

AGENDA

Thursday, September 26, 2019 - 10:00 AM
BOARD OF COUNTY COMMISSIONERS

Beginning Board Order No. 2019-87

CALL TO ORDER

- Roll Call
- Pledge of Allegiance

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

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

A. Health, Housing & Human Services

1. Approval of Agreement No. 18609 with Ride Connection, Inc. to Provide Funding for non-Emergency Medical Rides Provided by Social Services, Transportation Reaching People – *Social Services*
2. Approval of Agreement No. 18608 with Ride Connection, Inc. to Provide Funding for Dedicated Dialysis Rides Provided by Social Services, Transportation Reaching People – *Social Services*
3. Approval of Agreement No. 8598 (Urban) & No. 18599 (Rural) with Ride Connection, Inc. to Provide Funding for Vehicle Maintenance of Ride Connection owned Vehicles Operated by both Urban & Rural Community-based Clackamas County Transportation Consortium Members – *Social Services*
4. Approval of Inter-Agency Agreement with Clackamas County Health Centers Division for School Based Health Centers (SBHC) – Building Mental Health Services Capacity – *Public Centers*
5. Approval of Amendment No. 2 to the Intergovernmental Agreement with the State of Oregon, acting by and through its Oregon Health Authority for Operation as Local Public Health Authority for Clackamas County – *Public Health*
6. Approval of a Service Agreement No. 1770 with Henry Schein for Pediatric Dental Services at the new Gladstone Dental Clinic – *Health Centers via Procurement*
7. Approval of an Amendment to the HOME Loan Agreement with River Glen Renewal Associates, LLC to Rehabilitate the River Glen Apartments in Gladstone – *Community Development*

B. Department of Transportation & Development

1. Approval of a Contract with Kittelson & Associates, Inc. for Design Services for South Ivy Street Pedestrian Intersection Improvements - *Procurement*
2. Approval of a Contract with CivilWorks NW, Inc. for the Aldercrest Road Slide Repair Project - *Procurement*

C Elected Officials

1. Approval of Previous Business Meeting Minutes – *BCC*
2. Request by the Clackamas County Sheriff's Office to Enter into an Annual Operating Plan and financial Plan with the Oregon State Marine Board for the Clackamas County Boating Safety Action Plan - *ccso*

D Juvenile Department

1. Approval to Accept the Grant Award and Sign the Grant Agreement for the Oregon Criminal Justice Commission Specialty Court Grant Program

E Disaster Management

1. Approval of Memorandum of Agreement between Clackamas County and the Lake Oswego School District for Emergency/Disaster Related Use of Lake Oswego and Lakeridge High Schools

F. Business & Community Services

1. Approval of a Contract with Opsis Architecture, LLP for the Oak Lodge and Gladstone Community Project - *Procurement*

III. WATER ENVIRONMENT SERVICES

1. Approval of a Contract with Pearce Moody Construction Company, LLC for the Sierra Case – West Storm Main Contemporaneous Development - *Procurement*

IV. COUNTY ADMINISTRATOR UPDATE

V. COMMISSIONERS COMMUNICATION

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

September 26, 2019

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of Agreement #18609 with Ride Connection, Inc. to Provide Funding for non-Emergency Medical Rides Provided by Social Services,
Transportation Reaching People

Purpose/Outcomes	Funding for Social Services-Transportation Reaching People to provide non-Emergency Medical Rides to assist older and disabled county residents in meeting their transportation needs to conduct medical appointments.
Dollar Amount and Fiscal Impact	The total agreement is \$72,211. State of Oregon, Elderly and Disabled Transportation Fund – Federal Transit Administration 5310 Grant.
Funding Source	Federal 5311 Transportation Funds - \$8,265 of Social Services-Transportation Reaching People Special Transportation Formula (STF) Funds are used to meet match requirements. No County General Funds are involved.
Duration	Effective July 1, 2019 and terminates on June 30, 2020
Previous Board Action	011719-A1
Strategic Plan Alignment	1. This funding aligns with the strategic priority to increase self-sufficiency for our clients. 2. This funding aligns with the strategic priority to ensure safe, healthy and secure communities by addressing needs of older adults in the community.
Counsel Review	County Counsel reviewed and approved the agreement on 9/11/19
Contact Person	Brenda Durbin, Director, Social Services Division 503-655-8641
Contract No.	9455

BACKGROUND:

The Social Services Division of the Health, Housing and Human Services requests approval of Agreement #18609 with Ride Connection, Inc. This agreement provides pass through funding State of Oregon, Elderly and Disabled Transportation Fund – Federal Transit Administration 5310 funding specifically for non-emergency medical rides provided by the Social Services Transportation Reaching People (TRP) program. This agreement provides continuation funding for the portion of the rides that are provided inside the TriMet District to areas that have been designated high equity needs area by the TriMet HD2017 Transit Advisory Committee. This project helps riders to remain independent in meeting their medical treatment needs for as long as possible.

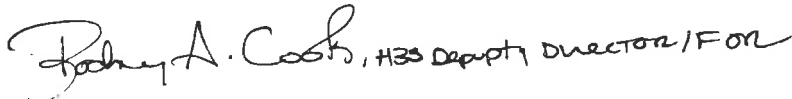
The TRP program provides rides in either a lift equipped mini-buses or mini-vans driven by paid staff as well as with volunteer drivers providing rides in their own vehicles. TRP provides transportation to medical facilities located throughout the county and in the greater Portland-metro area in these vehicles. When possible, riders with a similar destination and arrival times ride together to increase program efficiencies. Generally, transportation is provided weekdays between 8:00 am and 5:00pm.

This contract is late due to Ride Connection not being able to release agreements/modifications to its sub-contractors until their funding source released their contract and approved the Subrecipient agreements issued by Ride Connection. The maximum funding for this agreement is \$72,211. The term of the agreement is July 1, 2019 to June 30, 2020. County Council reviewed and approved these modifications on September 11, 2019. No County General Funds are involved. Matching funds of \$8,265 are provided by TRP's Special Transportation Formula (STF) Agreement. This agreement provides the first year of the two-year grant funding that was awarded during the January 2019 application cycle.

RECOMMENDATION:

Staff recommends the Board approval of this agreement and that Richard Swift, H3S Director; be authorized to sign on behalf of Clackamas County.

Respectfully submitted,

 Robyn A. Cook, H3S Deputy Director / For

Richard Swift, Director
Health Housing & Human Services

**SERVICES AGREEMENT #18609
BETWEEN
Ride Connection, Inc. and Clackamas County Social Services**

PARTIES:

1. Ride Connection, Inc. ("Ride Connection" or "Recipient"), and
2. Clackamas County, a political subdivision of the State of Oregon, on behalf of its Health, Housing & Human Services Department, by and through the Social Services Division ("Contractor")

RECITALS:

1. Ride Connection and Contractor enter into this Contractor Agreement (the "Agreement") for the purpose of procuring Contractor's services, for which payment in whole or part shall be from Federal Funds.

AGREEMENTS:

1. General

- A. Scope of Agreement - This Agreement contains the terms and conditions that governs all services, and deliverables, (the "Services") to be performed by Contractor during the Term of this Agreement, which shall be amended as needed for one or more projects. However, execution of this Agreement does not obligate Ride Connection to award any Services to Contractor, other than the initial scope of Services attached in Exhibit A.
 - 1) This Agreement consists of this document, all Exhibits or other attachments, and other documents referenced herein and incorporated by this reference. Contractor shall comply with all applicable federal laws, regulations, executive orders, circulars, rules, policies, procedures and directives, whether or not expressly set forth in this Agreement, including but not limited to the following, which are incorporated into and made a part hereof: (1) the terms and conditions applicable to a "Recipient" set forth in the Prime Contract; (2) OMB Circular 2 CFR 200 (3) FTA Master Agreement, (4) Annual Certifications and Assurances, (5) FTA C 9070.1G.
- B. Scope of Services and Changes - Contractor is responsible for compliance with all applicable federal laws, regulations, executive orders, circulars, rules, policies, procedures and directives, whether or not expressly set forth in this Agreement, including but not limited to Federal Requirements, attached as Exhibit B. Contractor agrees that it is under a continuing obligation to comply with the foregoing requirements, as they be modified or amended from time to time. Contractor must rely on its own independent judgment to ensure compliance with this section. Oral or written statements by Ride Connection are not to be relied on as a substitute for Contractor's independent obligation to follow all applicable laws as required by this section.
- C. Schedule - Contractor and Ride Connection agree that time is of the essence for all

regulations, "Program Fraud Civil Remedies" 49 CFR Part 31, apply to its actions pertaining to the Services under this Agreement. Upon execution of this Agreement, Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make or cause to be made pertaining to this Agreement. In addition to other penalties that may be applicable, Contractor acknowledges that if it makes, or causes to be made a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on Contractor to the extent the Federal Government deems appropriate.

- (ii) Contractor also acknowledges that if it makes, or causes to be made a false, fictitious or fraudulent claim, statement, submission, or certification to the Federal Government under an Agreement connected with a project that is financed in whole or part with Federal assistance awarded by FTA under 49 U.S.C. Chapter 53 or any other Federal law, the Government reserves the rights to impose penalties of 18 U.S.C. 1001 and 49 U.S.C 5323(1) on Contractor, to the extent the Federal Government deems appropriate.
 - (iii) Contractor agrees to include the above two clauses in each subcontract it awards under this Agreement financed in whole or in part with FTA funds. It is further agreed that the clauses shall not be modified except to identify the subcontractor who will be subject to the provisions.
- 6) Subagreement insurance - Contractor shall require the other party, or parties, to each of its subagreements to obtain and maintain insurance of the types and in the amounts provided in Exhibit C to this agreement. Any insurance obtained by the other party to Contractor's subagreements, if any, shall not relieve Contractor of the requirements of Exhibit C to this Agreement. The other party to any subagreement with Contractor, if the other party employs subject workers as defined in ORS 657.027, must obtain Workers Compensation Coverage as described in Exhibit C.
- F. ODOT Not A Party - Contractor and Ride Connection acknowledge and agree that notwithstanding any concurrence by ODOT in or approval of the solicitation or award of this Agreement, absent the express written consent by ODOT, ODOT is not a party to this Agreement and shall not be subject to any obligations or liabilities to Contractor, Ride Connection or any other party (whether or not a party to this Agreement or any Agreement awarded pursuant hereto) pertaining to any matter resulting from this Agreement.
- G. Drug-Free Workplace Agreement - Contractor is required to verify that Contractor, its principals, and affiliates will maintain a drug-free workplace for all employees and to have an antidrug policy and awareness program. Drug-free workplace means a site for the performance of work done in connection with a specific award at which employees of the recipient are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance (source: 49 CFR § 32.635).

2. Inspection of Records and Services

- A. Recordkeeping Term - Contractor shall maintain intact and readily accessible a complete set of records relating to this Agreement for six (6) years after the date of transmission of

3. Reporting Requirements

- A. Monthly reports shall be due on the **20th** day after the end of the preceding month.
- B. Reports may include any of the following types of information required by FTA Circular 5010.1C, Chapter 1, Section (5) Reporting Requirements, particularly the status of grant activity line items, budget and schedule changes, milestone revisions or cost variances, outstanding claims, change orders and other information that the circular may require. Ride Connection may require additional reporting information from the Contractor.

4. Compensation

- A. The total Project Cost is estimated at **\$80,476**. In accordance with the terms and conditions of this agreement, Ride Connection shall provide Contractor an amount not to exceed **\$72,211** in Grant Funds for eligible costs. Contractor shall provide matching funds for all Project Costs as described in Exhibit A, in the amount of **\$8,265**.
- B. Ride Connection shall pay Contractor for full, complete, and satisfactory performance of the Services, upon Ride Connection's receipt of payment from ODOT for Contractor's Services, at the price and/or rates mutually agreed by the parties under this Agreement for the applicable project. The Grant Funds shall be solely used for the Project described in Exhibit A and shall not be used for any other purpose. No other costs, rates, or fees shall be payable to the Contractor. Except as set forth in this Agreement, Contractor shall bear sole responsibility for all additional expenses incurred in connection with its performance of the Services.
- C. Payment Terms - Contractor shall submit to Ride Connection all vehicle maintenance invoices and any other documentation requested by Ride Connection. When required by Ride Connection, and as a condition precedent to any payment, and particularly final payment, Contractor shall provide, in a form satisfactory to Ride Connection, lien releases, claim waivers, and affidavits of payment from Contractor, and its lower-tier subcontractors and suppliers of any tier, for any portion of Contractor's Services.
- D. Withholding - Ride Connection may withhold payment of funds or offset future payments against funds already paid to Contractor if the funds are not being used in accordance with this Agreement, all required reporting has not been submitted, or there are any unresolved audit findings relating to the Contractor's performance. Contractor shall assure that funds allocated hereunder are used only for the purposes permitted, and shall, upon breach of conditions that require Ride Connection to reimburse funds to ODOT or otherwise incur costs from ODOT withholding of funds, hold harmless and indemnify Ride Connection for an amount equal to the funds required to be repaid or withheld plus any additional costs or expenses incurred by Ride Connection. In the event a creditor imposes any lien or claim for labor, fringe benefits, taxes, supplies, materials, equipment rental or other charges against the Services covered by this Agreement, thereby legally encumbering the Services, the amount of such obligation may be deducted by Ride Connection from any payment or payments, including retainage, made under this Agreement.

investigations and defense, but not limited to the liabilities enumerated above, resulting from or arising out of the activities of such subcontractor, its officers, employees or agents under the contract between Contractor and such subcontractor(s) procured pursuant to this Agreement.

Any such indemnification clause shall also provide that the subcontractor(s), nor any attorney engaged by the subcontractor(s), shall defend any claim in the name of the State or any agency of the State of Oregon, nor purport to act as legal representative of the State of Oregon or any of its agencies, without the prior written consent of the Oregon Attorney General. The State, at any time at its election, assume its own defense and settlement in the event that it determines that Contractor's subcontractor is prohibited from defending State or that Contractor's subcontractor is not adequately defending State's interests, or that an important governmental principle is at issue or it is in the best interests of the State to do so. State reserves all rights to pursue claims it may have against Contractor's subcontractor if State assumes to elect its own defense.

Any such indemnification clause shall also provide that the subcontractor(s), nor any attorney engaged by the subcontractor(s), shall defend any claim in the name of Ride Connection, nor purport to act as legal representative of Ride Connection, without the prior written consent from Ride Connection. Ride Connection, at any time at its election, assume its own defense and settlement in the event that it determines that Contractor's subcontractor is prohibited from defending Ride Connection or that Contractor's subcontractor is not adequately defending Ride Connection's interests, or that it is in the best interests of Ride Connection to do so. Ride Connection reserves all rights to pursue claims it may have against Contractor's subcontractor if Ride Connection assumes to elect its own defense.

- C. Indemnitee Consent - Contractor shall not defend any claim in the name of the State of Oregon, any Agency of the State of Oregon, ODOT, Ride Connection, without the prior written consent of the Oregon Attorney General, or Ride Connection.
- D. Limitation on Indemnification - Contractor's indemnification above shall not include any liability to the extent caused by or resulting from the concurrent negligence of any Indemnitees. Any legal limitations now or hereafter in effect affecting the validity or enforceability of the indemnity, defense and hold harmless obligations assumed by Contractor pursuant to this Agreement shall operate to amend the Contractor's obligations only to the minimum extent necessary for the indemnity, defense and hold harmless contractual provision to conform with the requirements of such limitations, and as so modified, the obligations shall continue in full force and effect.
- E. No Consequential Damages – Neither Ride Connection nor any of its officers, employees, directors, and agents shall have any liability to Contractor regardless of the theory of recovery, including breach of contract or negligence, to the other party for any indirect, incidental, special, or consequential damages, including but not limited to loss of revenue or profit, whether actual or anticipated, loss of use, failure to realize anticipated savings, loss of or damage to data or other commercial or economic loss.

herein or any extension thereof;

- (ii) Contractor fails to comply with or 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 Ride Connection fails to correct such failures within 10 days or such longer period as Ride Connection may authorize;
- (iii) Ride Connection fails to receive funding, or appropriations, limitations or other expenditure authority at levels sufficient to pay for the work provided in this Agreement, or if Ride Connection determines to terminate for its own convenience;
- (iv) Any laws, regulations, rules or guidelines are modified, changed or interpreted in such a way that financial assistance or purchase of equipment provided for in this Agreement is no longer allowable or is no longer eligible for funding proposed by this Agreement;
- (v) Both parties agree that continuation of the Project would not produce results commensurate with the further expenditure of funds; or
- (vi) Contractor takes any action pertaining to this Agreement without the approval of Ride Connection and which under the provisions of this Agreement would have required the approval of Ride Connection.

Contractor may terminate the Agreement, in whole or in part, upon 30 days written notice to Ride Connection.

Any termination of this Agreement shall not prejudice any rights or obligations accrued to the parties prior to termination.

11. Compliance with Laws

- A. **Governing law** - This Agreement shall be governed by the laws of the State of Oregon, to the express exclusion of all other choice of law alternatives.
- B. **Federal laws and regulations** - In addition to those elsewhere specified, Contractor shall comply with all applicable federal, state, and local laws, rules, regulations, executive orders, and ordinances applicable to the Agreement or to the implementation of the Project, as applicable without limitation as described in Exhibit B. Without limiting the generality of the foregoing, Contractor expressly agrees to comply with the following laws, regulations and executive orders to the extent they are applicable:
 - (i) Title VI of the Civil Rights Act of 1964;
 - (ii) Section V of the Rehabilitation Act of 1973;
 - (iii) Americans with Disabilities Act of 1990 and ORS 659a.142;
 - (iv) All other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations;
 - (v) Clean Air Act (42 U.S.C. 7401-7671q);
 - (vi) Water Pollution Control Act as amended (33 U.S.C. 1251-1387);
 - (vii) Executive Order 11738;

13. Communications

All communications between the parties regarding this Agreement shall be directed to the parties' as indicated below:

Ride Connection:
Scott Gates
Ride Connection
9955 NE Glisan St.
Portland, OR 97220

Contractor:
Stefanie Reid
Clackamas County Social Services
2051 Kaen Rd
Oregon City, OR 97045

14. No Third Party Beneficiary

Ride Connection and Contractor are the only parties to this Agreement and, as such, are the only parties entitled to enforce its terms. Nothing in this Agreement gives or shall be construed to create or provide any legal right or benefit, direct, indirect or otherwise to any other party unless that party is individually identified by name herein and expressly described as an intended beneficiary of the terms of this Agreement.

15. Assignment

Contractor may not assign, delegate or subcontract any of its rights or obligations under this Agreement to any other party without the prior written consent of Ride Connection. Any assignment, delegation or subcontract in violation of this paragraph shall be null and void, and shall constitute grounds for immediate termination by Ride Connection.

16. Dispute Resolution

- A. Executive Negotiation - The Parties shall attempt in good faith to resolve any dispute arising out of or relating to this Agreement, or any breach hereof or any Services performed hereunder, promptly by negotiation between executives who have authority to settle the controversy. Any party may give the other party written notice of any dispute not resolved during the normal course of business. Such notice shall include a statement of that party's position and documentation supporting that parties claim and the name and title of the executive who will be representing that party and any other person who will accompany the executive. The receiving party shall respond in kind within five (5) days of the date of notice. Within ten (10) days after delivery of the initial notice, the executives of both parties shall meet at a mutually acceptable time and place and use good faith efforts to resolve the dispute. If dispute is not then resolved, either party may give the other written notice that these executive negotiations are concluded. Negotiations pursuant to this Section shall be confidential and shall be treated as compromise and settlement negotiations for purposes of Law and rules of evidence. Time requirements herein may be modified upon mutual written consent of the parties.
- B. Mediation - In the event that the parties are unable to settle the dispute through direct negotiations as set forth above, all remaining controversies or claims shall then be submitted to mediation within ten (10) days from written notice of concluded negotiations following the Mediation Rules published by the Arbitration Service of Portland, Inc. Unless the parties agree otherwise, mediation shall be held in Portland, Oregon. This Agreement to mediate and any other agreement or consent to mediate entered into in

21. Severability

If any provision of this Subcontract will be held to be invalid or unenforceable for any reason, the remaining provisions will continue to be valid and enforceable. If a court or arbitrator finds that any provision of this Subcontract is invalid or unenforceable, but that by limiting such provision, it would become valid and enforceable, then such provision will be deemed to be written, construed, and enforced as so limited.

22. Surviving Provisions

Notwithstanding termination or expiration of this Agreement, the following provisions shall survive and continue to be in full force and effect: 1D (Audit); 2A (Recordkeeping); 6 (Confidential Information); 7 (Indemnification); 8 (Insurance); 11A (Governing Law); 16 (Dispute Resolution); and 22 (Surviving Provisions).

23. Entire Agreement/Authority

This Agreement, exhibits, and any other attachments constitute the entire Agreement between the parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either party unless in writing and signed by both parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made shall be effective only in the specific instance and for the specific purpose given. The failure of Ride Connection to enforce any provision of this Agreement shall not constitute a waiver by Ride Connection of that or any other provision. The individuals signing below represent and warrant that they have authority to bind the party for which they sign.

24. Debt Limitation

This Agreement is expressly subject to the limitations of the Oregon Constitution and Oregon Tort Claims Act, and is contingent upon appropriation of funds. Any provisions herein that conflict with the above referenced laws are deemed inoperative to that extent.

September 26, 2019

Board of County Commissioner
Clackamas County

Members of the Board:

Approval of Agreement #18608 with Ride Connection, Inc. to Provide Funding for
Dedicated Dialysis Rides Provided by Social Services,
Transportation Reaching People

Purpose/Outcomes	Funding for Social Services-Transportation Reaching People to provide Dedicated Dialysis Rides to assist older and disabled county residents in meeting their transportation needs to receive dialysis treatment.
Dollar Amount and Fiscal Impact	The total agreement is \$70,567. State of Oregon, Elderly and Disabled Transportation Fund – Federal Transit Administration 5310 Grant.
Funding Source	Federal 5311 Transportation Funds - \$8,077 of Social Services-Transportation Reaching People Special Transportation Formula (STF) Funds are used to meet match requirements. No County General Funds are involved.
Duration	Effective July 1, 2019 and terminates on June 30, 2020
Previous Board Action	011719-A1
Strategic Plan Alignment	<ol style="list-style-type: none"> 1. This funding aligns with the strategic priority to increase self-sufficiency for our clients. 2. This funding aligns with the strategic priority to ensure safe, healthy and secure communities by addressing needs of older adults in the community.
Counsel Review	County Counsel reviewed and approved the agreement on 9/11/19
Contact Person	Brenda Durbin, Director, Social Services Division 503-655-8641
Contract No.	9454

BACKGROUND:

The Social Services Division of the Health, Housing and Human Services requests approval of Agreement #18608 with Ride Connection, Inc. This agreement pass through funding State of Oregon, Elderly and Disabled Transportation Fund – Federal Transit Administration 5310 funding specifically for dedicated dialysis rides provided by the Social Services Transportation Reaching People (TRP) program. This agreement provides continuation funding for the portion of the rides that are provided inside the TriMet District to areas that have been designated high equity needs area by the TriMet HD2017 Transit Advisory Committee. This project helps riders to remain independent in meeting their dialysis treatment needs for as long as possible.

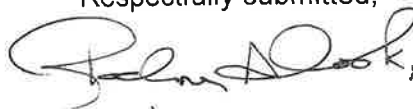
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RECOMMENDATION:

Staff recommends the Board approval of this agreement and that Richard Swift, H3S Director; be authorized to sign on behalf of Clackamas County.

Respectfully submitted,

 , H3S Deputy Director/For

Richard Swift, Director
Health Housing & Human Services

**SERVICES AGREEMENT #18608
BETWEEN
Ride Connection, Inc. and Clackamas County Social Services**

PARTIES:

1. Ride Connection, Inc. ("Ride Connection" or "Recipient"), and
2. Clackamas County, a political subdivision of the State of Oregon, on behalf of its Health, Housing & Human Services Department, by and through the Social Services Division ("Contractor")

RECITALS:

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- A. Scope of Agreement - This Agreement contains the terms and conditions that governs all services, and deliverables, (the "Services") to be performed by Contractor during the Term of this Agreement, which shall be amended as needed for one or more projects. However, execution of this Agreement does not obligate Ride Connection to award any Services to Contractor, other than the initial scope of Services attached in Exhibit A.
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2. Inspection of Records and Services

- A. Recordkeeping Term - Contractor shall maintain intact and readily accessible a complete set of records relating to this Agreement for six (6) years after the date of transmission of

3. Reporting Requirements

- A. Monthly reports shall be due on the **20th** day after the end of the preceding month.
- B. Reports may include any of the following types of information required by FTA Circular 5010.1C, Chapter 1, Section (5) Reporting Requirements, particularly the status of grant activity line items, budget and schedule changes, milestone revisions or cost variances, outstanding claims, change orders and other information that the circular may require. Ride Connection may require additional reporting information from the Contractor.

4. Compensation

- A. The total Project Cost is estimated at **\$78,644**. In accordance with the terms and conditions of this agreement, Ride Connection shall provide Contractor an amount not to exceed **\$70,567** in Grant Funds for eligible costs. Contractor shall provide matching funds for all Project Costs as described in Exhibit A, in the amount of **\$8,077**.
- B. Ride Connection shall pay Contractor for full, complete, and satisfactory performance of the Services, upon Ride Connection's receipt of payment from ODOT for Contractor's Services, at the price and/or rates mutually agreed by the parties under this Agreement for the applicable project. The Grant Funds shall be solely used for the Project described in Exhibit A and shall not be used for any other purpose. No other costs, rates, or fees shall be payable to the Contractor. Except as set forth in this Agreement, Contractor shall bear sole responsibility for all additional expenses incurred in connection with its performance of the Services.
- C. Payment Terms - Contractor shall submit to Ride Connection all vehicle maintenance invoices and any other documentation requested by Ride Connection. When required by Ride Connection, and as a condition precedent to any payment, and particularly final payment, Contractor shall provide, in a form satisfactory to Ride Connection, lien releases, claim waivers, and affidavits of payment from Contractor, and its lower-tier subcontractors and suppliers of any tier, for any portion of Contractor's Services.
- D. Withholding - Ride Connection may withhold payment of funds or offset future payments against funds already paid to Contractor if the funds are not being used in accordance with this Agreement, all required reporting has not been submitted, or there are any unresolved audit findings relating to the Contractor's performance. Contractor shall assure that funds allocated hereunder are used only for the purposes permitted, and shall, upon breach of conditions that require Ride Connection to reimburse funds to ODOT or otherwise incur costs from ODOT withholding of funds, hold harmless and indemnify Ride Connection for an amount equal to the funds required to be repaid or withheld plus any additional costs or expenses incurred by Ride Connection. In the event a creditor imposes any lien or claim for labor, fringe benefits, taxes, supplies, materials, equipment rental or other charges against the Services covered by this Agreement, thereby legally encumbering the Services, the amount of such obligation may be deducted by Ride Connection from any payment or payments, including retainage, made under this Agreement.

investigations and defense, but not limited to the liabilities enumerated above, resulting from or arising out of the activities of such subcontractor, its officers, employees or agents under the contract between Contractor and such subcontractor(s) procured pursuant to this Agreement.

Any such indemnification clause shall also provide that the subcontractor(s), nor any attorney engaged by the subcontractor(s), shall defend any claim in the name of the State or any agency of the State of Oregon, nor purport to act as legal representative of the State of Oregon or any of its agencies, without the prior written consent of the Oregon Attorney General. The State, at any time at its election, assume its own defense and settlement in the event that it determines that Contractor's subcontractor is prohibited from defending State or that Contractor's subcontractor is not adequately defending State's interests, or that an important governmental principle is at issue or it is in the best interests of the State to do so. State reserves all rights to pursue claims it may have against Contractor's subcontractor if State assumes to elect its own defense.

Any such indemnification clause shall also provide that the subcontractor(s), nor any attorney engaged by the subcontractor(s), shall defend any claim in the name of Ride Connection, nor purport to act as legal representative of Ride Connection, without the prior written consent from Ride Connection. Ride Connection, at any time at its election, assume its own defense and settlement in the event that it determines that Contractor's subcontractor is prohibited from defending Ride Connection or that Contractor's subcontractor is not adequately defending Ride Connection's interests, or that it is in the best interests of Ride Connection to do so. Ride Connection reserves all rights to pursue claims it may have against Contractor's subcontractor if Ride Connection assumes to elect its own defense.

- C. Indemnitee Consent - Contractor shall not defend any claim in the name of the State of Oregon, any Agency of the State of Oregon, ODOT, Ride Connection, without the prior written consent of the Oregon Attorney General, or Ride Connection.
- D. Limitation on Indemnification - Contractor's indemnification above shall not include any liability to the extent caused by or resulting from the concurrent negligence of any Indemnitees. Any legal limitations now or hereafter in effect affecting the validity or enforceability of the indemnity, defense and hold harmless obligations assumed by Contractor pursuant to this Agreement shall operate to amend the Contractor's obligations only to the minimum extent necessary for the indemnity, defense and hold harmless contractual provision to conform with the requirements of such limitations, and as so modified, the obligations shall continue in full force and effect.
- E. No Consequential Damages – Neither Ride Connection nor any of its officers, employees, directors, and agents shall have any liability to Contractor regardless of the theory of recovery, including breach of contract or negligence, to the other party for any indirect, incidental, special, or consequential damages, including but not limited to loss of revenue or profit, whether actual or anticipated, loss of use, failure to realize anticipated savings, loss of or damage to data or other commercial or economic loss.

herein or any extension thereof;

- (ii) Contractor fails to comply with or 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 Ride Connection fails to correct such failures within 10 days or such longer period as Ride Connection may authorize;
- (iii) Ride Connection fails to receive funding, or appropriations, limitations or other expenditure authority at levels sufficient to pay for the work provided in this Agreement, or if Ride Connection determines to terminate for its own convenience;
- (iv) Any laws, regulations, rules or guidelines are modified, changed or interpreted in such a way that financial assistance or purchase of equipment provided for in this Agreement is no longer allowable or is no longer eligible for funding proposed by this Agreement;
- (v) Both parties agree that continuation of the Project would not produce results commensurate with the further expenditure of funds; or
- (vi) Contractor takes any action pertaining to this Agreement without the approval of Ride Connection and which under the provisions of this Agreement would have required the approval of Ride Connection.

Contractor may terminate the Agreement, in whole or in part, upon 30 days written notice to Ride Connection.

Any termination of this Agreement shall not prejudice any rights or obligations accrued to the parties prior to termination.

11. Compliance with Laws

- A. **Governing law** - This Agreement shall be governed by the laws of the State of Oregon, to the express exclusion of all other choice of law alternatives.
- B. **Federal laws and regulations** - In addition to those elsewhere specified, Contractor shall comply with all applicable federal, state, and local laws, rules, regulations, executive orders, and ordinances applicable to the Agreement or to the implementation of the Project, as applicable without limitation as described in Exhibit B. Without limiting the generality of the foregoing, Contractor expressly agrees to comply with the following laws, regulations and executive orders to the extent they are applicable:
 - (i) Title VI of the Civil Rights Act of 1964;
 - (ii) Section V of the Rehabilitation Act of 1973;
 - (iii) Americans with Disabilities Act of 1990 and ORS 659a.142;
 - (iv) All other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations;
 - (v) Clean Air Act (42 U.S.C. 7401-7671q);
 - (vi) Water Pollution Control Act as amended (33 U.S.C. 1251-1387);
 - (vii) Executive Order 11738;

13. Communications

All communications between the parties regarding this Agreement shall be directed to the parties' as indicated below:

Ride Connection:
Scott Gates
Ride Connection
9955 NE Glisan St.
Portland, OR 97220

Contractor:
Stefanie Reid
Clackamas County Social Services
2051 Kaen Rd
Oregon City, OR 97045

14. No Third Party Beneficiary

Ride Connection and Contractor are the only parties to this Agreement and, as such, are the only parties entitled to enforce its terms. Nothing in this Agreement gives or shall be construed to create or provide any legal right or benefit, direct, indirect or otherwise to any other party unless that party is individually identified by name herein and expressly described as an intended beneficiary of the terms of this Agreement.

15. Assignment

Contractor may not assign, delegate or subcontract any of its rights or obligations under this Agreement to any other party without the prior written consent of Ride Connection. Any assignment, delegation or subcontract in violation of this paragraph shall be null and void, and shall constitute grounds for immediate termination by Ride Connection.

16. Dispute Resolution

- A. Executive Negotiation - The Parties shall attempt in good faith to resolve any dispute arising out of or relating to this Agreement, or any breach hereof or any Services performed hereunder, promptly by negotiation between executives who have authority to settle the controversy. Any party may give the other party written notice of any dispute not resolved during the normal course of business. Such notice shall include a statement of that party's position and documentation supporting that parties claim and the name and title of the executive who will be representing that party and any other person who will accompany the executive. The receiving party shall respond in kind within five (5) days of the date of notice. Within ten (10) days after delivery of the initial notice, the executives of both parties shall meet at a mutually acceptable time and place and use good faith efforts to resolve the dispute. If dispute is not then resolved, either party may give the other written notice that these executive negotiations are concluded. Negotiations pursuant to this Section shall be confidential and shall be treated as compromise and settlement negotiations for purposes of Law and rules of evidence. Time requirements herein may be modified upon mutual written consent of the parties.
- B. Mediation - In the event that the parties are unable to settle the dispute through direct negotiations as set forth above, all remaining controversies or claims shall then be submitted to mediation within ten (10) days from written notice of concluded negotiations following the Mediation Rules published by the Arbitration Service of Portland, Inc. Unless the parties agree otherwise, mediation shall be held in Portland, Oregon. This Agreement to mediate and any other agreement or consent to mediate entered into in

21. Severability

If any provision of this Subcontract will be held to be invalid or unenforceable for any reason, the remaining provisions will continue to be valid and enforceable. If a court or arbitrator finds that any provision of this Subcontract is invalid or unenforceable, but that by limiting such provision, it would become valid and enforceable, then such provision will be deemed to be written, construed, and enforced as so limited.

22. Surviving Provisions

Notwithstanding termination or expiration of this Agreement, the following provisions shall survive and continue to be in full force and effect: 1D (Audit); 2A (Recordkeeping); 6 (Confidential Information); 7 (Indemnification); 8 (Insurance); 11A (Governing Law); 16 (Dispute Resolution); and 22 (Surviving Provisions).

23. Entire Agreement/Authority

This Agreement, exhibits, and any other attachments constitute the entire Agreement between the parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either party unless in writing and signed by both parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made shall be effective only in the specific instance and for the specific purpose given. The failure of Ride Connection to enforce any provision of this Agreement shall not constitute a waiver by Ride Connection of that or any other provision. The individuals signing below represent and warrant that they have authority to bind the party for which they sign.

24. Debt Limitation

This Agreement is expressly subject to the limitations of the Oregon Constitution and Oregon Tort Claims Act, and is contingent upon appropriation of funds. Any provisions herein that conflict with the above referenced laws are deemed inoperative to that extent.

September 26, 2018

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of Agreement #18598 (Urban) & #18599 (Rural) with Ride Connection, Inc. to Provide Funding for Vehicle Maintenance of Ride Connection owned Vehicles Operated by both Urban & Rural Community-based Clackamas County Transportation Consortium members

Purpose/Outcomes	Vehicle Maintenance support to the Social Services-Transportation Reaching People and Community Center based transportation services to assist older and disabled county residents in meeting their transportation needs to conduct their personal business, grocery shop, medical and/or other appointments.
Dollar Amount and Fiscal Impact	Agreement Amounts: \$22,750(Urban) & \$21,600(Rural). The contract is funded through the agreements with State of Oregon, Elderly and Disabled Transportation Fund – Federal Transit Administration 5310 Grant.
Funding Source	Federal Transit Administration 5310 Grant. No County General Funds are involved
Duration	Effective July 1, 2019 and terminates on June 30, 2020
Previous Board Action	None
Strategic Plan Alignment	1. This funding aligns with the strategic priority to increase self-sufficiency for our clients. 2. This funding aligns with the strategic priority to ensure safe, healthy and secure communities by addressing needs of older adults in the community.
Counsel Review	County Counsel reviewed and approved the agreement on 9/11/19
Contact Person	Brenda Durbin, Director, Social Services Division 503-655-8641
Contract No.	H3S# 9000

BACKGROUND:

The Social Services Division of the Health, Housing and Human Services request approval of Agreement #18598 (Urban) & #18599 (Rural) with Ride Connection, Inc. to provide pass through funding for vehicle maintenance of the vehicles owned by Ride Connection and operated by the rural and urban community-based members of the Clackamas County Transportation Consortium. These agreements will provide reimbursement funding to Consortium members for the routine maintenance of specified vehicles used for transportation services provided to seniors and persons with disabilities.

Transportation services are offered to area seniors and persons with disabilities who have limited or no access to public transportation. Any disabled adult, or person over the age of 60, living in Clackamas has access to transportation services through either their local Adult/Senior Community Centers or the Social Services Transportation Reaching People (TRP) program. Transportation services provide a link for residents to access other services that meet their individual needs. This helps them to remain independent and involved in the community as long as possible.

Healthy Families. Strong Communities.

This contract is late due to Ride Connection not being able to release agreements/modifications to its sub-contractors until their funding source released their contract and approved the Subrecipient agreements issued by Ride Connection. This resulted in the delay of Ride Connection sending out its contracts for FY19-20. The maximum funding for agreement #18598 (Urban) is \$22,750 & #18599 (Rural) is \$21,600. The term of the agreements is July 1, 2019 to June 30, 2020. County Council reviewed and approved both agreements on September 11, 2019. No County General Funds are involved. Matching funds are deducted from the vehicle maintenance reimbursements to meet the match requirement. This agreement provides the second year of the two-year grant funding that was awarded during the January 2017 application cycle.

RECOMMENDATION:

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

Respectfully submitted,

 H3S Deputy Director / For

Richard Swift, Director
Health, Housing and Human Services

**SERVICES AGREEMENT No. 18598
BETWEEN
Ride Connection, Inc. and Clackamas County Consortium**

PARTIES:

1. Ride Connection, Inc. ("Ride Connection" or "Recipient"), and
2. Clackamas County, a political subdivision of the State of Oregon, on behalf of its Health, Housing & Human Services Department, by and through the Social Services Division, ("Contractor")

RECITALS:

1. Ride Connection and Contractor enter into this Contractor Agreement (the "Agreement") for the purpose of procuring Contractor's services, for which payment in whole or part shall be from Federal Funds.

AGREEMENTS:

1. General

- A. Scope of Agreement - This Agreement contains the terms and conditions that governs all services, and deliverables, (the "Services") to be performed by Contractor during the Term of this Agreement, which shall be amended as needed for one or more projects. However, execution of this Agreement does not obligate Ride Connection to award any Services to Contractor, other than the initial scope of Services attached in Exhibit A.
 - 1) This Agreement consists of this document, all Exhibits or other attachments, and other documents referenced herein and incorporated by this reference. Contractor shall comply with all applicable federal laws, regulations, executive orders, circulars, rules, policies, procedures and directives, whether or not expressly set forth in this Agreement, including but not limited to the following, which are incorporated into and made a part hereof: (1) the terms and conditions applicable to a "Recipient" set forth in the Prime Contract; (2) OMB Circular 2 CFR 200 (3) FTA Master Agreement, (4) Annual Certifications and Assurances, (5) FTA C 9070.1G.
- B. Scope of Services and Changes - Contractor is responsible for compliance with all applicable federal laws, regulations, executive orders, circulars, rules, policies, procedures and directives, whether or not expressly set forth in this Agreement, including but not limited to Federal Requirements, attached as Exhibit B. Contractor agrees that it is under a continuing obligation to comply with the foregoing requirements, as they be modified or amended from time to time. Contractor must rely on its own independent judgment to ensure compliance with this section. Oral or written statements by Ride Connection are not to be relied on as a substitute for Contractor's independent obligation to follow all applicable laws as required by this section.

Remedies Act of 1986, as amended, 31 U.S.C. 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies" 49 CFR Part 31, apply to its actions pertaining to the Services under this Agreement. Upon execution of this Agreement, Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make or cause to be made pertaining to this Agreement. In addition to other penalties that may be applicable, Contractor acknowledges that if it makes, or causes to be made a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on Contractor to the extent the Federal Government deems appropriate.

- (ii) Contractor also acknowledges that if it makes, or causes to be made a false, fictitious or fraudulent claim, statement, submission, or certification to the Federal Government under an Agreement connected with a project that is financed in whole or part with Federal assistance awarded by FTA under 49 U.S.C. Chapter 53 or any other Federal law, the Government reserves the rights to impose penalties of 18 U.S.C. 1001 and 49 U.S.C 5323(1) on Contractor, to the extent the Federal Government deems appropriate.
 - (iii) Contractor agrees to include the above two clauses in each subcontract it awards under this Agreement financed in whole or in part with FTA funds. It is further agreed that the clauses shall not be modified except to identify the subcontractor who will be subject to the provisions.
- 6) Subagreement insurance - Contractor shall require the other party, or parties, to each of its subagreements to obtain and maintain insurance of the types and in the amounts provided in Exhibit C to this agreement. Any insurance obtained by the other party to Contractor's subagreements, if any, shall not relieve Contractor of the requirements of Exhibit C to this Agreement. The other party to any subagreement with Contractor, if the other party employs subject workers as defined in ORS 657.027, must obtain Workers Compensation Coverage as described in Exhibit C.
- F. ODOT Not A Party - Contractor and Ride Connection acknowledge and agree that notwithstanding any concurrence by ODOT in or approval of the solicitation or award of this Agreement, absent the express written consent by ODOT, ODOT is not a party to this Agreement and shall not be subject to any obligations or liabilities to Contractor, Ride Connection or any other party (whether or not a party to this Agreement or any Agreement awarded pursuant hereto) pertaining to any matter resulting from this Agreement.
- G. Drug-Free Workplace Agreement - Contractor is required to verify that Contractor, its principals, and affiliates will maintain a drug-free workplace for all employees and to have an antidrug policy and awareness program. Drug-free workplace means a site for the performance of work done in connection with a specific award at which employees of the recipient are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance (source: 49 CFR § 32.635).

2. Inspection of Records and Services

- A. Recordkeeping Term - Contractor shall maintain intact and readily accessible a complete

or state laws, regulations, rules, circulars or directives. Contractor agrees to include in any third party contract under this Agreement a provision to this effect.

3. Reporting Requirements

- A. Monthly reports shall be due on the **20th** day after the end of the preceding month.
- B. Reports may include any of the following types of information required by FTA Circular 5010.1C, Chapter 1, Section (5) Reporting Requirements, particularly the status of grant activity line items, budget and schedule changes, milestone revisions or cost variances, outstanding claims, change orders and other information that the circular may require. Ride Connection may require additional reporting information from the Contractor.

4. Compensation

- A. The total Project Cost is estimated at **\$25,354**. In accordance with the terms and conditions of this agreement, Ride Connection shall provide Contractor an amount not to exceed **\$22,750** in Grant Funds for eligible costs. Contractor shall provide matching funds for all Project Costs as described in Exhibit A, in the amount of **\$2,604**.
- B. Ride Connection shall pay Contractor for full, complete, and satisfactory performance of the Services, upon Ride Connection's receipt of payment from ODOT for Contractor's Services, at the price and/or rates mutually agreed by the parties under this Agreement for the applicable project. The Grant Funds shall be solely used for the Project described in Exhibit A and shall not be used for any other purpose. No other costs, rates, or fees shall be payable to the Contractor. Except as set forth in this Agreement, Contractor shall bear sole responsibility for all additional expenses incurred in connection with its performance of the Services.
- C. Payment Terms - Contractor shall submit to Ride Connection all vehicle maintenance invoices and any other documentation requested by Ride Connection. When required by Ride Connection, and as a condition precedent to any payment, and particularly final payment, Contractor shall provide, in a form satisfactory to Ride Connection, lien releases, claim waivers, and affidavits of payment from Contractor, and its lower-tier subcontractors and suppliers of any tier, for any portion of Contractor's Services.
- D. Withholding - Ride Connection may withhold payment of funds or offset future payments against funds already paid to Contractor if the funds are not being used in accordance with this Agreement, all required reporting has not been submitted, or there are any unresolved audit findings relating to the Contractor's performance. Contractor shall assure that funds allocated hereunder are used only for the purposes permitted, and shall, upon breach of conditions that require Ride Connection to reimburse funds to ODOT or otherwise incur costs from ODOT withholding of funds, hold harmless and indemnify Ride Connection for an amount equal to the funds required to be repaid or withheld plus any additional costs or expenses incurred by Ride Connection. In the event a creditor imposes any lien or claim for labor, fringe benefits, taxes, supplies, materials, equipment rental or other charges against the Services covered by this Agreement, thereby legally encumbering the Services, the amount of such obligation may be deducted by Ride Connection from any payment or payments, including retainage, made under this Agreement.

whatsoever nature, damages or losses, and all expenses and costs incidental to the investigations and defense, but not limited to the liabilities enumerated above, resulting from or arising out of the activities of such subcontractor, its officers, employees or agents under the contract between Contractor and such subcontractor(s) procured pursuant to this Agreement.

Any such indemnification clause shall also provide that the subcontractor(s), nor any attorney engaged by the subcontractor(s), shall defend any claim in the name of the State or any agency of the State of Oregon, nor purport to act as legal representative of the State of Oregon or any of its agencies, without the prior written consent of the Oregon Attorney General. The State, at any time at its election, assume its own defense and settlement in the event that it determines that Contractor's subcontractor is prohibited from defending State or that Contractor's subcontractor is not adequately defending State's interests, or that an important governmental principle is at issue or it is in the best interests of the State to do so. State reserves all rights to pursue claims it may have against Contractor's subcontractor if State assumes to elect its own defense.

Any such indemnification clause shall also provide that the subcontractor(s), nor any attorney engaged by the subcontractor(s), shall defend any claim in the name of Ride Connection, nor purport to act as legal representative of Ride Connection, without the prior written consent from Ride Connection. Ride Connection, at any time at its election, assume its own defense and settlement in the event that it determines that Contractor's subcontractor is prohibited from defending Ride Connection or that Contractor's subcontractor is not adequately defending Ride Connection's interests, or that it is in the best interests of Ride Connection to do so. Ride Connection reserves all rights to pursue claims it may have against Contractor's subcontractor if Ride Connection assumes to elect its own defense.

- C. Indemnitor Consent - Contractor shall not defend any claim in the name of the State of Oregon, any Agency of the State of Oregon, ODOT, Ride Connection, without the prior written consent of the Oregon Attorney General, or Ride Connection.
- D. Limitation on Indemnification - Contractor's indemnification above shall not include any liability to the extent caused by or resulting from the concurrent negligence of any Indemnitors. Any legal limitations now or hereafter in effect affecting the validity or enforceability of the indemnity, defense and hold harmless obligations assumed by Contractor pursuant to this Agreement shall operate to amend the Contractor's obligations only to the minimum extent necessary for the indemnity, defense and hold harmless contractual provision to conform with the requirements of such limitations, and as so modified, the obligations shall continue in full force and effect.
- E. No Consequential Damages – Neither Ride Connection nor any of its officers, employees, directors, and agents shall have any liability to Contractor regardless of the theory of recovery, including breach of contract or negligence, to the other party for any indirect, incidental, special, or consequential damages, including but not limited to loss of revenue or profit, whether actual or anticipated, loss of use, failure to realize anticipated savings, loss of or damage to data or other commercial or economic loss.

8. Insurance

10. Termination

Ride Connection may terminate this Agreement, in whole or in part, effective upon delivery of written notice to Contractor, or at such later date as may be established by Ride Connection, under any of the following conditions:

- (i) Contractor fails to provide services called for by this Agreement within the time specified herein or any extension thereof;
- (ii) Contractor fails to comply with or 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 Ride Connection fails to correct such failures within 10 days or such longer period as Ride Connection may authorize;
- (iii) Ride Connection fails to receive funding, or appropriations, limitations or other expenditure authority at levels sufficient to pay for the work provided in this Agreement, or if Ride Connection determines to terminate for its own convenience;
- (iv) Any laws, regulations, rules or guidelines are modified, changed or interpreted in such a way that financial assistance or purchase of equipment provided for in this Agreement is no longer allowable or is no longer eligible for funding proposed by this Agreement;
- (v) Both parties agree that continuation of the Project would not produce results commensurate with the further expenditure of funds; or
- (vi) Contractor takes any action pertaining to this Agreement without the approval of Ride Connection and which under the provisions of this Agreement would have required the approval of Ride Connection.

Contractor may terminate the Agreement, in whole or in part, upon 30 days written notice to Ride Connection.

Any termination of this Agreement shall not prejudice any rights or obligations accrued to the parties prior to termination.

11. Compliance with Laws

- A. **Governing law** - This Agreement shall be governed by the laws of the State of Oregon, to the express exclusion of all other choice of law alternatives.
- B. **Federal laws and regulations** - In addition to those elsewhere specified, Contractor shall comply with all applicable federal, state, and local laws, rules, regulations, executive orders, and ordinances applicable to the Agreement or to the implementation of the Project, as applicable without limitation as described in Exhibit B. Without limiting the generality of the foregoing, Contractor expressly agrees to comply with the following laws, regulations and executive orders to the extent they are applicable:
 - (i) Title VI of the Civil Rights Act of 1964;
 - (ii) Section V of the Rehabilitation Act of 1973;
 - (iii) Americans with Disabilities Act of 1990 and ORS 659a.142;

12. Term

This Agreement shall begin on **7/1/2019** and shall remain in effect through **6/30/2020** unless terminated sooner under the provisions of this Agreement.

13. Communications

All communications between the parties regarding this Agreement shall be directed to the parties' as indicated below:

Ride Connection:
Dean Orr
Ride Connection
9955 NE Glisan St.
Portland, OR 97220

Contractor:
Stefanie Reid
Clackamas County Consortium
2051 Kaen Rd
Oregon City, OR 97045-1819

14. No Third Party Beneficiary

Ride Connection and Contractor are the only parties to this Agreement and, as such, are the only parties entitled to enforce its terms. Nothing in this Agreement gives or shall be construed to create or provide any legal right or benefit, direct, indirect or otherwise to any other party unless that party is individually identified by name herein and expressly described as an intended beneficiary of the terms of this Agreement.

15. Assignment

Contractor may not assign, delegate or subcontract any of its rights or obligations under this Agreement to any other party without the prior written consent of Ride Connection. Any assignment, delegation or subcontract in violation of this paragraph shall be null and void, and shall constitute grounds for immediate termination by Ride Connection.

16. Dispute Resolution

- A. Executive Negotiation - The Parties shall attempt in good faith to resolve any dispute arising out of or relating to this Agreement, or any breach hereof or any Services performed hereunder, promptly by negotiation between executives who have authority to settle the controversy. Any party may give the other party written notice of any dispute not resolved during the normal course of business. Such notice shall include a statement of that party's position and documentation supporting that parties claim and the name and title of the executive who will be representing that party and any other person who will accompany the executive. The receiving party shall respond in kind within five (5) days of the date of notice. Within ten (10) days after delivery of the initial notice, the executives of both parties shall meet at a mutually acceptable time and place and use good faith efforts to resolve the dispute. If dispute is not then resolved, either party may give the other written notice that these executive negotiations are concluded. Negotiations pursuant to this Section shall be confidential and shall be treated as compromise and settlement negotiations for purposes of Law and rules of evidence. Time requirements herein may be modified upon mutual written consent of the parties.
- B. Mediation - In the event that the parties are unable to settle the dispute through direct

20. Amendments

This Agreement may be amended or extended only by a written instrument signed by both Parties and approved as required by applicable law.

21. Severability

If any provision of this Subcontract will be held to be invalid or unenforceable for any reason, the remaining provisions will continue to be valid and enforceable. If a court or arbitrator finds that any provision of this Subcontract is invalid or unenforceable, but that by limiting such provision, it would become valid and enforceable, then such provision will be deemed to be written, construed, and enforced as so limited.

22. Surviving Provisions

Notwithstanding termination or expiration of this Agreement, the following provisions shall survive and continue to be in full force and effect: 1D (Audit); 2A (Recordkeeping); 6 (Confidential Information); 7 (Indemnification); 8 (Insurance); 11A (Governing Law); 16 (Dispute Resolution); and 22 (Surviving Provisions).

23. Entire Agreement/Authority

This Agreement, exhibits, and any other attachments constitute the entire Agreement between the parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either party unless in writing and signed by both parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made shall be effective only in the specific instance and for the specific purpose given. The failure of Ride Connection to enforce any provision of this Agreement shall not constitute a waiver by Ride Connection of that or any other provision. The individuals signing below represent and warrant that they have authority to bind the party for which they sign.

24. Debt Limitation

This Agreement is expressly subject to the limitations of the Oregon Constitution and Oregon Tort Claims Act, and is contingent upon appropriation of funds. Any provisions herein that conflict with the above referenced laws are deemed inoperative to that extent.

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**SERVICES AGREEMENT No. 18599
BETWEEN
Ride Connection, Inc. and Clackamas County Consortium**

PARTIES:

1. Ride Connection, Inc. ("Ride Connection" or "Recipient"), and
2. Clackamas County, a political subdivision of the State of Oregon, on behalf of its Health, Housing & Human Services Department, by and through the Social Services Division, ("Contractor")

RECITALS:

1. Ride Connection and Contractor enter into this Contractor Agreement (the "Agreement") for the purpose of procuring Contractor's services, for which payment in whole or part shall be from Federal Funds.

AGREEMENTS:

1. General

- A. Scope of Agreement - This Agreement contains the terms and conditions that governs all services, and deliverables, (the "Services") to be performed by Contractor during the Term of this Agreement, which shall be amended as needed for one or more projects. However, execution of this Agreement does not obligate Ride Connection to award any Services to Contractor, other than the initial scope of Services attached in Exhibit A.
 - 1) This Agreement consists of this document, all Exhibits or other attachments, and other documents referenced herein and incorporated by this reference. Contractor shall comply with all applicable federal laws, regulations, executive orders, circulars, rules, policies, procedures and directives, whether or not expressly set forth in this Agreement, including but not limited to the following, which are incorporated into and made a part hereof: (1) the terms and conditions applicable to a "Recipient" set forth in the Prime Contract; (2) OMB Circular 2 CFR 200 (3) FTA Master Agreement, (4) Annual Certifications and Assurances, (5) FTA C 9070.1G.
- B. Scope of Services and Changes - Contractor is responsible for compliance with all applicable federal laws, regulations, executive orders, circulars, rules, policies, procedures and directives, whether or not expressly set forth in this Agreement, including but not limited to Federal Requirements, attached as Exhibit B. Contractor agrees that it is under a continuing obligation to comply with the foregoing requirements, as they be modified or amended from time to time. Contractor must rely on its own independent judgment to ensure compliance with this section. Oral or written statements by Ride Connection are not to be relied on as a substitute for Contractor's independent obligation to follow all applicable laws as required by this section.

Remedies Act of 1986, as amended, 31 U.S.C. 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies" 49 CFR Part 31, apply to its actions pertaining to the Services under this Agreement. Upon execution of this Agreement, Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make or cause to be made pertaining to this Agreement. In addition to other penalties that may be applicable, Contractor acknowledges that if it makes, or causes to be made a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on Contractor to the extent the Federal Government deems appropriate.

- (ii) Contractor also acknowledges that if it makes, or causes to be made a false, fictitious or fraudulent claim, statement, submission, or certification to the Federal Government under an Agreement connected with a project that is financed in whole or part with Federal assistance awarded by FTA under 49 U.S.C. Chapter 53 or any other Federal law, the Government reserves the rights to impose penalties of 18 U.S.C. 1001 and 49 U.S.C 5323(1) on Contractor, to the extent the Federal Government deems appropriate.
 - (iii) Contractor agrees to include the above two clauses in each subcontract it awards under this Agreement financed in whole or in part with FTA funds. It is further agreed that the clauses shall not be modified except to identify the subcontractor who will be subject to the provisions.
- 6) Subagreement insurance - Contractor shall require the other party, or parties, to each of its subagreements to obtain and maintain insurance of the types and in the amounts provided in Exhibit C to this agreement. Any insurance obtained by the other party to Contractor's subagreements, if any, shall not relieve Contractor of the requirements of Exhibit C to this Agreement. The other party to any subagreement with Contractor, if the other party employs subject workers as defined in ORS 657.027, must obtain Workers Compensation Coverage as described in Exhibit C.
- F. ODOT Not A Party - Contractor and Ride Connection acknowledge and agree that notwithstanding any concurrence by ODOT in or approval of the solicitation or award of this Agreement, absent the express written consent by ODOT, ODOT is not a party to this Agreement and shall not be subject to any obligations or liabilities to Contractor, Ride Connection or any other party (whether or not a party to this Agreement or any Agreement awarded pursuant hereto) pertaining to any matter resulting from this Agreement.
- G. Drug-Free Workplace Agreement - Contractor is required to verify that Contractor, its principals, and affiliates will maintain a drug-free workplace for all employees and to have an antidrug policy and awareness program. Drug-free workplace means a site for the performance of work done in connection with a specific award at which employees of the recipient are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance (source: 49 CFR § 32.635).

2. Inspection of Records and Services

- A. Recordkeeping Term - Contractor shall maintain intact and readily accessible a complete

or state laws, regulations, rules, circulars or directives. Contractor agrees to include in any third party contract under this Agreement a provision to this effect.

3. Reporting Requirements

- A. Monthly reports shall be due on the **20th** day after the end of the preceding month.
- B. Reports may include any of the following types of information required by FTA Circular 5010.1C, Chapter 1, Section (5) Reporting Requirements, particularly the status of grant activity line items, budget and schedule changes, milestone revisions or cost variances, outstanding claims, change orders and other information that the circular may require. Ride Connection may require additional reporting information from the Contractor.

4. Compensation

- A. The total Project Cost is estimated at **\$27,000**. In accordance with the terms and conditions of this agreement, Ride Connection shall provide Contractor an amount not to exceed **\$21,600** in Grant Funds for eligible costs. Contractor shall provide matching funds for all Project Costs as described in Exhibit A, in the amount of **\$5,400**.
- B. Ride Connection shall pay Contractor for full, complete, and satisfactory performance of the Services, upon Ride Connection's receipt of payment from ODOT for Contractor's Services, at the price and/or rates mutually agreed by the parties under this Agreement for the applicable project. The Grant Funds shall be solely used for the Project described in Exhibit A and shall not be used for any other purpose. No other costs, rates, or fees shall be payable to the Contractor. Except as set forth in this Agreement, Contractor shall bear sole responsibility for all additional expenses incurred in connection with its performance of the Services.
- C. Payment Terms - Contractor shall submit to Ride Connection all vehicle maintenance invoices and any other documentation requested by Ride Connection. When required by Ride Connection, and as a condition precedent to any payment, and particularly final payment, Contractor shall provide, in a form satisfactory to Ride Connection, lien releases, claim waivers, and affidavits of payment from Contractor, and its lower-tier subcontractors and suppliers of any tier, for any portion of Contractor's Services.
- D. Withholding - Ride Connection may withhold payment of funds or offset future payments against funds already paid to Contractor if the funds are not being used in accordance with this Agreement, all required reporting has not been submitted, or there are any unresolved audit findings relating to the Contractor's performance. Contractor shall assure that funds allocated hereunder are used only for the purposes permitted, and shall, upon breach of conditions that require Ride Connection to reimburse funds to ODOT or otherwise incur costs from ODOT withholding of funds, hold harmless and indemnify Ride Connection for an amount equal to the funds required to be repaid or withheld plus any additional costs or expenses incurred by Ride Connection. In the event a creditor imposes any lien or claim for labor, fringe benefits, taxes, supplies, materials, equipment rental or other charges against the Services covered by this Agreement, thereby legally encumbering the Services, the amount of such obligation may be deducted by Ride Connection from any payment or payments, including retainage, made under this Agreement.

whatsoever nature, damages or losses, and all expenses and costs incidental to the investigations and defense, but not limited to the liabilities enumerated above, resulting from or arising out of the activities of such subcontractor, its officers, employees or agents under the contract between Contractor and such subcontractor(s) procured pursuant to this Agreement.

Any such indemnification clause shall also provide that the subcontractor(s), nor any attorney engaged by the subcontractor(s), shall defend any claim in the name of the State or any agency of the State of Oregon, nor purport to act as legal representative of the State of Oregon or any of its agencies, without the prior written consent of the Oregon Attorney General. The State, at any time at its election, assume its own defense and settlement in the event that it determines that Contractor's subcontractor is prohibited from defending State or that Contractor's subcontractor is not adequately defending State's interests, or that an important governmental principle is at issue or it is in the best interests of the State to do so. State reserves all rights to pursue claims it may have against Contractor's subcontractor if State assumes to elect its own defense.

Any such indemnification clause shall also provide that the subcontractor(s), nor any attorney engaged by the subcontractor(s), shall defend any claim in the name of Ride Connection, nor purport to act as legal representative of Ride Connection, without the prior written consent from Ride Connection. Ride Connection, at any time at its election, assume its own defense and settlement in the event that it determines that Contractor's subcontractor is prohibited from defending Ride Connection or that Contractor's subcontractor is not adequately defending Ride Connection's interests, or that it is in the best interests of Ride Connection to do so. Ride Connection reserves all rights to pursue claims it may have against Contractor's subcontractor if Ride Connection assumes to elect its own defense.

- C. Indemnatee Consent - Contractor shall not defend any claim in the name of the State of Oregon, any Agency of the State of Oregon, ODOT, Ride Connection, without the prior written consent of the Oregon Attorney General, or Ride Connection.
- D. Limitation on Indemnification - Contractor's indemnification above shall not include any liability to the extent caused by or resulting from the concurrent negligence of any Indemnitees. Any legal limitations now or hereafter in effect affecting the validity or enforceability of the indemnity, defense and hold harmless obligations assumed by Contractor pursuant to this Agreement shall operate to amend the Contractor's obligations only to the minimum extent necessary for the indemnity, defense and hold harmless contractual provision to conform with the requirements of such limitations, and as so modified, the obligations shall continue in full force and effect.
- E. No Consequential Damages – Neither Ride Connection nor any of its officers, employees, directors, and agents shall have any liability to Contractor regardless of the theory of recovery, including breach of contract or negligence, to the other party for any indirect, incidental, special, or consequential damages, including but not limited to loss of revenue or profit, whether actual or anticipated, loss of use, failure to realize anticipated savings, loss of or damage to data or other commercial or economic loss.

8. Insurance

10. Termination

Ride Connection may terminate this Agreement, in whole or in part, effective upon delivery of written notice to Contractor, or at such later date as may be established by Ride Connection, under any of the following conditions:

- (i) Contractor fails to provide services called for by this Agreement within the time specified herein or any extension thereof;
- (ii) Contractor fails to comply with or 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 Ride Connection fails to correct such failures within 10 days or such longer period as Ride Connection may authorize;
- (iii) Ride Connection fails to receive funding, or appropriations, limitations or other expenditure authority at levels sufficient to pay for the work provided in this Agreement, or if Ride Connection determines to terminate for its own convenience;
- (iv) Any laws, regulations, rules or guidelines are modified, changed or interpreted in such a way that financial assistance or purchase of equipment provided for in this Agreement is no longer allowable or is no longer eligible for funding proposed by this Agreement;
- (v) Both parties agree that continuation of the Project would not produce results commensurate with the further expenditure of funds; or
- (vi) Contractor takes any action pertaining to this Agreement without the approval of Ride Connection and which under the provisions of this Agreement would have required the approval of Ride Connection.

Contractor may terminate the Agreement, in whole or in part, upon 30 days written notice to Ride Connection.

Any termination of this Agreement shall not prejudice any rights or obligations accrued to the parties prior to termination.

11. Compliance with Laws

- A. **Governing law** - This Agreement shall be governed by the laws of the State of Oregon, to the express exclusion of all other choice of law alternatives.
- B. **Federal laws and regulations** - In addition to those elsewhere specified, Contractor shall comply with all applicable federal, state, and local laws, rules, regulations, executive orders, and ordinances applicable to the Agreement or to the implementation of the Project, as applicable without limitation as described in Exhibit B. Without limiting the generality of the foregoing, Contractor expressly agrees to comply with the following laws, regulations and executive orders to the extent they are applicable:
 - (i) Title VI of the Civil Rights Act of 1964;
 - (ii) Section V of the Rehabilitation Act of 1973;
 - (iii) Americans with Disabilities Act of 1990 and ORS 659a.142;

12. Term

This Agreement shall begin on **7/1/2019** and shall remain in effect through **6/30/2020** unless terminated sooner under the provisions of this Agreement.

13. Communications

All communications between the parties regarding this Agreement shall be directed to the parties' as indicated below:

Ride Connection:	Contractor:
Dean Orr	Stefanie Reid
Ride Connection	Clackamas County Consortium
9955 NE Glisan St.	2051 Kaen Rd
Portland, OR 97220	Oregon City, OR 97045-1819

14. No Third Party Beneficiary

Ride Connection and Contractor are the only parties to this Agreement and, as such, are the only parties entitled to enforce its terms. Nothing in this Agreement gives or shall be construed to create or provide any legal right or benefit, direct, indirect or otherwise to any other party unless that party is individually identified by name herein and expressly described as an intended beneficiary of the terms of this Agreement.

15. Assignment

Contractor may not assign, delegate or subcontract any of its rights or obligations under this Agreement to any other party without the prior written consent of Ride Connection. Any assignment, delegation or subcontract in violation of this paragraph shall be null and void, and shall constitute grounds for immediate termination by Ride Connection.

16. Dispute Resolution

A. Executive Negotiation - The Parties shall attempt in good faith to resolve any dispute arising out of or relating to this Agreement, or any breach hereof or any Services performed hereunder, promptly by negotiation between executives who have authority to settle the controversy. Any party may give the other party written notice of any dispute not resolved during the normal course of business. Such notice shall include a statement of that party's position and documentation supporting that parties claim and the name and title of the executive who will be representing that party and any other person who will accompany the executive. The receiving party shall respond in kind within five (5) days of the date of notice. Within ten (10) days after delivery of the initial notice, the executives of both parties shall meet at a mutually acceptable time and place and use good faith efforts to resolve the dispute. If dispute is not then resolved, either party may give the other written notice that these executive negotiations are concluded. Negotiations pursuant to this Section shall be confidential and shall be treated as compromise and settlement negotiations for purposes of Law and rules of evidence. Time requirements herein may be modified upon mutual written consent of the parties.

B. Mediation - In the event that the parties are unable to settle the dispute through direct

20. Amendments

This Agreement may be amended or extended only by a written instrument signed by both Parties and approved as required by applicable law.

21. Severability

If any provision of this Subcontract will be held to be invalid or unenforceable for any reason, the remaining provisions will continue to be valid and enforceable. If a court or arbitrator finds that any provision of this Subcontract is invalid or unenforceable, but that by limiting such provision, it would become valid and enforceable, then such provision will be deemed to be written, construed, and enforced as so limited.

22. Surviving Provisions

Notwithstanding termination or expiration of this Agreement, the following provisions shall survive and continue to be in full force and effect: 1D (Audit); 2A (Recordkeeping); 6 (Confidential Information); 7 (Indemnification); 8 (Insurance); 11A (Governing Law); 16 (Dispute Resolution); and 22 (Surviving Provisions).

23. Entire Agreement/Authority

This Agreement, exhibits, and any other attachments constitute the entire Agreement between the parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either party unless in writing and signed by both parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made shall be effective only in the specific instance and for the specific purpose given. The failure of Ride Connection to enforce any provision of this Agreement shall not constitute a waiver by Ride Connection of that or any other provision. The individuals signing below represent and warrant that they have authority to bind the party for which they sign.

24. Debt Limitation

This Agreement is expressly subject to the limitations of the Oregon Constitution and Oregon Tort Claims Act, and is contingent upon appropriation of funds. Any provisions herein that conflict with the above referenced laws are deemed inoperative to that extent.

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September 26, 2019

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of Inter-Agency Agreement with Clackamas County Health Centers Division for School Based Health Centers (SBHC) - Building Mental Health Services Capacity

Purpose/ Outcomes	This Agreement provides the basis for a cooperative working relationship for building Mental Health Services capacity at the Rex Putnam, Oregon City, and Sandy SBHC's.
Dollar Amount and Fiscal Impact	The maximum Agreement value is \$333,000.
Funding Source	Public Health is receiving Grant funds from the State Public Health Authority – No County General Funds will be used.
Duration	Effective July 01, 2019 and terminates on June 30, 2021
Previous Board Action	The Board of County Commissioners previously reviewed this agreement on June 5, 2014 agenda item 060514-A1, October 22, 2015, agenda item 102215-A1, and December 7, 2017, agenda item 120717-A3.
Strategic Plan Alignment	1. Improved Community Safety and Health 2. Ensure safe, healthy and secure communities
Counsel Review	County counsel has reviewed and approved this document on September 17, 2019
Contact Person	Kim La Croix, Access to Care Program Manager – (503) 742-5982
Contract No.	9295

BACKGROUND:

The Clackamas County Public Health Division (CCPHD) of the Health, Housing & Human Services Department requests the approval of an Intra-Agency Agreement with Clackamas County Health Centers Division (CCHCD) to build mental health services capacity at the Rex Putnam, Oregon City, and Sandy SBHC's. This will provide the basis for a cooperative working relationship and the provision of a mental health specialist at the SBHC's. This will allow for earlier access to mental health services, reducing the number of crisis incidents. This agreement is funded with grant money received through the Local Public Health Authority (LPHA).

This contract is effective July 1, 2019 and continues through June 30, 2021.

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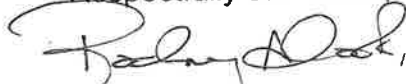
Board of County Commissioners

Agreement # 9295

RECOMMENDATION:

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

Respectfully submitted,

 H3S Deputy Director / For

Richard Swift, Director
Health, Housing, and Human Services

**INTRA-AGENCY AGREEMENT
BETWEEN
CLACKAMAS COUNTY PUBLIC HEALTH DIVISION
AND
CLACKAMAS COUNTY HEALTH CENTERS DIVISION**

Contract # 9295

I. Purpose

This agreement provides the basis for a cooperative working relationship between the Clackamas County Public Health Division herein referred to as "CCPHD," and the Clackamas County Health Centers Division, herein referred to as "CCHCD," with the common goal of building capacity of Mental Health services to the School Based Health Center (SBHC) program. The funds provided under this agreement shall only be used to support activities related to the Mental Health Expansion Project within the SBHC.

II. Scope of Work and Cooperation

A. CCHCD agrees to:

1. Provide a .8 FTE mental health specialist 2 at Oregon City SBHC, Rex Putnam SBHC and Sandy SBHC.
2. Provide services that are culturally and linguistically appropriate for their target population.
3. Track data related to mental health encounters as outlined in the SBHC Certification standards.
4. Submit mental health encounter data to the State Program Office (SPO) four times during the contract period (January 15, 2020; July 15, 2020; January 15, 2021; and July 15, 2021)
5. Participate in regular check-in meetings via phone or email with the SPO.
6. Submit 3 mid-project reports in December 2019, June 2020, December 2020, and a final report in June 2021. Final reports are due no later than July 15, 2021. Guidance will be given on expected report content.
7. Create and implement an evaluation plan for their projects in collaboration with the SPO. The SPO will provide technical assistance throughout this process.
8. Facilitate County wide collaboration with SBHC staff, school district staff, public health services, other county departments, and community agencies in order to develop, implement, and maintain SBHC services for school age children as opportunities arise.
9. Facilitate communication and cooperation between the CCHCD and school districts to provide mental health services in the SBHC's.
10. Designate at least one mental health provider to participate in biannual SBHC community of practice meetings hosted by CCPHD.

B. CCPHD agrees to:

1. Serve as liaison to SPO.

CLACKAMAS COUNTY HEALTH CENTERS DIVISION

INTRA-AGENCY AGREEMENT - # 9295

Page 2 of 5

2. Participate in regular check-in meetings via phone or email with the SPO.
3. Provide the oversight and technical assistance so that each SBHC in its jurisdiction meet the 2017 Standards for Certification for SBHC.
4. Assure to the OHA State Program Office (SPO) that all certification documentation and subsequent follow-up items are completed by the requested date(s) in accordance with the certification review cycle.
5. Meet with CCHCD Mental Health Manager and Mental Health Program Supervisor at least once per year to facilitate communication and program development.
6. Upon receipt of proper invoice, distribute SBHC funding on behalf of the OHA to CCHCD for provision of healthcare services between July 1, 2019 and June 30, 2021.
7. Develop and distribute updated SBHC agreements as needed.

III. Liaison Responsibility

A. Complete the scope of work as outlined under Section II.

Liaison from CCPHD is Aria Baker: ABaker@clackamas.us
Liaison from CCHCD is Benjamin DeGiulio: LBDDeGiulio@clackamas.us

IV. Compensation

CCPHD's obligations under this agreement are subject to receipt of grant funds from the State of Oregon for Program Element #44: School Based Health Centers.

The maximum amount available for CCHCD under this agreement shall not exceed \$333,000. The funds shall be distributed as follows:

Description	Dates	Sandy HS	Rex Putnam HS	Oregon City HS	TOTAL
Year 1 funding	July 1, 2019 – June 30, 2020	Up to \$55,500	Up to \$55,500	Up to \$55,500	Up to \$166,500
Year 2 funding (contingent on receipt of funds from State)	July 1, 2020 – June 30, 2021	Up to \$55,500	Up to \$55,500	Up to \$55,500	Up to \$166,500

CCHCD shall submit monthly expenditure reimbursement interfund invoices by the tenth day of the month following that in which service was performed for true and verifiable costs and expenses related to implementation of the services outlined in this agreement. The invoice must be itemized and reference contract # 9295, dates of service, number of hours billed, and the total amount due for all service provided during the month. Invoices shall be submitted to:

Clackamas County Public Health Division
Attn: Accounts Payable
2051 Kaen Road, # 367
Oregon City, Oregon 97045
PublicHealthFiscalAP@clackamas.us

When submitting electronically, designate CCHCD name and contract # 9295 in the subject of the e-mail.

CLACKAMAS COUNTY HEALTH CENTERS DIVISION

INTRA-AGENCY AGREEMENT - # 9295

Page 3 of 5

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

Withholding of Contract Payments: Notwithstanding any other payment provision of this agreement, should CCHCD fail to submit required reports when due, or submit reports which appear patently inaccurate or inadequate on their face, or fail to perform or document the performance of contracted services, CCPHD shall immediately withhold payments hereunder. Such withholding of payment for cause may continue until CCHCD submits required reports, performs required services, or establishes to CCPHD's satisfaction that such failure arose out of causes beyond the control, and without the fault or negligence, of CCHCD.

V. Reporting Requirements

A. Fiscal Reports

1. CCHCD shall submit monthly expenditure reimbursement invoices for true and verifiable costs and expenses related to implementation of the Mental Health Expansion Project. Invoices must be itemized and reference contract # 9295. Invoices shall be submitted to CCPHD by the 10th of the month following expenditures.
2. Annual expenditure report due to COUNTY by July 10, 2020 and July 10, 2021.
3. CCHCD will submit Fiscal Reports to:

Clackamas County Public Health Division
Attn: Sherry Olson
2051 Kaen Road, #367
Oregon City, Oregon 97045
SOlson4@clackamas.us
(503) 742-5342

B. Performance Reporting

1. CCHCD must submit qualitative and quantitative data based on reporting requirements set forth by the SPO.
2. CCHCD will submit Performance Reports to:

Clackamas County Public Health Division
Attn: Aria Baker
2051 Kaen Road, #367
Oregon City, Oregon 97045
ABaker@clackamas.us

VI. Amendments

This agreement may be amended at any time with the concurrence of both parties. Amendments become a part of this agreement only after the written amendment has been signed by both parties and the Department Director.

VII. Term of Agreement

This agreement becomes effective **July 1, 2019** and is scheduled to terminate **June 30, 2021**.

CLACKAMAS COUNTY HEALTH CENTERS DIVISION
INTRA-AGENCY AGREEMENT - # 9295
Page 4 of 5

This contract may be terminated by mutual consent of both parties, or by either party, upon 30 days' written notice.

This agreement in its entirety consists of seven (7) sections.

CLACKAMAS COUNTY HEALTH CENTERS DIVISION
INTRA-AGENCY AGREEMENT - # 9295
Page 5 of 5

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

**CLACKAMAS COUNTY
HEALTH CENTERS DIVISION**



Deborah Cockrell, Director

8/20/2019
Date

**CLACKAMAS COUNTY
HEALTH, HOUSING, AND HUMAN SERVICES DEPARTMENT**

Richard Swift, Director

Date

September 26, 2019

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of Amendment #02 to the Intergovernmental Agreement with the State of Oregon, acting by and through its Oregon Health Authority for Operation as the Local Public Health Authority for Clackamas County

Purpose/Outcomes	Amendment #02 adds funding to PE 01 – State Support for Public Health, PE 13 – Tobacco Prevention and Education Program (TPEP), PE 27 – PDOP Bridge
Dollar Amount and Fiscal Impact	Contract is increased by \$464,360 bringing the contract maximum value is \$2,991,025.00.
Funding Source	Funding through the State - No County General Funds are involved.
Duration	Effective upon signature and terminates on June 30, 2021
Previous Board Action	The Board previously reviewed and approved this agreement on June 20, 2019, Agenda item 062019-A1, September 5, 2019, Agenda item 090519-A1
Strategic Plan Alignment	1. Improved Community Safety and Health 2. Ensure safe, healthy and secure communities
Counsel Review	County counsel has reviewed and approved this document on September 12, 2019
Contact Person	Richard Swift, Interim Public Health Director – (503) 655-8479
Contract No.	9329-02

BACKGROUND:

The Clackamas County Public Health Division (CCPHD) of the Health, Housing & Human Services Department requests the approval of Amendment #02 to the Intergovernmental Agreement with State of Oregon, Oregon Health Authority. Amendment #02 increased the Agreement by \$464,360. Bringing the maximum contract value to \$2,991,025.00.

This contract is effective upon signature and continues through June 30, 2021.

RECOMMENDATION:

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

Respectfully submitted,

 , H3S Deputy Director / For

Richard Swift, Director
Health, Housing, and Human Services

Agreement #159803



**SECOND AMENDMENT TO OREGON HEALTH AUTHORITY
2019-2021 INTERGOVERNMENTAL AGREEMENT FOR THE
FINANCING OF PUBLIC HEALTH SERVICES**

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 Second Amendment to Oregon Health Authority 2019-2021 Intergovernmental Agreement for the Financing of Public Health Services, effective July 1, 2019, (as amended the “Agreement”), is between the State of Oregon acting by and through its Oregon Health Authority (“OHA”) and Clackamas County (“LPHA”), the entity designated, pursuant to ORS 431.003, as the Local Public Health Authority for Clackamas County.

RECITALS

WHEREAS, OHA and LPHA wish to modify the Program Element Table as set forth in Exhibit A of the Agreement;

WHEREAS, OHA and LPHA wish to modify the Fiscal Year 2020 (FY20) Financial Assistance Award set forth in Exhibit C of the Agreement;

WHEREAS, OHA and LPHA wish to modify the Exhibit J information required by 2 CFR Subtitle B with guidance at 2 CFR Part 200;

NOW, THEREFORE, in consideration of the premises, covenants and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows

AGREEMENT

- Exhibit A “Definitions”, Section 16 “Program Element” is amended to add if new or replace if existing, the following Program Element titles and funding source identifiers as follows:

<u>PE NUMBER AND TITLE</u> • SUB-ELEMENT(S)	<u>FUND TYPE</u>	<u>FEDERAL AGENCY/ GRANT TITLE</u>	<u>CFDA#</u>	<u>HIPAA RELATED (Y/N)</u>	<u>SUB-RECIPIENT (Y/N)</u>
PE 27 Prescription Drug Overdose Prevention (PDOP)	FF	CDC /Injury Prevention and Control Research and State and Community Based Programs SAMHSA/Oregon State Opioid Response	93.136 93.788	N	Y

- Exhibit C entitled “Financial Assistance Award” of the Agreement for FY20 is hereby superseded and replaced in its entirety by Attachment A attached hereto and incorporated herein by this reference. Attachment A must be read in conjunction with Section 3 of Exhibit C.
- Exhibit J “Information required by 2 CFR Subtitle B with guidance at 2 CFR Part 200” is amended to add to the federal award information datasheet as set forth in Attachment B, attached hereto and incorporated herein by this reference.

OHA - 2019-2021 INTERGOVERNMENTAL AGREEMENT - FOR THE FINANCING OF PUBLIC HEALTH SERVICES

4. LPHA represents and warrants to OHA that the representations and warranties of LPHA set forth in Section 2 of Exhibit E of the Agreement are true and correct on the date hereof with the same effect as if made on the date hereof.
5. Capitalized words and phrases used but not defined herein shall have the meanings ascribed thereto in the Agreement.
6. Except as amended hereby, all terms and conditions of the Agreement remain in full force and effect.
7. The parties expressly ratify the Agreement as herein amended.
8. This Amendment may be executed in any number of counterparts, all of which when taken together shall constitute one agreement binding on all parties, notwithstanding that all parties are not signatories to the same counterpart. Each copy of this Amendment so executed shall constitute an original.
9. This Amendment becomes effective on the date of the last signature below.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment as of the dates set forth below their respective signatures.

10. Signatures.

By: _____
Name: /for/ Lillian Shirley, BSN, MPH, MPA
Title: Public Health Director
Date: _____

CLACKAMAS COUNTY LOCAL PUBLIC HEALTH AUTHORITY

By: _____
Name: Richard Swift,
Title: Director, Health, Housing and Human Services
Date: _____

DEPARTMENT OF JUSTICE – APPROVED FOR LEGAL SUFFICIENCY

Approved by Steven Marlowe, Senior Assistant Attorney General on July 26, 2019. Copy of emailed approval on file at OHA, OC&P.

REVIEWED BY OHA PUBLIC HEALTH ADMINISTRATION

By: _____
Name: Derrick Clark (or designee)
Title: Program Support Manager
Date: _____

**Attachment A
Financial Assistance Award (FY19)**

State of Oregon Oregon Health Authority Public Health Division		Page 1 of 3		
1) Grantee Name: Clackamas County		2) Issue Date August 09, 2019		This Action AMENDMENT FY 2020
Street: 2051 Kaen Rd., Suite 637 City: Oregon City State: OR Zip Code: 97045		3) Award Period From July 1, 2019 Through June 30, 2020		
4) OHA Public Health Funds Approved				
Program	Award Balance	Increase/ (Decrease)	New Award Bal	
PE01-01 State Support for Public Health	121,790	384,764	506,554	
PE02 Cities Readiness Initiative	37,499	0	37,499	
PE07 HIV Prevention Services	128,846	0	128,846	
PE12 Public Health Emergency Preparedness and Response (PHEP)	170,273	0	170,273	
PE13-01 Tobacco Prevention and Education Program (TPEP)	56,897	37,931	94,828	
PE27-03 PDOP - Gap Funding (OSTR/PDO)	28,497	0	28,497	
PE27-05 PDOP Bridge (PDO/SOR)	0	41,665	41,665	
PE40-01 WIC NSA: July - September	188,990	0	188,990	
PE40-02 WIC NSA: October - June	566,969	0	566,969	
PE40-03 BFPC: July - September	17,325	0	17,325	
PE40-04 BFPC: October - June	51,975	0	51,975	
PE40-05 Farmer's Market	2,699	0	2,699	
PE42-03 MCAH Perinatal General Funds & Title XIX	11,060	0	11,060	
PE42-04 MCAH Babies First! General Funds	35,342	0	35,342	
PE42-06 MCAH General Funds & Title XIX	20,752	0	20,752	
PE42-07 MCAH Title V (July-Sept)	29,663	0	29,663	
PE42-08 MCAH Title V (Oct-June)	88,988	0	88,988	
PE42-09 MCAH Oregon Mothers Care Title V (July-Sept)	2,283	0	2,283	

State of Oregon Oregon Health Authority Public Health Division				Page 2 of 3
1) Grantee Name: Clackamas County		2) Issue Date August 09, 2019	This Action AMENDMENT FY 2020	
Street: 2051 Kaen Rd., Suite 637 City: Oregon City State: OR Zip Code: 97045		3) Award Period From July 1, 2019 Through June 30, 2020		
4) OHA Public Health Funds Approved				
Program	Award Balance	Increase/ (Decrease)	New Award Bal	
PE42-10 MCAH Oregon Mothers Care Title V (Oct-June)	6,849	0	6,849	
PE43 Public Health Practice (PHP) - Immunization Services (Vendors)	92,462	0	92,462	
PE44-01 SBHC Base	300,000	0	300,000	
PE44-02 SBHC - Mental Health Expansion	376,500	0	376,500	
PE46-02 RH Community Participation & Assurance of Access (July - Mar)	0	0	0	
PE46-03 RH Community Participation & Access (State Funds)	41,893	0	41,893	
PE46-04 RH Community Participation & Access Federal Funds (July-Mar)	1,638	0	1,638	
PE50 Safe Drinking Water (SDW) Program (Vendors)	147,475	0	147,475	
	2,526,665	464,360	2,991,025	
5) Foot Notes:				
PE01-01	1	Initial SFY20: Award is estimated for July 1-September 30, 2019 and will be paid out at 1/3rd. Awards will be amended pending approval of the State budget.		
PE01-01	2	8/2019: SFY20 Award amended for increase for July 1, 2019-June 30, 2020. Previous footnotes are void and replaced by this one.		
PE13-01	1	Initial SFY20: Award is 3 months (July-September 2019) of bridge TPEP funding and will be paid out at 1/3rd		
PE13-01	2	8/2019: Award is 5 months (July-November 2019) of bridge TPEP funding and will be paid out at 1/5th, all previous footnotes are void and replaced by this one.		
PE40-05	1	7/2019: Funding available SFY2020 July - December 2019		
PE42-07	1	Initial SFY20: LPHA shall not use more than 10% of the Title V funds awarded for a particular MCAH Service on indirect costs. See PE42 language under 4. a. (3) Funding Limitations for details.		
PE42-08	1	Initial SFY20: LPHA shall not use more than 10% of the Title V funds awarded for a particular MCAH Service on indirect costs. See PE42 language under 4. a. (3) Funding Limitations for details.		
PE42-09	1	Initial SFY20: LPHA shall not use more than 10% of the Title V funds awarded for a particular MCAH Service on indirect costs. See PE42 language under 4. a. (3) Funding Limitations for details.		
PE42-10	1	Initial SFY20: LPHA shall not use more than 10% of the Title V funds awarded for a particular MCAH Service on indirect costs. See PE42 language under 4. a. (3) Funding Limitations for details.		
PE46-03	1	7/2019: Funding is for July 15, 2019 - June 30, 2020		
PE46-04	1	7/2019: Funding for July 1-14, 2019		

State of Oregon Oregon Health Authority Public Health Division		Page 3 of 3	
1) Grantee Name: Clackamas County Street: 2051 Kaen Rd., Suite 637 City: Oregon City State: OR Zip Code: 97045		2) Issue Date August 09, 2019	This Action AMENDMENT FY 2020
		3) Award Period From July 1, 2019 Through June 30, 2020	
4) OHA Public Health Funds Approved			
Program	Award Balance	Increase/ (Decrease)	New Award Bal
6) Comments: PE02 7/2019: Adding program element as result of Washington County relinquishing CRI lead agency status PE07 Initial SFY20: \$39,628 is for the period of 7/1/19 to 12/31/19 and must be spent by 12/31/19. PE07 7/2019: Funding period 07/01/19 - 12/31/19 - \$64,422. A minium of \$39,627 must be spent by 12/31/19. Funding period 01/01/20 - 06/30/20 - \$64,422 PE13-01 8/2019: Amending to add 2 months of funding (total award is now for July-November 2019) PE27-03 Initial SFY20: \$28,496.83 in FY20 is available 7/1/19-8/31/19 ONLY. This is the balance of Gap Funding from PDO Year 4 for OSTR funded LPHA's. PE27-05 8/2019: \$41,665 in FY20 Available 9/1/19-1/31/20. PE40-01 Initial SFY20: spend \$37,798 Nutrition Education, \$7,618 Breastfeeding Promotion by 9/30/19 PE40-02 Initial SFY20: spend \$113,394 Nutrition Education, \$22,855 Breastfeeding Promotion by 6/30/20 PE44-02 7/2019: MH Expansion funding increase PE46-02 7/2019: Reducing award to \$0 and re-allocating award to PE46-03 and PE46-04 PE46-03 7/2019: State Funding for July 15, 2019 – June 30, 2020 PE46-04 7/2019: Federal Funding for July 1 – July 14, 2019 only			
7) Capital outlay Requested in this Action: Prior approval is required for Capital Outlay. Capital Outlay is defined as an expenditure for equipment with a purchase price in excess of \$5,000 and a life expectancy greater than one year.			
PROGRAM	ITEM DESCRIPTION	COST	PROG APPROV

Attachment B
Information required by CFR Subtitle B with guidance at 2 CFR Part 200

PE27-05: PDOP Bridge (PDO/SOR)

Funding Information Table

Federal Award Identification Number (FAIN):	6H79T1081716-01M002
Federal Award Date:	7/12/2019
Performance Period:	9/30/18-9/29/20
Federal Awarding Agency:	SAMHSA
CFDA Number:	93.788
CFDA Name:	Opioid STR
Total Federal Award:	\$16,090,592
Project Description:	PDOP Naloxone Project
Awarding Official:	LeSchell D Browne
Indirect Cost Rate:	N/A
Research and Development (Y/N):	No

PCA: 82367

INDEX: 87850

Agency/Contractor	DUNS	Amount
Clackamas	96992656	\$41,665

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of Contract #1770 with Henry Schein
for Pediatric Dental Equipment at the new Gladstone Dental Clinic

Purpose/Outcomes	Provides the purchase of dental equipment needed to operate a new pediatric dental clinic located in Gladstone
Dollar Amount and Fiscal Impact	Contract maximum value \$215,647.00. No County General Funds are involved. No matching funds required.
Funding Source	CareOregon
Duration	Effective upon signature and December 31, 2019 expiration.
Previous Board Action	Board Approved Brand Standardization for this procurement on June 6, 2019
Strategic Plan Alignment	1. Individuals and families in need are healthy and safe 2. Ensure Safe, healthy and secure communities
Counsel Review	County Counsel reviewed and approved this document on September 17, 2019.
Contact Person	Deborah Cockrell 503-742-5495

BACKGROUND:

The Clackamas Health Centers (CHC) of the Health, Housing and Human Services Department requests the approval of a Goods and Services Agreement with Henry Schein for the purpose of purchasing and installing pediatric dental equipment.

This agreement allows for the purchase of dental and installation of dental equipment needed for patient treatment. This project will facilitate increasing capacity of patients by providing dental services to CHC patients and residents in the Gladstone Youth and Family Services Center. Increasing member's visits and access to care improves the overall quality of dental health. A RFP was published on June 6, 2019 and intent to award to Henry Schein, Inc., was posted on July 23, 2019 after the competitive solicitation.

This is an expense contract for CHC. The total amount of the agreement is \$215,647.00. No County General Funds are involved. The Agreement #1770 (H3S #9464) is effective upon signature and will continue until December 31, 2019. County Counsel reviewed this agreement on September 17, 2019.

PROCUREMENT PROCESS:

In accordance with the Local Contract Review Board, on June 6, 2019, Procurement published Request for Proposals #2019-36 Gladstone Pediatric Dental Equipment with a closing date of July 9, 2019. One (1) proposal was received and an evaluation committee of qualified staff evaluated the proposal per the stated criteria and recommended Henry Schein, Inc. for contract award. Upon Contract award, the final dollar amount and equipment list was negotiated and finalized.

Page 2 – Staff Report: #1770 (H3S #9464)
September 19, 2019

RECOMMENDATION:

Staff recommends the Board of County Commissioners approve and sign the attached contract award with Henry Schein, Inc.

Respectfully submitted,

Richard Swift, Director
Health, Housing, and Human Services

Place on the board agenda of 9-26-19 by the Procurement Office.



**CLACKAMAS COUNTY
GOODS AND SERVICES CONTRACT
Contract #1770**

This Goods and Services Contract (this "Contract") is entered into between Henry Schein, Inc. ("Contractor"), and Clackamas County, a political subdivision of the State of Oregon ("County") on behalf of the Health, Housing, and Human Services Department for the purposes of providing **Gladstone Pediatric Dental Equipment**.

I. TERM

This Contract shall become effective upon signature of both parties and shall remain in effect until **December 31, 2019**. This Contract and any amendments to this Contract will not be effective until approved in writing by an authorized representative of the Board of County Commissioners of Clackamas County. This Contract supersedes and cancels any prior contracts between the parties hereto for similar services.

II. SCOPE OF WORK

This Contract covers the Scope of Work as described in RFP #2019-36 Gladstone Pediatric Clinic issued June 6, 2019, attached and hereby incorporated by reference as Exhibit "A." This Contract consists of the following documents which are listed in descending order of precedence and are attached and incorporated by reference, this Contract, Exhibit "A", and the Contractor's Proposal dated July 8, 2019 attached and hereby incorporated by reference as Exhibit "B." Work shall be performed in accordance with a schedule approved by the County. The Contractor shall meet the highest standards prevalent in the industry or business most closely involved in providing the appropriate goods or services. The County's Representative for this contract is: **Amy Council** Phone: 503-722-6757 Email: ACouncil@clackamas.us

III. COMPENSATION

- 1. PAYMENT.** The County agrees to compensate the Contractor on a fixed fee basis as detailed in this Contract. The total Contract compensation shall not exceed **two hundred nine thousand eighty-four dollars (\$209,084.00)**.
- 2. TRAVEL EXPENSE REIMBURSEMENT.** Authorized: Yes No
If travel expense reimbursement is authorized in this Contract, such expenses shall only be reimbursed at the rates in the County Contractor Travel Reimbursement Policy, hereby incorporated by reference, in effect at the time of the expense is incurred.
- 3. INVOICES.** Invoices submitted for payment in connection with this Contract shall be properly documented and shall indicate pertinent County contract and/or purchase order numbers. All charges shall be billed monthly (unless a different payment period is outlined in Exhibit A) and will be paid net thirty (30) days from receipt of invoice and shall be subject to Oregon Revised Statute ("ORS") 293.462. If Contractor fails to present invoices in proper form within sixty (60) calendar days after the end of the month in which the services were rendered, Contractor waives any rights to present such invoice thereafter and to receive payment therefor. Invoices shall be submitted to the County Representative at: Amy Council Phone: 503-722-6757 Email: ACouncil@clackamas.us

IV. CONTRACT PROVISIONS

- 1. ACCESS TO RECORDS.** Contractor shall maintain books, records, documents, and other evidence

and accounting procedures and practices sufficient to reflect properly all costs of whatever nature claimed to have been incurred and anticipated to be incurred in the performance of this Contract. County and their duly authorized representatives shall have access to the books, documents, papers, and records of Contractor which are directly pertinent to this Contract for the purpose of making audit, examination, excerpts, and transcripts. Such books and records shall be maintained by Contractor for a minimum of three (3) years, or such longer period as may be required by applicable law, following final payment and termination of this Contract, or until the conclusion of any audit, controversy or litigation arising out of or related to this Contract, whichever date is later.

2. AVAILABILITY OF FUNDS. County certifies that sufficient funds are available and authorized for expenditure to finance costs of this Contract within its current annual appropriation or expenditure limitation, provided, however, that continuation of this Contract, or any extension, after the end of the fiscal period in which it is written, is contingent on a new appropriation or limitation for each succeeding fiscal period sufficient in amount, in the exercise of the County's reasonable administrative discretion, to continue to make payments under this Contract.

3. CAPTIONS. The captions or headings in this Contract are for convenience only and in no way define, limit, or describe the scope or intent of any provisions of this Contract.

4. COMPLIANCE WITH APPLICABLE LAW. Contractor shall comply with all federal, state, county, and local laws, ordinances, and regulations applicable to the work to be done under this Contract. Contractor specifically agrees to comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules, and regulations. Contractor shall also comply with the Americans with Disabilities Act of 1990 (Pub. L. No. 101-336), Title VI of the Civil Rights Act of 1964, Section V of the Rehabilitation Act of 1973, ORS 659A.142, and all regulations and administrative rules established pursuant to those laws. Contractor further agrees to make payments promptly when due, to all persons supplying to such Contractor, labor or materials for the prosecution of the work provided in this Contract; pay all contributions or amounts due the Industrial Accident Funds from such Contractor responsibilities incurred in the performance of this Contract; not permit any lien or claim to be filed or prosecuted against the County on account of any labor or material furnished; pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167. If Contractor fails or refuses to make any such payments required herein, the appropriate County official may pay such claim. Any payment of a claim in the manner authorized in this section shall not relieve the Contractor or Contractor's surety from obligation with respect to unpaid claims. Contractor shall promptly pay any person or entity that furnishes medical care to Contractor's employees those sums which Contractor agreed to pay for such services and all money Contractor collected or deducted from employee's wages to provide such services.

5. EXECUTION AND COUNTERPARTS. This Contract may be executed in several counterparts, each of which shall be an original, all of which shall constitute but one and the same instrument.

6. GOVERNING LAW. This Contract shall be governed and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, or suit between County and Contractor that arises out of or relates to the performance of this Contract shall be brought and conducted solely and exclusively within the Circuit Court for Clackamas County, for the State of Oregon. Provided, however, that if any such claim, action, or suit may be brought in a federal forum, it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon.

7. HAZARD COMMUNICATION. Contractor shall notify County prior to using products containing hazardous chemicals to which County employees may be exposed, which includes any hazardous, toxic, or dangerous substance, waste, or material that is the subject of environmental protection legal

requirements or that becomes regulated under any applicable local, state or federal law, including but not limited to the items listed in the United States Department of Transportation Hazardous Materials Table (49 CFR §172.101) or designated as hazardous substances by Oregon Administrative Rules, Chapter 437, or the United States Environmental Protection Agency (40 CFR Part 302), and any amendments thereto. Upon County's request, Contractor shall immediately provide Safety Data Sheets for the products subject to this provision.

8. INDEMNITY, RESPONSIBILITY FOR DAMAGES. Contractor shall be responsible for all damage to property, injury to persons, and loss, expense, inconvenience, and delay which may be caused by, or result from, the conduct of work, or from any negligent or willful act, omission, or neglect of Contractor, its subcontractors, agents, or employees. The Contractor agrees to indemnify, hold harmless and defend the County, and their officers, elected officials, agents and employees from and against all claims and actions, and all expenses incidental to the investigation and defense thereof, arising out of or based upon damage or injuries to persons or property caused by the errors, omissions, fault or negligence of the Contractor or the Contractor's employees, subcontractors, or agents.

9. INDEPENDENT CONTRACTOR STATUS. The service(s) to be rendered under this Contract are those of an independent contractor. Although the County reserves the right to determine (and modify) the delivery schedule for the Work to be performed and to evaluate the quality of the completed performance, County cannot and will not control the means or manner of Contractor's performance. Contractor is responsible for determining the appropriate means and manner of performing the work. Contractor is not to be considered an agent or employee of County for any purpose, including, but not limited to: (A) The Contractor will be solely responsible for payment of any Federal or State taxes required as a result of this Contract; (B) This Contract is not intended to entitle the Contractor to any benefits generally granted to the County employees, including, but not limited to, vacation, holiday and sick leave, other leaves with pay, tenure, medical and dental coverage, life and disability insurance, overtime, Social Security, Workers' Compensation, unemployment compensation, or retirement; and (C) If the Contractor has the assistance of other persons in the performance of this Contract, and the Contractor is a subject employer, the Contractor shall qualify and remain qualified for the term of this Contract as an insured employer under ORS Chapter 656.

10. INSURANCE. Insurance policies, which cannot be excess to a self-insurance program, are to be issued by an insurance company authorized to do business in the State of Oregon. Contractor shall provide insurance as indicated below:

A. COMMERCIAL GENERAL LIABILITY

The Contractor agrees to furnish the County evidence of commercial general liability insurance with a combined single limit of not less than \$1,000,000 for each claim, incident, or occurrence, with an aggregate limit of \$2,000,000 for bodily injury and property damage for the protection of the County, its officers, elected officials, agents, and employees against liability for damages because of personal injury, bodily injury, death or damage to property, including loss of use thereof, in any way related to this Contract. The general aggregate shall apply separately to this project / location. The County, at its option, may require a complete copy of the above policy.

B. AUTOMOBILE LIABILITY

The Contractor agrees to furnish the County evidence of business automobile liability insurance with a combined single limit of not less than \$1,000,000 for bodily injury and property damage for the protection of the County, its officers, elected officials, agents, and employees against liability for damages because of bodily injury, death or damage to property, including loss of use thereof in any way related to this Contract. The County, at its option, may require a complete copy of the above policy.

C. Contractor shall provide County a certificate of insurance naming the Clackamas County and its officers, elected officials, agents, and employees as an additional insured. If Contractor's

insurance policy does not include a blanket endorsement for additional insured status when/where required by written contract (as required in this Contract), the insurance, shall include Clackamas County and its officers, elected officials, agents, and employees as expressly scheduled additional insured. Use CG 20 10 or its equivalent. Such insurance shall provide sixty (60) days written notice to the County 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 County under this insurance. This policy(s) shall be primary insurance with respect to the County. Any insurance or self-insurance maintained by the County shall be excess and shall not contribute to it.

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

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

F. There shall be no cancellation, material change, exhaustion of aggregate limits or intent not to renew insurance coverage without 60 days written notice by the Contractor to the County. This policy(s) shall be primary insurance with respect to the County. Any insurance or self-insurance maintained by the County shall be excess and shall not contribute to it.

G. Contractor shall require that all of its subcontractors of any tier provide insurance coverage (including additional insured provisions) and limits identical to the insurance required of the Contractor under this Contract, unless this requirement is expressly modified or waived by the County.

11. LIMITATION OF LIABILITIES. Except for liability arising under or related to Section 14 or 21(B), neither party shall be liable for (i) any indirect, incidental, consequential or special damages under this Contract or (ii) any damages of any sort arising solely from the termination of this Contract in accordance with its terms. This Contract is expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10, of the Oregon Constitution, and is contingent upon funds being appropriated therefore. Any provisions herein which would conflict with law are deemed inoperative to that extent.

12. NOTICES. Except as otherwise expressly provided in this Contract, any communications between the parties hereto or notices to be given hereunder shall be given in writing by personal delivery, facsimile, or mailing the same, postage prepaid, to Contractor or County at the address or number set forth on the signature page of this Contract, or to such other addresses or numbers as either party may hereafter indicate. Any communication or notice so addressed and mailed shall be deemed to be given five (5) days after mailing. Any such communication or notice delivered by facsimile shall be deemed to be given when receipt of transmission is generated by the transmitting machine. To be effective against County, such facsimile transmission must be confirmed by telephone notice to County's supervising representative. Any communication or notice by personal delivery shall be deemed to be given when actually delivered.

13. OWNERSHIP OF WORK PRODUCT. All work product of Contractor that results from this Contract (the "Work Product") is the exclusive property of County. County and Contractor intend that such Work Product be deemed "work made for hire" of which County shall be deemed the author. If for

any reason the Work Product is not deemed “work for hire,” Contractor hereby irrevocably assigns to County all of its right, title, and interest in and to any and all of the Work Product, whether arising from copyright, patent, trademark or trade secret, or any other state or federal intellectual property law or doctrine. Contractor shall execute such further documents and instruments as County may reasonably request in order to fully vest such rights in County. Contractor forever waives any and all rights relating to the Work Product, including without limitation, any and all rights arising under 17 USC § 106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use or subsequent modifications.

14. REPRESENTATIONS AND WARRANTIES. Contractor represents and warrants to County that (1) Contractor has the power and authority to enter into and perform this Contract; (2) this Contract, when executed and delivered, shall be a valid and binding obligation of Contractor enforceable in accordance with its terms; (3) the Work under this Contract shall be performed in a good and workmanlike manner and in accordance with the highest professional standards; and (4) Contractor shall at all times during the term of this Contract, be qualified, professionally competent, and duly licensed to perform the Work. The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.

- a. Performance Warranty. Contractor warrants that the goods provided to the County shall consistently perform according to the performance characteristics described in the Scope of Work.
- b. Service Warranty. Contractor warrants that the services provided herein to the County, if any, will be performed in a workmanlike manner and in accordance with the highest professional standards. Contractor’s liability and County’s remedy under this services warranty are limited to Contractor’s prompt correction of such services, provided that written notice of such alleged defective services shall have been given by the County to Contractor. The County agrees to provide Contractor reasonable access to the goods for purposes of repair or replacement under this services warranty. Failure of Contractor to promptly correct problems pursuant to this Service Warranty shall be deemed a material breach of this Contract.
- c. The additional warranties provided under this contract include the following:
 - i. Henry Schein will provide Clackamas County with an 18 Month Labor Warranty for the dental equipment installed by Henry Schein in addition to the manufacturer warranties.
 - ii. Manufacturer warranties are as follows:

Manufacturer Name	Item Description	Warranty Length
A-Dec	Chairs, Stools, Lights, Delivery Systems, Monitor Mounts, and Dental Cabinetry	5-Year Warranty
A-Dec	Assistina	2-Year Warranty
A-Dec	Hand pieces	1-Year Warranty
Air Techniques	Vacuum, and Compressor	5-Year Warranty
Coltene Whaledent	Ultrasonic Cleaner	2-Year Warranty
KavoKerr	Dexis sensor/camera	1-Year Warranty
KavoKerr	Gendex sensor	2-Year Warranty
Nevin (Baldor)	Lathe	1-Year Warranty
Porter	Nitrous Items	1-Year Warranty
SciCan	Statim and Bravo	1-Year Warranty
Sirona	Intra-Oral X-ray	2-Year Warranty
Sirona	Panoramic X-ray	5-Year Warranty
Solmetex	Amalgam Separator	2-Year Warranty
All other items under this contract have a 90 day warranty		

15. SURVIVAL. All rights and obligations shall cease upon termination or expiration of this Contract, except for the rights and obligations set forth in Sections of Section IV: 1, 6, 8, 11, 13, 14, 15, and 21.

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

17. SUBCONTRACTS AND ASSIGNMENTS. Contractor shall not enter into any subcontracts for any of the work required by this Contract, or assign or transfer any of its interest in this Contract by operation of law or otherwise, without obtaining prior written approval from the County. In addition to any provisions the County may require, Contractor shall include in any permitted subcontract under this Contract a requirement that the subcontractor be bound by this section and Sections 1, 8, 13, 15, and 27 as if the subcontractor were the Contractor. County's consent to any subcontract shall not relieve Contractor of any of its duties or obligations under this Contract.

18. SUCCESSORS IN INTEREST. The provisions of this Contract shall be binding upon and shall inure to the benefit of the parties hereto, and their respective authorized successors and assigns.

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

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

20. TERMINATION. This Contract may be terminated for the following reasons: (A) This Contract may be terminated at any time by mutual consent of the parties, or by the County for convenience upon thirty (30) days' written notice to the Contractor; (B) County may terminate this Contract effective upon delivery of notice to Contractor, or at such later date as may be established by the County, if (i) federal or state laws, rules, regulations, or guidelines are modified, changed, or interpreted in such a way that either

the work under this Contract is prohibited or the County are prohibited from paying for such work from the planned funding source; or (ii) any license or certificate required by law or regulation to be held by the Contractor to provide the services required by this Contract is for any reason denied, revoked, or not renewed; (C) This Contract may also be immediately terminated by the County for default (including breach of Contract) if (i) Contractor fails to provide services or materials called for by this Contract within the time specified herein or any extension thereof; or (ii) Contractor fails to perform any of the other provisions of this Contract or so fails to pursue the work as to endanger performance of this Contract in accordance with its terms, and after receipt of notice from the County, fails to correct such failure within ten (10) business days; or (D) If sufficient funds are not provided in future approved budgets of the County (or from applicable federal, state, or other sources) to permit the County in the exercise of its reasonable administrative discretion to continue this Contract, or if the program for which this Contract was executed is abolished, County may terminate this Contract without further liability by giving Contractor not less than thirty (30) days' notice.

21. REMEDIES. (A) In the event of termination pursuant to Section 20(A), (B)(i), or (D), Contractor's sole remedy shall be a claim for the sum designated for accomplishing the work multiplied by the percentage of work completed and accepted by the County, less previous amounts paid and any claim(s) which the County has against Contractor. If previous amounts paid to Contractor exceed the amount due to Contractor under Section 21(A), Contractor shall pay any excess to County on demand. (B) In the event of termination pursuant to Sections 20(B)(ii) or 20(C), the County shall have any remedy available to it in law or equity. If it is determined for any reason that Contractor was not in default under Sections 20(B)(ii) or 20(C), the rights and obligations of the parties shall be the same as if the Contract was terminated pursuant to Section 20(A). (C) Upon receiving a notice of termination of this Contract, Contractor shall immediately cease all activities under this Contract, unless County expressly directs otherwise in such notice of termination. Upon termination of this Contract, Contractor shall deliver to County all documents, information, works-in-progress and other property that are or would be deliverables had the Contract work been completed. Upon County's request, Contractor shall surrender to anyone County designates, all documents, research or objects or other tangible things needed to complete the work.

22. NO THIRD PARTY BENEFICIARIES. County and Contractor are the only parties to this Contract and are the only parties entitled to enforce its terms. Nothing in this Contract gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Contract.

23. TIME IS OF THE ESSENCE. Contractor agrees that time is of the essence under this Contract.

24. FOREIGN CONTRACTOR. If the Contractor is not domiciled in or registered to do business in the State of Oregon, Contractor shall promptly provide to the Oregon Department of Revenue and the Secretary of State, Corporate Division, all information required by those agencies relative to this Contract. The Contractor shall demonstrate its legal capacity to perform these services in the State of Oregon prior to entering into this Contract.

25. FORCE MAJEURE. Neither County nor Contractor shall be held responsible for delay or default caused by fire, terrorism, riot, acts of God, or war where such cause was beyond, respectively, County's or Contractor's reasonable control. Contractor shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall upon the cessation of the cause, diligently pursue performance of its obligations under this Contract.

26. WAIVER. The failure of County to enforce any provision of this Contract shall not constitute a

waiver by County of that or any other provision.

27. COMPLIANCE. Pursuant to the requirements of ORS 279B.020 and 279B.220 through 279B.235 and Article XI, Section 10, of the Oregon Constitution, the following terms and conditions are made a part of this Contract: (A) Contractor shall: (i) Make payments promptly, as due, to all persons supplying to the Contractor labor or materials for the prosecution of the work provided for in this Contract; (ii) Pay all contributions or amounts due the Industrial Accident Fund from such Contractor or subcontractor incurred in the performance of this Contract; (iii) Not permit any lien or claim to be filed or prosecuted against the County on account of any labor or material furnished. (B) If the Contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to the Contractor or a subcontractor by any person in connection with this Contract as such claim becomes due, the proper officer representing the County may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due the Contractor by reason of this Contract. (C) The Contractor shall pay employees for work in accordance with ORS 279B.020 and ORS 279B.235, which is incorporated herein by this reference. All subject employers working under the contract are either employers that will comply with ORS 656.017 or employers that are exempt under ORS 656.126. The Contractor shall comply with the prohibitions set forth in ORS 652.220, compliance of which is a material element of this Contract and failure to comply is a material breach that entitles County to exercise any rights and remedies available under this Contract including, but not limited to, termination for default. (D) The Contractor shall promptly, as due, make payment to any person or copartnership, association or corporation furnishing medical, surgical and hospital care or other needed care and attention incident to sickness and injury to the employees of the Contractor, of all sums which the Contractor agrees to pay for such services and all moneys and sums which the Contractor collected or deducted from the wages of the Contractor's employees pursuant to any law, contract or agreement for the purpose of providing or paying for such services.

28. DELIVERY. All deliveries shall be F.O.B. destination with all transportation and handing charges paid by the Contractor, unless specified otherwise in this Contract. Responsibility and liability for loss or damage shall remain with the Contractor until final inspection and acceptance, when responsibility shall pass to the County except as to latent defects, fraud and Contractor's warranty obligations.

29. INSPECTIONS. Goods and services furnished under this Contract will be subject to inspection and test by the County at times and places determined by the County. If the County finds goods and services furnished to be incomplete or not in compliance with the Contract, the County, at its sole discretion, may either reject the goods and services, require Contractor to correct any defects without charge, or negotiate with Contractor to sell the goods and services to the County at a reduced price, whichever the County deems equitable under the circumstances. If Contractor is unable or refuses to cure any defects within a time deemed reasonable by the County, the County may reject the goods and services and cancel the Contract in whole or in part. Nothing in this paragraph shall in any way affect or limit the County's rights as a Buyer, including the rights and remedies relating to rejection under ORS 72.6020 and revocation of acceptance under ORS 72.6080.

30. MERGER. THIS CONTRACT CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PARTIES WITH RESPECT TO THE SUBJECT MATTER REFERENCED THEREIN. THERE ARE NO UNDERSTANDINGS, AGREEMENTS, OR REPRESENTATIONS, ORAL OR WRITTEN, NOT SPECIFIED HEREIN REGARDING THIS CONTRACT. NO AMENDMENT, CONSENT, OR WAIVER OF TERMS OF THIS CONTRACT SHALL BIND EITHER PARTY UNLESS IN WRITING AND SIGNED BY ALL PARTIES. ANY SUCH AMENDMENT, CONSENT, OR WAIVER SHALL BE EFFECTIVE ONLY IN THE SPECIFIC INSTANCE AND FOR THE SPECIFIC PURPOSE GIVEN. CONTRACTOR, BY THE SIGNATURE HERETO OF ITS AUTHORIZED REPRESENTATIVE, ACKNOWLEDGES HAVING READ AND

UNDERSTOOD THIS CONTRACT AND CONTRACTOR AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

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

Henry Schein, Inc.
135 Duryea Rd
Melville, NY 11747

Clackamas County

Authorized Signature

Date

Chair

Date

Name / Title (Printed)

Recording Secretary

Date

083473-95
Oregon Business Registry #

Approved as to Form:

FBC / DE
Entity Type / State of Formation

County Counsel

Date

EXHIBIT A
RFP # 2019-36 Gladstone Pediatric Dental Equipment

EXHIBIT B
CONTRACTOR'S PROPOSAL

September 26, 2019

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of an Amendment to the HOME Loan Agreement with River Glen Renewal Associates, LLC To Rehabilitate the River Glen Apartments in Gladstone

Purpose/Outcomes	The 44-unit River Glen Apartments is an affordable housing project in Gladstone and is currently owned and operated by Northwest Housing Alternatives. The complex was built in 1971. Repairs and some rehabilitation occurred in 2009 with assistance from CDBG funds. The complex currently needs significant rehabilitation and modernization to extend its useful life as affordable housing. The BCC approved a HOME Loan Agreement for \$550,000 on 12/20/2018. Because of rising construction costs and unanticipated repairs to the buildings, NHA is requesting \$143,527 of additional HOME funds to complete the renovation. Total HOME assistance requested is \$693,527.
Dollar Amount and Fiscal Impact	\$143,527 of additional HOME Investment Partnerships Program funds, 0.0% interest loan. The total project cost is estimated at \$4,931,000.
Funding Source	U.S. Department of Housing and Urban Development (HUD) No County General Funds are involved
Duration	Effective upon project completion. The HOME provisions expires 15 years after project completion. The affordability provisions will continue for an additional 27 years.
Previous Board Action	2018 Action Plan was approved by the BCC on May 3, 2018. The original HOME allocation of \$550,000 was approved by the BCC on 12/20/2018.
Strategic Plan Alignment	1. Build a strong infrastructure 2. Ensure safe, healthy and secure communities
Contact Person	Kevin Ko, Housing and Community Development - (503) 655-8359
Contract No.	H3S-9103

BACKGROUND:

The Housing and Community Development Division of the Health, Housing and Human Services Department requests the approval of an Amendment to the HOME Program Loan Agreement of an additional \$143,527 for the renovation and modernization of the River Glen Apartments, located at 1055 Risley Avenue in Gladstone. Northwest Housing Alternatives (NHA) currently owns the property, and will be the developer of this project. NHA submitted a letter requesting additional HOME funds to complete the renovation, citing increased labor costs and unexpected sewer work. The project will be owned by

Healthy Families. Strong Communities.

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

www.clackamas.us

River Glen Renewal Associates LLC, a partnership created for the purposed of the Low Income Housing Tax Credit (LIHTC) Program. NHA is the General Partner and will continue to manage the complex. After the renovation is complete, the 44-unit complex will continue to provide much needed affordable housing for the benefit of Clackamas County residents for no less than 42 years. The original HOME Loan Agreement and associated documents were reviewed by County Counsel on November 21, 2018. The only change to the original HOME Loan Agreement is to increase the HOME allocation from \$550,000 to \$693,527.

The term of the HOME loan will be at 0.0% interest, with deferred payments, maturity date is 42 years after project completion. The HOME programmatic and affordability requirements will be enforced by a recorded Trust Deed and Declaration of Land Use and Restrictive Covenants. These documents are available for review upon request.

RECOMMENDATION:

We recommend the approval of the Amendment to the HOME Investment Partnerships Loan Agreement and that Richard Swift H3S Director be authorized to sign on behalf of the Board of County Commissioners.

Respectfully submitted,



Richard Swift, HSS Deputy Director/For

Richard Swift, Director
Health, Housing & Human Services Department

AMENDMENT TO
HOME LOAN AGREEMENT
BETWEEN
CLACKAMAS COUNTY, OREGON
AND
RIVER GLEN RENEWAL ASSOCIATES LLC

H3S Contract #: 9103

Board Order #: N/A

Amendment Requested by: Northwest Housing Alternatives

Changes: () Scope of Work () Contract Budget
 () Contract Time () Other

Justification: The Northwest Housing Alternatives non-profit housing development agency has requested that additional HOME Investment Partnerships Program (HOME) funds be made available to mitigate the unanticipated increase in construction costs to the project. The HOME Agreement is amended to include the increase in HOME funds to the project.

This amendment adds an additional \$143,527.00 of HOME funds to the initial allocation of \$550,000. The revised total HOME allocation is \$693,527.00. There are no other revisions to the HOME Agreement.

TO AMEND

4. HOME FUNDS; LOAN TERMS

- a. **Amount and Purpose:** County shall loan HOME funds in the amount of Five Hundred and Fifty Thousand Dollars (**\$550,000**) to the Owner for the Project.

TO READ

4. HOME FUNDS; LOAN TERMS

- a. **Amount and Purpose:** County shall loan HOME funds in the amount of Six Hundred and Ninety-three Thousand, Five Hundred and Twenty-seven Dollars (**\$693,527**) to the Owner for the Project.

River Glen Renewal Associates LLC
By: Northwest Housing Alternatives, Inc.
Its Sole Member and Manager
By: Trell Anderson, Executive Director

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

Signing on Behalf of the Board

Trell Anderson, Executive Director

Richard Swift, Director
Health, Housing and Human Services
Department

Date

Date



DAN JOHNSON
DIRECTOR

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

Board of County Commissioners
Clackamas County

Members of the Board:

**Approval of a Contract with Kittelson & Associates, Inc. for the
Design Services for South Ivy Street Pedestrian Intersection Improvements**

Purpose/Outcomes	This contract will provide survey, right-of-way, stormwater management, and design services for pedestrian and intersection improvements along South Ivy Street from 99E to Lee Elementary School.
Dollar Amount and Fiscal Impact	Total Contract value is \$539,855.79
Funding Source	County Road Fund and State Funded Local Project Funds
Duration	Contract execution through June 30, 2022
Previous Board Action	1/24/19: BCC Approval of a Supplemental Project Agreement No. 32756 with Oregon Department of Transportation for the S. Ivy Street (Canby) Project
Strategic Plan Alignment	-Ensure safe, healthy and secure communities -Build a strong infrastructure
Counsel Review	September 18, 2019
Contact Person	Jonathan Hangartner, PE, 503-742-4649

Background:

Clackamas County obtained State Funded Local Projects (SFLP) funds through an IGA with the Oregon Department of Transportation (ODOT) to provide bicycle lanes and sidewalk improvements on South Ivy St from OR99E to Lee Elementary School and signal construction at the intersection of South Ivy St and SE Township Rd. After completion of the project, the County will transfer jurisdiction of the street to the City of Canby.

This contract will provide survey, right-of-way, stormwater management, and design services for the signal, pedestrian and intersection improvements along South Ivy Street from 99E to Lee Elementary School.

Procurement Process:

This project was advertised in accordance with ORS and LCRB Rules on March 21, 2019. Proposals were opened on April 18, 2019. The County received three (3) Proposals: Kittelson & Associates, Inc.; PBS Engineering and Environmental, Inc.; and Harper Houf Peterson Righellis, Inc. Upon evaluation of the submitted proposals, the Evaluation Committee chose to interview all three (3) proposers. After the interviews, it was determined that Kittelson & Associates, Inc. was the highest scoring proposer. Following award, the Project Manager entered into negotiations with Kittelson & Associates, Inc. and developed a final statement of work along with final billing rates and a contract total value.

Recommendation:

Staff respectfully recommends that the Board approves and signs this Professional Services Contract with Kittelson & Associates, Inc. for the Design Services for South Ivy Street Pedestrian Intersection Improvements.

Sincerely,

Joel Howie
Civil Engineer Supervisor

Placed on the BCC Agenda _____ by Procurement



**CLACKAMAS COUNTY
PERSONAL SERVICES CONTRACT
Contract #1856**

This Personal Services Contract (this “Contract”) is entered into between **Kittelson & Associates, Inc.** (“Contractor”), and Clackamas County, a political subdivision of the State of Oregon (“County”) on behalf of the **Department of Transportation and Development.**

ARTICLE I.

- 1. Effective Date and Duration.** This Contract shall become effective upon signature of both parties. Unless earlier terminated or extended, this Contract shall expire on **June 30, 2022.**
- 2. Scope of Work.** Contractor shall provide the following personal services: #2019-19 **Design Services for South Ivy Street Pedestrian Intersection Improvements** (“Work”), further described in **Exhibit A.**
- 3. Consideration.** The County agrees to pay Contractor, from available and authorized funds, a sum not to exceed **five hundred thirty-nine thousand eight hundred fifty-five dollars and seventy-nine cents (\$539,855.79)**, for accomplishing the Work required by this Contract. Consideration rates are on a time and materials basis in accordance with the rates and costs specified in Exhibit B. If any interim payments to Contractor are made, such payments shall be made only in accordance with the schedule and requirements in Exhibit A.
- 4. Invoices and Payments.** Unless otherwise specified, Contractor shall submit monthly invoices for Work performed. Invoices shall describe all Work performed with particularity, by whom it was performed, and shall itemize and explain all expenses for which reimbursement is claimed. The invoices shall include the total amount billed to date by Contractor prior to the current invoice. If Contractor fails to present invoices in proper form within sixty (60) calendar days after the end of the month in which the services were rendered, Contractor waives any rights to present such invoice thereafter and to receive payment therefor. Payments shall be made to Contractor following the County’s review and approval of invoices submitted by Contractor. Contractor shall not submit invoices for, and the County will not be obligated to pay, any amount in excess of the maximum compensation amount set forth above. If this maximum compensation amount is increased by amendment of this Contract, the amendment must be fully effective before Contractor performs Work subject to the amendment.

Invoices shall reference the above Contract Number and be submitted to: Clackamas County Department of Transportation and Development, 150 Beaver Creek Road, Oregon City, Oregon 97045 or via email at jhangartner@clackamas.us.

- 5. Travel and Other Expense.** Authorized: Yes No
If travel expense reimbursement is authorized in this Contract, such expense shall only be reimbursed at the rates in the County Contractor Travel Reimbursement Policy, hereby incorporated by reference and found at: <http://www.clackamas.us/bids/terms.html>. Travel expense reimbursement is not in excess of the not to exceed consideration.
- 6. Contract Documents.** This Contract consists of the following documents, which are listed in descending order of precedence and are attached and incorporated by reference, this Contract, Exhibit A, and Exhibit B.

7. Contractor and County Contacts.

Contractor	County
Administrator: Tony Roos Phone: 503-535-7444 Email: troos@kittelson.com	Administrator: Jonathan Hangartner Phone: 503-742-4649 Email: jhangartner@clackamas.us

Payment information will be reported to the Internal Revenue Service (“IRS”) under the name and taxpayer ID number submitted. (See I.R.S. 1099 for additional instructions regarding taxpayer ID numbers.) Information not matching IRS records will subject Contractor payments to backup withholding.

ARTICLE II.

- 1. ACCESS TO RECORDS.** Contractor shall maintain books, records, documents, and other evidence, in accordance with generally accepted accounting procedures and practices, sufficient to reflect properly all costs of whatever nature claimed to have been incurred and anticipated to be incurred in the performance of this Contract. County and their duly authorized representatives shall have access to the books, documents, papers, and records of Contractor, which are directly pertinent to this Contract for the purpose of making audit, examination, excerpts, and transcripts. Contractor shall maintain such books and records for a minimum of six (6) years, or such longer period as may be required by applicable law, following final payment and termination of this Contract, or until the conclusion of any audit, controversy or litigation arising out of or related to this Contract, whichever date is later.
- 2. AVAILABILITY OF FUTURE FUNDS.** Any continuation or extension of this Contract after the end of the fiscal period in which it is written is contingent on a new appropriation for each succeeding fiscal period sufficient to continue to make payments under this Contract, as determined by the County in its sole administrative discretion.
- 3. CAPTIONS.** The captions or headings in this Contract are for convenience only and in no way define, limit, or describe the scope or intent of any provisions of this Contract.
- 4. COMPLIANCE WITH APPLICABLE LAW.** Contractor shall comply with all applicable federal, state and local laws, regulations, executive orders, and ordinances, as such may be amended from time to time.
- 5. COUNTERPARTS.** This Contract may be executed in several counterparts (electronic or otherwise), each of which shall be an original, all of which shall constitute the same instrument.
- 6. GOVERNING LAW.** This Contract, and all rights, obligations, and disputes arising out of it, shall be governed and construed in accordance with the laws of the State of Oregon and the ordinances of Clackamas County without regard to principles of conflicts of law. Any claim, action, or suit between County and Contractor that arises out of or relates to the performance of this Contract shall be brought and conducted solely and exclusively within the Circuit Court for Clackamas County, for the State of Oregon. Provided, however, that if any such claim, action, or suit may be brought in a federal forum, it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this section be construed as a waiver by the County of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court. Contractor, by execution of this Contract, hereby consents to the personal jurisdiction of the courts referenced in this section.

- 7. RESPONSIBILITY FOR DAMAGES; INDEMNITY.** To the extent the Contractor is negligent, Contractor shall be responsible for all damage to property, injury to persons, and loss, expense, inconvenience, and delay which may be caused by, or result from, the conduct of Work, or from any act, omission, or neglect of Contractor, its subcontractors, agents, or employees. To the extent the Contractor is negligent, the Contractor agrees to indemnify, hold harmless and defend the County, and its officers, elected officials, agents and employees from and against all claims and actions, and all expenses incidental to the investigation and defense thereof, arising out of or based upon damage or injuries to persons or property caused by the errors, omissions, fault or negligence of the Contractor or the Contractor's employees, subcontractors, or agents. However, neither Contractor nor any attorney engaged by Contractor shall defend the claim in the name of County or any department of County, nor purport to act as legal representative of County or any of its departments, without first receiving from the Clackamas County Counsel's Office authority to act as legal counsel for County, nor shall Contractor settle any claim on behalf of County without the approval of the Clackamas County Counsel's Office. County may, at its election and expense, assume its own defense and settlement.
- 8. INDEPENDENT CONTRACTOR STATUS.** The service(s) to be rendered under this Contract are those of an independent contractor. Although the County reserves the right to determine (and modify) the delivery schedule for the Work to be performed and to evaluate the quality of the completed performance, County cannot and will not control the means or manner of Contractor's performance. Contractor is responsible for determining the appropriate means and manner of performing the Work. Contractor is not to be considered an agent or employee of County for any purpose, including, but not limited to: (A) The Contractor will be solely responsible for payment of any Federal or State taxes required as a result of this Contract; and (B) This Contract is not intended to entitle the Contractor to any benefits generally granted to County employees, including, but not limited to, vacation, holiday and sick leave, other leaves with pay, tenure, medical and dental coverage, life and disability insurance, overtime, Social Security, Workers' Compensation, unemployment compensation, or retirement benefits.
- 9. INSURANCE.** Contractor shall secure at its own expense and keep in effect during the term of the performance under this Contract the insurance required and minimum coverage indicated below. Contractor shall provide proof of said insurance and name the County as an additional insured on all required liability policies. Proof of insurance and notice of any material change should be submitted to the following address: Clackamas County Procurement Division, 2051 Kaen Road, Oregon City, OR 97045 or procurement@clackamas.us.

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

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

- 10. LIMITATION OF LIABILITIES.** This Contract is expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10, of the Oregon Constitution, and is contingent

upon funds being appropriated therefore. Any provisions herein which would conflict with law are deemed inoperative to that extent. Except for liability arising under or related to Article II, Section 13 or Section 21 neither party shall be liable for (i) any indirect, incidental, consequential or special damages under this Contract or (ii) any damages of any sort arising solely from the termination of this Contract in accordance with its terms.

- 11. NOTICES.** Except as otherwise provided in this Contract, any required notices between the parties shall be given in writing by personal delivery, email, or mailing the same, to the Contract Administrators identified in Article 1, Section 6. If notice is sent to County, a copy shall also be sent to: Clackamas County Procurement, 2051 Kaen Road, Oregon City, OR 97045, or procurement@clackamas.us. Any communication or notice so addressed and mailed shall be deemed to be given five (5) days after mailing, and immediately upon personal delivery, or within 2 hours after the email is sent during County's normal business hours (Monday – Thursday, 7:00 a.m. to 6:00 p.m.) (as recorded on the device from which the sender sent the email), unless the sender receives an automated message or other indication that the email has not been delivered.
- 12. OWNERSHIP OF WORK PRODUCT.** All work product of Contractor that results from this Contract (the "Work Product") is the exclusive property of County. County and Contractor intend that such Work Product be deemed "work made for hire" of which County shall be deemed the author. If for any reason the Work Product is not deemed "work made for hire," Contractor hereby irrevocably assigns to County all of its right, title, and interest in and to any and all of the Work Product, whether arising from copyright, patent, trademark or trade secret, or any other state or federal intellectual property law or doctrine. Contractor shall execute such further documents and instruments as County may reasonably request in order to fully vest such rights in County. Contractor forever waives any and all rights relating to the Work Product, including without limitation, any and all rights arising under 17 USC § 106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use or subsequent modifications. Notwithstanding the above, County shall have no rights in any pre-existing Contractor intellectual property provided to County by Contractor in the performance of this Contract except to copy, use and re-use any such Contractor intellectual property for County use only. If this Contract is terminated prior to completion, and the County is not in default, County, in addition to any other rights provided by this Contract, may require the Contractor to transfer and deliver all partially completed Work Product, reports or documentation that the Contractor has specifically developed or specifically acquired for the performance of this Contract.
- 13. REPRESENTATIONS AND WARRANTIES.** Contractor represents and warrants to County that (A) Contractor has the power and authority to enter into and perform this Contract; (B) this Contract, when executed and delivered, shall be a valid and binding obligation of Contractor enforceable in accordance with its terms; (C) Contractor shall at all times during the term of this Contract, be qualified, professionally competent, and duly licensed to perform the Work; (D) Contractor is an independent contractor as defined in ORS 670.600; and (E) the Work under this Contract shall be performed in the same professional skill, care, diligence and standards as other professionals performing similar services under similar conditions. The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.
- 14. SURVIVAL.** All rights and obligations shall cease upon termination or expiration of this Contract, except for the rights and obligations set forth in Article II, Sections 1, 6, 7, 11, 13, 14, 16 and 21, and all other rights and obligations which by their context are intended to survive. However, such expiration shall not extinguish or prejudice the County's right to enforce this Contract with respect to: (a) any breach of a Contractor warranty; or (b) any default or defect in Contractor performance that has not been cured.

- 15. SEVERABILITY.** If any term or provision of this Contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Contract did not contain the particular term or provision held to be invalid.
- 16. SUBCONTRACTS AND ASSIGNMENTS.** Contractor shall not enter into any subcontracts for any of the Work required by this Contract, or assign or transfer any of its interest in this Contract by operation of law or otherwise, without obtaining prior written approval from the County, which shall be granted or denied in the County's sole discretion. In addition to any provisions the County may require, Contractor shall include in any permitted subcontract under this Contract a requirement that the subcontractor be bound by this Article II, Sections 1, 7, 8, 13, 16 and 27 as if the subcontractor were the Contractor. County's consent to any subcontract shall not relieve Contractor of any of its duties or obligations under this Contract.
- 17. SUCCESSORS IN INTEREST.** The provisions of this Contract shall be binding upon and shall inure to the benefit of the parties hereto, and their respective authorized successors and assigns.
- 18. TAX COMPLIANCE CERTIFICATION.** The Contractor shall comply with all federal, state and local laws, regulation, executive orders and ordinances applicable to this Contract. Contractor represents and warrants that it has complied, and will continue to comply throughout the duration of this Contract and any extensions, with all tax laws of this state or any political subdivision of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318. Any violation of this section shall constitute a material breach of this Contract and shall entitle County to terminate this Contract, to pursue and recover any and all damages that arise from the breach and the termination of this Contract, and to pursue any or all of the remedies available under this Contract or applicable law.
- 19. TERMINATIONS.** (A) This Contract may be terminated by mutual agreement of the parties or by the County for one of the following reasons: (i) for convenience upon thirty (30) days written notice to Contractor; or (ii) at any time the County fails to receive funding, appropriations, or other expenditure authority as solely determined by the County. Upon receipt of written notice of termination from the County, Contractor shall immediately stop performance of the Work. (B) If Contractor breaches any Contract provision or is declared insolvent, County may terminate after thirty (30) days written notice with an opportunity to cure. Upon termination of this Contract, Contractor shall deliver to County all documents, information, works-in-progress and other property that are or would be deliverables had the Contract Work been completed. Upon County's request, Contractor shall surrender to anyone County designates, all documents, research, objects or other tangible things needed to complete the Work.
- 20. REMEDIES.** If terminated by the County due to a breach by the Contractor, then the County shall have any remedy available to it in law or equity. If this Contract is terminated for any other reason, Contractor's sole remedy is payment for the goods and services delivered and accepted by the County, less any setoff to which the County is entitled.
- 21. NO THIRD PARTY BENEFICIARIES.** County and Contractor are the only parties to this Contract and are the only parties entitled to enforce its terms. Nothing in this Contract gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Contract.
- 22. TIME IS OF THE ESSENCE.** Contractor agrees that time is of the essence in the performance this Contract.

23. FOREIGN CONTRACTOR. If the Contractor is not domiciled in or registered to do business in the State of Oregon, Contractor shall promptly provide to the Oregon Department of Revenue and the Secretary of State, Corporate Division, all information required by those agencies relative to this Contract. The Contractor shall demonstrate its legal capacity to perform these services in the State of Oregon prior to entering into this Contract.

24. FORCE MAJEURE. Neither County nor Contractor shall be held responsible for delay or default caused by events outside the County or Contractor's reasonable control including, but not limited to, fire, terrorism, riot, acts of God, or war. However, Contractor shall make all reasonable efforts to remove or eliminate such a cause of delay or default and shall upon the cessation of the cause, diligently pursue performance of its obligations under this Contract.

25. WAIVER. The failure of County to enforce any provision of this Contract shall not constitute a waiver by County of that or any other provision.

26. PUBLIC CONTRACTING REQUIREMENTS. Pursuant to the public contracting requirements contained in Oregon Revised Statutes ("ORS") Chapter 279B.220 through 279B.235, Contractor shall:

- a. Make payments promptly, as due, to all persons supplying to Contractor labor or materials for the prosecution of the work provided for in the Contract.
- b. Pay all contributions or amounts due the Industrial Accident Fund from such Contractor or subcontractor incurred in the performance of the Contract.
- c. Not permit any lien or claim to be filed or prosecuted against County on account of any labor or material furnished.
- d. Pay the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.
- e. If Contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to Contractor or a subcontractor by any person in connection with the Contract as such claim becomes due, the proper officer representing Clackamas County may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due Contractor by reason of the Contract.
- f. As applicable, the Contractor shall pay employees for work in accordance with ORS 279B.235, which is incorporated herein by this reference. The Contractor shall comply with the prohibitions set forth in ORS 652.220, compliance of which is a material element of this Contract, and failure to comply is a breach entitling County to terminate this Contract for cause.
- g. If the Work involves lawn and landscape maintenance, Contractor shall salvage, recycle, compost, or mulch yard waste material at an approved site, if feasible and cost effective.

27. KEY PERSONS. Contractor acknowledges and agrees that a significant reason the County is entering into this Contract is because of the special qualifications of certain Key Persons set forth in the contract. Under this Contract, the County is engaging the expertise, experience, judgment, and personal attention of such Key Persons. Neither Contractor nor any of the Key Persons shall delegate performance of the management powers and responsibilities each such Key Person is required to provide under this Contract to any other employee or agent of the Contractor unless the County provides prior written consent to such delegation. Contractor shall not reassign or transfer a Key Person to other duties or positions such that the Key Person is no longer available to provide the County with such Key Person's services unless the County provides prior written consent to such reassignment or transfer.

28. MERGER. THIS CONTRACT CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PARTIES WITH RESPECT TO THE SUBJECT MATTER REFERENCED THEREIN. THERE ARE NO UNDERSTANDINGS, AGREEMENTS, OR REPRESENTATIONS, ORAL OR

WRITTEN, NOT SPECIFIED HEREIN REGARDING THIS CONTRACT. NO AMENDMENT, CONSENT, OR WAIVER OF TERMS OF THIS CONTRACT SHALL BIND EITHER PARTY UNLESS IN WRITING AND SIGNED BY ALL PARTIES. ANY SUCH AMENDMENT, CONSENT, OR WAIVER SHALL BE EFFECTIVE ONLY IN THE SPECIFIC INSTANCE AND FOR THE SPECIFIC PURPOSE GIVEN. CONTRACTOR, BY THE SIGNATURE HERETO OF ITS AUTHORIZED REPRESENTATIVE, IS AN INDEPENDENT CONTRACTOR, ACKNOWLEDGES HAVING READ AND UNDERSTOOD THIS CONTRACT, AND CONTRACTOR AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

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

Kittelson & Associates, Inc.

Clackamas County Board of County
Commissioners

Authorized Signature Date

Chair Date

Name / Title (Printed)

Recording Secretary

099459-81

Oregon Business Registry #

Approved as to Form:

DBC/Oregon

Entity Type / State of Formation

County Counsel Date

EXHIBIT A
SCOPE OF WORK

**EXHIBIT B
FEE SCHEDULE**



DAN JOHNSON
DIRECTOR

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

Board of County Commissioners
Clackamas County

Members of the Board:

**Approval of a Contract with CivilWorks NW, Inc. for the
Aldercrest Road Slide Repair**

Purpose/Outcomes	Aldercrest Road is closed due to a landslide damaging the road. This contract will open Aldercrest road to traffic by constructing a retaining wall to hold up the road and re-build the road at the location of the failure
Dollar Amount and Fiscal Impact	Maximum Contract value is \$169,035.00. Contract value includes an early incentive award of up to \$10,000.00.
Funding Source	215-7433-00-431900-RM-2019-6 Road Funds
Duration	Substantial completion 11/9/2019; Final Completion 12/31/2019
Previous Board Action	None
Strategic Plan Alignment	Build a strong infrastructure. Ensure safe, healthy and secure communities.
Counsel Approval	September 16, 2019
Contact Person	Vince Hall, Project Manager 503-650-3210

Background:

The Aldercrest Road Landslide Project is a landslide mitigation contract. The project is located in close proximity to 5407 SE Aldercrest Road near the city of Milwaukie, Oregon.

This contract will include constructing approximately 790 square feet of mechanical stabilized earth retaining wall; excavating 315 cubic yards of general backfill; placing 275 cubic yards of granular backfill; placing 170 tons of asphalt concrete pavement; installing 95 feet of guard rail; installing 700 feet of striping; and performing additional incidental work as called for by the specifications and plans.

The project work is anticipated to begin immediately following contract signing. Substantial completion will be not later than November 9, 2019, with final completion no later than December 31, 2019.

Procurement Process:

This project was advertised in accordance with ORS and LCRB Rules on August 14, 2019. Bids were opened on September 4, 2019. The County received six (6) bids: Banzer Construction, \$201,249.00; PCR, Inc. \$212,126.00; CivilWorks NW, Inc., \$169,035.00; Conway Construction, \$255,750.00; O'Malley Brothers Corporation, \$180,301.00; and D+D Concrete and Utilities, \$212,440.00. CivilWorks, NW was determined to be the lowest responsive bidder.

Recommendation:

Staff respectfully recommends that the Board approve and sign this Public Improvement Contract with CivilWorks, NW, Inc. for the Aldercrest Road Slide Repair.

Sincerely,

Dan Johnson
Director of Transportation and Development

9-26-19

Placed on the BCC Agenda _____ by Procurement



CLACKAMAS COUNTY PUBLIC IMPROVEMENT CONTRACT

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

Project Name: **#2019-73 Aldercrest Road Slide Repair**

1. Contract Price, Contract Documents and Work.

The Contractor, in consideration of the sum of **one hundred fifty-nine thousand thirty-five dollars (\$159,035.00)** (the "Contract Price"), to be paid to the Contractor by Owner in the manner and at the time hereinafter provided, and subject to the terms and conditions provided for in the Instructions to Bidders and other Contract Documents (as defined in the Clackamas County General Conditions for Public Improvement Contracts (11/1/2017) ("General Conditions") referenced within the Instructions to Bidders), all of which are incorporated herein by reference, hereby agrees to perform all Work described and reasonably inferred from the Contract Documents. The Contract Price is the amount contemplated by the Base Bid. The Contract Price does not include the optional Incentive Award Amount described in Section 12 of this Contract, below. The total amount authorized under this Contract, including the Contract Price and maximum Incentive Award Amount, may not exceed the sum of **one hundred sixty-nine thousand thirty-five dollars (\$169,035.00)**.

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

- Notice of Contract Opportunity
- Supplemental Instructions to Bidders
- Bid Form
- Performance Bond and Payment Bond
- Supplemental General Conditions
- Payroll and Certified Statement Form
- Addenda #1 through #3
- Instructions to Bidders
- Bid Bond
- Public Improvement Contract Form
- Clackamas County General Conditions
- Prevailing Wage Rates
- Plans, Specifications and Drawings

2. Representatives.

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

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

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

3. Key Persons.

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

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

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

4. Contract Dates.

COMMENCEMENT DATE: Specific Date or Upon Issuance of Notice to Proceed
SUBSTANTIAL COMPLETION DATE: November 9, 2019
FINAL COMPLETION DATE: December 30, 2019

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

5. Insurance Certificates.

In accordance with Section G.3.5 of the General Conditions, Contractor shall furnish proof of the required insurance naming Clackamas County as an additional insured. Insurance certificates may be returned with the signed Contract or may be emailed to Procurement@clackamas.us.

6. Tax Compliance.

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

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

7. Confidential Information.

Contractor acknowledges that it and its employees or agents may, in the course of performing their responsibilities under this Contract, be exposed to or acquire information that is confidential to Owner. Any and all information of any form obtained by Contractor or its employees or agents in the performance of this Contract shall be deemed confidential information of Owner ("Confidential Information"). Contractor agrees to hold Confidential Information in strict confidence, using at least the same degree of care that Contractor

uses in maintaining the confidentiality of its own confidential information, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties or use Confidential Information for any purpose unless specifically authorized in writing under this Contract.

8. Required Terms.

In addition to the terms and conditions contained in this Contract and the Contract Documents, the following terms and conditions are required by Oregon law:

- A. 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 Owner 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.
- B. If the Contractor or a first-tier subcontractor fails, neglects or refuses to pay a person that provides labor or materials in connection with the public improvement contract within 30 days after receiving payment from the contracting agency or a contractor, the Contractor or first-tier subcontractor owes the person the amount due plus interest charges that begin at the end of the 10-day period within which payment is due under ORS 279C.580 (4) and that end upon final payment, unless payment is subject to a good faith dispute as defined in ORS 279C.580. The rate of interest on the amount due is nine percent per annum. The amount of interest may not be waived.
- C. 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.
- D. The Contractor shall include in each subcontract those provisions required under ORS 279C.580.
- E. For demolition tasks, if any, the Contractor shall salvage or recycle construction and demolition debris, if feasible and cost-effective.

9. Counterparts.

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

10. Integration.

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

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

11. Liquidated Damages

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

- 11.1 Liquidated Damages shall be as follows if the actual Substantial Completion exceeds the required date of Substantial Completion:
 - 11.1.1. \$600.00 per Calendar day past the Substantial Completion date.

12. Incentive for Early Completion

To encourage the contractor to complete the work as specified in the Special Provisions, Section 00180.50 within a shorter time span as specified, thereby reducing expenses to the department and economic losses to businesses and the public, the Department will pay to the Contractor an incentive award for early completion of the work specified in 00180.50(e).

- 12.1 **Incentive Award Amount** – If the Contractor completes all of the work to be done under the contract before November 9, 2019, the Department agrees to pay the Contractor an incentive award of \$1,000.00 per calendar day, up to \$10,000.00, from the actual completion date to the substantial completion date, as defined within the contract. Any partial day will be rounded to the nearest whole day.

13. Compliance with Applicable Law. Contractor shall comply with all federal, state, county, and local laws, ordinances, and regulations applicable to the Work to be done under this Contract including, but not limited to, compliance with the prohibitions set forth in ORS 652.220, compliance of which is a material element of this Contract and failure to comply is a material breach that entitles County to exercise any rights and remedies available under this Contract including, but not limited to, termination for default.

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

Contractor DATA:
CivilWorks NW, Inc.
PO Box 5698
Vancouver, WA 98668

Contractor CCB # 154103 Expiration Date: 1/27/2021
Oregon Business Registry # 126359-91 Entity Type: FBC State of Formation: Washington

Signature page to follow.

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

CivilWorks NW, Inc.

Clackamas County Board of County Commissioners

Authorized Signature

Date

Chair

Date

Name / Title Printed

Recording Secretary

APPROVED AS TO FORM

County Counsel

Date

DRAFT

Approval of Previous Business Meeting Minutes:

August 8, 2019

BOARD OF COUNTY COMMISSIONERS BUSINESS MEETING MINUTES

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

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

Thursday, August 8, 2019 – 10:00 AM

Public Services Building

2051 Kaen Rd., Oregon City, OR 97045

PRESENT: Commissioner Jim Bernard. Chair
Commissioner Ken Humberston
Commissioner Paul Savas
Commissioner Martha Schrader

EXCUSED: Commissioner Sonya Fischer

CALL TO ORDER

- Roll Call
- Pledge of Allegiance

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

1. Employee Spirit Awards Presentation

Jackie Nerski, Emergency Mgmt. gave background about the SPIRIT of Excellence Awards.

She introduced this year's winners: Suz Baughman, C-Com, Traci Nichols, C-Com, Char Kasch-McIntyre, HR, Stacy Davenport, PGA, Kim Brown, DTD, Glen Hamburg, DTD, Cindy Garcia H3S, Stephanie Speidel H3S, Callie Collette, H3S and Kevin Ko H3S.

The Board congratulated these outstanding employees for this accomplishment.

2. Department of Transportation & Development (DTD) Outstanding Customer Service Awards Presentation

Dan Chandler, County Administration, Cheryl Bell DTD explained this award. The DTD Teams recognized today. Building Codes, Surveyors Office, Development Engineering, Land Use & Zoning, Onsite Wastewater and Customer Information Specialists.

The Board congratulated these Divisions of the Dept. of Transportation & Development and thanked them for their outstanding customer service to Clackamas County Residents.

II. CITIZEN COMMUNICATION

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

1. Thelma Haggemiller, Oak Grove – opposes using property taxes for funding of Heritage in Clackamas County and suggested other options.
2. Grover Bornefeld, Jennings Lodge – issues relating to NCPRD and parks.
3. Les Poole, Gladstone – the need for more public involvement.

~Board Discussion~

III. PUBLIC HEARING

1. Second Reading of Ordinance Number 06-2019 Amending Chapter 8 (Business Regulation), Section 8.07, Alarm Permit - *1st reading was 7-18-19*

Julie Rush, Sheriff's Office presented the staff report.

~Board Discussion~

Chair Bernard opened the public hearing and asked if anyone would like to speak.

1. Les Poole, Gladstone – make sure the public is educated on these changes.

Chair Bernard asked if anyone else would like to speak, seeing none he closed the public hearing and asked for a motion.

MOTION:

Commissioner Schrader: I move we read the ordinance by title only.

Commissioner Humberston: Second.

all those in favor/opposed:

Commissioner Humberston: Aye.
Commissioner Savas: Aye.
Commissioner Schrader: Aye.
Chair Bernard: Aye – the Ayes have it, the motion carries 4-0. He asked the Clerk to read the Ordinance by title only then asked for a motion to adopt.

MOTION:

Commissioner Humberston: I move we adopt Ordinance No. 06-2019 amending Chapter 8 (Business Regulations), Section 8.07, Alarm Permit.

Commissioner Schrader: Second.

all those in favor/opposed:

Commissioner Humberston: Aye.

Commissioner Savas: Aye.

Commissioner Schrader: Aye.

Chair Bernard: Aye – the Ayes have it, the motion carries 4-0.

IV. CONSENT AGENDA

Chair Bernard asked the Clerk to read the consent agenda by title, then asked for a motion.

MOTION:

Commissioner Humberston: I move we approve the consent agenda.

Commissioner Schrader: Second.

all those in favor/opposed:

Commissioner Humberston: Aye.

Commissioner Savas: Aye.

Commissioner Schrader: Aye.

Chair Bernard: Aye – the Ayes have it, the motion carries 4-0.

A. Health, Housing & Human Services

1. Approval of an Intergovernmental Sub-recipient Agreement No. 20-007 with City of Lake Oswego/Lake Oswego Adult Community Center to Provide Social Services for Clackamas County Residents – *Social Services*
2. Approval of a Local Grant Agreement with Clackamas Women’s Services to Provide Evidence-based Parenting Education Classes – *Children, Families & Community Connections*
3. Approval for Amendment No. 6 to Agreement No. 7462 to a Revenue Agreement with Oregon Health Authority for Pharmacist Services to Members Enrolled with the Oregon Health Plan (OHP) – *Health Centers*
4. Approval of Agreement No. 9119 to a Revenue Agreement with Oregon Health Authority for Reproductive Health Services to Members enrolled with the ScreenWise Program – *Health Centers*
5. Approval of Sub-recipient Professional Services Agreement with Cascade AIDS Project for Human Immunodeficiency Virus (HIV) Testing and Counseling Services – *Public Health*

B. Department of Transportation & Development

1. **Board Order No. 2019-81** Adopting the Vacation of a Portion of Haskin Mill Road
2. Approval to Accept Award for Regional Travel Options (RTO) Grant for Safe Routes to School Program Coordinator

C. Elected Officials

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

D. Business & Community Services

1. Approval of a Research Services Agreement No. 27786 with the University of Oregon, Department of Architecture as Part of the United State Forest Dept. Wood Innovation Grant

E. Human Resources

1. Approval of Amendment No. 1 between Clackamas County, Clackamas County Housing Authority, and Voya Retirement Insurance and Annuity Company and Voya Financial Partners, LLC - *Procurement*

F. Juvenile Department

1. Approval of an Intergovernmental Agreement with the State of Oregon, acting by and through its Oregon Youth Authority for Juvenile Crime Prevention Basic Services and Diversion Services for Secure Detention Beds
2. Approval of Amendment No. 4 to Intergovernmental Agreement No. 931488 with Metro for Litter Pick-up near Metro South Transfer Station
3. Approval of Personal Services Contract with Latino Network to Provide Community-Based Diversion Services - *Procurement*

G. Technology Services

1. Approval of an Intergovernmental Agreement between Clackamas Broadband eXchange and the City of Sandy to Deliver Internet Service to US Forest Service Roads, 29, 31, 35, 35A and 35B as Part of the Kiwanis ISP Project

V. NORTH CLACKAMAS PARKS & RECREATION DISTRICT

1. Approval of a RiverHealth Stewardship Grant Agreement with Water Environment Services for Funding to Support Water Education Projects

VI. DEVELOPMENT AGENCY

1. Approval of an Assignment and Second Amendment to the Disposition Agreement with Clackamas Crossing, LLC

VII. WATER ENVIRONMENT SERVICES

1. Approval of Intergovernmental Agreements with the Cities of Gladstone and Oregon City for the Water Environment Services Good Neighbor Fund

VIII. COUNTY ADMINISTRATOR UPDATE

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

IX. COMMISSIONERS COMMUNICATION

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

MEETING ADJOURNED – 11:25 AM

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

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



Clackamas County Sheriff's Office

CRAIG ROBERTS, Sheriff

September 26, 2019

Board of County Commissioners
Clackamas County

Members of the Board:

Request by the Clackamas County Sheriff's Office (CCSO) to enter into an Annual Operating Plan & Financial Plan with the Oregon State Marine Board for the Clackamas County Boating Safety Action Plan

Purpose/Outcome	The Sheriff's Office provides marine patrol enforcement on all waters within Clackamas County including six lakes and six major rivers. This Operating Plan will reimburse the Sheriff's Office for a portion of expenses as outlined in the Financial Plan.
Dollar Amount and Fiscal Impact	The total Fiscal Year 2020 Operating Plan includes \$411,623.00 in support from the Marine Board as well as an estimated \$389,041.60 in CCSO contribution.
Funding Source	The Oregon State Marine Board is the source of funds for this agreement as billed by the Clackamas County Sheriff's Office.
Duration	Effective July 1, 2019 through June 30, 2020
Strategic Plan Alignment	The funds will provide patrol services on all Clackamas County waters as well as investigate boating law violations and boating accidents, examination of boats and other services as outlined in the agreement.
Previous Board Action/Review	Approval of multiple, prior fiscal year requests.
Counsel Review	Reviewed and approved by County Counsel on 9/16/19
Contact Person	Nate Thompson – Office (503) 572-7118
Contract No.	250-1920CLACKAMAS-000

BACKGROUND:

The Sheriff's Office provides marine patrol enforcement on all waters within Clackamas County including six lakes with approximately 35.5 miles of shoreline and six major rivers with about 139.5 river miles. The emphasis is on the Willamette River, the Clackamas River and the High Lakes. This is a renewal of a previous agreement.

Funds from the Marine Board pay for staffing to include Supervisor time, Marine Deputies, Marine Service Officers, overtime, marine fuel, training, insurance, boat maintenance and other administrative costs. County counsel has reviewed and approved this agreement.

RECOMMENDATION:

Staff recommends the Board approve this operating plan and authorizes Craig Roberts, Sheriff, or his designee, to sign on behalf of Clackamas County.

Respectfully submitted,

Angela Brandenburg, Undersheriff

"Working Together to Make a Difference"

INTERGOVERNMENTAL AGREEMENT

Agreement No. 250-1920CLACKAMAS-000

This Agreement is between the State of Oregon acting by and through its State Marine Board (“OSMB”) and Clackamas County (“County”), each a “Party” and, together, the “Parties”.

SECTION 1: AUTHORITY

This Agreement is authorized by ORS 190.110 and ORS 830.110.

SECTION 2: PURPOSE

The purpose of this Agreement is to provide funding to the County to conduct enforcement related to recreational boating in Oregon. Specific activities and assessments are detailed in “Exhibit A” attached hereto and by this reference made a part hereof.

SECTION 3: EFFECTIVE DATE AND DURATION

This Agreement is effective on July 1, 2019, or the date of the last signature, whichever occurs last) (“Effective Date”), and terminates on **June 30, 2020**, unless terminated earlier in accordance with Section 17.

SECTION 4: AUTHORIZED REPRESENTATIVES

4.1 OSMB’s Authorized Representative is:

Randy Henry
435 Commercial Street NE Suite 400, Salem OR 97301
503-378-4597
503-378-2612 Office
Randy. H.Henry@oregon.gov

4.2 County’s Authorized Representative is:

Clackamas County Sheriff’s Office
Sgt. Nate Thompson
2223 S Kaen Rd, Oregon City OR 97045
503 655-8650
nathantho@co.clackamas.or.us

4.3 A Party may designate a new Authorized Representative by written notice to the other Party.

SECTION 5: RESPONSIBILITIES OF EACH PARTY

- 5.1 County shall perform the work set forth on Exhibit A, attached hereto and incorporated herein by this reference.
- 5.2 OSMB shall pay County as described in Section 7.

SECTION 6: BOAT OWNERSHIP

- 6.1 The ownership of any boat purchased by the County during the term of this agreement shall be vested with the County regardless of funding source, subject to Section 6.2 and Section 29.
- 6.2 During the term of this agreement and for the useful life of the boat or major piece of equipment, the County agrees to maintain in good working condition any boat or major piece of equipment purchased in whole or in part by the County with funds received from OSMB, pursuant to this agreement and prior agreements between County and OSMB. Preventative maintenance schedules for boats and trailers will be established and adhered to. Further, upon the trade-in or sale of a boat or major piece of equipment purchased, in whole or part, with funds received pursuant to this agreement, County shall apply any proceeds from the trade-in or sale to law enforcement activities approved by OSMB, with such approval not to be unreasonably withheld. Notwithstanding Section 29, upon default of this Agreement or notice from OSMB to County of the termination of funding described in ORS 830.140, all boats and major pieces of equipment purchased, in whole or in part, with funds received pursuant to this agreement or previous agreement between the OSMB and County, shall be returned to the OSMB for reassignment if OSMB requests that the boat or major pieces of equipment be returned to OSMB. Upon OSMB's request, County agrees to permit the transfer of a boat purchased, in whole or part, with funds received pursuant to this agreement to another county.

SECTION 7: COMPENSATION AND PAYMENT TERMS

- 7.1 OSMB shall, upon receipt and approval of expenditure documentation, pay to the County an amount not to exceed **\$411,623.00** for the agreement term. Payment requests shall be only for authorized services provided by the County pursuant to this agreement and for costs actually incurred by the County in conjunction with such services (including salaries/benefits, supplies or purchases of boats/equipment). At OSMB's discretion, federal funds may be used for payment.
- 7.2 County shall be responsible for providing employment-related benefits and deductions that are required by law, including but not limited to federal and state income tax deductions, workers' compensation coverage, and contributions to the Public Employees Retirement System.

This agreement is subject to all applicable federal Assurances specified in Exhibit C attached hereto and by this reference made a part hereof. If applicable, County shall provide the OSMB

its Annual Comprehensive Financial Report as required in the Single Audit Act of 1984, 31U.S.C. §§7501-7507 (1994) as amended by Pub.L. 104-156, §§ 1-3, 110 Stat. 1397 (1996). At the end of each fiscal year during the term of this agreement, the County has the duty to request the amount of federal pass-through dollars included in the payments made by the OSMB to the County during that fiscal year.

SECTION 8: CONDITION OF PERFORMANCE

In accordance with 44 CFR 13.36(i), the OSMB's performance is conditioned upon the County's compliance with federal, state and local laws and regulations, including but not limited to, the following:

- 8.1 County shall comply and, if applicable, require a subcontractor to comply, with the applicable audit requirements and responsibilities set forth in the Office of Management and Budget Circular A-133 entitled "Audits of States, Local Governments and Non-Profit Organizations."
- 8.2 The applicable Code of Federal Regulations (CFR) sections and OMB Circulars governing expenditure of federal funds. State, local and Indian Tribal Governments and governmental hospitals must follow OMB A-102. County shall ensure any organization to which funds are passed comply with CFR and OMB requirements
- 8.3 All applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection County regulations (40 CFR part 15).
- 8.4 Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub.L. 94-163, 89 Stat. 871).
- 8.5 The Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3).
- 8.6 The Davis-Bacon Act (40 U.S.C. 276a to 276a -7) as supplemented by Department of Labor regulations (29 CFR Part 5).
- 8.7 Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5).

SECTION 9: REPRESENTATIONS AND WARRANTIES

County represents and warrants to OSMB that:

- 9.1 County is a county, duly organized and validly existing. County has the power and authority to enter into and perform this Agreement;
- 9.2 The making and performance by County of this Agreement (a) have been duly authorized by

County, (b) do not and will not violate any provision of any applicable law, rule, regulation, or order of any court, regulatory commission, board, or other administrative agency or any provision of County’s charter or other organizational document and (c) do not and will not result in the breach of, or constitute a default or require any consent under any other agreement or instrument to which County is party or by which County may be bound or affected. No authorization, consent, license, approval of, or filing or registration with or notification to any governmental body or regulatory or supervisory authority is required for the execution, delivery or performance by County of this Agreement, other than those that have already been obtained;

- 9.3 This Agreement has been duly executed and delivered by County and constitutes a legal, valid and binding obligation of County enforceable in accordance with its terms;
- 9.4 County has the skill and knowledge possessed by well-informed members of the industry, trade or profession most closely involved in providing the services under this Agreement, and County will apply that skill and knowledge with care and diligence to perform its obligations under this Agreement in a professional manner and in accordance with the highest standards prevalent in the related industry, trade or profession; and
- 9.5 County shall, at all times during the term of this Agreement, be qualified, professionally competent, and duly licensed to perform its obligations under this Agreement.

The representations and warranties set forth in this section are in addition to, and not in lieu of, any other representations or warranties provided by County.

SECTION 10: GOVERNING LAW, CONSENT TO JURISDICTION

This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively “Claim”) between OSMB or any other agency or department of the State of Oregon, or both, and County that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Marion County for the State of Oregon; provided, however, if a Claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this Section be construed as a waiver by the State of Oregon of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the eleventh amendment to the Constitution of the United States or otherwise, to or from any Claim or from the jurisdiction of any court. COUNTY, BY EXECUTION OF THIS AGREEMENT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS.

SECTION 11: CONTRIBUTION

- 11.1 If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 (a “Third Party Claim”) against a Party (the “Notified

Party”) with respect to which the other Party (the “Other Party”) may have liability, the Notified Party shall promptly notify the Other Party in writing of the Third Party Claim and deliver to the Other Party, along with the written notice, a copy of the claim, process and all legal pleadings with respect to the Third Party Claim that have been received by the Notified Party. 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 the Other Party of the notice and copies required in this Section and a meaningful opportunity for the Other Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to the Other Party’s contribution obligation under this Section 10 with respect to the Third Party Claim.

- 11.2** With respect to a Third Party Claim for which OSMB is jointly liable with County (or would be if joined in the Third Party Claim), OSMB 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 County in such proportion as is appropriate to reflect the relative fault of OSMB on the one hand and of County on the other hand in connection with the events that resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of OSMB on the one hand and of County 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. OSMB’s contribution amount in any instance is capped to the same extent it would have been capped under Oregon law if the State had sole liability in the proceeding.
- 11.3** With respect to a Third Party Claim for which County is jointly liable with OSMB (or would be if joined in the Third Party Claim), County 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 OSMB in such proportion as is appropriate to reflect the relative fault of County on the one hand and of OSMB on the other hand in connection with the events that resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of County on the one hand and of OSMB 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. County’s contribution amount in any instance is capped to the same extent it would have been capped under Oregon law if it had sole liability in the proceeding.

SECTION 12: COUNTY DEFAULT

County will be in default under this Agreement upon the occurrence of any of the following events:

- 12.1** County fails to perform, observe or discharge any of its covenants, agreements or obligations under this Agreement;

- 12.2** Any representation, warranty or statement made by County in this Agreement or in any documents or reports relied upon by OSMB to measure the delivery of services, the expenditure of funds or the performance by County is untrue in any material respect when made;
- 12.3** County (a) applies for or consents to the appointment of, or taking of possession by, a receiver, custodian, trustee, or liquidator of itself or all of its property, (b) admits in writing its inability, or is generally unable, to pay its debts as they become due, (c) makes a general assignment for the benefit of its creditors, (d) is adjudicated as bankrupt or insolvent, (e) commences a voluntary case under the Federal Bankruptcy Code (as now or hereafter in effect), (f) files a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, (g) fails to controvert in a timely and appropriate manner, or acquiesces in writing to, any petition filed against it in an involuntary case under the Bankruptcy Code, or (h) takes any action for the purpose of effecting any of the foregoing; or
- 12.4** A proceeding or case is commenced, without the application or consent of County, in any court of competent jurisdiction, seeking (a) the liquidation, dissolution or winding-up, or the composition or readjustment of debts of County, (b) the appointment of a trustee, receiver, custodian, liquidator, or the like of County or of all or any substantial part of its assets, or (c) similar relief in respect to County under any law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, and such proceeding or case continues undismissed, or an order, judgment, or decree approving or ordering any of the foregoing is entered and continues unstayed and in effect for a period of sixty consecutive days, or an order for relief against County is entered in an involuntary case under the Federal Bankruptcy Code (as now or hereafter in effect).

SECTION 13: OSMB DEFAULT

OSMB will be in default under this Agreement if OSMB fails to perform, observe or discharge any of its covenants, agreements, or obligations under this Agreement.

SECTION 14: REMEDIES

- 14.1** In the event County is in default under Section 12, OSMB may, at its option, pursue any or all of the remedies available to it under this Agreement and at law or in equity, including, but not limited to: (a) termination of this Agreement under Section 17, (b) reducing or withholding payment for work or Work Product that County has failed to deliver within any scheduled completion dates or has performed inadequately or defectively, (c) requiring County to perform, at County's expense, additional work necessary to satisfy its performance obligations or meet performance standards under this Agreement, (d) initiation of an action or proceeding for damages, specific performance, or declaratory or injunctive relief, or (e) exercise of its right of recovery of overpayments under Section 15 of this Agreement or setoff, or both. These remedies are cumulative to the extent the remedies are not inconsistent, and OSMB may pursue any remedy or remedies singly, collectively, successively

or in any order whatsoever.

- 14.2** In the event OSMB is in default under Section 12 and whether or not County elects to exercise its right to terminate this Agreement under Section 17.3.3, or in the event OSMB terminates this Agreement under Sections 17.2.1, 17.2.2, 17.2.3, or 17.2.5, County's sole monetary remedy will be (a) for work compensable at a stated rate, a claim for unpaid invoices for work completed and accepted by OSMB, for work completed and accepted by OSMB within any limits set forth in this Agreement but not yet invoiced, for authorized expenses incurred, and for interest within the limits of ORS 293.462, less any claims OSMB has against County, and (b) for deliverable-based work, a claim for the sum designated for completing the deliverable multiplied by the percentage of work completed on the deliverable and accepted by OSMB, for authorized expenses incurred, and for interest within the limits of ORS 293.462, less previous amounts paid for the deliverable and any claims that OSMB has against County. In no event will OSMB be liable to County for any expenses related to termination of this Agreement or for anticipated profits. If previous amounts paid to County exceed the amount due to County under this Section 14.2, County shall promptly pay any excess to OSMB.

SECTION 15: RECOVERY OF OVERPAYMENTS

If payments to County under this Agreement, or any other agreement between OSMB and County, exceed the amount to which County is entitled, OSMB may, after notifying County in writing, withhold from payments due County under this Agreement, such amounts, over such periods of times, as are necessary to recover the amount of the overpayment.

SECTION 16: LIMITATION OF LIABILITY

EXCEPT FOR LIABILITY ARISING UNDER OR RELATED TO SECTION 11, NEITHER PARTY WILL BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL, OR OTHER INDIRECT DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT, REGARDLESS OF WHETHER THE LIABILITY CLAIM IS BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, PRODUCT LIABILITY OR OTHERWISE. NEITHER PARTY WILL BE LIABLE FOR ANY DAMAGES OF ANY SORT ARISING SOLELY FROM THE TERMINATION OF THIS AGREEMENT IN ACCORDANCE WITH ITS TERMS.

SECTION 17: TERMINATION

17.1 This Agreement may be terminated at any time by mutual written consent of the Parties.

17.2 OSMB may terminate this Agreement as follows:

17.2.1 Upon 30 days advance written notice to County;

17.2.2 Immediately upon written notice to County, if OSMB fails to receive funding, or appropriations, limitations or other expenditure authority at levels sufficient in OSMB's

reasonable administrative discretion, to perform its obligations under this Agreement;

- 17.2.3 Immediately upon written notice to County, if federal or state laws, rules, regulations or guidelines are modified or interpreted in such a way that OSMB's performance under this Agreement is prohibited or OSMB is prohibited from paying for such performance from the planned funding source;
 - 17.2.4 Immediately upon written notice to County, if County is in default under this Agreement and such default remains uncured 15 days after written notice thereof to County; or
 - 17.2.5 As otherwise expressly provided in this Agreement.
- 17.3 County may terminate this Agreement as follows:
- 17.3.1 Immediately upon written notice to OSMB, if County fails to receive funding, or appropriations, limitations or other expenditure authority at levels sufficient in County's reasonable administrative discretion, to perform its obligations under this Agreement;
 - 17.3.2 Immediately upon written notice to OSMB, if federal or state laws, rules, regulations or guidelines are modified or interpreted in such a way that County's performance under this Agreement is prohibited or County is prohibited from paying for such performance from the planned funding source;
 - 17.3.3 Immediately upon written notice to OSMB, if OSMB is in default under this Agreement and such default remains uncured 15 days after written notice thereof to OSMB; or
 - 17.3.4 As otherwise expressly provided in this Agreement.
- 17.4 Upon receiving a notice of termination of this Agreement, County will immediately cease all activities under this Agreement, unless OSMB expressly directs otherwise in such notice. Upon termination, County will deliver to OSMB all documents, information, works-in-progress, Work Product and other property that are or would be deliverables under the Agreement. And upon OSMB's reasonable request, County will surrender all documents, research or objects or other tangible things needed to complete the work that was to have been performed by County under this Agreement.

SECTION 18: INSURANCE

County shall maintain insurance as set forth in Exhibit D, attached hereto and incorporated herein by this reference.

SECTION 19: NONAPPROPRIATION

OSMB's obligation to pay any amounts and otherwise perform its duties under this Agreement is conditioned upon OSMB receiving funding, appropriations, limitations, allotments, or other expenditure authority sufficient to allow OSMB, in the exercise of its reasonable administrative

discretion, to meet its obligations under this Agreement. Nothing in this Agreement may be construed as permitting any violation of Article XI, section 7 of the Oregon Constitution or any other law limiting the activities, liabilities or monetary obligations of OSMB.

SECTION 20: AMENDMENTS

The terms of this Agreement may not be altered, modified, supplemented or otherwise amended, except by written agreement of the Parties.

SECTION 21: NOTICE

Except as otherwise expressly provided in this Agreement, any notices to be given relating to this Agreement must be given in writing by facsimile, email, personal delivery, or postage prepaid mail, to a Party's Authorized Representative at the physical address, fax number or email address set forth in this Agreement, or to such other addresses as either Party may indicate pursuant to this Section 21. Any notice so addressed and mailed becomes effective five (5) days after mailing. Any notice given by personal delivery becomes effective when actually delivered. Any notice given by email becomes effective upon the sender's receipt of confirmation generated by the recipient's email system that the notice has been received by the recipient's email system. Any notice given by facsimile becomes effective upon electronic confirmation of successful transmission to the designated fax number.

SECTION 22: SURVIVAL

All rights and obligations of the Parties under this Agreement will cease upon termination of this Agreement, other than the rights and obligations arising under Sections 6,10, 11, 15, 16 and 22 hereof and those rights and obligations that by their express terms survive termination of this Agreement; provided, however, that termination of this Agreement will not prejudice any rights or obligations accrued to the Parties under this Agreement prior to termination.

SECTION 23: SEVERABILITY

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

SECTION 24: COUNTERPARTS

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

SECTION 25: COMPLIANCE WITH LAW

In connection with their activities under this Agreement, the Parties shall comply with all applicable federal, state and local law.

SECTION 26: INDEPENDENT CONTRACTORS

The Parties agree and acknowledge that their relationship is that of independent contracting parties and that County is not an officer, employee, or agent of the State of Oregon as those terms are used in ORS 30.265 or otherwise.

SECTION 27: INTENDED BENEFICIARIES

OSMB and County are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement provides, is intended to provide, or may be construed to provide any direct or indirect benefit or right to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of this Agreement.

SECTION 28: FORCE MAJEURE

Neither Party is responsible for any failure to perform nor any delay in performance of any obligations under this Agreement caused by fire, civil unrest, labor unrest, natural causes, or war, which is beyond that Party's reasonable control. Each Party shall, however, make all reasonable efforts to remove or eliminate such cause of failure to perform or delay in performance and shall, upon the cessation of the cause, diligently pursue performance of its obligations under this Agreement. OSMB may terminate this Agreement upon written notice to County after reasonably determining that the failure or delay will likely prevent successful performance of this Agreement.

SECTION 29: SECURITY INTEREST

County, in consideration of OSMB's provision of services described in Exhibit A, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, hereby grants OSMB a continuing security interest in and so pledges and assigns to OSMB all of the rights of County and all proceeds and products in the boats and equipment purchased pursuant to OSMB's authority under ORS 830.140, including, but not limited to this agreement ("Collateral"). County hereby irrevocably authorizes OSMB at any time and from time to time to file in any filing office in any Uniform Commercial Code jurisdiction any financing statements and amendments thereto to complete the attachment, perfection and first priority of, and the ability of OSMB to enforce, OSMB's security interest in the Collateral, including, but not limited to, causing OSMB's name to be noted as secured party on any certificate of title for a titled good. County will not, or will not offer to, sell or otherwise dispose of the Collateral or any interest in the Collateral except with receipt of OSMB's prior written approval. Upon the failure by County

to keep, observe or perform any provision of this agreement, without any other notice to or demand upon County, OSMB shall have in any jurisdiction in which enforcement of this agreement is sought, in addition to all other rights and remedies, all rights, privileges, powers and remedies of a secured creditor provided by the Uniform Commercial Code and any additional rights and remedies which may be provided to a secured party in any jurisdiction in which the Collateral or a part thereof is located, at law, in equity, or otherwise, including, without limitation, its right to take immediate possession of the Collateral.

SECTION 30: ASSIGNMENT AND SUCCESSORS IN INTEREST

County may not assign or transfer its interest in this Agreement without the prior written consent of OSMB and any attempt by County to assign or transfer its interest in this Agreement without such consent will be void and of no force or effect. OSMB's consent to County's assignment or transfer of its interest in this Agreement will not relieve County of any of its duties or obligations under this Agreement. The provisions of this Agreement will be binding upon and inure to the benefit of the Parties hereto, and their respective successors and permitted assigns.

SECTION 31: SUBCONTRACTS

County shall not, without OSMB's prior written consent, enter into any subcontracts for any of the work required of County under this Agreement. OSMB's consent to any subcontract will not relieve County of any of its duties or obligations under this Agreement.

County shall take all reasonable steps to cause its contractor(s) that are not units of local government as defined in ORS 190.003, if any, to indemnify, defend, save and hold harmless the State of Oregon and its officers, employees and agents ("Indemnitee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including attorneys' fees) arising from a tort (as now or hereafter defined in ORS 30.260) caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of County's contractor or any of the officers, agents, employees or subcontractors of the contractor ("Claims"). It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by the County's contractor from and against any and all Claims.

SECTION 32: TIME IS OF THE ESSENCE

Time is of the essence in County's performance of its obligations under this Agreement.

SECTION 33: MERGER, WAIVER

This Agreement and all exhibits and attachments, if any, constitute the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver or

consent under this Agreement binds either Party unless in writing and signed by both Parties. Such waiver or consent, if made, is effective only in the specific instance and for the specific purpose given. EACH PARTY, BY SIGNATURE OF ITS AUTHORIZED REPRESENTATIVE, HEREBY ACKNOWLEDGES THAT IT HAS READ THIS AGREEMENT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

SECTION 34: RECORDS MAINTENANCE AND ACCESS

County shall maintain all financial records relating to this Agreement in accordance with generally accepted accounting principles. In addition, County shall maintain any other records, books, documents, papers, plans, records of shipments and payments and writings of County, whether in paper, electronic or other form, that are pertinent to this Agreement in such a manner as to clearly document County's performance. All financial records, other records, books, documents, papers, plans, records of shipments and payments and writings of County, whether in paper, electronic or other form, that are pertinent to this Agreement, are collectively referred to as "Records." County acknowledges and agrees that OSMB and the Oregon Secretary of State's Office and the federal government and their duly authorized representatives will have access to all Records to perform examinations and audits and make excerpts and transcripts. County shall retain and keep accessible all Records for a minimum of six (6) years, or such longer period as may be required by applicable law, following termination of this Agreement, or until the conclusion of any audit, controversy or litigation arising out of or related to this Agreement, whichever date is later. Subject to foregoing minimum records retention requirement, County shall maintain Records in accordance with the records retention schedules set forth in OAR Chapter 166.

SECTION 35: HEADINGS

The headings and captions to sections of this Agreement have been inserted for identification and reference purposes only and may not be used to construe the meaning or to interpret this Agreement.

SECTION 36: ADDITIONAL REQUIREMENTS

County shall comply with the additional requirements set forth in Exhibit C, attached hereto and incorporated herein by this reference.

SECTION 37: AGREEMENT DOCUMENTS

This Agreement consists of the following documents, which are listed in descending order of precedence: this Agreement less all exhibits, attached Exhibit A (the Statement of Work), Exhibit B (Boating Safety Action Plan) Exhibit C (Federal Assurances), and Exhibit D (Insurances).

SECTION 38: SIGNATURES

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

STATE OF OREGON acting by and through its State Marine Board

Larry Warren, Director

Date

Clackamas County Sheriff's Office

County Sheriff

Date

Signature

Date

Approved for Legal Sufficiency in accordance with ORS 291.047

DOJ File No. 25001-GT0234-11 Exemption letter, AAG Marlowe
DOJ Attorney

May 24, 2012
Date

EXHIBIT A

STATEMENT OF WORK

THE COUNTY AGREES TO:

- A. Enforce the applicable provisions of the Oregon Revised Statutes, Chapters 830 and 704 and Oregon Administrative Rules, Chapter 250.
- B. Investigate complaints of boating law violations and boating accidents as specified in the current version of the OSMB Policy and Procedures Manual, incorporated by reference herein.
- C. Alert the public to unsafe boating conditions.
- D. Assign duties under this agreement to sworn officers who have met the Oregon State Sheriff's Association (OSSA) swim standard, completed training and received certification at the Marine Law Enforcement Academy. Boating law enforcement personnel assigned by the County shall be mentally and physically capable of performing required duties. Standards of performance, discipline of officers and the control of personnel performing services pursuant to this agreement shall be the responsibility of the County. County agrees that assigned personnel shall wear a Coast Guard approved personal flotation device (life jacket) while on board a boat.
- E. Provide assistance to boaters and provide search and rescue services as noted in the policy and procedures manual.
- F. Provide law enforcement examinations of boats.
- G. Carry out all aspects of the Boating Safety Program: The Boating Safety Action Plan, Budget and Maintenance Schedule, described in Exhibit B, attached here to and incorporated by reference herein.
- H. Provide OSMB with monthly activity reports to the OSMB database by the end of each month.
- I. Send quarterly invoices to: **Boating Safety Program Analyst, Oregon State Marine Board, and 435 Commercial St. NE, Salem, OR 97309**. Invoices must be submitted within 45 days following the end of the quarter.
- J. Furnish and supply all necessary labor, supervision, equipment, communications, facilities and supplies necessary to provide the level of service required to fulfill this agreement.
- K. Submit all requests for boat and related equipment repairs, to which OSMB holds title, to OSMB for approval. Approval is also required for the vendor providing the services.

OSMB AGREES TO:

- A. Provide County an orientation to OSMB policies, regulations, and administrative rules necessary to meet the purpose of this agreement.
- B. Provide required training through the Marine Law Enforcement Academy held once a year.
- C. Provide funds for the purchase of patrol boats, required equipment, fuel, and boat maintenance.
- D. Provide access to and training for the use of OSMB's law enforcement data base.
- E. Make payment to County within 45 days of receiving and approving invoice from County.

EXHIBIT B
(BOATING SAFETY ACTION PLAN)

(SEE ATTACHED)

EXHIBIT C

OMB Approval No. 0348-0040

ASSURANCES - NON-CONSTRUCTION PROGRAMS

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0040), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

NOTE: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant, I certify that the applicant:

1. Has the legal authority to apply for Federal assistance and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project cost) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States and, if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§4728-4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and, (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
8. Will comply, as applicable, with provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

Previous Edition Usable

Authorized for Local Reproduction

Standard Form 424B (Rev. 7-97)
Prescribed by OMB Circular A-102

EXHIBIT D

INSURANCE

During the term of this agreement, the County shall provide insurance to cover all loss; damage or injury to the equipment purchased under this agreement, in an amount no less than the purchase price thereof. Such insurance shall be provided by the County through an insurer duly authorized to do business in the State of Oregon but may be provided by self-insurance. Any proceeds from insurance or self-insurance shall be applied to the repair or replacement of the damaged equipment unless the County received prior written direction or authorization from the OSMB to otherwise dispose of the proceeds.



Boating Safety Action Plan

for Clackamas County Sheriff's Office
Agency

FY 2019-20

Address: 2223 S Kaen Rd Oregon City OR 97045

Phone #: 503-655-8218

Contact for Questions: Sgt. Nate Thompson 503-572-7118

Patrol Hours:	3500
Program Hours:	3260
Total Hours:	6760

**Total Available Hours
from Page 7**

10,080.00

Your 2019-20 Action Plan Overview

Our focus in 2019-20 continues to be risk intervention. Collisions, high speed accidents, livery rentals, BUII and nav rule violations are critical. While basic compliance is still important, please briefly describe your strategies to focus your patrol efforts on risk intervention and accident prevention at your key, higher risk waterways.

Our high risk waterways continue to be the Willamette River both above and below the falls during the summer months. Interaction between pleasure boaters and PWC is a concern on the lower Willamette River. With the new rules on the upper Willamette we anticipate a influx of wake sport boats on the lower river which already has a congested mixed user group. The upper Willamette River mostly has complaints about boat wakes and wake or towed water sports. With the new rules in place on the upper Willamette River regarding the wake sport boating restriction we will have a major focus on this area over the summer months.

The Clackamas River sees very heavy traffic during the warm summer months. With five to seven thousand people floating down the river a day. Patrol of this area can be a strain on resources. We no longer have the use of a diversion program to help educate boaters on the safety equipment they need. If we issue citations for no PFD they will have to pay the entire fine or go to trial. We will continue to try and find a new diversion program.

The reservoirs on the Clackamas River will continue to be patrol by Marine Patrol year round and have an increased patrols July through September through a contract with PGE.

This year my Patrol hours and Program hours are lower than in years past. That is because I am only including the hours for our full time Marine Deputies. There could be more patrol hours than planned if all of the seasonal positions are filled. Additionally several of the positions are for MSO's and those are secondary officers on the boat and their hours are not counted towards the program and patrol hours.

Annual Patrol Plan: 3500 Hours

Expectation: Directed patrols will prioritize risk-based interventions first, then administrative compliance. Interventions should include a full BER. Consider local operation, use patterns, seasonal risks (fishing, cold water, wind etc). Patrol plan should reference ORS/OAR (at left) pertinent to your area of operation.

Risk Intervention

- Local Rules
OAR 250-020
- PFDs
830.215
- Muffling Device
830.260
- Sound Signaling
830.230
- Unsafe Operation
830.305
- Reckless Operation
830.315
- BUU
830.325
- Maintain Lookout
830.335
- Nav Rules
830.340
- Traffic Lanes
830.345
- Riding on Bow
830.360
- Occupy transom
830.362
- Waterskiing/Observer
830.365
- Boat Livery
830.415, 420

Compliance

- AIS
- Boater Ed Card
- Outfitter Guide

To fulfill the directive of the Marine Board we will focus on risk-based intervention in our high risk waterways. This means there may be a drop in the number of boater contacts for basic boat inspections.

On the lower Willamette River we will focus on the area of Meldrum Bar. This area is very popular with personal water crafts. PWC's and boats, both motorized and non-motorized, in this area are often operated in close proximity to each other. Our patrol will focus on unsafe operation, fail to maintain lookout, Navigation Rules as well as rules specific to PWC's. We will utilize patrol boats as well as PWC's to patrol this area.

The upper Willamette River has complaints of congestion and excessive wakes. With the new rules in place this year we will focus on education and enforcement of these new rules. Our primary focus will be on the zones that restrict certain type of boat operation. We will still focus on areas outside of the restriction area as well, these areas are prone for congestion which leads to rules of the road violations.

The Clackamas River has a large amount of non-motorized traffic during the summer months. We have done studies showing that on hot days five to seven thousand people float between Barton Park and Carver Park. There are other areas of the river with heavy traffic but this area is by far the busiest. We will focus patrols on safety equipment such as PFD's and Sound Signaling devices as well as making sure we have compliance with AIS rules.

We contract with PGE to provide patrols to their Reservoirs which includes, Estacada Lake, North Fork, Frog Lake, Lake Harriet and Timothy Lake. These lakes have very high use in the summer months. Most are slow speed lakes so they do not have a lot of high risk activities. North Fork reservoir is the busiest with a mixed user group. Patrols of these waterway will be focused on PFD's and other safety equipment at the ramps and on the water. On water and shore patrol will prioritize any high risk behavior.

We are currently still working with OSP Fish and Game to contact fishermen. They have a boat slip at our boat house that they are able to use. We strongly encourage Deputies to patrol with OSP so that they can learn from each other and work as a team.

Boating Safety Program

Waterbodies To Be Patrolled



County/Agency: Clackamas County Sheriff's Office

FY 2019-20

Waterways (Inland & Ocean)	Specific Area	Start MM/YY	End MM/YY	Add'l Comments
Willamette River	Above the Falls	Year	Round	Year round use both motorized and non. Very heavy use during summer months.
Willamette River	Below the Falls	Year	Round	Heavy year round use both motorized and non. Fishing traffic in winter spring and summer. Some commercial traffic.
Clackamas River	All	Year	Round	Heavy year round use both motorized and non. Fishing traffic in winter spring and summer. Heavy non motorized use in summer months.
Sandy River	All	Year	Round	Patrol during winter and spring for fishing traffic. Summer patrol are minimal due to water level and low use. Use has increased due to the alcohol ban on the Clackamas River.
Molalla River	All	Year	Round	Patrol during winter and spring for fishing traffic. Summer patrol are minimal due to water level and low use.
Tualatin River	All	Year	Round	Most patrols are during the summer months. There is mixed use traffic. Low head dam on the river that we put up warning buoys for.
Pudding River	All	Year	Round	Very low use year round. Mixed motor and non motorized traffic. Most traffic is during duck and goose hunting season.
North Fork Reservoir	All	Year	Round	Patrol year round with most of the focus during summer months. Heavy mixed use traffic. This is a PGE reservoir.
Estacada Lake	All	Year	Round	Patrol year round with most of the focus during summer months. Mixed use traffic with minimal use mostly during summer months. This is a PGE Reservoir
Frog Lake	All	Year	Round	Patrol to make sure boats are not on the water. This lake has no boats allowed. This is a PGE reservoir
Lake Harriet	All	Year	Round	Mostly fishing traffic this is a PGE reservoir. New boat ramp and docks installed in 2018 so we are expecting increased traffic
Timothy Lake	All	Year	Round	Fishing traffic both motorized and non. Lake has a 10mph speed limit. There are three boat ramps on the lake and many camp sites only accessible by boat. This is a PGE reservoir
Trillium Lake	All	Year	Round	Non motorized only lake. High traffic during the summer months.
Lake Oswego	All	Year	Round	Work with Lake Oswego Lake Patrol to address problem areas



Annual Program Plan

3260

Hours

Instructor Training	<p>Expectation: Note personnel involved or willing to be involved in providing training on OSMB behalf. Participation pre-approved by training coordinator.</p> <p>Sergeant Thompson and Deputy Wilson will continue to teach the OSMB PWC course that is offered at Clackamas County.</p> <p>Sergeant Thompson and Deputy Wilson will instruct at the Academy, Drift and Jet if their attendance is needed.</p>
Training	<p>Expectation: New or inexperienced DPSST certified marine officers will complete Marine Law Enforcement Academy, Drift Boat, White Water, Swift Water Rescue and other training as appropriate, and attend pre- and post-season meetings, if possible.</p> <p>New Marine Deputy Adam Peterson will be attending the Marine Academy, Drift and Jet operations this year.</p>
Non-OSMB Training	<p>Expectation: Training as per program standards to maintain high level of police skill, performance and certifications.</p> <p>Deputy's will participate in all required Sheriff's Office Training. To include monthly training in firearms and defensive tactics.</p>
Maintenance	<p>Expectation: Perform regular and appropriate maintenance such as winterization, oil changes, trailer bearings, basic repairs and other preventative work as needed.</p> <p>We will continue to perform basic repair and maintenance on our boats. Additional training will go to the new deputy this winter on boat maintenance. We would like to get additional training in Rotax / Seadoo maintenance so that we can do our own maintenance on our PWC and Boat with these engine and pumps.</p>
Waterway Markers	<p>Expectation: Map and track OSMB-funded or approved waterway markers, maintain and confirm locations as per ORS, OAR, safety and informational requirements, maintain inventory.</p> <p>We currently maintain and place about 20 buoys on our waterways.</p>

Hazard Mitigation	Expectation: Identify and respond to extraordinary waterway hazards through coordination with OSMB.
	We will continue to clear waterway hazards using Sheriff's Office resources. If a hazard is unable to be cleared we will reach out to OSMB for assistance.
Abandoned Boats	Expectation: Identify, assess, mitigate and investigate as appropriate. Coordinate with OSMB Abandoned Vessel Program manager.
	We do not have any abandoned boats currently in our property room but as these come in we will work with OSMB to dispose of these boats.
Education	Expectation 1: Plan and implement public outreach strategies that teach public basic on-water safety skills. Expectation 2: Provide directly or through partners equivalency exam opportunities in your county.
	Clackamas County works with several schools of all age levels throughout the year to educate water safety. We also attend meeting with different adult groups to talk about boating safety. We do provide equivalence exams when requested.
Trailing/Travel	Expectation: Note necessary trailering and traveling times specific to your AOR.
	Several lakes in the county have to have a boat trailered to them. Some are as long as a 2 hour commute. We pick route to and from these lakes so that other waterway can be checked and patrol at the same time. We have boats inside boathouses on both the upper and lower Willamette River.
Accident Investigation	Expectation: Follow investigation protocols. Notify Boat Accident Investigation Team of fatal or serious accidents. Fully evaluate for BUll. Complete reports within timeframe.
	Deputy Belmont has been trained in boat accident investigation and we also have a accident reconstruction team at the Sheriff's Office if needed.
Administrative	Expectation: Office duties required for program operations.
	Most administrative duties are completed by the Sergeant but some are done by the deputies. Although administrative duties are time consuming and necessary at the Clackamas County Marine program we will attempt to do shore or river patrol everyday.
HINS/Livery/Moorage Checks	Expectation: Provide HIN inspections as requested; inspect liveries annually for records compliance; check moorages annually to ensure registration compliance.
	We currently schedule HIN's on a regular basis and do livery and moorage checks several times a year depending on the need.

**Note: Programs are monitored for Road Patrol Assistance and other non-marine activities. Hours should be incidental to program. Also, avoid non-marine operations that cause overtime hours to be charged to marine funding.*

Boating Safety Program Proposed Costs



County/Agency: Clackamas County Sheriff's Office FY 2019-20

Allocation (some may not apply)	OSMB	County/Agency Contribution
LE Allocation:	\$411,623.00	
Boat Allocation:		
Special Emphasis:		
Total:	\$411,623.00	\$0.00
Proposed Program Costs:		
	OSMB	County/Agency Contribution
1. Personnel (Must match totals on Form A)	\$411,623.00	\$229,306.60
2. Operations and Maintenance (Must match totals on Form B)	\$0.00	\$159,735.00
3. Boat		389,041.60
4. Total direct Proposed Program Cost (1+2+3, should equal Total in above section)	\$411,623.00	\$382,115.60

County/Agency Authorized Representative:

Angela Brandenburg
Signature

4/10/19
Date

Angela Brandenburg
Typed Name

503-655-8218
Telephone

Boating Safety Program



Proposed Personnel Costs – Form A

Note: “# of Hours” equals staff time dedicated to marine program. This may include overhead such as personal leave but should be proportional to their position (2080 hrs is full time). Note that total hours should be consistent with combined “Patrol” and “Program” hours on page 1.

County/Agency: Clackamas County Sheriff's FY 2019-20

Employee Compensation				Compensation		
Name	Title	# of Hours	Cost per Hour	Total	OSMB	County/ Agency Cash Contribution
1. Full Time Supervisor	Sergeant	2,080.00	\$86.12	\$179,129.60	\$128,000.00	\$51,129.60
2. Full Time Deputy	Deputy	2,080.00	\$70.30	\$146,224.00	\$120,000.00	\$26,224.00
3. Full Time Deputy	Deputy	2,080.00	\$70.30	\$146,224.00	\$120,000.00	\$26,224.00
4. 6 month Full Time Deputy	Seasonal Deputy	1,040.00	\$70.30	\$73,112.00	\$23,623.00	\$49,489.00
5. Seasonal PGE Contract Deputy	Seasonal Deputy	400.00	\$36.00	\$14,400.00	\$0.00	\$14,400.00
6. Marine Service Officer 1	MSO	600.00	\$16.60	\$9,960.00	\$0.00	\$9,960.00
7. Marine Service Officer 2	MSO	600.00	\$16.60	\$9,960.00	\$0.00	\$9,960.00
8. Marine Service Officer 3	MSO	600.00	\$16.60	\$9,960.00	\$0.00	\$9,960.00
9. Marine Service Officer 4	MSO	600.00	\$16.60	\$9,960.00	\$0.00	\$9,960.00
10.				\$0.00		
11.				\$0.00		
12.				\$0.00		
13.				\$0.00		
14.				\$0.00		
15.				\$0.00		
16.				\$0.00		
17.				\$0.00		
18.				\$0.00		
19.				\$0.00		
20.				\$0.00		
21. Sub-Total (lines 1 thru 20)		10,080.00		\$598,929.60	\$391,623.00	\$207,306.60
22. Overtime (cannot exceed 5% of OSMB's amount on line 21)					\$20,000.00	\$22,000.00
23. Total Proposed Personnel Costs (lines 21 + 22)					\$411,623.00	\$229,306.60

Boating Safety Program Proposed Operations & Maintenance Costs – Form B



County/Agency: Clackamas County Sheriff  FY 2019-20

Operating Supplies/Maintenance/Training Costs	Actual Expenditures		
	Total	OSMB	County/ Agency Cash Contrib.
A. Fuel: Vehicle 9,000.00 gallons @ \$ \$3.00 per gallon Boat 6,000.00 gallons @ \$ \$3.00 per gallon <div style="text-align: right;">Subtotal of A:</div>	\$27,000.00 \$18,000.00 \$45,000.00	\$0.00	\$27,000.00 \$18,000.00 \$45,000.00
B. Vehicle Lease			
C. Moorage	\$8,220.00	\$0.00	\$8,220.00
D. Expendable Supplies – (\$500 max/each item) specify: 1. Materials and Services 2. 3. 4. <div style="text-align: right;">Subtotal of D:</div>	\$29,286.00 \$29,286.00	\$0.00	\$29,286.00 \$29,286.00
E. Maintenance – Refer to your 19-20 maintenance service plan, enter data below: Identify by OR # and make: 1. Total Maintenance budget for all boats 2. 3. 4. 5. 6. <div style="text-align: right;">Subtotal of E:</div>	\$22,895.00 \$22,895.00	\$0.00	\$22,895.00 \$22,895.00
F. Insurance – (specify Insurance Company & policy #): Hartford Fire Insurance Policy #520MKA7840	\$15,111.00	\$0.00	\$15,111.00
G. Non-OSMB Training – specify: 1. 2. 3. 4. <div style="text-align: right;">Subtotal of G:</div>	\$0.00	\$0.00	\$0.00

H. Training Attending– specify:			
1. Drift: Total Training budget for Marine Board Training	\$6,155.00	\$0.00	\$6,155.00
2. Jet:			
3. Academy:			
4. Other:			
Subtotal of H:	\$6,155.00	\$0.00	\$6,155.00
I. Other – specify:			
1. County Allocation Charges	\$33,068.00	\$0.00	\$33,068.00
2.			
3.			
4.			
5.			
6.			
7.			
8.			
9.			
10.			
Subtotal of I:	\$33,068.00	\$0.00	\$33,068.00
Subtotal:	\$159,735.00	\$0.00	\$159,735.00



Clackamas County 2019 Maintenance Service Plan

Maintenance Budget (*inputted in Action Plan, Form B, Section E*)

When estimating the maintenance budget it is important to review the following:

- 1) Current engine hours
- 2) Maintenance item, service, and interval charts provided in this plan
- 3) Projected platform usage for the budget period
- 4) Actual maintenance costs from previous years
- 5) Maintenance records in the OMLEAR database under *Reports: Patrol Boat Service History*

The marine board is requiring all programs designate a **Maintenance Lead**. The **Maintenance Lead** will ensure all required annual maintenance is completed and recorded. Looking at maintenance records for all counties, there is a significant amount of regular maintenance that is not being reported on and in some cases not being completed.

The **Maintenance Lead** will be the point of contact for the marine board to effectively communicate about the service plans and provide best maintenance practices. There will be a specific meeting held during pre-season for **Maintenance Leads** which will provide additional resources and planning to complete the required maintenance.

If you have questions about this maintenance service plan or need help preparing your maintenance budget please contact **Brian Paulsen** at **503-378-2610** or email: brian.paulsen@oregon.gov. The following are required maintenance items with service intervals based on marine law enforcement use.

2019 River Wild – OR 740 XCX

Engine - Propulsion: Rotax 250 ECT Supercharged 240 HP

ITEM	SERVICE	INTERVAL
Engine Oil & Filter	CHANGE	100 HRS - 1 YR
Anti-Corrosion Spray	LUBRICATE	1 YR
Supercharger Clutch	CHANGE	200 HRS
Exhaust System	CLEAN - FLUSH	1 YR
Coolant Hoses	INSPECT	1 YR
Engine Coolant	CHANGE	300 HRS - 5 YRS
Fuel Tanks & Hoses	INSPECT	1 YR
Spark Plugs	REPLACE	200 HRS - 2 YRS
Ignition Coil Seals	LUBRICATE	1 YR
Steering Components	INSPECT	1 YR
Propulsion System	INSPECT - LUBE	1 YR
Sacrificial Anode	INSPECT	1 YR
Trailer Brakes and Bearings	INSPECT	1 YR
Trailer Tires	INSPECT	1 YR



2016 River Wild – OR 725 XCX

Engine - Propulsion: Yanmar 8 LV Diesel – Hamilton HJ241

ITEM	SERVICE	INTERVAL
Engine Oil & Filter	CHANGE	100 HRS
Engine Coolant	CHANGE	300 HRS - 5 YRS
Valve Adjustment	SERVICE	250 HRS
Fuel Injection System	SERVICE	500 HRS
Fuel Filter	REPLACE	250 HRS
Fuel - Water Separator	DRAIN	50 HRS
Belts	INSPECT	1 YR
Heat Exchanger	INSPECT - CLEAN	1 YR
Zinc Anodes	INSPECT - CLEAN	1 YR
Reverse Cylinder Shaft	GREASE	100 HRS
Main Jet Thrust Bearing	GREASE	10 HRS
Jet Pump Tear-Down	INSPECT - CLEAN	1 YR
Trailer Brakes and Bearings	INSPECT	1 YR
Trailer Tires	INSPECT	1 YR

2016 Sea Doo – OR 724 XCX

Engine - Propulsion: Rotax Supercharged 300 HP

ITEM	SERVICE	INTERVAL
Engine Oil & Filter	CHANGE	100 HRS - 1 YR
Anti-Corrosion Spray	LUBRICATE	1 YR
Supercharger Clutch	CHANGE	200 HRS
Exhaust System	CLEAN - FLUSH	1 YR
Coolant Hoses	INSPECT	1 YR
Engine Coolant	CHANGE	300 HRS - 5 YRS
ITC Lever	LUBRICATE	1 YR
iBR Lever	LUBRICATE	1 YR
Fuel Tank & Hoses	INSPECT	1 YR
Spark Plugs	REPLACE	200 HRS - 2 YRS
Ignition Coil Seals	LUBRICATE	1 YR
Steering Components	INSPECT	1 YR
Propulsion System	INSPECT - LUBE	1 YR
Sacrificial Anode	INSPECT	1 YR
Trailer Bearings & Tires	INSPECT	1 YR



2016 Sea Doo – OR 723 XCX

Engine - Propulsion: Rotax Supercharged 300 HP

ITEM	SERVICE	INTERVAL
Engine Oil & Filter	CHANGE	100 HRS - 1 YR
Anti-Corrosion Spray	LUBRICATE	1 YR
Supercharger Clutch	CHANGE	200 HRS
Exhaust System	CLEAN - FLUSH	1 YR
Coolant Hoses	INSPECT	1 YR
Engine Coolant	CHANGE	300 HRS - 5 YRS
iTC Lever	LUBRICATE	1 YR
iBR Lever	LUBRICATE	1 YR
Fuel Tank & Hoses	INSPECT	1 YR
Spark Plugs	REPLACE	200 HRS - 2 YRS
Ignition Coil Seals	LUBRICATE	1 YR
Steering Components	INSPECT	1 YR
Propulsion System	INSPECT - LUBE	1 YR
Sacrificial Anode	INSPECT	1 YR
Trailer Bearings & Tires	INSPECT	1 YR

2016 Bad Cat – OR 926 XX

Engine - Propulsion: cataraft w/o motor

ITEM	SERVICE	INTERVAL
UV Coating - 303 AP	APPLY	1 YR
Valve Gaskets	INSPECT - CLEAN	1 YR
Frame & Straps	INSPECT	1 YR
Anchor Rope	INSPECT	1 YR
Anchor Pulley System	INSPECT - LUBE	1 YR
Oars and Oar Locks	INSPECT	1 YR

2016 Bad Cat – OR 927 XX

Engine - Propulsion: cataraft w/o motor

ITEM	SERVICE	INTERVAL
UV Coating - 303 AP	APPLY	1 YR
Valve Gaskets	INSPECT - CLEAN	1 YR
Frame & Straps	INSPECT	1 YR
Anchor Rope	INSPECT	1 YR
Anchor Pulley System	INSPECT - LUBE	1 YR
Oars and Oar Locks	INSPECT	1 YR



2014 River Wild – OR 497 XCX

Engine - Propulsion: Yanmar 6 LP Diesel - Hamilton HJ241

ITEM	SERVICE	INTERVAL
Engine Oil & Filter	CHANGE	100 HRS
Engine Coolant	CHANGE	300 HRS - 5 YRS
Valve Adjustment	SERVICE	250 HRS
Fuel Injection System	SERVICE	500 HRS
Fuel Filter	REPLACE	250 HRS
Fuel - Water Separator	DRAIN	50 HRS
Belts	INSPECT	1 YR
Heat Exchanger	INSPECT - CLEAN	1 YR
Zinc Anodes	INSPECT - CLEAN	1 YR
Reverse Cylinder Shaft	GREASE	100 HRS
Main Jet Thrust Bearing	GREASE	10 HRS
Jet Pump Tear-Down	INSPECT - CLEAN	1 YR
Trailer Brakes and Bearings	INSPECT	1 YR
Trailer Tires	INSPECT	1 YR

2009 Thunder Jet – OR 402 XCX

Engine - Propulsion: Mercury Sport Jet 200 HP

ITEM	SERVICE	INTERVAL
Bilge Siphon Hose	INSPECT - CLEAN	10 HRS
Drive Housing Lubricant	REPLACE	1 YR
Stator Assembly Lubricant	REPLACE	1 YR
Fuel Filter (In-Line)	REPLACE	1 YR
Fuel Water Separator	REPLACE	1 YR
Compressor Air Filter	REPLACE	1 YR
Spark Plugs	INSPECT	100 HRS
Belts	INSPECT	1 YR
Belt Tensioner	LUBE	1 YR
Impeller Shaft	GREASE	1 YR
Zinc Anodes	INSPECT - CLEAN	1 YR
Reverse Gate Bushings	INSPECT	1 YR
Cooling System	FLUSH	1 YR
Trailer Brakes and Bearings	INSPECT	1 YR
Trailer Tires	INSPECT	1 YR



2009 Sotar

Engine - Propulsion: raft w/o motor

ITEM	SERVICE	INTERVAL
UV Coating - 303 AP	APPLY	1 YR
Valve Gaskets	INSPECT - CLEAN	1 YR
Frame & Straps	INSPECT	1 YR
Anchor Rope	INSPECT	1 YR
Anchor Pulley System	INSPECT - LUBE	1 YR
Oars and Oar Locks	INSPECT	1 YR

2007 North River – OR 384 XCX

Engine - Propulsion: Marine Power 6.0L – Hamilton HJ212

ITEM	SERVICE	INTERVAL
Engine Oil & Filter	CHANGE	50 HRS
Engine Coolant	CHANGE	2 YRS
Spark Plugs	INSPECT - CLEAN	1 YR
Fuel Filter (G Force)	REPLACE	1 YR
Flame Arrestor	CLEAN	100 HRS
Belts	INSPECT	1 YR
Spark Plug Wires	INSPECT	1 YR
Breather Hoses	CLEAN	1 YR
Starter Bendix	GREASE	1 YR
Heat Exchanger	INSPECT - CLEAN	1 YR
Zinc Anodes	INSPECT - CLEAN	1 YR
Main Jet Thrust Bearing	GREASE	10 HRS
Annual Pump Tear-Down	INSPECT - CLEAN	1 YR
Trailer Brakes and Bearings	INSPECT	1 YR
Trailer Tires	INSPECT	1 YR

2004 Sotar

Engine - Propulsion: cataraft w/o motor

ITEM	SERVICE	INTERVAL
UV Coating - 303 AP	APPLY	1 YR
Valve Gaskets	INSPECT - CLEAN	1 YR
Frame & Straps	INSPECT	1 YR
Anchor Rope	INSPECT	1 YR
Anchor Pulley System	INSPECT - LUBE	1 YR
Oars and Oar Locks	INSPECT	1 YR



CHRISTINA L. McMAHAN
DIRECTOR

JUVENILE DEPARTMENT
JUVENILE INTAKE AND ASSESSMENT CENTER
2121 KAEN ROAD | OREGON CITY, OR 97045

September 26, 2019

Board of County Commissioners
Clackamas County

Members of the Board:

Approval to Accept Award and Sign Grant Agreement for the Oregon Criminal Justice Commission Specialty Court Grant Program

Purpose/ Outcomes	This grant awards \$63,294.00 for the biennium to enhance the services of our Juvenile Drug Treatment Court, which includes supporting .25 FTE to provide services to increase the successful completion of youth in the Juvenile Drug Treatment Court program and reduce barriers
Dollar Amount and Fiscal Impact	This grant award is for \$63,294.00 with no match of County General Fund attached to grant award
Funding Source	2019-2021 Oregon Criminal Justice Commission
Duration	Effective July 1, 2019 – June 30, 2021
Previous Board Action	The 2017-2019 grant award was accepted and signed by the County Chair on September 14, 2017, Agenda Item E-1, the approval to apply for this grant was signed by the County Administrator on May 23, 2019, Agenda Item E.2.
Strategic Plan Alignment	1. Provide interventions, compliance monitoring, and restorative services to youth so they can be accountable to victims and the community to repair the harm they have caused 2. Ensure safe, healthy and secure communities.
Counsel Review	September 12, 2019
Contact Person	Ed Jones, Juvenile Dept. Administrative Services Manager – 503-650-3169
Contract No.	SC-21-007

BACKGROUND:

The Juvenile Department received an award letter and grant agreement for a renewal to the Specialty Court Grant provided through the Oregon Criminal Justice Commission. This grant awards \$63,294.00 in funding to enhance the services of our Juvenile Drug Treatment Court for two years, ending June 30, 2021.

RECOMMENDATION:

Staff recommends the Board approval of this grant agreement.

Respectfully submitted,

Christina L. McMahan, Director
Juvenile Department

For more information on this issue or copies of attachments,
please contact Lisa Krzmarzick at 503-655-8788

CRIMINAL JUSTICE COMMISSION
SPECIALTY COURTS GRANT PROGRAM
GRANT AGREEMENT

885 Summer Street NE
Salem, OR 97301

This Grant Agreement (“Agreement”) is made and entered into by and between the **State of Oregon**, acting by and through its Criminal Justice Commission, hereafter referred to as “CJC,” and **Clackamas County Juvenile Department**, hereinafter referred to as “Grantee,” and collectively referred to as the “Parties.” This Agreement shall become effective on the later of July 1, 2019 or the date when this Agreement is fully executed and approved as required by applicable law.

1. Grant. In accordance with the terms and conditions of this Agreement, CJC shall provide Grantee an amount not to exceed **\$63,294.00** (the “Grant Funds”) to assist Grantee in implementing the project described in Exhibits A and B (the “Project”) during the period beginning on the Project Start Date and ending on the Project End Date (the “Project Period”), as those dates are specified in Exhibit A. The Grant Funds may be used by Grantee solely for Eligible Costs (as described in Section 4.a) incurred by Grantee within the line items of the Project Budget (set forth in Exhibit A) during the Project Period. CJC’s obligation to disburse Grant Funds under this Agreement shall end 45 days after the Project End Date.

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

- Exhibit A: **Project Description and Budget**
- Exhibit B: **Project Goals and Objectives**
- Exhibit C: **Subagreement Insurance Requirements**

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

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

a. Progress Reports. Grantee shall submit to CJC reports each quarter during Project implementation as specified in Exhibit B as well as such other quarterly reports and information on the Project as CJC may reasonably request (collectively, “Progress Reports”). Progress Reports must be received by CJC no later than October 15, January 15, April 15 and July 15 for the prior calendar quarter. Additionally, Grantee shall submit to CJC no later than January 15 an annual Progress Report for the prior year that describes, in a narrative fashion, Grantee’s progress in meeting the Project’s objectives and any remedial actions necessary if

those objectives have not been met in any respect. Grantee must receive prior approval from CJC to submit a Progress Report after its due date.

b. Requests for Reimbursement. Grantee shall submit to CJC a Request for Reimbursement (“RFR”) each quarter for reimbursement of Eligible Costs incurred during the prior calendar quarter. Each RFR must include supporting documentation for all Eligible Costs for which Grantee is seeking reimbursement. RFRs must be received by CJC no later than October 15, January 15, April 15, and July 15; provided, however, that the final RFR must be submitted no later than the earlier of 30 days after completion of the Project or 15 days after the Project End Date. Failure to submit an RFR by the due date could result in a loss of reimbursement for costs incurred during that quarter. Grantee must receive prior approval from CJC to submit an RFR after its due date.

4. Disbursement and Recovery of Grant Funds.

a. Disbursement Generally. Subject to Section 4.b, CJC shall reimburse, on a quarterly basis and within the line items of the Project Budget, Eligible Costs incurred in carrying out the Project, up to the amount of Grant Funds specified in Section 1. Reimbursements shall be made by CJC within 30 days of CJC’s approval of a RFR. “Eligible Costs” are the necessary and reasonable costs incurred by Grantee (or a subgrantee or subrecipient under a Subagreement) during the Project Period in implementation of the Project and that are allocable thereto, as further described in 2 CFR Part 200, Subpart E (Cost Principles), and that are not excluded from reimbursement by CJC, either by this Agreement or by exclusion as a result of financial review or audit, subject to the following requirements and limitations:

- i.** Reimbursement rates for travel expenses shall not exceed those allowed by the Oregon travel policy, available at <http://www.oregon.gov/das/Financial/Acctng/Pages/Travel.aspx>. Requests for reimbursement for travel must be supported with a detailed statement identifying the person who traveled, the purpose of the travel, the times, dates, and places of travel, and the actual expenses or authorized rates incurred. CJC will reimburse travel expenses only after the travel actually occurs. By way of example only, CJC will not reimburse the costs of an airplane ticket unless and until the ticketed air travel has actually occurred.
- ii.** When requesting reimbursement for equipment costing over \$5,000, the Grantee must provide a description of the equipment, purchase price, date of purchase, and identifying numbers if any.

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

- i. CJC has received funding, appropriations, limitations, allotments or other expenditure authority sufficient to allow CJC, in the exercise of its reasonable administrative discretion, to make the disbursement.
- ii. Grantee is in compliance with the terms of this Agreement.
- iii. Grantee's representations and warranties set forth in Section 5 hereof are true and correct on the date of disbursement with the same effect as though made on the date of disbursement.
- iv. All Progress Reports due on or before the date of disbursement have been completed and submitted to CJC.
- v. Grantee has provided to CJC a RFR in accordance with Section 3.b. hereof.

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

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

b. Binding Obligation. This Agreement has been duly executed and delivered by Grantee and constitutes a legal, valid and binding obligation of Grantee, enforceable in accordance with its terms subject to the laws of bankruptcy, insolvency, or other similar laws affecting the enforcement of creditors' rights generally.

c. No Solicitation. Grantee's officers, employees, and agents shall neither solicit nor accept gratuities, favors, or any item of monetary value from contractors, potential contractors, or parties to subagreements. No member or delegate to the Congress of the United States or State of Oregon employee shall be admitted to any share or part of this Agreement or any benefit arising therefrom.

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

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

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

6. Records Maintenance and Access; Audit.

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

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

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

d. Audits. If Grantee expends \$750,000 or more in Federal funds (from all sources) in its fiscal year, Grantee shall have a single organization-wide audit conducted in accordance with the 2 CFR Part 200, Subpart F (Audit Requirements). Copies of all audits must be submitted to CJC within 30 days of completion. If Grantee expends less than \$750,000 in its fiscal year in Federal funds, Grantee is exempt from Federal audit requirements for that year. Records must be available for review or audit by appropriate officials as provided in Section 6.a herein.

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

7. Grantee Subagreements and Procurements

a. Subagreements. Grantee may enter into agreements with subgrantees and subrecipients ("Subagreements") for implementation of portions of the Project.

i. Each Subagreement must be in writing executed by Grantee and must incorporate and pass through all of the applicable requirements of this Agreement to the other party or parties to the Subagreement, including but not limited to the requirement to comply with 2 CFR Part 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards), as applicable. Use of a Subagreement does not relieve Grantee of its responsibilities under this Agreement.

ii. Grantee shall notify CJC of each Subagreement and provide CJC with a copy of a Subagreement upon request by CJC. Any material breach of a term or condition of a Subagreement relating to Grant Funds provided under this Agreement must be reported by Grantee to CJC within ten (10) days of its discovery.

b. Subagreement indemnity; insurance.

Each Grantee Subagreement shall require each other party to such Subagreement, that is not a unit of local government as defined in ORS 190.003, or a unit of state government as defined in ORS 174.111, to indemnify, defend, save and hold harmless the CJC and its officers, employees and agents from and against any and all claims, actions, liabilities, damages, losses, or expenses, including attorneys' fees, arising from a tort, as now or hereafter defined in ORS 30.260, caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of the other party to the Subagreement or any of such party's officers, agents, employees or contractors ("Claims"). It is the specific intention of the Parties that CJC shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the CJC, be indemnified by the other party to the Subagreement from and against any and all Claims.

Any such indemnification shall also provide that neither the other party to such Subagreement nor any attorney engaged by such party shall defend a Claim in the name of the State of Oregon

or an agency of the State of Oregon, nor purport to act as legal representative of the State of Oregon or any of its agencies, without the prior written consent of the Oregon Attorney General. The State may, at any time at its election, assume its own defense and settlement in the event that it determines that the other party to such Subagreement is prohibited from defending State or that such other party is not adequately defending State's interests, or that an important governmental principle is at issue or that it is in the best interests of State to do so. State reserves all rights to pursue claims it may have against the other party to such Subagreement if State elects to assume its own defense.

Grantee shall require each other party to each of its Subagreements, that is not a unit of local government as defined in ORS 190.003, or a unit of state government as defined in ORS 174.111, to obtain and maintain insurance of the types and in the amounts provided in Exhibit C to this Agreement.

c. Procurements.

i. Grantee shall make purchases of any equipment, materials, or services for the Project under procedures that comply with Oregon law, including all applicable provisions of the Oregon Public Contracting Code and rules, as well as the requirements of 2 CFR §§ 200.317-326, as applicable.

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

iii. The Grantee shall be alert to organizational conflicts of interest or non-competitive practices among vendors that may restrict or eliminate competition or otherwise restrain trade. A vendor that develops or drafts specifications, requirements, statements of work, or Requests for Proposals (RFP) for a proposed procurement shall be excluded from bidding or submitting a proposal to compete for the award in such procurement. A request for a waiver of this restriction must be submitted to and approved by CJC in advance and in writing.

8. Default. Grantee shall be in default under this Agreement upon the occurrence of any of the following events:

a. Grantee fails to perform, observe or discharge any of its covenants, agreements or obligations set forth herein; or

b. Any representation, warranty or statement made by Grantee herein or in any documents or reports relied upon by CJC to monitor implementation of the Project, the use of the Grant Funds or the performance by Grantee is untrue in any material respect when made.

9. Remedies upon Default. If Grantee's default is not cured within 30 calendar days of written notice thereof to Grantee from CJC or such longer period as CJC may authorize in its sole discretion, CJC may pursue any remedies available under this Agreement, at law or in equity. Such remedies include, but are not limited to, termination of this Agreement as provided in Section 10.a.ii, suspension of further disbursements of Grant Funds, recovery of Grant Funds, and declaration of ineligibility for the receipt of future awards from CJC.

10. Termination

a. Termination by CJC. CJC may terminate this Agreement upon thirty (30) days advance written notice of termination to Grantee. In addition, CJC may terminate this Agreement effective upon delivery of written notice of termination to Grantee, or at such later date as may be established by CJC in such written notice, if:

- i. Grantee fails to implement the Project during the Project Period or commencement or continuation of the Project by Grantee is, for any reason, rendered improbable, impossible, or illegal; or
- ii. Grantee is in default under this Agreement and has failed to cure the default within the time period specified in Section 9; or
- iii. Grantee takes an action without the approval of CJC that, under the provisions of this Agreement, requires the approval of CJC; or
- iv. CJC fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow CJC, in the exercise of its reasonable administrative discretion, to continue to make payments under this Agreement; or
- v. Federal or state laws, rules, regulations or guidelines are modified or interpreted in such a way that the Project is no longer allowable or no longer eligible for funding under this Agreement; or
- vi. The Project would not produce results commensurate with the further expenditure of funds.

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

- i. After conferring with CJC, Grantee has determined that the requisite local funding to continue the Project is unavailable to Grantee or Grantee is unable to continue implementation of the Project as a result of circumstances not reasonably

anticipated by Grantee at the time it executed this Agreement and that are beyond Grantee's reasonable control; or

ii. Federal or state laws, rules, regulations or guidelines are modified or interpreted in such a way that the Project is no longer allowable or no longer eligible for funding under this Agreement.

c. **Effect of Termination.** Upon termination of this Agreement, CJC may end all further disbursements of Grant Funds; provided, however, that if this Agreement is terminated under Sections 10.a.iv, 10.a.v, 10.a.vi, or 10.b, CJC will disburse Grant Funds to cover Eligible Costs incurred by Grantee prior to termination that CJC would otherwise be required to reimburse under the terms and conditions of this Agreement had the Agreement not been terminated. Termination of this Agreement shall not affect Grantee's obligations under this Agreement or CJC's right to enforce this Agreement against Grantee in accordance with its terms, with respect to Grant Funds actually received by Grantee or with respect to portions of the Project actually implemented. Specifically, but without limiting the generality of the preceding sentence, Sections 6 and 11 shall survive termination of this Agreement.

11. GENERAL PROVISIONS

a. **Contribution.** If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 ("Third Party Claim") against CJC or Grantee relating to this Agreement or the Project and 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 contribution obligation with respect to the Third Party Claim.

With respect to a Third Party Claim for which CJC is jointly liable with Grantee (or would be if joined in the Third Party Claim), CJC shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by Grantee in such proportion as is appropriate to reflect the relative fault of the CJC on the one hand and of the Grantee on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of CJC on the one hand and of Grantee on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. CJC's contribution amount in any instance is capped to the same extent it would have been capped

under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if CJC had sole liability in the proceeding.

With respect to a Third Party Claim for which Grantee is jointly liable with CJC (or would be if joined in the Third Party Claim), Grantee shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by CJC in such proportion as is appropriate to reflect the relative fault of Grantee on the one hand and of CJC on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of Grantee on the one hand and of CJC on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. Grantee's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if it had sole liability in the proceeding.

b. Dispute Resolution. The Parties shall attempt in good faith to resolve any dispute arising out of this Agreement. In addition, the Parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation.

c. Amendments; budget changes. This Agreement may be amended only by a written instrument signed by both Parties and approved as required by applicable law. Grantee may propose changes to the Project Budget in Exhibit A that do not increase the total budget amount. If Grantee's proposed changes do not alter any line item in the Project Budget by more than ten percent, the proposed changes to the Project Budget will be effective upon written approval by CJC delivered to Grantee as provided in Section 11.f. All other changes to the Project Budget must be implemented through a formal amendment to this Agreement before the changes become effective.

d. Duplicate Payment. Grantee is not entitled to compensation or any other form of duplicate, overlapping or multiple payments for costs reimbursed under this Agreement from any agency of the State of Oregon or the United States of America or any other party, organization or individual.

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

Grantee acknowledges and agrees that the Federal Government, absent express written consent by the Federal Government, is not a party to this Agreement and shall not be subject to any

obligations or liabilities to the Grantee or any other person pertaining to any matter resulting from the this Agreement.

f. Notices. Except as otherwise expressly provided in this Agreement, any notices to be given by a Party to the other Party hereunder shall be given in writing by personal delivery, facsimile, email, or mailing the same by registered or certified mail, postage prepaid, to Grantee Contact or CJC Contact at the address or number set forth on the signature page of this Agreement, or to such other addresses or numbers as either Party may hereafter indicate pursuant to this Section 11.f. Any notice personally delivered shall be deemed to be given when actually delivered. Any notice delivered by facsimile shall be deemed to be given when receipt of the transmission is generated by the transmitting machine, and to be effective against CJC, such facsimile transmission must be confirmed by telephone notice to CJC Contact. Any notice by email shall be deemed to be given when the recipient of the email acknowledges receipt of the email. Any notice by registered or certified mail shall be deemed to be given three (3) days after mailing. The parties also may communicate by telephone, regular mail or other means, but such communications shall not be deemed notices under this Section unless receipt by the other Party is expressly acknowledged in writing by the receiving party.

g. Work Product. To the extent it has the necessary rights, Grantee hereby grants to CJC a non-exclusive, irrevocable, perpetual, royalty-free, license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display for governmental purposes, all documents, reports and works of authorship created, produced or obtained as part of or in connection with the Project ("Work Product"). Grantee shall deliver copies of Work Product to CJC upon request. In addition, if applicable law requires that CJC or Grantee grant to the United States a license to any intellectual property created, produced or obtained as part of or in connection with the Project, or if applicable law requires that the CJC or the United States own such intellectual property, then Grantee shall execute such further documents and instruments as CJC may reasonably request in order to make any such grant or to assign ownership in the intellectual property to the United States or CJC.

h. Governing Law, Consent to Jurisdiction.

i. This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law.

ii. Any claim, action, suit or proceeding (collectively, "Claim") between CJC (and/or any other agency or department of the State of Oregon) and Grantee that arises from or relates to this Agreement must be brought and conducted solely and exclusively within the Circuit Court of Marion County for the State of Oregon (unless Oregon law requires that it be brought and conducted in another Oregon county). Grantee hereby consents to the exclusive jurisdiction of such court, waives any objection to venue, and waives any claim that such form is an inconvenient forum.

iii. Notwithstanding Section 11.h.ii above, if a Claim must be brought in a federal forum, then it must be brought and adjudicated solely and exclusively within the United States District Court for the District of Oregon. This Section 11.h.iii applies to a Claim brought against CJC or any other agency or department of the State of Oregon only to the extent Congress has appropriately abrogated the State of Oregon's sovereign immunity and is not consent by the State of Oregon to be sued in federal court. This Section 11.h.iii is also not a waiver by the State of Oregon of any form of defense or immunity, including but not limited to sovereign immunity and immunity based on the Eleventh Amendment to the Constitution of the United States.

i. Compliance with Law. Grantee shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to the Agreement or to the implementation of the Project, including without limitation 2 CFR Part 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards) and the federal laws, rules and regulations described in Exhibit D, as applicable. Without limiting the generality of the foregoing, Grantee expressly agrees to comply with (i) Title VI of Civil Rights Act of 1964; (ii) Title V and Section 504 of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 and ORS 659A.142; (iv) all regulations and administrative rules established pursuant to the foregoing laws; and (v) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.

j. Insurance; Workers' Compensation. All employers, including Grantee, that employ subject workers who provide services in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. Employer's liability insurance with coverage limits of not less than \$500,000 must be included. Grantee shall ensure that each of its subgrantees and subrecipients complies with these requirements.

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

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

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

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

The signatures of the parties follow on the next page.

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

Approved by Grantee

Signature of Grantee Date

Name/Title

Federal Tax ID Number

State Tax ID Number

Approved by Criminal Justice Commission

Michael Schmidt, Executive Director Date

Approved for Legal Sufficiency

Approved for Legal Sufficiency by AAG Sam Zeigler by email dated 7/9/19

CJC Contact
CJC Grant Administrator
Joanna Robert
885 Summer St. NE
Salem, OR 97301-2524
Joanna.D.Robert@oregon.gov
(503) 378-2655

Grantee Contact
Ed Jones
2051 Kaen Rd Suite
Oregon City, OR 97045
EJones@clackamas.us
503-650-3169

EXHIBIT A

Project Description and Budget

The goal of the Criminal Justice Commission's *Specialty Court Grant Program* is to financially support Oregon specialty courts. Oregon specialty courts are those courts, programs and systems identified in Oregon Laws 2013, Chapter 649, Section 39. The specialty courts are designed to address the root causes of criminal activity by offering non-violent offenders an alternative to incarceration. Oregon's best practice standards applicable to the specialty courts are available at <http://www.oregon.gov/cjc/specialtycourts/Documents/family/OregonTreatmentCourtStandards.pdf> and are incorporated herein by reference ("Best Practices").

This Grant Agreement funds the **Clackamas County Juvenile Drug Court** to address the needs of juveniles who are involved with the criminal justice system, with the goal of providing the opportunity to divert them from prison. Grantee shall administer the Grant Funds provided under this Grant Agreement to support the operation, substantially in accordance with the Best Practices, of the **Clackamas County Juvenile Drug Court**.

Project Start Date: July 1, 2019

GRANT #: SC-21-007

GRANTEE PROGRAM CONTACT: Ed Jones

EMAIL: EJones@clackamas.us

TELEPHONE: 503-650-3169

Project End Date: June 30, 2021

CFDA #: 16.738

GRANTEE FISCAL CONTACT: Marla Conser

EMAIL: marlacon@clackamas.us

TELEPHONE: 503-655-8342

BUDGET SUMMARY:

	Grant Funds Requested
Personnel	\$40,584.00
Contractual Personnel Services	\$0
Drug Testing	\$13,572.00
Medical Needs	\$0
Other Participant Supports	\$2,170.00
Sanction Costs	\$0
Training and Travel	\$6,968.00
Evaluation	\$0
Indirect Costs	\$0
Total	\$63,294.00

FUNDING BREAKDOWN

A	Total Project Cost	\$63,294.00
B	Federal Funds	\$0.00
C	Lottery Funds	\$0.00
D	General Funds	\$63,294.00
E	Other Funds	\$0.00

EXHIBIT B

Project Goals and Objectives

The goal of the Grant Program is to financially support specialty courts serving adults, juveniles, veterans, and families. Specialty courts have demonstrated positive cost-effective results for people struggling with substance use disorder through recidivism outcomes by way of interdisciplinary team collaboration, court-directed treatment, and compliance.

All Specialty Court Grant Program awards require recipients to submit progress reports quarterly through OJD's Specialty Court Case Management System (SCMS) <https://scms.oregon.gov> and CJC's grant administration website <https://cjc-grants.smapply.io/>. Awards also require recipients to upload federal progress reporting into the grant administration website as outlined below. Grantees shall complete and submit progress reports that contain all of the requested data.

1. SCMS CJC State Report

- a. All participant related tracking information in SCMS
- b. Complete for the quarter no later than the 15th of the month following the end of the quarter.

2. Semi-Annual Progress Report

- a. Court Name
- b. Court Type
- c. What is working well? (Narrative, 150 words)
- d. What is challenging? (Narrative, 150 words)
- e. The Specialty Court Grant Program funds are one-time funding that cannot be rolled over into future grant periods. At the end of the grant period any unspent funds are returned to Oregon's General Fund. What is the court's biggest risk to spending all of the grant dollars awarded? (Narrative, 50 words)
- f. What is the court doing to address any risks to spending all of the grant dollars awarded? (Narrative, 300 words)
- g. What is the court doing to address any barriers to maintaining monthly participant numbers at or near capacity? Capacity means the number of participants the program can serve at one time, regardless of phase. (Narrative, 150 words)
- h. If the court did not meet Oregon Specialty Court Standards, what is the court doing to improve? Please identify the standard and what work is being done to move towards meeting the standard.
- i. What does the court need technical assistance or support with from CJC? (Narrative, 150 words)

EXHIBIT C

Subagreement Insurance Requirements

Grantee shall require each other party to a Subagreement that is not a unit of local government as defined in ORS 190.003, or a unit of state government as defined in ORS 174.111, if any, to: i) obtain insurance specified under TYPES AND AMOUNTS and meeting the requirements under ADDITIONAL INSURED, "TAIL" COVERAGE, CERTIFICATES OF INSURANCE, and NOTIFICATION OF CHANGE OR CANCELLATION before the subgrantee performs under Subagreement, and ii) maintain the insurance in full force throughout the duration of the Subagreement. 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 CJC. Grantee shall not authorize a subgrantee to begin work under a Subagreement until the insurance is in full force. Thereafter, Grantee shall monitor continued compliance with the insurance requirements on an annual or more frequent basis. Grantee shall incorporate appropriate provisions in the Subagreements permitting it to enforce subgrantee 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 Subagreement as permitted by the Subagreement, or pursuing legal action to enforce the insurance requirements. In no event shall Grantee permit a subgrantee to work under a Subagreement when the Grantee is aware that the subgrantee is not in compliance with the insurance requirements.

TYPES AND AMOUNTS.

i. WORKERS COMPENSATION. Workers' Compensation Insurance as required by applicable workers' compensation laws for persons performing work under a Subagreement including Employers' Liability Insurance with limits not less than \$500,000 each accident.

ii. PROFESSIONAL LIABILITY

Required by CJC Not required by CJC.

Professional Liability Insurance covering any damages caused by an error, omission or negligent act related to the services to be provided under the Subagreement, in an amount not less than \$2,000,000 per occurrence. Annual aggregate limit shall not be less than \$4,000,000. If coverage is on a claims made basis, then either an extended reporting period of not less than 24 months shall be included in the Professional Liability Insurance coverage, or the subgrantee shall provide Tail Coverage as stated below.

iii. COMMERCIAL GENERAL LIABILITY.

Required by CJC Not required by CJC.

Commercial General Liability Insurance covering bodily injury, death, and property damage in a form and with coverages that are satisfactory to CJC. This insurance shall include personal injury liability, products and completed operations and contractual liability coverage for the indemnity provided under

the Subagreement. Coverage shall be written on an occurrence form basis in an amount of not less than \$1,000,000 per occurrence. Annual aggregate limit shall not be less than \$2,000,000.

iv. AUTOMOBILE LIABILITY.

Required by CJC Not required by CJC.

Automobile Liability Insurance covering all owned, non-owned and hired vehicles with a combined single limit of not less than \$1,000,000 for bodily injury and property damage.

ADDITIONAL INSURED. The Commercial General Liability insurance and Automobile Liability insurance must include the State of Oregon, CJC, and their officers, employees and agents as Additional Insureds but only with respect to the activities to be performed under the Subagreement. Coverage must be primary and non-contributory with any other insurance and self-insurance.

"TAIL" COVERAGE. If any of the required insurance is on a "claims made" basis and does not include an extended reporting period of at least 24 months, the subgrantee 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 Subagreement, for a minimum of 24 months following the later of : (i) the subgrantee's completion and Grantee's acceptance of all services required under the Subagreement or, (ii) the expiration of all warranty periods provided under the Subagreement.

CERTIFICATE(S) OF INSURANCE. Grantee shall obtain from the subgrantee a certificate(s) of insurance for all required insurance before the subgrantee performs under the Subagreement. The certificate(s) list the State of Oregon, its officers, employees and agents as a Certificate holder and as Additional Insured, specify that subgrantee shall pay for all deductibles, self-insured retention and self-insurance, if any, that all coverage shall be primary and non-contributory with any other insurance and self-insurance, and confirm that either an extended reporting period of at least 24 months is provided on all claims made policies or that tail coverage is provided. As proof of insurance, CJC has the right to request copies of the certificate(s) or insurance policies relating to the insurance requirements in this Agreement.

NOTICE OF CHANGE OR CANCELLATION. The subgrantee or its insurer must provide at least 30 days' written notice to Grantee and CJC before cancellation of, material change to, potential exhaustion of aggregate limits of, or non-renewal of the required insurance coverage(s).

INSURANCE REQUIREMENT REVIEW. Grantee agrees to periodic review of insurance requirements by CJC under this agreement and to provide updated requirements as mutually agreed upon by Grantee.



Nancy Bush

Director

Disaster Management
2200 Kaen Road
Oregon City, OR 97045

T 503-655-8378

clackamas.us

September 26, 2019

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of Memorandum of Agreement between Clackamas County and the Lake Oswego School District for emergency/disaster related use of Lake Oswego and Lakeridge High Schools

Purpose/Outcomes	This Memorandum of Agreement (MOA) allows Clackamas County to use Lake Oswego High School and/or Lakeridge High School for certain post-emergency/disaster purposes such as points of distribution, community sheltering and other emergency response and coordination efforts.
Dollar Amount and Fiscal Impact	The MOA has no monetary value. The County agrees to pay for expenses to ensure facilities are returned to their pre-use condition, as well as any facility-related expenses incurred during the time the County is making use of the facility. The County is only responsible for expenses that are additional expenses incurred by the school district.
Funding Source	None
Duration	September 26, 2019 until terminated by either party.
Previous Board Action	The Board approved a similar agreement with another school district on March 2, 2017. Disaster Management and Public Health are working to update agreements with all county school districts.
Strategic Plan Alignment	<ol style="list-style-type: none"> 1. Coordination and Integration of Planning and Preparedness 2. Ensure Safe, Healthy and Secure Communities
Counsel Review	Approved by Counsel on January 14, 2019
Contact Person	Nancy Bush, Director, 503-655-8665
Contract No.	None

BACKGROUND:

In December 2010, the Board approved an agreement between Clackamas County and three school districts allowing the County to use school facilities as points of dispensing sites for pharmaceuticals and commodities needed by county residents after a major emergency or disaster. Public Health and Disaster Management partnered to update the agreement to include points of dispensing as well as other disaster-related uses such as sheltering.

RECOMMENDATION:

Staff respectfully recommends Board approval of the Memorandum of Understanding between Clackamas County and Lake Oswego School District.

Respectfully submitted,

Nancy Bush, Director

FACILITIES USE AGREEMENT

between the

Lake Oswego School District

and

Clackamas County

This Facilities Use Agreement (this “Agreement”) is entered into this 15th day of August 2019, by and between the Lake Oswego School District, hereinafter referred to as Partner, and Clackamas County, hereinafter referred to as County.

WHEREAS, Clackamas County is the Local Public Health Authority under ORS Chapter 431 for all cities and unincorporated areas within its borders; and

WHEREAS, the County is authorized by ORS Chapter 401 to establish procedures to prepare for and carry out any activity to prevent, minimize, respond to or recover from an emergency; and

WHEREAS, the County and Partner desire to establish a relationship of cooperation in the event of a natural or human-caused public health or other emergency in Clackamas County where mass care, vaccination, medication, commodity (e.g., food, water) distribution centers and/or other activities become necessary for emergency activities; and

WHEREAS, the Partner is the owner of certain real property described as Lake Oswego High School and Lakeridge High School (the “Property”) that can accommodate mass care, vaccination, medication, commodity distribution, and other activities that, in the event of a public health and/or other related regional emergency, would assist the County in performing its functions described above; and

WHEREAS, the County and Partner desire to establish an agreement for use of Partner’s Property in advance of potential public health or natural disasters;

NOW, THEREFORE, in consideration of the mutual obligations as described in this Agreement, the parties understand that:

A. Use of Property: Partner hereby grants County the right to use the Property for the following purposes, together with any use reasonably related to the same:

- | | |
|--|--|
| <input checked="" type="checkbox"/> Point of distribution (vaccines, medication, commodities (e.g. food, water)) | <input checked="" type="checkbox"/> Landing zones |
| <input checked="" type="checkbox"/> Sheltering for community members | <input checked="" type="checkbox"/> Community reception / reunification / assistance centers |
| <input type="checkbox"/> Sheltering for small animals | <input checked="" type="checkbox"/> Children disaster services |
| <input type="checkbox"/> Sheltering for large animals | <input checked="" type="checkbox"/> Community meetings |
| <input type="checkbox"/> Long-term housing trailers | <input checked="" type="checkbox"/> General emergency response/coordination |

- B. Term: this Agreement shall be effective upon execution and shall terminate (1) upon mutual written consent of the parties; (2) for convenience following thirty (30) days' written notice to the other party, or (3) upon breach of the terms of this Agreement.
- C. Compensation: County shall compensate Partner as follows [CHECK ONE]:
- Partner agrees not to charge any fee for County's use of the Property.
 - County will pay Partner the sum of \$ [INSERT COMPENSATION SCHEDULE].
- D. Dates of Use: Upon notice by County of the occurrence of an emergency or other event necessitating County's requested use of the Property, Partner shall vacate the Property, or portions thereof, at a date and time mutually agreed upon by the parties.
- E. Partner's Responsibilities: Partner's responsibilities for County's use of the Property are as follows:
- a) Partner makes no warranty or representation about the Property. County accepts the Property "AS IS." The parties will jointly conduct a pre-occupancy survey of the Property before County takes possession, and agree to record any existing damage or conditions.
 - b) Partner shall make personnel available, at County's expense, to address facility-related issues that may occur during the time the County is making use of the Property.
 - c) Partner shall identify and maintain a current contact list, attached hereto as Attachment A and incorporated by this reference herein, for the following applicable Property-related contacts:
 - 1. Security systems;
 - 2. Electrical systems;
 - 3. Refrigeration systems;
 - 4. Heating and cooling; and
 - 5. Facilities Management.
 - d) Unless otherwise agreed to by the parties in writing, Partner shall be responsible for all utility services, and associated fees and charges, to the Property.
- F. County's Responsibilities: County's responsibilities for use of the Property are as follows:
- a) County agrees to leave the Property in its original, clean condition. County will remove all equipment and personal property brought onto the Property. County will use reasonable care to prevent damage to the Property. County shall be responsible for any cleaning, repair, or remediation costs arising from or related to County's use of the Property.
 - b) The County will not make any changes or modifications to the facilities without Partner's prior written approval.
 - c) The County will notify Partner as soon as practicable when the Property has been cleared and is available for re-occupancy by the Partner.

- G. Indemnification: Subject to the limitations of the Oregon Tort Claims Act (ORS 30.260 – 30.300) and the Oregon Constitution, Article XI, Section 10, County agrees to defend, indemnify and hold the Partner harmless from any loss, damage, injury, claim, or demand caused by the negligent or willful acts of the County or its officers, elected officials, employees, agents, or anyone over which the County has a right to control.
- H. Insurance. The parties agree to maintain levels of insurance, or self-insurance, sufficient to satisfy their obligations under this Agreement and all requirements under applicable law.
- I. Oregon Law and Forum. This Agreement, and all rights, obligations, and disputes arising out of it will be governed by and construed in accordance with the laws of the State of Oregon. Any claim between County and Partner that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Clackamas County for the State of Oregon; provided, however, if a claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon.
- J. Compliance with Applicable Law. Both Parties shall comply with all applicable local, state and federal ordinances, statutes, laws and regulations. All provisions of law required to be a part of this Agreement, whether listed or otherwise, are hereby integrated and adopted herein. Failure to comply with such obligations is a material breach of this Agreement.
- K. Debt Limitation. This Agreement is expressly subject to the limitations of the Oregon Constitution and Oregon Tort Claims Act, and is contingent upon appropriation of funds. Any provisions herein that conflict with the above referenced laws are deemed inoperative to that extent.
- L. Integration, Amendment and Waiver. Except as otherwise set forth herein, this Agreement constitutes the entire agreement between the parties. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either party unless in writing and signed by both parties and all necessary approvals have been obtained. The failure of either party to enforce any provision of this Agreement shall not constitute a waiver by such party of that or any other provision.
- M. Independent Contractor. Each of the parties hereto shall be deemed an independent contractor for purposes of this Agreement. No representative, agent, employee or contractor of one party shall be deemed to be a representative, agent, employee or contractor of the other Party for any purpose, except to the extent specifically provided herein. Nothing herein is intended, nor shall it be construed, to create between the parties any relationship of principal and agent, partnership, joint venture or any similar relationship, and each party hereby specifically disclaims any such relationship.
- N. No Third-Party Beneficiary. Partner and County are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives, is

intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.

- O. Counterparts. This Agreement may be executed in several counterparts (electronic or otherwise), each of which shall be an original, all of which shall constitute the same instrument.
- P. Necessary Acts. Each Party shall execute and deliver to the others all such further instruments and documents as may be reasonably necessary to carry out this Agreement.
- Q. Successors in Interest. The provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto, and their respective authorized successors and assigns.
- R. Contact Information

Unless specified otherwise, for purposes of this Agreement the following persons will serve as the official points of contact for each party:

Clackamas County Disaster Management
Sarah Eckman
Administrative Services Manager
2200 Kaen Road
Oregon City, OR 97045
(503) 655-8378
sarahste@clackamas.us

Lake Oswego School District
(name and info here) *John Park - Safety & Security*
PO Box 70
2455 Country Club Rd
Lake Oswego, OR 97034
(503) 534-2246
parkeje@loswego.k12.or.us

(Signature Page Follows)

CLACKAMAS COUNTY
BOARD OF COUNTY COMMISSIONERS

LAKE OSWEGO SCHOOL DISTRICT


Chair JIM BERNARD

ATTEST:

Clerk of the Board

APPROVED AS TO FORM:

County Counsel



By:
Title: *Assistant Superintendent
of Business Services*



Board of County Commissioners
 Clackamas County

Members of the Board:

Approval of a Contract with Opsis Architecture LLP
 for the Oak Lodge and Gladstone Community Project

Purpose/Outcomes	To provide programming and master planning services for the Oak Lodge and Gladstone Community project, which consists of three interrelated projects: Concord Property, Oak Lodge Library and Gladstone Library.
Dollar Amount and Fiscal Impact	Contract amount is not to exceed \$996,916.00
Funding Source	Contract costs will be allocated to individual BCS divisions, and will be funded from multiple sources, including accumulated Library District reserves, current year Library District distributions, and North Clackamas Parks and Recreation (NCPRD) disposition proceeds.
Duration	Through January 30, 2021
Previous Board Action	<ul style="list-style-type: none"> • <i>April 3, 2018 Policy Session</i> – Concord Property and Library Planning Task Force • <i>June 26, 2018 Policy Session</i> – Concord Property and Library Planning Task Force • <i>October 9, 2018 Policy Session</i> – Concord Property and Library Planning Process Update • <i>November 20, 2018 Issues/Updates</i> – Appointments to Gladstone Community Library Task Force • <i>January 8, 2019 Issues/Updates</i>– Gladstone Community Library Planning Task Force
Strategic Plan Alignment	<ul style="list-style-type: none"> • Build public trust through good government. • Build a strong infrastructure • Ensure safe, healthy and secure communities.
Counsel Approval	Approved by County Counsel on September 18, 2019
Contact Person	Laura Zentner, Director, Business and Community Services, 503-742-4351 Kathryn Krygier, Oak Lodge and Gladstone Community Project Manager, 503-742-4358

BACKGROUND:

In October 2017, the County and City of Gladstone entered into a settlement agreement which contemplated the County would construct and manage two new libraries, a 6,000 square foot facility in the City of Gladstone and an approximately 19,500 square foot facility in the Oak Lodge Library service area in unincorporated Clackamas County. The settlement agreement

calls for a “one library, two building” approach, with both libraries operated by Clackamas County to achieve economies of scale, realize efficiencies, and best provide library services to residents of the Oak Lodge and Gladstone communities.

Five months later, in February 2018, the North Clackamas Parks and Recreation District (NCPRD) and the North Clackamas School District (NCSD) entered into a strategic partnership to exchange NCPRD’s Hood View Park for cash and three former NCSD elementary school buildings and land, including the Concord Property in Oak Lodge.

Both the Oak Lodge Library and NCPRD are both divisions within Business & Community Services (BCS). In addition, BCS will be managing the Gladstone Library when operations are transferred later this year. In order to pool resources and make more efficient use of time and money, BCS staff proposed a joint process to plan for the Concord Property and the Oak Lodge and Gladstone libraries.

In 2018, the Board of Commissioners approved the proposed joint planning process. As part of the process, two task forces (the Concord Property and Library Planning Task Force and the Gladstone Community Library Planning Task Force) were formed to advise staff and the Board on the planning process, community needs, the capabilities of the Concord Property, and master plans for the Concord Property, the Oak Lodge Library, and the Gladstone Library.

The two task forces began meeting regularly in 2019. The task forces reviewed the request for proposals for architectural services issued by the County, and each task force selected two members to participate on a 13-member consultant selection committee. This committee, led by procurement staff, met during May and June to review written proposals and interview finalist candidates. The committee selected a design team led by Opsis Architecture LLP, and BCS and Procurement staff began to draft a scope of work.

In July and September 2019, joint Concord/Gladstone task force meetings were held to increase project efficiency and information-sharing. The scope of work was presented to task force members, and at the September 4, 2019 joint meeting, task force members indicated general concurrence with the scope of work and supported bringing the contract to the Board for approval (20 approved; 3 did not approve).

At that same meeting, some task force members raised concerns largely revolving around project timing (how long it will take before construction begins, the potential for the Concord/Oak Lodge process to slow the Gladstone Library process, whether there should continue to be joint task force meetings) and project funding (where the money will come from to pay for construction, the desire for project costs to be fairly and appropriately divided between Libraries and NCPRD). Staff explained that the contract will have some flexibility to change as needs arise, and noted that the need for joint meetings could be reviewed at each phase of work. In addition, a special joint task force meeting has been scheduled for Thursday, September 19 to further discuss and address general concerns related to project timing and funding.

OPIS ARCHITECTURE LLP SCOPE OF WORK:

This contract is to provide programming and master planning services for three interrelated projects that make up the Oak Lodge and Gladstone Community Project.

1. The redevelopment of the Concord Property, a six-acre site located at 3811 Concord Road in Oak Lodge. Situated on the property is a two-story 1936 Works Progress Administration school building, owned by NCPRD, that will be home to a new community center and park to serve NCPRD residents. In addition, NCPRD is considering consolidating its administrative offices in the school building.
2. A library to serve the residents of the Oak Lodge Library service area and unincorporated residents of the Gladstone service area. The library may be sited in the Concord building, elsewhere on the Concord Property or at another undetermined location in the Oak Lodge community.
3. A new library building in the City of Gladstone to serve City of Gladstone residents of the Gladstone Library service area at the current location of Gladstone City Hall at 525 Portland Ave.

Opsis Architecture LLP will employ best practices to engage the Oak Lodge and Gladstone communities and staff, conduct needs assessments, develop a program, and develop a comprehensive master plan for the Oak Lodge Library, Gladstone Library, and Concord Property. This contract will be amended to provide for future phases of the work.

PROCUREMENT PROCESS:

This project was advertised in accordance with ORS and LCRB Rules on April 25, 2019. Proposals were opened on May 23, 2019. BCS received five (5) proposals: FFA Architecture and Interiors, Hacker Architects Inc., Mackenzie Engineering Incorporated, Opsis Architecture LLP, and Scott Edwards Architecture. After initial evaluation of the submitted proposals, the evaluation committee recommended interviewing the top three proposers: FFA Architecture and Interiors, Hacker Architects Inc., and Opsis Architecture LLP. Upon completion of the interviews, Opsis Architecture LLP was the highest-ranking proposer and the evaluation committee recommended a contract be awarded to them. Following the award, BCS staff entered into negotiations with the selected vendor and developed a final statement of work along with final billing rates and contract total value.

RECOMMENDATION:

Staff recommends that the Board of County Commissioners approve and execute the Contract with Opsis Architecture LLP for the Oak Lodge and Gladstone Community Project.

Respectfully submitted,

Laura Zentner
Director, Business and Community Services

Placed on the BCC Agenda on _____ by the Procurement Office.



**CLACKAMAS COUNTY
PERSONAL SERVICES CONTRACT
Contract #1642**

This Personal Services Contract (this “Contract”) is entered into between **Opsis Architecture LLP** (“Contractor”), and Clackamas County, a political subdivision of the State of Oregon (“County”) on behalf of Business and Community Services.

ARTICLE I.

- 1. Effective Date and Duration.** This Contract shall become effective upon signature of both parties. Unless earlier terminated or extended, this Contract shall expire on **January 30, 2021**.
- 2. Scope of Work.** Contractor shall provide the following personal services: **RFP #2019-32 North Clackamas Parks and Recreation District Concord Property Oak Lodge Library and Gladstone Library Planning Process** (“Work”), further described in **Exhibit A**.
- 3. Consideration.** The County agrees to pay Contractor, from available and authorized funds, a sum not to exceed **nine hundred ninety-six thousand nine hundred sixteen dollars (\$996,916.00)**, for accomplishing the Work required by this Contract. This not to exceed amount includes: a) all allowable costs and expenses, profit, and fixed-fee amount, if any; and b) \$40,000.00 for contingency tasks, each of which must be separately authorized by the County in writing, and only by County’s contract administrator. Consideration rates are on a time and materials basis in accordance with the rates and costs specified in Exhibit C. If any interim payments to Contractor are made, such payments shall be made only in accordance with the schedule and requirements in Exhibit C.
- 4. Invoices and Payments.** Unless otherwise specified, Contractor shall submit monthly invoices for Work performed. Invoices shall describe all Work performed with particularity, by whom it was performed, and shall itemize and explain all expenses for which reimbursement is claimed. The invoices shall include the total amount billed to date by Contractor prior to the current invoice. If Contractor fails to present invoices in proper form within sixty (60) calendar days after the end of the month in which the services were rendered, Contractor waives any rights to present such invoice thereafter and to receive payment therefor. Payments shall be made to Contractor following the County’s review and approval of invoices submitted by Contractor. Contractor shall not submit invoices for, and the County will not be obligated to pay, any amount in excess of the maximum compensation amount set forth above. If this maximum compensation amount is increased by amendment of this Contract, the amendment must be fully effective before Contractor performs Work subject to the amendment.

Invoices shall reference the above Contract Number and be submitted to: Kathryn Krygier, 150 Beaver Creek Road, Oregon City Oregon 97045 or via email at kkrygier@ncprd.com.

- 5. Travel and Other Expense.** Authorized: Yes No
If travel expense reimbursement is authorized in this Contract, such expense shall only be reimbursed at the rates in the Clackamas County Contractor Travel Reimbursement Policy, hereby incorporated by reference and found at: <https://www.clackamas.us/finance/terms.html>. Travel expense reimbursement is not in excess of the not to exceed consideration.
- 6. Contract Documents.** This Contract consists of the following documents, which are listed in descending order of precedence and are attached and incorporated by reference, this Contract, Exhibit A, Exhibit B, and Exhibit C.

7. Contractor and County Contacts.

Contractor	County
Administrator: Mark Stoller Phone: 503-525-9511 Email: marks@opsisarch.com	Administrator: Kathryn Krygier Phone: 503-742-4358 Email: kkrygier@ncprd.com

Payment information will be reported to the Internal Revenue Service (“IRS”) under the name and taxpayer ID number submitted. (See I.R.S. 1099 for additional instructions regarding taxpayer ID numbers.) Information not matching IRS records will subject Contractor payments to backup withholding.

ARTICLE II.

- 1. ACCESS TO RECORDS.** Contractor shall maintain books, records, documents, and other evidence, in accordance with generally accepted accounting procedures and practices, sufficient to reflect properly all costs of whatever nature claimed to have been incurred and anticipated to be incurred in the performance of this Contract. County and their duly authorized representatives shall have access to the books, documents, papers, and records of Contractor, which are directly pertinent to this Contract for the purpose of making audit, examination, excerpts, and transcripts. Contractor shall maintain such books and records for a minimum of six (6) years, or such longer period as may be required by applicable law, following final payment and termination of this Contract, or until the conclusion of any audit, controversy or litigation arising out of or related to this Contract, whichever date is later.
- 2. AVAILABILITY OF FUTURE FUNDS.** Any continuation or extension of this Contract after the end of the fiscal period in which it is written is contingent on a new appropriation for each succeeding fiscal period sufficient to continue to make payments under this Contract, as determined by the County in its sole administrative discretion.
- 3. CAPTIONS.** The captions or headings in this Contract are for convenience only and in no way define, limit, or describe the scope or intent of any provisions of this Contract.
- 4. COMPLIANCE WITH APPLICABLE LAW.** Contractor shall comply with all applicable federal, state and local laws, regulations, executive orders, and ordinances, as such may be amended from time to time.
- 5. COUNTERPARTS.** This Contract may be executed in several counterparts (electronic or otherwise), each of which shall be an original, all of which shall constitute the same instrument.
- 6. GOVERNING LAW.** This Contract, and all rights, obligations, and disputes arising out of it, shall be governed and construed in accordance with the laws of the State of Oregon and the ordinances of Clackamas County without regard to principles of conflicts of law. Any claim, action, or suit between County and Contractor that arises out of or relates to the performance of this Contract shall be brought and conducted solely and exclusively within the Circuit Court for Clackamas County, for the State of Oregon. Provided, however, that if any such claim, action, or suit may be brought in a federal forum, it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this section be construed as a waiver by the County of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court. Contractor, by execution of this Contract, hereby consents to the personal jurisdiction of the courts referenced in this section.

- 7. RESPONSIBILITY FOR DAMAGES; INDEMNITY.** To the extent the contractor is negligent, contractor shall be responsible for all damage to property, injury to persons, and loss, expense, inconvenience, and delay which may be caused by, or result from, the conduct of Work, or from any act, omission, or neglect of Contractor, its subcontractors, agents, or employees. To the extent he contractor is negligent, the contractor agrees to indemnify, hold harmless and defend the County, and its officers, elected officials, agents and employees from and against all claims and actions, and all expenses incidental to the investigation and defense thereof, arising out of or based upon damage or injuries to persons or property caused by the errors, omissions, fault or negligence of the Contractor or the Contractor's employees, subcontractors, or agents. However, neither Contractor nor any attorney engaged by Contractor shall defend the claim in the name of County or any department of County, nor purport to act as legal representative of County or any of its departments, without first receiving from the Clackamas County Counsel's Office authority to act as legal counsel for County, nor shall Contractor settle any claim on behalf of County without the approval of the Clackamas County Counsel's Office. County may, at its election and expense, assume its own defense and settlement.
- 8. INDEPENDENT CONTRACTOR STATUS.** The service(s) to be rendered under this Contract are those of an independent contractor. Although the County reserves the right to determine (and modify) the delivery schedule for the Work to be performed and to evaluate the quality of the completed performance, County cannot and will not control the means or manner of Contractor's performance. Contractor is responsible for determining the appropriate means and manner of performing the Work. Contractor is not to be considered an agent or employee of County for any purpose, including, but not limited to: (A) The Contractor will be solely responsible for payment of any Federal or State taxes required as a result of this Contract; and (B) This Contract is not intended to entitle the Contractor to any benefits generally granted to County employees, including, but not limited to, vacation, holiday and sick leave, other leaves with pay, tenure, medical and dental coverage, life and disability insurance, overtime, Social Security, Workers' Compensation, unemployment compensation, or retirement benefits.
- 9. INSURANCE.** Contractor shall secure at its own expense and keep in effect during the term of the performance under this Contract the insurance required and minimum coverage indicated below. Contractor shall provide proof of said insurance and name the County as an additional insured on all required liability policies. Proof of insurance and notice of any material change should be submitted to the following address: Clackamas County Procurement Division, 2051 Kaen Road, Oregon City, OR 97045 or procurement@clackamas.us.

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

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

- 10. LIMITATION OF LIABILITIES.** This Contract is expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10, of the Oregon Constitution, and is contingent

upon funds being appropriated therefore. Any provisions herein which would conflict with law are deemed inoperative to that extent. Except for liability arising under or related to Article II, Section 13 or Section 21 neither party shall be liable for (i) any indirect, incidental, consequential or special damages under this Contract or (ii) any damages of any sort arising solely from the termination of this Contract in accordance with its terms.

- 11. NOTICES.** Except as otherwise provided in this Contract, any required notices between the parties shall be given in writing by personal delivery, email, or mailing the same, to the Contract Administrators identified in Article 1, Section 6. If notice is sent to County, a copy shall also be sent to: Clackamas County Procurement, 2051 Kaen Road, Oregon City, OR 97045, or procurement@clackamas.us. Any communication or notice so addressed and mailed shall be deemed to be given five (5) days after mailing, and immediately upon personal delivery, or within 2 hours after the email is sent during County's normal business hours (Monday – Thursday, 7:00 a.m. to 6:00 p.m.) (as recorded on the device from which the sender sent the email), unless the sender receives an automated message or other indication that the email has not been delivered.
- 12. OWNERSHIP OF WORK PRODUCT.** All work product of Contractor that results from this Contract (the "Work Product") is the exclusive property of County. County and Contractor intend that such Work Product be deemed "work made for hire" of which County shall be deemed the author. If for any reason the Work Product is not deemed "work made for hire," Contractor hereby irrevocably assigns to County all of its right, title, and interest in and to any and all of the Work Product, whether arising from copyright, patent, trademark or trade secret, or any other state or federal intellectual property law or doctrine. Contractor shall execute such further documents and instruments as County may reasonably request in order to fully vest such rights in County. Contractor forever waives any and all rights relating to the Work Product, including without limitation, any and all rights arising under 17 USC § 106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use or subsequent modifications. Notwithstanding the above, County shall have no rights in any pre-existing Contractor intellectual property provided to County by Contractor in the performance of this Contract except to copy, use and re-use any such Contractor intellectual property for County use only. If this Contract is terminated prior to completion, and the County is not in default, County, in addition to any other rights provided by this Contract, may require the Contractor to transfer and deliver all partially completed Work Product, reports or documentation that the Contractor has specifically developed or specifically acquired for the performance of this Contract. If County modifies the Work Product on this or on another project without Contractor's prior written consent, then County shall assume all risks attendant in such use.
- 13. REPRESENTATIONS AND WARRANTIES.** Contractor represents and warrants to County that (A) Contractor has the power and authority to enter into and perform this Contract; (B) this Contract, when executed and delivered, shall be a valid and binding obligation of Contractor enforceable in accordance with its terms; (C) Contractor shall at all times during the term of this Contract, be qualified, professionally competent, and duly licensed to perform the Work; (D) Contractor is an independent contractor as defined in ORS 670.600; and (E) the Work under this Contract shall be performed in the same professional skill, care, diligence and standards as other professionals performing similar services under similar conditions. The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.
- 14. SURVIVAL.** All rights and obligations shall cease upon termination or expiration of this Contract, except for the rights and obligations set forth in Article II, Sections 1, 6, 7, 11, 13, 14, 16 and 21, and all other rights and obligations which by their context are intended to survive. However, such expiration shall not extinguish or prejudice the County's right to enforce this Contract with respect to: (a) any breach of a Contractor warranty; or (b) any default or defect in Contractor performance that has not been cured.

- 15. SEVERABILITY.** If any term or provision of this Contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Contract did not contain the particular term or provision held to be invalid.
- 16. SUBCONTRACTS AND ASSIGNMENTS.** Contractor shall not enter into any subcontracts for any of the Work required by this Contract, or assign or transfer any of its interest in this Contract by operation of law or otherwise, without obtaining prior written approval from the County, which shall be granted or denied in the County's sole discretion. In addition to any provisions the County may require, Contractor shall include in any permitted subcontract under this Contract a requirement that the subcontractor be bound by this Article II, Sections 1, 7, 8, 13, 16 and 27 as if the subcontractor were the Contractor. County's consent to any subcontract shall not relieve Contractor of any of its duties or obligations under this Contract.
- 17. SUCCESSORS IN INTEREST.** The provisions of this Contract shall be binding upon and shall inure to the benefit of the parties hereto, and their respective authorized successors and assigns.
- 18. TAX COMPLIANCE CERTIFICATION.** The Contractor shall comply with all federal, state and local laws, regulation, executive orders and ordinances applicable to this Contract. Contractor represents and warrants that it has complied, and will continue to comply throughout the duration of this Contract and any extensions, with all tax laws of this state or any political subdivision of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318. Any violation of this section shall constitute a material breach of this Contract and shall entitle County to terminate this Contract, to pursue and recover any and all damages that arise from the breach and the termination of this Contract, and to pursue any or all of the remedies available under this Contract or applicable law.
- 19. TERMINATIONS.** A) This Contract may be terminated by mutual agreement of the parties or by the County for one of the following reasons: (i) for convenience upon thirty (30) days written notice to Contractor; or (ii) at any time the County fails to receive funding, appropriations, or other expenditure authority as solely determined by the County. Upon receipt of written notice of termination from the County, Contractor shall immediately stop performance of the Work. (B) if Contractor breaches any Contract provision or is declared insolvent, County may terminate after thirty (30) days written notice with an opportunity to cure. Upon termination of this Contract, Contractor shall deliver to County all documents, information, works-in-progress and other property that are or would be deliverables had the Contract Work been completed. Upon County's request, Contractor shall surrender to anyone County designates, all documents, research, objects or other tangible things needed to complete the Work.
- 20. REMEDIES.** If terminated by the County due to a breach by the Contractor, then the County shall have any remedy available to it in law or equity. If this Contract is terminated for any other reason, Contractor's sole remedy is payment for the goods and services delivered and accepted by the County, less any setoff to which the County is entitled.
- 21. MEDIATION.**
In an effort to resolve any conflicts that arise during the design or construction of the project or following the completion of the project, the County and Consultant agree that all disputes between them arising out of or relating to this Agreement shall be submitted to nonbinding mediation unless the parties mutually agree otherwise.
- 22. NO THIRD PARTY BENEFICIARIES.** County and Contractor are the only parties to this Contract and are the only parties entitled to enforce its terms. Nothing in this Contract gives, is intended to

give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Contract.

- 23. TIME IS OF THE ESSENCE.** Contractor agrees that time is of the essence in the performance this Contract.
- 24. FOREIGN CONTRACTOR.** If the Contractor is not domiciled in or registered to do business in the State of Oregon, Contractor shall promptly provide to the Oregon Department of Revenue and the Secretary of State, Corporate Division, all information required by those agencies relative to this Contract. The Contractor shall demonstrate its legal capacity to perform these services in the State of Oregon prior to entering into this Contract.
- 25. FORCE MAJEURE.** Neither County nor Contractor shall be held responsible for delay or default caused by events outside the County or Contractor's reasonable control including, but not limited to, fire, terrorism, riot, acts of God, or war. However, Contractor shall make all reasonable efforts to remove or eliminate such a cause of delay or default and shall upon the cessation of the cause, diligently pursue performance of its obligations under this Contract.
- 26. WAIVER.** The failure of County to enforce any provision of this Contract shall not constitute a waiver by County of that or any other provision.
- 27. PUBLIC CONTRACTING REQUIREMENTS.** Pursuant to the public contracting requirements contained in Oregon Revised Statutes ("ORS") Chapter 279B.220 through 279B.235, Contractor shall:
- a. Make payments promptly, as due, to all persons supplying to Contractor labor or materials for the prosecution of the work provided for in the Contract.
 - b. Pay all contributions or amounts due the Industrial Accident Fund from such Contractor or subcontractor incurred in the performance of the Contract.
 - c. Not permit any lien or claim to be filed or prosecuted against County on account of any labor or material furnished.
 - d. Pay the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.
 - e. If Contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to Contractor or a subcontractor by any person in connection with the Contract as such claim becomes due, the proper officer representing Clackamas County may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due Contractor by reason of the Contract.
 - f. As applicable, the Contractor shall pay employees for work in accordance with ORS 279B.235, which is incorporated herein by this reference. The Contractor shall comply with the prohibitions set forth in ORS 652.220, compliance of which is a material element of this Contract, and failure to comply is a breach entitling County to terminate this Contract for cause.
 - g. If the Work involves lawn and landscape maintenance, Contractor shall salvage, recycle, compost, or mulch yard waste material at an approved site, if feasible and cost effective.
- 27. KEY PERSONS.** Contractor acknowledges and agrees that a significant reason the County is entering into this Contract is because of the special qualifications of certain Key Persons set forth in the contract. Under this Contract, the County is engaging the expertise, experience, judgment, and personal attention of such Key Persons. Neither Contractor nor any of the Key Persons shall delegate performance of the management powers and responsibilities each such Key Person is required to provide under this Contract to any other employee or agent of the Contractor unless the County provides prior written consent to such delegation. Contractor shall not reassign or transfer a Key

**EXHIBIT A
SCOPE OF WORK**

**EXHIBIT B
Schedule**

**EXHIBIT C
Fee/Billing Rates**



Gregory L. Geist
Director

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of a Contract with Pearce Moody Construction Company LLC for the
Sierra Case- West Storm Main (Contemporaneous Development)

Purpose/Outcomes	Execution of the contract between Water Environment Services and Pearce Moody Construction Company LLC for the Sierra Case- West Storm Main (Contemporaneous Development)
Dollar Amount and Fiscal Impact	The contract amount is not to exceed \$519,089.00
Funding Source	WES funds 649-01-20100-481010-P642277
Duration	Contract execution through December 30, 2020.
Previous Board Action	None.
Strategic Plan Assignment	This project aligns with the following WES initiatives: - The project would complete the final section of a regional storm system that was constructed 20 years ago.
Counsel Review	September 16, 2019
Contact Person	Ron Wierenga, WES Tech Division Manager, 503-742-4581 Leah Johanson, Civil Engineer, 503-742-4620

BACKGROUND:

WES requested use of the Contemporaneous Development Exemption to contract with Pearce Moody Construction Company LLC to construct approximately 400 feet of 60-inch reinforced concrete storm pipe in conjunction with the Hettervig Industrial Warehouse Project at 16760 SE Robert Avenue in Clackamas for an amount not to exceed \$519,089.00. The project would complete the final section of a regional storm system that was constructed 20 years ago. The recent sale of the property and the proposed industrial warehouse development on the site affords WES the opportunity to complete this important project while the site redevelopment is taking place. The exemption allows WES to contract with a developer to perform certain construction work including public improvements, minor alterations or repairs.

In order for a construction project to qualify for this exemption, the department director requesting the exemption must show that the following requirements are met:

1. **The Construction work would occur adjacent to, or within close proximity of, the Person's existing or planned project:** The Developer is currently constructing a 53,600 square-foot industrial warehouse facility/office and parking lot at 16760 SE Robert Avenue in Clackamas. A partially completed regional storm system currently runs down both the east and west sides of the property. The proposed project will connect the two systems by running a 60-inch pipe across the subject property prior to the construction of the industrial warehouse project.

2. **The Contracting Agency has identified the Construction work through one of the following methods:**
Upon a recommendation by the Director of the Department: The WES Director recommends installation of this storm pipe in conjunction with the industrial development project because it was the original intention of constructing the existing regional storm system and would eliminate a temporary storm system outfall that currently discharges to the Clackamas River above Clackamas River Water's drinking water intakes.
3. **The Person engaged, or planning to engage, in the development project is willing and able to perform the Construction work:** Pearce Moody Construction Company LLC acting as the agent of the developer/property owner is willing and able to enter into a contract with WES to perform the work. The property owner has also consented to the project.
4. **Contracting Agency has sufficient funds to complete the Construction work:** WES has sufficient funds in the 2019-20 surface water construction fund budget. The project is not identified in the budget because the opportunity recently arose as the site is currently developing. However, WES has funding available in the construction fund from other projects that have been delayed.
5. **The use of this class exemption will result in cost savings and efficiencies as a result of the Person's equipment or other resources, including engineering or other personal services, being present or utilized for project work adjacent to, or within close proximity of, where Contracting Agency desires the Construction work to take place:** The installation of the storm pipe on the subject property prior to the construction of the industrial warehouse project results in efficiencies for WES related to project design and construction management services provided by the developer's project manager and engineer, who are familiar with the site and able to utilize their current information and planning work to most efficiently design the pipe layout. In addition, easements can be negotiated and dedicated before building and utility conflicts occur in the future.

From a cost standpoint the proposed pipe alignment across the subject property at 400 feet is the shortest feasible route to connect the east and west storm system segments in order to make the regional system functional. Alternative pipe alignments to the north, likely under roadways including Jennifer St and Robert Ave, would be between 650 and 1100 feet in length, thus would require more pipe segments and manholes to complete at a higher material and installation cost. In addition, there would be traffic disruptions and delays to install the pipe under the roadways, in addition to additional costs related to digging up and replacing the roadway. Partnering with the developer to complete pipe installation just prior to site redevelopment allows for the most efficient and cost effective project of the alternatives proposed.

6. **The use of this exemption is in the public's best interest:** The project itself is in the public's best interest because it will complete a regional storm system project that will eliminate a temporary outfall location and relocate the discharge to below the Clackamas River Water's drinking water intakes. Using the exemption to install the storm pipe is in the public's best interest because installing it now will eliminate future road impacts and delays during construction, in addition to potential private property impacts for alternative

routes other than in public rights-of-way. Furthermore, the cost savings enable WES to provide this surface water management service at a lower cost to our rate payers.

RECOMMENDATION:

Staff recommends that the Board of County Commissioners of Clackamas County, acting as the governing body of Water Environment Services, approve and execute the Contract between Water Environment Services and Pearce Moody Construction Company, LLC for the Sierra Case- West Storm Main project.

Respectfully submitted,

Greg Geist, Director
Water Environment Services

Placed on the BCC Agenda 9-26-19 by Procurement.



**WATER ENVIRONMENT SERVICES
PUBLIC IMPROVEMENT CONTRACT
Contract #1849**

This Public Improvement Contract (the "Contract"), is made by and between Water Environment Services ("WES"), a political subdivision of the State of Oregon, hereinafter called "Owner", and **Pearce Moody Construction Company LLC**, hereinafter called the "Contractor" (collectively the "Parties"), shall become effective on the date this Contract has been signed by all the Parties.

Project Name: **Sierra Case- West Storm Main** ("Project")

1. **Contract Documents.** This Contract shall consist of the following documents ("Contract Documents"), hereby incorporated by reference, and are listed in descending order of precedence:
 - A. This Public Improvement Contract
 - B. Clackamas County General Conditions for Public Improvement Contracts (dated 11/1/2017) ("General Conditions")
 - C. Exhibit A- Project Specifications and Project Drawings
 - D. Exhibit B- Vendor's Quote
 - E. Exhibit C- Performance and Payment Bonds

2. **Contract Price.** The Owner will compensate the Contractor for Work on a time and material basis at the rates outlined in Exhibit B and subject to a maximum not-to-exceed price of \$ _____; or in the firm, fixed-price amount of **five hundred nineteen thousand eighty-nine dollars (\$519,089.00)**; in accordance with the requirements of the General Conditions for the performance of all Work described and reasonably inferred from the Contract Documents. If the Project is done on a time and materials basis, the Contractor's listing of wage rates, material unit costs and overhead charges for the Work is attached to this Contract.

3. **Scope of Work.** This Project consists of the Scope of Work ("Work") as described in Exhibit A.

4. **Representatives.** Contractor has named Justin Pearce as its Authorized Representative to act on its behalf. Owner designates, or shall designate, its Authorized Representative as indicated below (check one):

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

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

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

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

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

- 6. Contract Dates.** The following critical dates are hereby set for this Project. Time is of the essence.
- A. COMMENCEMENT DATE: Upon Contract Execution
 - B. SUBSTANTIAL COMPLETION DATE: June 30, 2020
 - C. FINAL COMPLETION DATE: December 31, 2020

7. Minimum Wage Rates. (Check one of the following):

Prevailing Wage Rates requirements do not apply to this Project because the maximum compensation for all Owner-contracted Work does not exceed \$50,000.

Prevailing Wage Rates requirements apply to this Project because the maximum compensation for all Owner-contracted Work is more than \$50,000. Contractor and all subcontractors shall comply with the provisions of ORS 279C.800 through 279C.870, relative to Prevailing Wage Rates and the required public works bond, as outlined in Sections C.1, C.2, and G.2.3 of the General Conditions. The Bureau of Labor and Industries (BOLI) wage rates and requirements set forth in the following BOLI booklet (and any listed amendments to that booklet), which are incorporated herein by reference, apply to the Work authorized under this Contract:

PREVAILING WAGE RATES for Public Works Contracts in Oregon, July 1, 2019, which can be downloaded at the following web address:

http://www.oregon.gov/boli/WHD/PWR/Pages/pwr_state.aspx

The Work will take place in Clackamas County, Oregon

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

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

9. Required Terms. In addition to the terms and conditions contained in this Contract and the Contract Documents, the following terms and conditions are required by Oregon law:

- A. 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 Owner 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.
- B. If the Contractor or a first-tier subcontractor fails, neglects or refuses to pay a person that provides labor or materials in connection with the public improvement contract within 30 days after receiving payment from the contracting agency or a contractor, the Contractor or first-tier subcontractor owes the person the amount due plus interest charges that begin at the end of the 10-day period within which payment is due under ORS 279C.580 (4) and that end upon final payment, unless payment is subject to a good faith dispute as defined in ORS 279C.580. The rate of interest on the amount due is nine percent per annum. The amount of interest may not be waived.
- C. 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.
- D. The Contractor shall include in each subcontract those provisions required under ORS 279C.580.
- E. For demolition tasks, if any, the Contractor shall salvage or recycle construction and demolition debris, if feasible and cost-effective.

10. Insurance Certificates and Required Performance and Payment Bonds.

- 10.1 In accordance with Section G.3.5 of the General Conditions, Contractor shall furnish proof of the required insurance naming Clackamas County and the Owner as additional insureds. Insurance certificates may be returned with the signed Contract or may be emailed to Procurement@clackamas.us.
- 10.2 In accordance with Section G. of the General Conditions, Contractor shall furnish performance and payment bonds, on the bond forms furnished by the Owner, and in a sum equal to the Contract Price.

11. Execution and Counterparts. This Contract may be executed in several counterparts, each of which shall be an original, all of which shall constitute one and the same instrument.

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

13. Compliance with Applicable Law. Contractor shall comply with all federal, state, county, and local laws, ordinances, and regulations applicable to the Work to be done under this Contract including, but not limited to, compliance with the prohibitions set forth in ORS 652.220, compliance of which is a material element of this Contract and failure to comply is a material breach that entitles County to exercise any rights and remedies available under this Contract including, but not limited to, termination for default.

14. Contractor Data.

**Pearce Moody Construction Company LLC
615 Abbott Road
Walla Walla, Washington 99362**

Contractor CCB # 213120 Expiration Date: 02/7/2021
Oregon Business Registry # 1519767-93 Entity Type: FLLC State of Formation: Washington

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

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

Pearce Moody Construction Company LLC

Water Environment Services

Authorized Signature Date

Chair Date

Name / Title (Printed)

Approved as to Form:

County Counsel Date

EXHIBIT A
PROJECT SPECIFICATIONS, PROJECT DRAWINGS

EXHIBIT B
VENDOR'S QUOTE

EXHIBIT C
PERFORMANCE AND PAYMENT BONDS