
- We notify the state level procurement departments in each state for possible re-posting of the solicitation within their systems and at their option

5) RECEIVING BIDDERS' RESPONSES

Bids are time and date stamped when received in our Staples, MN office. They are opened and read aloud at a time, date, and place specified in the RFP.

6) EVALUATING BIDDERS' RESPONSES

Evaluation begins at the bid opening by determining the "responsiveness" of each bid. "Level One Responsiveness" includes:

- Timely submission
- Properly organized
- Electronic as well as physical copies as required
- Original signatures on appropriate documents
- Verification of bidder's liability insurance

"**Level Two Responsiveness**" is the evaluation of the bid response according to the evaluation criteria provided in the RFP and documented on the "Bid Evaluation" (Form G) by the Bid Evaluation Committee. Our typical RFP invites the widest possible variety of products and services within the scope of a bid. Our intention is to create a contract that provides the widest possible array of utility to the widest possible array of NJPA Members. We also specifically invite bidders to define their products and services not only by industry standard terms, but also in terms of the latest technological advances and its applicability and utility to our Members.

The perceived procurement value of a bid to NJPA and its Members, in the opinion of NJPA, includes but is not limited to:

- Conforming to RFP's intent, scope and specifications
- Competitive pricing strategies
- Ability to sell and service NJPA Members nationally
- Financial strength, experience and success in the industry/marketplace
- References from past customers and prior experience with NJPA
- A clear, concise, aggressive and effective marketing plan
- Value added related products, services and technological advances
- Financing options and detailed payment terms
- Warranty, product and service responsibility
- Identifying the depth, breadth and quality of products and service offerings

Additional consideration is given to bidder's who demonstrate "Green" and Disadvantaged Business Enterprise and the ability to sell and service Canada and other international provinces.

The final evaluation is conducted using the "Bid Evaluation" form defined in the RFP. This form establishes a weighted scoring method and also provides for an optional "Cost Comparison." This point-based system is used as a part of the final scoring and awarded Vendor determination.

7) MAKING RECOMMENDATIONS TO THE NJPA BOARD

The recommendations of the Bid Review Committee are presented to the NJPA Board of Directors for final review and possible award. The NJPA Board has the final authority to issue or deny a procurement contract.

8) AWARDING VENDOR(S)

Upon approval by the NJPA Board, the recommended Vendor is awarded a four-year contract with NJPA and is subject to annual renewals. The Contract Manager and/or the Director of Contracts and Marketing welcome the new Vendor to NJPA.

9) POSTING APPROVED CONTRACT DOCUMENTS

A complete procurement file is organized and posted on our website, offering the applicable evaluation, contract and solicitation documents where they can be reviewed by our Members.

10) DEVELOPING AND IMPLEMENTING A JOINT MARKETING PLAN WITH AWARDED VENDORS

NJPA works with both the Vendor and Member to educate people about the benefits and uses of an awarded contract. We work with the awarded Vendor(s) to educate and energize their sales and service teams. We advertise our awarded contracts in selected national publications, produce a full-color, hard copy "Contract Directory" and maintain a website offering of the contract opportunities. NJPA exhibits with Vendor partners in numerous national trade shows and provides break-out meetings presenting information at those trade shows on contract purchasing and cooperative opportunities available through NJPA.

11) REVIEWING AND MAINTAINING OUR CONTRACT THROUGHOUT ITS TERM

Contracts are reviewed annually for their effectiveness. NJPA contracts are written with four-year terms and subject to annual renewals based on those reviews. As a result, NJPA provides a simple, structured, well-documented procurement contract in an effort to create a seamless process for all of its Member procurement needs. It is important to stress that NJPA does not eliminate Member responsibility for following the bid process, but rather, provides a nationally pre-competed option, so as not to duplicate the formal bid process.