



AGENDA

***Revised**

Consent item VIII.1 has been moved to a Board Discussion Item
Consent item D.1 has been removed.

Thursday, December 19, 2013 - 6:00 PM
BOARD OF COUNTY COMMISSIONERS

Beginning Board Order No. 2013-96

I. CALL TO ORDER

- Roll Call
- Pledge of Allegiance

II. HOUSING AUTHORITY CONSENT AGENDA

1. In the Matter of Writing off Uncollectible Accounts for the Second Quarter of FY 2014

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

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

1. Board Order No. ____ Accepting a Transfer of Jurisdiction from Clackamas County to the City of Lake Oswego for Portions of Upper Drive (County Road #1009, DTD #21199) that are within the City Limits (Rick Maxwell, Engineering)
2. Reading and Adoption of Board Order No. ____ Amending Local Contract Review Board Rules, County Code Appendix "C" (Stephen Madkour, County Counsel)

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

1. Presentation of Status of Clackamas County Roads (Barbara Cartmill, Department of Transportation and Development)

VI. BOARD DISCUSSION ITEM *(The following items will be individually discussed by the Board only, followed by Board action.)*

***NORTH CLACKAMAS PARKS AND RECREATION DISTRICT**

1. Approval of a Purchase and Sale Agreement with the Tri-County Metropolitan Transportation District of Oregon Regarding Real Property for the Trolley Trail Project (Gary Barth, Business and Community Services and Chris Storey, County Counsel)

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

A. Health, Housing & Human Services

1. Approval of the Agency Services Amendment No. 1 to the Foothills Community Church to Provide Social Services for Clackamas County Residents – *Social Services*
2. Approval of a Revenue Agreement with Oregon Department of Human Services for Strengthening, Preserving and Reunifying Families Program Services – *Children, Youth & Families*

B. Department of Transportation & Development

1. Board Order No. _____ Amending the Declaration of Public Necessity and Purpose for Acquisition of Rights-of-Way and Easements for the Barlow/Zimmerman Intersection Improvement Project and Authorizing Negotiations and Eminent Domain Actions
2. Approval of an Intergovernmental Agreement between Clackamas County and the City of Lake Oswego to Transfer Permitting Authority, Maintenance Responsibility and Road Standards for Portions of Upper Drive (County Road #1009, DTD #21199) to the City
3. Approval of an Intergovernmental Agreement with Metro for the Clackamas Regional Center Way-Finding System Project

C. Elected Officials

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

***D. Resolution Services**

1. **REMOVED** - Resolution No. _____ Approving Fees for Small Claims Mediation Services through the Clackamas County Resolution Services Office

E. Technology Services

1. Approval of an ORMAP Intergovernmental Agreement Contract No. 3064 with the Oregon Department of Revenue for Digital GIS Tax Lot Conversion

**See VI. 1 for this item.*

~~VIII. NORTH CLACKAMAS PARKS AND RECREATION DISTRICT~~

- ~~1. Approval of a Purchase and Sale Agreement with the Tri-County Metropolitan Transportation District of Oregon Regarding Real Property for the Trolley Trail Project~~

IX. DEVELOPMENT AGENCY

1. Approval of a Disposition and Development Agreement with RPS Venture #2, LLC

X. COUNTY ADMINISTRATOR UPDATE

XI. COMMISSIONERS COMMUNICATION

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

www.clackamas.us/bcc/business.html

December 19, 2013

Housing Authority Board of Commissioners
Clackamas County

Members of the Board:

**In the Matter of Writing off Uncollectible Accounts for the
Second Quarter of Fiscal Year 2014**

Purpose/Outcomes	Approval to write off uncollectible rents, late charges and maintenance expenses for the second quarter of fiscal year 2014.
Dollar Amount and Fiscal Impact	\$7,021.43 in total collection losses.
Funding Source	N/A
Safety Impact	N/A
Duration	(October 1, 2013 – December 31, 2013)
Previous Board Action	First quarter collection losses were approved by the Housing Authority Board of Commissioners.
Contact Person	Chuck Robbins, Executive Director, Housing Authority 503-650-5666
Contract No.	N/A

BACKGROUND:

The Housing Authority of Clackamas County (HACC), a Division of the Health, Housing and Human Services Department, requests the approval to write off uncollectible rents, late charges and maintenance expenses for the second quarter of fiscal year 2014 (October 1, 2013 – December 31, 2013). The uncollectible amounts are detailed on the attached worksheets.

Uncollectible amounts for the second quarter of fiscal year 2014 will be \$7,021.43 for Low Rent Public Housing. Of the total second quarter write offs, \$3,710.48 was for uncollected rents and \$3,310.95 was for maintenance repairs charged to tenants for repairs required to units before HACC could lease them to a new tenant.

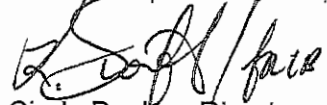
As a business practice, the HACC writes off debts after 90 days of collection efforts. Former residents in Public Housing that have debts that are written off continue to be tracked and are reported to a Federal Government database that prohibits their participation in any other Public Housing program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

The total amount proposed for transfer from Accounts Receivable to Collection Loss for the second quarter of fiscal year 2014 will be \$7,021.43. Total collection losses for fiscal year 2013 were \$63,917.29.

RECOMMENDATION:

HACC recommends the approval to write off uncollectible rents, late charges and maintenance expenses and for the Executive Director to be authorized to approve the transfer of these accounts from Accounts Receivable to Collection Loss.

Respectfully submitted,



Cindy Becker, Director



COPY
2

DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT

December 19, 2013

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

Board of Commissioners
Clackamas County

Members of the Board:

**A Board Order Accepting a Transfer of Jurisdiction from
Clackamas County to the City of Lake Oswego for Portions of Upper Drive
(County Road #1009, DTD #21199) that are within City Limits**

Purpose/Outcomes	Transfers jurisdiction of portions of Upper Drive that are inside the city limits, to the City of Lake Oswego.
Dollar Amount and Fiscal Impact	Cost savings in the form of staff time and materials related to the permitting, maintenance and oversight of this roadway.
Funding Source	Road Fund
Safety Impact	Transferring jurisdiction to the City will allow future development on Upper Drive to be consistent throughout, and will alleviate confusion on the part of the public.
Duration	Upon execution; permanent.
Previous Board Action	N/A
Contact Person	Rick Maxwell, Engineering Tech; 503-742-4671

BACKGROUND

Clackamas County currently has jurisdiction, including permitting authority, enforcement of road standards, and maintenance responsibility of Upper Drive. Property annexations in Lake Oswego have fractured the jurisdictional boundary of the road, some now within the city limits of Lake Oswego and some outside the city limits. Lake Oswego has passed a resolution to transfer jurisdiction of Upper Drive that is within their city limits, and to transfer by Intergovernmental Agreement the rights and duties as "road authority" for the portions of Upper Drive that are outside the city limits. This Intergovernmental Agreement will come before the Board of County Commissioners for acceptance as a separate instrument on December 19, 2013.

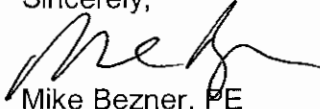
Transferring jurisdiction for these portions of Upper Drive that are inside the city limits to the City of Lake Oswego will eliminate confusion and improve efficiencies of maintenance and public service. The City has already annexed the adjacent properties into the city.

This agreement has been reviewed and approved by County Counsel.

Recommendation:

Staff respectfully recommends that the Board approve this Board Order which permanently transfers jurisdiction of portions of Upper Drive to the City of Lake Oswego.

Sincerely,



Mike Bezner, PE

Transportation Engineering Manager

For information on this issue or copies of attachments
please contact Rick Maxwell at (503) 742-4671

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

In the matter of transferring to the City of Lake Oswego, jurisdiction over portions of Upper Drive County Road No. 1009, DTD No. 21199



Order No.
Page 1 of 2

This matter coming before the Board of County Commissioners as a result of a request from the City of Lake Oswego, by Resolution Number 13-38, dated July 16, 2013, and the preceding negotiation between the City of Lake Oswego and Clackamas County Department of Transportation and Development to transfer portions of the following road:

<u>Road Name</u>	<u>Cnty #</u>	<u>DTD #</u>	<u>From</u>	<u>To</u>	<u>Square Feet</u>
Upper Drive	1009	21199	MP -0.02	MP 0.05	13,472
Upper Drive	1009	21199	MP 0.10	MP 0.31	30,121; and,

It further appearing to the Board that said transfer of jurisdiction has been recommended by M. Barbara Cartmill, Acting Director of the Department of Transportation and Development; and,

It further appearing to the Board that pursuant to ORS 373.270, notice of the hearing on this matter was provided by publication in the Lake Oswego Review on 11/21/13, 11/28/13, 12/05/13 and 12/12/13; now therefore,

IT IS HEREBY ORDERED that jurisdiction of portions of Upper Drive shall be transferred, Clackamas County jurisdiction shall cease, and full and absolute jurisdiction of said portions of roadway is transferred to the City of Lake Oswego as of the date of this Order; and,

IT IS FURTHER ORDERED that 43,593 square feet, more or less, be removed from the County's Road Inventory; and,

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

In the matter of transferring to the
City of Lake Oswego, jurisdiction over
portions of Upper Drive County
Road No. 1009, DTD No. 21199



Order No.
Page 2 of 2

IT IS FURTHER ORDERED that
copies of this Order be submitted to the Clackamas County Clerk's office for recording and that
copies be subsequently sent without charge to the Clackamas County Surveyor, Tax Assessor,
Finance/Fixed Asset Offices, and DTD Engineering.

ADOPTED this 19th day of December, 2013.

BOARD OF COUNTY COMMISSIONERS

Chair

Recording Secretary

RESOLUTION 13-38

A RESOLUTION OF THE LAKE OSWEGO CITY COUNCIL REQUESTING CLACKAMAS COUNTY TRANSFER JURISDICTION OF PORTIONS OF UPPER DRIVE INSIDE THE CITY LIMITS AND TRANSFER BY INTERGOVERNMENTAL AGREEMENT THE RIGHTS AND DUTIES OF "ROAD AUTHORITY" FOR PORTIONS OF UPPER DRIVE OUTSIDE OF THE CITY LIMITS, INCLUDING MAINTENANCE AND PERMITTING AUTHORITY.

WHEREAS, the following parcel annexation brought 1 property into the City limits:

- 4601 Upper Drive, AN 13-0002, April 16, 2013; and

WHEREAS, pursuant to Section 1 of the Urban Services Agreement – Roads entered into by the City of Lake Oswego and Clackamas County, dated July 15, 2003, "the City shall, within 60 days of the effective date of the annexation, initiate proceedings for the transfer of jurisdiction to the City of all County roads within the annexed areas"; and

WHEREAS:

1. Portions of County Roads within City limits: ORS 373.270 authorizes the City to request that Clackamas County transfer jurisdiction of a County road such as Upper Drive that is within the City limits, and provides that upon the County Board of Commissioners' adoption of an order meeting the City's resolution, the jurisdiction of Clackamas County over the portions of Upper Drive as a County road that is inside the City limits shall cease, and the full and absolute jurisdiction over the portions of Upper Drive within the City limits shall for all purposes of repair, construction, improvement and the levying and collection of assessments including maintenance and permitting authority therefore shall vest in the City, except for any transfer reservations stated in the resolution; and

2. Portions of County Roads outside City limits:

a. ORS 373.260(1)(b) authorizes an intergovernmental agreement between the City and Clackamas County for the construction, improvement or repair of, and the acquisition of right-of-way for County roads located outside of the City but leading directly to it. Upper Drive leads directly to the City, as shown on Exhibit A. ORS 373.260(1)(b) requires that the City and Clackamas County agree upon the proportion that each shall contribute toward such acquisition, construction, improvement or repair and upon the method and kind of acquisition, construction, improvement or repair to be made.

b. ORS 190.010 authorizes an intergovernmental agreement between the City and Clackamas County for the performance of any or all functions and activities that Clackamas County, its officers or agencies, have authority to perform. The functions and activities relating to County roads include maintenance, review and issuance of access permits, and the development and maintenance of road standards; and

WHEREAS, fragmented jurisdiction, maintenance, permitting, and road standards over the portions of Upper Drive results in confusion on the part of the public;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Lake Oswego that:

Section 1. County Roads Inside City Limits. The City of Lake Oswego requests that Clackamas County transfer all jurisdiction over the portions of the following roadway that is within the City limits, pursuant to ORS 373.270:

- a. Upper Drive (Clackamas County Rd. No. 1009 and DTD Maint. No. 21199) from the existing City of Lake Oswego road jurisdiction line near the northern extension of the west property line of 4450 Upper Drive westerly to the existing City of Lake Oswego road jurisdiction line of Boones Ferry Road excluding the segments referred to in Section 2 below (See also attached Exhibit A).

Section 2. County Roads Outside City Limits. The Mayor is hereby authorized to sign an Intergovernmental Agreement with Clackamas County substantially in the form attached as Exhibit B, for the transfer of the rights and duties as "road authority" for the portions of the below described County road that is outside the City limits:

- a. Segment 1: Entire Upper Drive (Clackamas County Rd. No. 1009 and DTD Maint. No. 21199) right-of-way from the northerly extension of the west property line of 5022 Upper Drive westerly to the existing City of Lake Oswego road jurisdiction line of Boones Ferry Road (See attached Exhibit A);
- b. Segment 2: North 1/2 of Upper Drive (Clackamas County Rd. No. 1009 and DTD Maint. No. 21199) right-of-way from the northerly extension of the west property line of 5022 Upper Drive easterly to the southerly extension of the east property line of 16766 Upper Drive (See attached Exhibit A); and
- c. Segment 3: Entire Upper Drive (Clackamas County Rd. No. 1009 and DTD Maint. No. 21199) right-of-way from the northerly extension of the west property line of 4680 Upper Drive easterly to the northern extension of the east property line of 4650 Upper Drive (See attached Exhibit A),

as authorized under Oregon law, including but not limited to the construction, improvement or repair of, acquisition of right of way (if necessary), maintenance, review and issuance of access permits, and the development and maintenance of road standards.

Section 3. Effective Date. This Resolution shall take effect upon passage.

Considered and enacted at the regular meeting of the City Council of the City of Lake Oswego on the 16th day of July, 2013.

AYES: Mayor Studebaker, Bowerman, Gudman, Gustafson, Jordan, Kehoe, O'Neill

NOES: None


EXCUSED: None

ABSTAIN: None



Kent Studebaker, Mayor

ATTEST:

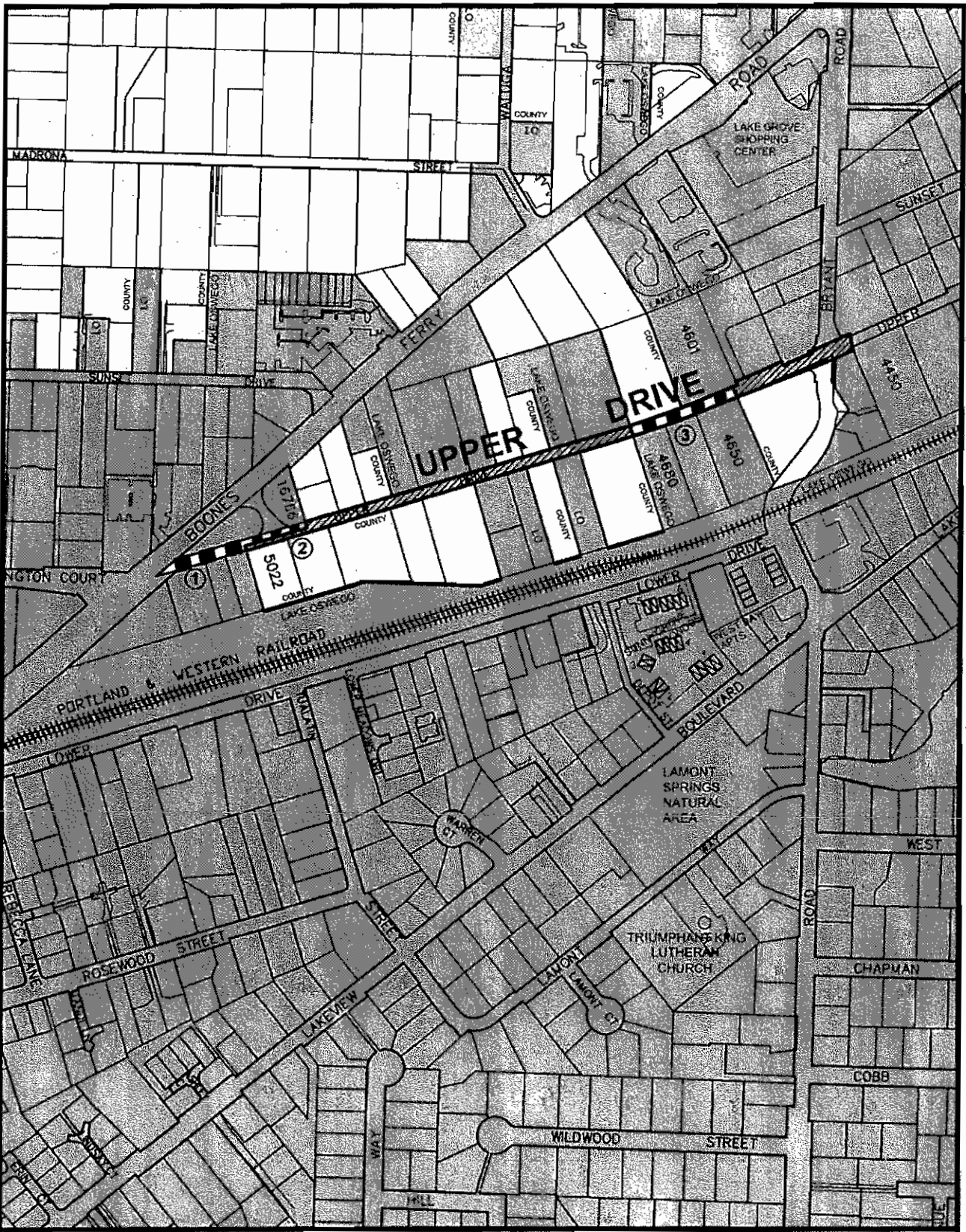


Catherine Schneider, City Recorder





APPROVED AS TO FORM:




Evan P. Boone, Deputy City Attorney



LEGEND

-  ROAD TO BE TRANSFERRED BY RESOLUTION
-  ROAD TO BE TRANSFERRED BY IGA
-  INSIDE CITY OF LAKE OSWEGO BOUNDARY
-  SEGMENT NUMBER

0 500'




PUBLIC WORKS
DEPARTMENT

EXHIBIT A
UPPER DRIVE

JURISDICTIONAL TRANSFER FROM
CLACKAMAS COUNTY

DRAWN BY: RS	DESIGN BY: EM	DATE: 8/27/2013	PAGE: 1 OF 1
-----------------	------------------	--------------------	-----------------

Exhibit B

INTERGOVERNMENTAL AGREEMENT BETWEEN CLACKAMAS COUNTY AND THE CITY OF LAKE OSWEGO FOR RIGHTS AND DUTIES AS "ROAD AUTHORITY," REGARDING PORTIONS OF UPPER DRIVE THAT ARE OUTSIDE CITY LIMITS, INCLUDING MAINTENANCE, PERMITTING AUTHORITY, AND ROAD STANDARDS.

Whereas, the City of Lake Oswego has authorized entering into this Intergovernmental Agreement pursuant to Resolution 13-38; and

Whereas, Clackamas County has authorized entering into this Intergovernmental Agreement pursuant to Order _____; and

Whereas, this Intergovernmental Agreement concerns the following portions of Upper Drive (Clackamas County Rd. No. 1009 and DTD Maint. No. 21199) (hereafter collectively referred to as "roadway"):

The Portions of Road That are Outside of City Limits (See Attached Exhibit A)			
Road	County No.	DTD No.	General Location
Upper Drive	1009	21199	Segment 1: Entire Upper Drive from the northerly extension of the west property line of 5022 Upper Drive westerly to the existing City of Lake Oswego road jurisdiction line of Boones Ferry Road. Segment 2: North 1/2 of Upper Drive right-of-way from the northerly extension of the west property line of 5022 Upper Drive easterly to the southerly extension of the east property line of 16766 Upper Drive. Segment 3: Entire Upper Drive right-of-way from the northerly extension of the west property line of 4680 Upper Drive easterly to the northern extension of the east property line of 4650 Upper Drive.

Whereas, ORS 373.260(1)(b) authorizes an intergovernmental agreement between the City and Clackamas County for the construction, improvement or repair of, and the acquisition of right-of-way for County roads located outside of the City but leading directly to it, and said roadway leads directly to the City, as shown on Exhibit A; and

Whereas, ORS 190.010 authorizes intergovernmental agreements for the performance of any or all functions and activities that Clackamas County, its officers or agencies, have authority to perform as "road authority" relating to County roads, including maintenance, review and issuance of access permits, and the development and maintenance of road standards;

NOW, THEREFORE, THE CITY OF LAKE OSWEGO ("CITY") AND CLACKAMAS COUNTY ("COUNTY") AGREE AS FOLLOWS:

1. Except as hereafter provided, upon the effective date of this Agreement, the County transfers to the City, and the City accepts and assumes all rights and duties of the County as a road authority for the portions of roadway located outside of the City limits, including but not limited to:

- a. Construction and reconstruction,
- b. Improvement or repair, and maintenance,
- c. Review of applications for access permits to the roadway, and the issuance of access permits,
- d. Establishing roadway standards,
- e. Acquisition of right-of-way, if necessary or convenient,
- f. Maintenance and repair of related facilities within the roadway, including storm water drainage facilities, and
- g. Review of application of street opening permits for improvements such as public and private utility installations.

2. All costs incurred in carrying out the right and duties stated in Section 1 above shall be the responsibility of the City.

3. Upon the effective date of this agreement, the roadway standards for future access to, work in, or development of the roadway shall be the City roadway standards, as generally applicable to streets of the same classification within the City.

4. County Responsibilities.

a. Maintenance Records. Within 180 days following the effective date of this Agreement, the County shall provide all existing records, at the County's expense, related to the maintenance of the roadway to City in both a hard copy and electronic format.

b. Unacceptable Conditions. If City determines in its discretion that the striping, reflective pavement markers or signage on the roadway is in an unacceptable condition, City may, within 60 days of the effective date of this Agreement, provide the County with written notice of the unacceptable conditions. Within 180 days following receipt of the written notice, the County shall, at the County's expense, perform the striping, replace reflective pavement markers and replace signs on the roadway as listed in the notice.

c. Permit Documentation. Within 180 days of the effective date of this Agreement, the County shall supply City with all documents and other information in the County's possession relating to all past as well as pending permits for any road-related work that would impact, or that has impacted the roadway.

d. Permitting Authority. The County shall retain responsibility for administering all permits pending on the effective date of this Agreement, or for which work authorized by issued permits has not been completed as of the effective date of this Agreement, and that impact the roadway. The County shall complete administration of these permits and supply City with documentation that work authorized by the permits has been completed, along with all relevant inspection reports and records. Responsibility for administering individual pending permits may be transferred to the City pursuant to mutual agreement between the parties.

e. As-built Information, Maintenance and Operation Records. Within 180 days of the date of this Agreement, the County shall, at the County's expense, provide City existing as-built information for the roadway in both hard copy and electronic format, and shall provide City all existing correspondence files, plans, maps and all other information related to the daily maintenance and operation of the roadway.

f. Future Fees and Permitting. The County waives all rights to future fees and/or permitting associated with the roadway.

g. Transition of Maintenance. The County shall work with City's Public Works Operations Division personnel in providing a smooth transition for the maintenance of the roadway.

h. Matters Impacting Roadway; City's Right to Comment. The County shall inform City in writing of any land use actions, decisions or permits that are pending or that become pending on or after the date of this Agreement that may impact the roadway, and shall consider City's input prior to making any decisions or recommendations related to such actions or prior to issuing any such permits.

i. Surface Water Drainage Facilities. City and County staff will conduct an on-site review of the drainage system and verify if any items need to be addressed prior to the transfer of the surface water system facilities within the roadway. Prior to acceptance of any existing surface water facilities within the roadway to be transferred, the County will clean and map all existing surface water facilities (including underground injection control (UIC) systems) and provide the City with details such as, but not limited to, location, depth, inlet and outlet elevations and pipe size.

5. City Responsibilities.

a. Future Fees and Permitting Authority. City shall collect fees and issue and administer permits, as deemed appropriate by City, for work performed on the roadway. Fees shall be retained by City.

b. Future Matters Impacting Roads; Good Faith and Timely Comments. City shall work in good faith to provide pertinent, timely feedback to the County with respect to matters noted in paragraph 4.h of this Agreement.

6. General Provisions.

a. Obey All Laws; Non-Discrimination. The County and the City agree to comply with all applicable local, state, and federal ordinances, statutes, laws and regulations; and rules and regulations on non-discrimination in employment because of race, color, ancestry, national origin, religion, sex,

marital status, age, medical condition or handicap.

b. Public Contracting Requirements. To the extent applicable, the provisions of ORS 279B.220, 279B.230, 279B.235 and 279C.500 through 279C.870 are incorporated by this reference as though fully set forth.

c. Insurance. Each party agrees to maintain insurance levels, or self-insurance in accordance with ORS 30.282, for the duration of this Agreement at levels necessary to protect against public body liability as specified in ORS 30.272.

d. Debt Limitation. This Agreement is expressly subject to the debt limitation of Oregon Counties set forth in Article XI, Section 10 of the Oregon Constitution, and is contingent upon funds being appropriated therefore.

e. Mutual Indemnification. The County and City, subject to the limitations and provisions of the Oregon Constitution and the Oregon Tort Claims Act, shall each indemnify, defend and hold harmless the other party, its officers, agents and employees, from all liability, loss or expenses, including attorney's fees, and against all claims or actions based upon or arising out of damage or injury (including death) to persons or property caused by or sustained by the indemnifying party's intentional or negligent act or omission, related to the terms, covenants and obligations of this Agreement. This contractual indemnity provision does not abrogate common law or statutory liability and indemnification, but is in addition to such common law or statutory provisions.

f. Severability. Any provisions herein which would conflict with law are deemed inoperative to that extent.

g. Amendment. This Agreement may be amended in writing by mutual consent of the parties.

h. Effective Date. This Agreement shall be effective as of the date of the last signature below.

City of Lake Oswego

Clackamas County

By: _____
Kent Studebaker, Mayor

By: _____
Chair, County Board of Commissioners

APPROVED AS TO FORM:

APPROVED AS TO FORM:

David D. Powell, City Attorney

County Counsel



Page 5 of 5 - Intergovernmental Agreement ... Regarding Portions Of Upper Drive That Are Outside City Limits, Including Maintenance, Permitting, And Road Standards



3

OFFICE OF COUNTY COUNSEL

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

December 19, 2013

Board of Commissioners
Clackamas County

Members of the Board:

Stephen L. Madkour
County Counsel

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

**Reading and Adoption of a Board Order Amending Local
Contract Review Board Rules (County Code Appendix "C")**

We are here to present that attached proposed amendment to Appendix C of the County Code, which contains the Local Contract Review Board Rules (LCRB Rules). These are the public contracting rules adopted by the County.

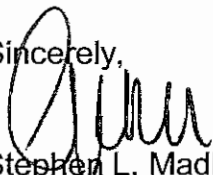
Changes to the LCRB Rules are adopted by Board Order upon a single reading, which may be a reading by title only.

During the time period December 20, 2013 through January 6, 2014 the Board of County Commissioners will not be holding regular meetings. In the absence of the regular Board meetings, we request that the County Administrator be given authority to sign all contracts and contract amendments that would otherwise be signed by the Board. Delegation of the Board's contract signing authority to the County Administrator will allow for continuation of regular business matters without delay. The time period for this delegation of authority would be only from December 20, 2013 to January 6, 2014.

RECOMMENDATION

Staff recommends that the Board conduct a single reading, by title only, and then approve the Board Order amending the Local Contract Review Board Rules.

Sincerely,


Stephen L. Madkour
County Counsel

For information on this issue please contact Lane Miller, Purchasing Manager, at 503-742-5442 or Stephen L. Madkour, County Counsel at 503-655-8362.

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

In the Matter of amending
Local Contract Review Board Rules,
Appendix C of the Clackamas
County Code



ORDER NO.

This matter coming regularly before the Board of County Commissioners, and it appearing that;

WHEREAS, on June 7, 2012, the Board of County Commissioners adopted Board Order No. 2012-41 which amended the Local Contract Review Board Rules, incorporated into the County Code as Appendix C; and

WHEREAS, it is now necessary to temporarily amend those rules to provide additional authority to the County Administrator to sign contracts, during a period of time when the Board will not have regularly scheduled meetings;

NOW, THEREFORE, IT IS HEREBY ORDERED as follows:

Section 1: Section C-050-0100 (2)(c) of Appendix C is hereby amended to read as follows:

C-050-0100 Delegation of Authority to sign Contracts and Amendments.

(2) Authority to Sign Contracts and Contract Amendments.

(c) For the period of **December 20, 2013 through January 6, 2014**, the Board of County Commissioners delegates authority to the County Administrator to sign all Contracts or Contract amendments. The County Administrator will report to the Board of County Commissioners in January 2014, regarding contracts signed by the County Administrator during this time period.

DATED this 19th day of December, 2013.

BOARD OF COUNTY COMMISSIONERS

John Ludlow, Chair

Mary Raethke, Recording Secretary



4

DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT

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

December 19, 2013

Board of County Commissioners
Clackamas County

Members of the Board:

Presentation on Status of County Roads

Purpose/Outcomes	Increase BCC and public understanding of the County road system, including current status, current and long-term maintenance needs, and associated costs.
Dollar Amount and Fiscal Impact	The 2013-14 budget for transportation is \$35.8 million; \$23.2 million of that is from the Road Fund.
Funding Source	State and federal gas tax, state vehicle registration and title fees, state weight-mile taxes paid by owners of heavy trucks
Safety Impact	Maintaining the safety of County roads for travelers is the top priority of the Transportation Maintenance Division.
Duration	Ongoing
Previous Board Action	Several BCC study and planning sessions during fall 2013 on transportation maintenance funding issues. BCC approval of an education and outreach timeline through April 10, 2014.
Contact Person	M. Barbara Cartmill, Acting Director, Department of Transportation and Development, 503-742-4326

BACKGROUND:

Clackamas County owns 1,400 miles of roadways and is constantly working to maintain those roads in safe condition for all travelers. Despite our best efforts, however, with increasing costs and needs and steady or decreasing revenue, the challenge continues to increase.

At this meeting we will review the status of County-owned roads, what is required to maintain them and prospects for the future.

RECOMMENDATION:

Staff recommends that the Board of County Commissioners continue to focus attention on the need for safe roadways, now and in the future, and consider ways to provide the resources needed to maintain the kind of road system our residents want and deserve.

Respectfully submitted,

A handwritten signature in cursive script that reads "M. B. Cartmill".

M. Barbara Cartmill, Acting Director,
Department of Transportation and Development

December 19, 2013

Board of Commissioners,
 Clackamas County

Members of the Board:

**Approval of the Agency Services Amendment #1 with the
 Foothills Community Church to provide Social Services for
Clackamas County Residents**


Purpose/Outcomes	Agreement with the Foothills Community Church to provide mandated Older American Act (OAA) funded services for persons in the City of Molalla.
Dollar Amount and Fiscal Impact	The maximum agreement is \$92,448. The contract is funded through the Social Services Division agreement with the Oregon Dept of Human Services, State Unit on Aging.
Funding Source	The Older American Act - no County General Funds are involved.
Safety Impact	None
Duration	Effective July 1, 2013 and terminates on June 30, 2014
Previous Board Action	None
Contact Person	Brenda Durbin, Director, Social Services Division 503-655-8641
Contract No.	6183

The Social Services Division of the Health, Housing & Human Services Department (H3S) requests the approval of an Agency Services Agreement Amendment #1 with the Foothills Community Church to provide social services to Clackamas County residents age 60 and over. This is a budget adjustment that adjusts the match rate for Medicaid service client transportation services, redistributes Title III-C funding of the nutrition program and adjusts the Ride Connection transportation funding. This results in an increase to the contract budget of \$8,476. The agreement begins July 1, 2013 and continues through June 30, 2014.

Recommendation

We recommend the approval of this agreement and that Cindy Becker be authorized to sign on behalf of the Board of County Commissioners.

Respectfully submitted,


 Cindy Becker
 Director

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

Healthy Families. Strong Communities.

Contract Amendment
Health, Housing and Human Services

H3S Contract Number: 6183 Board Agenda Number: _____ Division: Social Services

Contractor: Foothills Community Church Amendment Number 1

Amendment Requested By Brenda Durbin, CCSS Director

Changes: (X) Contract Budget

Justification for Amendment:

This is a budget adjustment that adjusts the match rate for Medicaid service client transportation services, redistributes Title III-C funding of the nutrition program and adjusts the Ride Connection transportation funding. This results in an increase to the contract budget of \$8,476.

I. AMEND: COMPENSATION AND RECORDS

- A. Compensation. County shall compensate the Agency for satisfactorily performing the services identified in Section I on a fixed unit rate reimbursement basis as described in Exhibit 3 - Budget and Units of Service - attached hereto. The maximum compensation allowed under this contract is \$83,972:

Funding Title	CFDA #	Funding Maximum
Older Americans Act III-B	93.044	\$10,872
Older Americans Act III-C	93.045	\$3,465
Older Americans Act III-D	93.043	\$1,560
NSIP Funds	93.053	\$281
Medicaid Funds: Home Delivered Meals	N/A	\$9,653
Low Income Energy Assistance (LIEAP)	N/A	\$325
STF/Ride Connection – Out of District	N/A	\$16,002
Special Transportation Formula Funds	N/A	\$33,244
STF/Ride Connection: Vehicle Maintenance	20.513	\$5,000
STF/Tri-Met: Medicaid Waivered Non-Medical Transportation	N/A	\$1,341
Medicaid Funds: Waivered Non-Medical Transportation	N/A	\$2,229

TO READ:

- B. Compensation. County shall compensate the Agency for satisfactorily performing the services identified in Section I on a fixed unit rate reimbursement basis as described in Exhibit 3 - Budget and Units of Service - attached hereto. The maximum compensation allowed under this contract is \$92,448:

Funding Title	CFDA #	Funding Maximum
Older Americans Act III-B	93.044	\$10,872
Older Americans Act III-C	93.045	\$7,810
Older Americans Act III-D	93.043	\$1,560
NSIP Funds	93.053	\$251
Medicaid Funds: Home Delivered Meals	N/A	\$9,653
Low Income Energy Assistance (LIEAP)	N/A	\$325
STF/Ride Connection – Out of District	N/A	\$20,927
Special Transportation Formula Funds	N/A	\$31,840
STF/Ride Connection: Vehicle Maintenance	20.513	\$5,640
STF/Tri-Met: Medicaid Waivered Non-Medical Transportation	N/A	\$1,316
Medicaid Funds: Waivered Non-Medical Transportation	N/A	\$2,254

AMEND: Page 3 - Unit Cost Schedule

TO READ: Page 4 – Unit Cost Schedule

Amend

Foothills Community Church
Molalla Adult Community Center Services
 Fiscal Year 2013-14

Service Category	LIEAP Funds (1)	OAA III B Funds (2)	OAA III C Funds (3)	OAA III D Funds (4)	OAA III E Funds (5)	OAA Match (6)	STF Funds (7)	NSIP Funds (8)	Medicaid Funds (9)	P.I. (if applicable) (12)	NO. OF UNITS (13)	TOTAL COST (14)	Reimbursement Rate (15)
Case Management		2,028				226					103.37 Hrs	\$2,254	\$26.18
Reassurance		2,174				242					70	\$2,416	\$31.23
Information & Assistance		1,085				121					81	\$1,206	\$13.44
PublicOutreach		300				33					6	\$333	\$50.00
Transportation - OAA III-B		5,285				588				529	1,057	\$6,401	\$5.00
OAA - Meal Site Mgmt			3,241			360				10,728	11,175	\$14,329	\$1.25
OAA - Site Prepared Meals			1,969			219		1,125			1,875	3,313	\$1.65
APD Medicaid HDMs			(1,850)			(206)		(866)	10,733	(1,080)	1,125	\$6,731	\$6.17
Physical Activity/Falls Prevention Programs				834		93					42	\$927	\$20.00
Preventive Screening, Counseling, and Referrals				726		81					18	\$807	\$40.00
Transport - Ride Con Out of Dist.							16,002			1,000	2,000	\$17,002	\$8.00
Non Medical Medicaid Rides							1,341		2,229		255	\$3,570	\$14.00
Special Tran. Formula-TAXI							7,886				103	\$7,886	\$76.56
Special Tran. Formula-VAN							25,358			714	1,429	\$26,072	\$17.75
Special Tran. Formula-Vehicle Maint.							5,000				N/A	\$5,000	N/A
LIEAP Intakes	325										50	\$325.00	\$6.50
TOTALS	325	\$10,872	\$3,360	\$1,560	\$0	\$1,756	\$55,587	\$259	\$12,962	\$11,891		\$98,571	

Total Cost Equals (1 + 2 + 3 + 4 + 5 + 6 + 7 + 8 + 9 + 10 + 11 + 12 = 14)

Reimbursement Rate - all services but meal site mngt., HDMs & non-medical T19 rides (1 + 2 + 4 + 5 + 7 + 11 / 13 = 15)

Reimbursement Rate - meal site management & Medicaid HDMs (3 + 9 + 10 / 13 = 15)

Reimbursement Rate - Non-Medical Medicaid Rides (7 + 9 / 13 = 15)

Source of OAA Title III-B, III-C, III D and III-E Match -

County Contract Amount: \$83,844

To Read

Foothills Community Church
Molalla Adult Community Center Services
 Fiscal Year 2013-14

Service Category	LIEAP Funds (1)	OAA III B Funds (2)	OAA III C Funds (3)	OAA III D Funds (4)	OAA III E Funds (5)	Required Match (6)	STF Funds (7)	NSIP Funds (8)	Medicaid Funds (9)	P.I. (If applicable) (12)	NO. OF UNITS (13)	TOTAL COST (14)	Reimbursement Rate (15)
Case Management		2,028				226					103.37 Hrs	\$2,254	\$26.18
Reassurance		2,174				242					70	\$2,416	\$31.23
Information & Assistance		1,085				121					81	\$1,206	\$13.44
PublicOutreach		300				33					6	\$333	\$50.00
Transportation - OAA III-B		5,285				588				529	1,057	\$6,401	\$5.00
OAA - Meal Site Mgmt			5,476			609				10,728	11,175	\$16,813	\$1.45
OAA - Site Prepared Meals			4,219			469		1,125			1,875	5,813	\$2.85
APD Medicaid HDMs			(1,884)			(210)		(874)	10,733	(1,080)	1,125	\$6,685	\$6.13
Physical Activity/Falls Prevention Programs				834		93					42	\$927	\$20.00
Preventive Screening, Counseling, and Referrals				726		81					18	\$807	\$40.00
Transport - Ride Con Out of Dist.							20,927			1,308	2,616	\$22,235	\$8.00
Non Medical Medicaid Rides							1,316		2,254		255	\$3,570	\$14.00
Special Tran. Formula-TAXI							7,886				103	\$7,886	\$76.56
Special Tran. Formula-VAN							23,954			675	1,350	\$24,629	\$17.75
Special Tran. Formula-Vehicle Maint.						\$646	5,640				N/A	\$6,286	N/A
LIEAP Intakes	325										50	\$325.00	\$6.50
TOTALS	325	\$10,872	\$7,810	\$1,560	\$0	\$2,896	\$59,723	\$251	\$12,987	\$12,159		\$108,583	

Total Cost Equals (1 + 2 + 3 + 4 + 5 + 6 + 7 + 8 + 9 + 10 + 11 + 12 = 14)

Reimbursement Rate - all services but meal site mgmt., HDMs & non-medical T19 rides (1 + 2 + 4 + 5 + 7 + 11 / 13 = 15)

Reimbursement Rate - meal site management & Medicaid HDMs (3 + 9 + 10 / 13 = 15)


Reimbursement Rate - Non-Medical Medicaid Rides (7 + 9 / 13 = 15)

Source of OAA Title III-B, III-C, III D and III-E Match -

County Contract Amount: \$92,448

All other terms and conditions of the original contract remain in full force and effect.

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

<p>AGENCY</p> <p>FOOTHILLS COMMUNITY CHURCH</p> <p></p> <p>By: Pastor Dale Satrum</p> <p><u>11/27/10</u></p> <p>Date</p> <p><u>215 Main Street, P.O.Box 797</u> Street Address</p> <p><u>Molalla, OR 97038</u> City/Zip</p> <p><u>(503) 829-5101</u> <u>(503) 829-9502</u> Phone Number Fax #</p> <p><u>93-1240330</u> Tax ID Number</p>	<p>CLACKAMAS COUNTY</p> <p>Commissioner John Ludlow, Chair Commissioner Jim Bernard Commissioner Paul Savas Commissioner Martha Schrader Commissioner Tootie Smith</p> <p>Signing on Behalf of the Board</p> <p>_____ Cindy Becker, Director Health, Housing, and Human Services</p> <p>_____ Date</p>
---	--

6

December 19, 2013

Board of County Commissioner
Clackamas County

Members of the Board:

**Approval of Revenue Intergovernmental Agreement with
Oregon Department of Human Services
For Strengthening, Preserving and Reunifying Families Program Services**

Purpose/Outcomes	Overall goals of the program are to maintain children safely at home with their parents or caregivers, safely and equitably reduce the number of children in the foster care system, reduce the length of stay in foster care, and to reduce the referral or re-entry rates of families into the child welfare system.
Dollar Amount and Fiscal Impact	Total amount of this agreement is \$610,877.00. \$108,588.00 will fund allocated costs and divisional staff(s) totaling 1.0FTE to administer the program. \$502,289.00 will fund local providers to provide direct services.
Funding Source	Funds are budgeted in the State Revenues grant stream for fiscal year 2013-2014 to cover this agreement. No County General Funds are involved.
Safety Impact	N/A
Duration	This agreement is effective upon acceptance by all parties and will terminate November 30, 2014.
Previous Board Action	N/A
Contact Person	Rodney A. Cook
Contract No.	6523

BACKGROUND:

The Children, Youth & Families Division of the Health, Housing and Human Services Department requests the approval of a Revenue Intergovernmental Agreement with Oregon Department of Human Services to develop and oversee the Strengthening, Preserving and Reunifying Families Program for Clackamas County families.

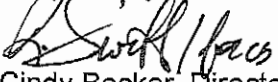
Services to be provided under this contract include: 1) connect families to existing social services provided by the county and 2) provide crisis mental health and alcohol and drug services to immediately stabilize the family while they wait to enter existing treatment services that will resolve the Oregon Department of Human Services client/family's long term service needs. The expectation is to provide Family Support Services to a minimum of 225 families, Parent Education to 65 families, Intensive Alcohol & Drug interventions to 75 families, and Intensive Mental Health interventions to 75 families by November 30, 2104.

This contract has been reviewed and approved by County Counsel.

RECOMMENDATION:

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

Respectfully submitted,


Cindy Becker, Director

Agreement Number 144523



**STATE OF OREGON
INTERGOVERNMENTAL AGREEMENT**

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

This Agreement is between the State of Oregon, acting by and through its Department of Human Services, hereinafter referred to as "DHS" and,

**Clackamas County
Acting by and through its Children, Youth & Family Division
2051 Kaen Road
Oregon City, OR 97045
Contact: Rodney A. Cook
Telephone: (503) 650-5677
Facsimile: (503) 650-5674
E-mail address: rodcoo@co.clackamas.or.us**

hereinafter referred to as "County."

Work to be performed under this Agreement relates principally to the DHS'

**Child Welfare Program
District 15
315 S. Beavercreek Road
Oregon City, OR 97045
Agreement Administrator: Mary Clark or delegate
Telephone: (971) 673-7321
Facsimile: (971) 673-7382
E-mail address: mary.s.clark@state.or.us**

1. Effective Date and Duration.

Upon signature by all applicable parties, this Agreement shall be effective on the later of (i) December 1, 2013 or (ii) when required, the date this Agreement is approved by the Department of Justice, regardless of the date it is actually signed by all other parties. Unless extended or terminated earlier in accordance with its terms, this Agreement shall expire on November 30, 2014. Agreement termination or expiration shall not extinguish or prejudice either party's right to enforce this Agreement with respect to any default by the other party that has not been cured.

2. Agreement Documents.

a. This Agreement consists of this document and includes the following listed exhibits which are incorporated into this Agreement:

- (1) Exhibit A, Part 1: Statement of Work
- (2) Exhibit A, Part 2: Payment and Financial Reporting
- (3) Exhibit A, Part 3: Special Terms and Conditions
- (4) Exhibit B: Standard Terms and Conditions
- (5) Exhibit C: Subcontractor Insurance Requirements
- (6) Exhibit D: Required Federal Terms and Conditions

This Agreement constitutes the entire agreement between the parties on the subject matter in it; there are no understandings, agreements, or representations, oral or written, regarding this Agreement that are not specified herein.

- b. 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, Exhibits D, A, B, and C.
- c. For purposes of this Agreement, "Work" means specific work to be performed or services to be delivered by County as set forth in Exhibit A.

3. Consideration.

- a. The maximum not-to-exceed amount payable to County under this Agreement, which includes any allowable expenses, is \$610,877.00. DHS will not pay County any amount in excess of the not-to-exceed amount for completing the Work, and will not pay for Work until this Agreement has been signed by all parties.
- b. DHS will pay only for completed Work under this Agreement, and may make interim payments as provided for in Exhibit A.

4. Vendor or Sub-Recipient Determination.

In accordance with the State Controller's Oregon Accounting Manual, policy 30.40.00.102, DHS' determination is that:

County is a sub-recipient; **OR** County is a vendor.

Catalog of Federal Domestic Assistance (CFDA) #(s) of federal funds to be paid through this Agreement: 93.658

5. County Data and Certification.

- a. County Information.** County shall provide information set forth below. This information is requested pursuant to ORS 305.385 and OAR 125-246-0330(1).

PLEASE PRINT OR TYPE THE FOLLOWING INFORMATION:

County Name (exactly as filed with the IRS): _____

Clackamas County

Street address: _____

2051 Kaen Rd

City, state, zip code: _____

Oregon City, OR 97045

Email address: _____

rod.coo@co.clackamas.or.us

Telephone: _____

(503) 650-5677 Facsimile: (503) 650-5674

Federal Employer Identification Number: _____

93-6002286

Proof of Insurance:

Workers' Compensation Insurance Company: _____

Separate letter

Policy #: _____

Expiration Date: _____

The above information must be provided prior to Agreement approval. County shall provide proof of Insurance upon request by DHS or DHS designee.

- b. Certification.** The County acknowledges that the Oregon False Claims Act, ORS 180.750 to 180.785, applies to any "claim" (as defined by ORS 180.750) that is made by (or caused by) the County and that pertains to this Agreement or to the project for which the Agreement work is being performed. The County certifies that no claim described in the previous sentence is or will be a "false claim" (as defined by ORS 180.750) or an act prohibited by ORS 180.755. County further acknowledges that in addition to the remedies under this Agreement, if it makes (or causes to be made) a false claim or performs (or causes to be performed) an act prohibited under the Oregon False Claims Act, the Oregon Attorney General may enforce the liabilities and penalties provided by the Oregon False Claims Act against the County. Without limiting the generality of the foregoing, by signature on this Agreement, the County hereby certifies that:

- (1) Under penalty of perjury the undersigned is authorized to act on behalf of County and that County is, to the best of the undersigned's knowledge, not in violation of any Oregon Tax Laws. For purposes of this certification, "Oregon Tax Laws" means a state tax imposed by ORS 320.005 to 320.150 and 403.200 to 403.250 and ORS chapters 118, 314, 316, 317, 318, 321 and 323 and the elderly rental assistance program under ORS 310.630 to 310.706 and local taxes administered by the Department of Revenue under ORS 305.620;

- (2) The information shown in this Section 5., County Data and Certification , is County's true, accurate and correct information;
 - (3) To the best of the undersigned's knowledge, County has not discriminated against and will not discriminate against minority, women or emerging small business enterprises certified under ORS 200.055 in obtaining any required subcontracts;
 - (4) County and County's employees and agents are not included on the list titled "Specially Designated Nationals and Blocked Persons" maintained by the Office of Foreign Assets Control of the United States Department of the Treasury and currently found at:
<http://www.treas.gov/offices/enforcement/ofac/sdn/t11sdn.pdf>;
 - (5) County is not listed on the non-procurement portion of the General Service Administration's "List of Parties Excluded from Federal procurement or Non-procurement Programs" found at
<https://www.sam.gov/portal/public/SAM/>; and
 - (6) County is not subject to backup withholding because:
 - (a) County is exempt from backup withholding;
 - (b) County has not been notified by the IRS that County is subject to backup withholding as a result of a failure to report all interest or dividends; or
 - (c) The IRS has notified County that County is no longer subject to backup withholding.
- c. County is required to provide its Federal Employer Identification Number (FEIN). By County's signature on this Agreement, County hereby certifies that the FEIN provided to DHS is true and accurate. If this information changes, County is also required to provide DHS with the new FEIN within 10 days.

EACH PARTY, BY EXECUTION OF THIS AGREEMENT, HEREBY ACKNOWLEDGES THAT IT HAS READ THIS AGREEMENT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

COUNTY: YOU WILL NOT BE PAID FOR WORK PERFORMED PRIOR TO NECESSARY STATE APPROVALS

6. Signatures.

**Clackamas County acting by and through its Children, Youth & Family Division
By:**

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

**State of Oregon acting by and through its Department of Human Services
By:**

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

Approved for Legal Sufficiency:

Approved via E-mail by Jeffrey J. Wahl	November 27, 2013
Assistant Attorney General	Date

Office of Contracts and Procurement:

Contract Specialist	Date
---------------------	------

EXHIBIT A

Part 1 Statement of Work

1. Overview and Background

- a. The Strengthening, Preserving and Reunifying Families Program (SPRF Program) was created by the Oregon legislature with the goal of reducing trauma to children who are at risk of being removed from their families of origin because of reasons of abuse or neglect, and to resolve those issues by means of offering family-focused services starting at the assessment phase of the case and extending into aftercare services; or for those children in substitute care, service transitioning into aftercare services when children are returned home.
- b. The overall goals of the SPRF Program are to maintain children safely at home with their parents or caregivers, safely and equitably reduce the number of children in the foster care system, reduce the length of stay in foster care, and to reduce the referral or reentry rates of families into the Child Welfare system.
- c. Services provided will be culturally-competent, evidenced-based, client-centered, and family-focused. SPRF Program services can be both front-end intervention programs in the home and community to support and maintain in-home placement; and services in the home, community and with the foster parent, child and biological parents to support early reunification programs.
- d. This Agreement is part of a collaborative effort among Clackamas County, schools and non-profit social service providers to reinvest in critical social services and supportive programs for at-risk families in the Oregon City, Gladstone, North Clackamas areas of high poverty and crime, where a substantial amount of the DHS foster care population resides, with a goal of families being served in their local communities and supported by the natural supports that will stabilize them for the long-term.
- e. The services provided under this Agreement are to be used to:
 - (1) connect families to existing social services provided by the county; and
 - (2) provide crisis mental health, alcohol and drug services, and parent education to immediately stabilize the family while they wait to enter existing treatment services that will resolve the DHS Client family's long term service needs.

2. Definitions

- a. "Child" or "Children" refers to children and youth, primarily between newborn and 18 years of age, who are part of an open case with DHS Child Welfare in Oregon City, Gladstone or North Clackamas areas, regardless of whether the child is currently in substitute care or is receiving in-home services.

- b. "Child Welfare Caseworker" or "Caseworker" means DHS Child Welfare staff.
- c. "Client" or "Clients" refers specifically to the person identified on the referral for service and the recipient of services being provided by the County. Depending on the referral and focus of the services, Client can mean the Child, the Child's family, the Child's parent, the primary or substitute caregiver, or another family member or relation of the Child.
- d. "Nurturing Parent Curriculum" refers to the evidence-based curriculum used by the County to help parents develop parenting skills while working to strengthen the parent-child relationship.
- e. "Service Point Data Base" (trademarked and copyrighted by Bowman Systems) refers to the web based client information system that provides standardized assessment of a Client's needs, creates individualized service plans and records the use of housing and services which communities can use to determine the utilization of services of participating service providers, identify gaps in the local service continuum and develop outcome measurements.
- f. "Service Point Use Agreement" refers to the user agreement provided by the County, for authorized employees or subcontractors to read and sign, in order to use the Service Point Data Base.

3. Services to be Provided

Pursuant to Exhibit B, paragraph 20, DHS hereby approves for the County to subcontract with NW Family Services and Metropolitan Family Services for the provision of SPRF Program services under this Agreement. DHS must approve any other subcontractors prior to award of a subcontract.

The County shall provide the following:

- a. The services of 2.25 FTE to be known as "Family Support Navigators." The Family Support Navigators to be distributed as follows: 1. 0 FTE at the Eastham Center, 1. 0 FTE in the North Clackamas area and 0.25 FTE at the Gladstone Center.
 - (1) The Family Support Navigators shall have a minimum of a Bachelor's of Art (BA) degree or a Bachelor's of Sciences (BS) degree in a human services related field awarded by an accredited University or equivalent work experience.
 - (2) The Family Support Navigators shall be responsible for: day-to-day parent engagement; information, referral and assistance for referred families; completing required forms, including release of information forms; case coordination; providing links to services, assessing Child safety needs or case planning, and assistance in navigating the social service system and being a liaison between DHS and the family.
 - (3) Duties and responsibilities the Family Support Navigator shall perform, but are not limited to:

- (a) Meet with families involved in the Child Welfare system to provide assistance in accessing community resources and navigating social service supports;
 - (b) Identify and assist appropriate local community providers to offer their services on site;
 - (c) Develop strong connections with referral sources for community social services and provide referrals as needed;
 - (d) Conduct home visits as needed to help remove barriers and enable families to access needed services and to develop a stronger relationship with schools;
 - (e) Administer emergency or discretionary funds for families receiving navigation services for items such as: rent and transportation.
 - (f) Identify and assist appropriate local community providers to offer their services on-site at the Eastham Center, the Gladstone Center, and the North Clackamas area;
 - (g) Maintain a comprehensive list of public and private social services in Clackamas County. Establish a strong connection with referral sources for community social services and provide referrals as needed; and
 - (h) Enter client data into Service Point data base in a timely fashion as per Service Point Use Agreement.
- b. Immediate Response and Assessment Services.
- (1) The services of 1.0 FTE to be known as an "Intensive Mental Health Crisis Response Worker".
 - (a) The Intensive Mental Health Crisis Response worker shall be a Qualified Mental Health Professional as defined in Oregon Administrative Rule (OAR) 309-039-0510 (12), including being supervised by a Qualified Supervisor employed by the County or the sub-contractor employing the Qualified Mental Health Professional, as defined in OAR 309-039-0510 (13).
 - (b) The Intensive Mental Health Crisis Response Worker will be skilled in, and have experience in, community-based, primarily in-home, mental health intervention practices, conflict resolution, and family engagement and mobilization skills.
 - (c) The Intensive Mental Health Crisis Response Worker will be required to work a flexible non-traditional work schedule that may include evening work periods. Schedule will be agreed upon between County and DHS.
 - (2) Duties and responsibilities the Intensive Mental Health Crisis Response Worker shall perform, but are not limited to:

- (a) Complete risk assessment as well as identify mental health issues;
 - (b) Provide short term in home mental health counseling as a stop gap to stabilize situation and bridge gap until client is engaged in treatment;
 - (c) Provide screening to clients to identify mental health issues;
 - (d) Provide assessments and report back to Caseworkers;
 - (e) Work with families to help them understand the process/issues associated with mental health issues;
 - (f) Provide appropriate referrals to mental health services and assist in accessing services;
 - (g) Provide services when families are available, which may include evenings and weekends;
 - (h) Administer emergency or discretionary funds for families receiving treatment services for things like child care, transportation, etc.;
 - (i) Engage the Client by providing short-term services until the Client is able to be placed in a treatment program, which could take four to six weeks;
 - (j) Provide follow up stabilization services; and
 - (k) Enter client data into Service Point Data Base in a timely fashion as per Service Point Use Agreement.
- (3) The services of 1.0 FTE to be known as the "Intensive Alcohol and Drug Specialist."
- (a) The Intensive Alcohol and Drug Specialist shall be certified as a Certified Alcohol Drug Counselor II (CADC II) or a Certified Alcohol Drug Counselor III (CADC III), by The Addiction Counselor Certification Board of Oregon (ACCBO).
 - (b) The Intensive Alcohol and Drug Specialist will provide crisis stabilization services to help address substance abuse issues within the family, and will work in conjunction with the DHS Addiction Recovery Team (ART) to complete alcohol and drug assessments and link clients to ongoing alcohol and drug treatment service providers.
- (4) Duties and responsibilities the Intensive Alcohol and Drug Specialist shall perform, but are not limited to:
- (a) Provide short term in home alcohol and drug counseling as a stop gap to stabilize situation and bridge gap until client is engaged in treatment;

- (b) Be available to provide screening for Clients to identify alcohol and drug or mental health issues, provide assessments and report back to Caseworkers;
 - (c) Work with families to help them understand the process and issues associated with alcohol and drug use;
 - (d) Provide appropriate referrals to alcohol and drug treatment and assist Clients in accessing services;
 - (e) Administer urine analysis when needed for screening or follow-up services;
 - (f) Provide services when families are available, which may include working evenings and weekends;
 - (g) Engage the Client by providing short-term services until the Client is able to be placed in a treatment program, which could take four to six weeks;
 - (h) Provide follow up stabilization services;
 - (i) Administer emergency or discretionary funds for families receiving treatment services for things like child care, transportation, etc.; and
 - (j) Enter client data into Service Point Data Base in a timely fashion as per Service Point Use Agreement.
- (5) Working closely and in collaboration with schools and other community partners, upon referral by DHS, the Intensive Mental Health Crisis Response worker or the Intensive Alcohol and Drug Specialist, whichever is appropriate to the referral, may be asked to accompany the Child Welfare Caseworker in making the home assessment, Immediate Response- (IR), and will provide screening and assessment services to the parent and family simultaneously with DHS as it conducts Child and family risk assessments and evaluates other related safety and risk factors. The appropriate staff will screen and assess the parent and family to determine any impact that substance abuse or mental health issues may have had relative to the Child Protective Services (CPS) referral and on the family dynamic in general. The County shall provide written reports to DHS within three calendar days of conducting the screening and assessment, and it shall include, among other relevant items, recommendations for treatment and any other recommendations for service.
- (6) In some situations upon assignment by DHS, the County will screen and assess the parent and family in their own home separate from the DHS IR to determine the impact that substance abuse or mental health has had on the family dynamic, the report of which by the County may be included by DHS as part of the CPS assessment process. County shall conduct and

complete the screening and assessment within three calendar days of receiving the referral from DHS; and will provide written reports to DHS within three calendar days of conducting the screening and assessment, including recommendations for treatment and other services based on the screening and assessment conducted by the County.

- (7) Screening, assessment and recommendation for treatment and other services will be based on the level of care criteria as defined by the American Society of Addiction Medicine (ASAM); and any applicable rule promulgated by the Oregon Health Authority (OHA) or other state, local or federal agencies with such rule authority.
 - (8) The Intensive Mental Health Crisis Response Worker and the Intensive Alcohol and Drug Specialist will work in conjunction with all the Family Support Navigators to ensure that families maintain links with all the community support services needed by, and available to, the family.
- c. The services of 2.10 FTE to be known as the "Parent Educators." The Parent Educators will:
- (1) Be responsible for assisting with coordination, and implementation of individual coaching using the Nurturing Parenting curriculum.
 - (2) Be available to meet with parents in their homes when they are available, which may include working evening hours 5:00 pm -7:00 pm at least two to three days per week.
 - (3) Duties and responsibilities the Parent Educator shall perform, but are not limited to:
 - (a) Work with designated partners in North Clackamas to identify families involved with DHS Child Welfare;
 - (b) Utilize best practice in home visiting;
 - (c) Gain a thorough and complete understanding of the Nurturing Parenting curriculum;
 - (d) Evaluate effectiveness of the program and provide documentation of program outcomes;
 - (e) Maintain awareness of parent needs and issues;
 - (f) Enter client data into Service Point Data Base in a timely fashion as per Service Point Use Agreement.
- d. The services of 0.5 FTE to be known as the "SPRF Case Coordinator." The SPRF Case Coordinator will:
- (1) Be responsible for coordinating the Family Support Navigators to insure their time is being utilized fully and in the most efficient manner;

- (2) Be a resource to the Family Support Navigators to assist in gaining access to services that Family Support Navigators are not able to access on their own or may not be fully aware of;
 - (3) Gain and maintain knowledge and expertise in all social service programs and resources in Clackamas County;
 - (4) Have regular meetings with Family Support Navigators to discuss and resolve challenges and barriers to accessing services, and discuss opportunities available for accessing services; and
 - (5) Manage and allocate support service dollars to Clients for miscellaneous items such as bus tickets, cleaning supplies, diapers, etc.; and larger items such as: short-term Alcohol and Drug or Mental Health services not covered by the Oregon Health Plan or personal insurance, short-term rental assistance, car repairs, etc., according to procedure and protocol determined jointly by DHS and the County.
- e. The services of 0.25 FTE to be known as the SPRF Planner. The SPRF Planner will be responsible for data collection, program evaluation and overall contract compliance.

4. Reporting Requirements

County will provide monthly service reports to the referred Child's Child Welfare Caseworker and to the DHS Contract Administrator or designee.

- a. The monthly report shall list all referrals provided to the Child and family during the month; list of service offered and provided, and the frequency of services provided; location; and other relevant information, including transportation specifics, if any.
- b. The monthly service report is based on a calendar month, and shall be received by Child Welfare no later than the 10th calendar day of the month following the reporting period.
- c. Reports shall be sent directly to the DHS Contract Administrator or designee, and shall accompany the monthly invoice.

5. Systematic, Outcomes-Based Services

Performance measures include:

- a. By November 30, 2014, a minimum of 225 families will be served by Family Support Navigators under the terms and conditions of this Agreement; a minimum of 75% families receiving services at Eastham (100) and Gladstone (25) and North Clackamas School district (100) under this Agreement will achieve service plan goals;

Performance measured by:

- (1) Number of DHS families served.
- (2) Number of DHS families served that close DHS Child Welfare cases.

- (3) Number of Children served that did not return or penetrate further into the Child Welfare system (Based on Data entered into Service Point);
 - (4) Number of Children served that did not enter into the foster care system;
 - (5) Number of DHS families served who have achieved stable housing; and
 - (6) Quarterly accounting of emergency or discretionary fund disbursements including recipient Client and funds use.
- b. By November 30, 2014, a minimum of 65 families will be served by Parent Educators under the terms and conditions of this Agreement; a minimum of 75% families receiving services at North Clackamas School District under this Agreement will achieve service plan goals;

Performance measured by:

- (1) Number of DHS families served.
 - (2) Number of DHS families served that close DHS Child Welfare cases.
 - (3) Number of Children served that did not return or penetrate further into the Child Welfare system (Based on Data entered into Service Point);
 - (4) Number of DHS families served that maintained or achieved stable housing;
 - (5) Number of DHS families demonstrating improvement in parenting skills or abilities; and
- c. By November 30, 2014, a minimum of 75 families will be served by Intensive Alcohol and Drug Specialist under the terms and conditions of the Agreement; a minimum of 75% families receiving services at Eastham, Gladstone and North Clackamas School District under this Agreement will achieve service plan goals;

Performance measured by:

- (1) Number of DHS families served.
 - (2) Number of DHS families served that close DHS Child Welfare cases.
 - (3) Number of Children served that did not return or penetrate further into the Child Welfare system (Based on Data entered into Service Point);
 - (4) Number of Children served that did not enter into the foster care system;
 - (5) Number of DHS families served who have achieved stable housing; and
 - (6) Quarterly accounting of emergency or discretionary fund disbursements including recipient Client and funds use.
- d. By November 30, 2014, a minimum of 75 families will be served by Intensive Mental Health Crisis Response Worker under the terms and conditions of the contract; A minimum of 75% families receiving services at Eastham, Gladstone and North Clackamas School District under this contract will achieve service plan goals;

Performance measured by:

- (1) Number of DHS families served.
- (2) Number of DHS families served that close DHS Child Welfare cases.
- (3) Number of Children served that did not return or penetrate further into the Child Welfare system (Based on Data entered into Service Point);
- (4) Number of Children served that did not enter into the foster care system;
- (5) Number of DHS families served who have achieved stable housing; and
- (6) Quarterly accounting of emergency or discretionary fund disbursements including recipient Client and funds use.

6. Pay for Performance, and Performance and Outcome Measures

DHS is in the process of creating and certifying certain Pay for Performance measures, or Performance or Outcome measures, that it fully intends to implement in all its Strengthening, Preserving and Reunifying Families Program Agreements, including this one. Experience gained under this Agreement and Agreements in other Counties will most likely weigh on the final measures that will be created by DHS, and the County may or may not be asked to contribute to the discussion. DHS has the authority and intent to create and implement Pay for Performance or Performance and Outcome measures into this Agreement. County is hereby advised that DHS will be amending this Agreement, under provisions stated elsewhere, to institute those measures, and Rates of Pay and other Terms and Conditions will be altered to accommodate those measures.

EXHIBIT A

Part 2 Payment and Financial Reporting

1. Payment Provisions:

- a. As consideration for the services provided by the County during the period specified **Section 1. Effective Date and Duration**, DHS will pay to the County, a maximum not-to-exceed amount as specified in **Section 3. Consideration**, to be paid as follows:
 - (1) Services will be paid at a monthly rate of \$50,906.42
- b. County Invoice.
 - (1) County shall submit signed invoices on a form created by the County that has been approved by DHS or on the DHS approved invoice located at:
<http://www.oregon.gov/dhs/children/pages/data/sacwis/index.aspx>
 - (2) Invoices must include the following information:
 - (a) County name and OR-Kids provider number;
 - (b) Agreement number;
 - (c) Service Category and Service Type for services being claimed; and
 - (d) Total dollar amount.
 - (3) In addition to the information listed above in 1.b.(2), invoices for Client specific services must also include the following information:
 - (a) Name of Client receiving services;
 - (b) DHS Branch office that referred Client for services;
 - (c) Client OR-Kids case number and participant number; and
 - (d) Begin and end dates of each service provided for the month being invoiced.
 - (4) Invoices must be submitted to the Attention of the Agreement Administrator or designee.
 - (5) Payment will be made by DHS to the County monthly on or after the first of each month following the month in which services were performed, subject to receipt and approval by DHS of the County's invoice and required reporting as identified in **EXHIBIT A, Part 1, Statement of Work, Section 4. Reporting Requirements**.

2. Travel and Other Expenses

DHS **shall not** reimburse County for any travel or additional expenses under this Agreement.

EXHIBIT A

Part 3 Special Terms and Conditions

1. Confidentiality of Client Information.

- a. All information as to personal facts and circumstances obtained by the County on the client shall be treated as privileged communications, shall be held confidential, and shall not be divulged without the written consent of the client, his or her guardian, or the responsible parent when the client is a minor child, or except as required by other terms of this Agreement. Nothing prohibits the disclosure of information in summaries, statistical, or other form, which does not identify particular individuals.
- b. The use or disclosure of information concerning clients shall be limited to persons directly connected with the administration of this Agreement. Confidentiality policies shall be applied to all requests from outside sources.
- c. DHS, County and any subcontractor will share information as necessary to effectively serve DHS clients.

2. Amendments.

- a. DHS reserves the right to amend or extend the Agreement under the following general circumstances:
 - (1) DHS may extend the Agreement for additional periods of time up to a total Agreement period of 5 years, and for additional money associated with the extended period(s) of time. The determination for any extension for time may be based on DHS' satisfaction with performance of the work or services provided by the County under this Agreement.
 - (2) DHS may periodically amend any payment rates throughout the life of the Agreement proportionate to increases in Portland Metropolitan Consumer Price Index; and to provide Cost Of Living Adjustments (COLA) if DHS so chooses. Any negotiation of increases in rates to implement a COLA will be as directed by the Oregon State Legislature.
- b. DHS further reserves the right to amend the Statement of Work for the following:
 - (1) Programmatic changes/additions or modifications deemed necessary to accurately reflect the original scope of work that may not have been expressed in the original Agreement or previous amendments to the Agreement;
 - (2) Implement additional phases of the Work; or
 - (3) As necessitated by changes in Code of Federal Regulations, Oregon Revised Statutes, or Oregon Administrative Rules which, in part or in combination, govern the provision of services provided under this Agreement.

- c. Upon identification, by any party to this Agreement, of any circumstance which may require an amendment to this Agreement, the parties may enter into negotiations regarding the proposed modifications. Any resulting amendment must be in writing and be signed by all parties to the Agreement before the modified or additional provisions are binding on either party. All amendments must comply with Exhibit B, Section 22 “Amendments” of this Agreement.

3. County Requirements to Report Abuse of Certain Classes of Persons.

- a. County shall comply with, and cause all employees to comply with, the applicable laws for mandatory reporting of abuse for certain classes of persons in Oregon, including: Children (ORS 419B.005 through 419B.045).
- b. County shall make reports of suspected abuse of persons who are members of the classes established in section 3.a. above to appropriate authorities as a requirement of this Agreement.
- c. County shall immediately report suspected child abuse, neglect or threat of harm to DHS Child Protective Services or law enforcement officials in full accordance with the mandatory Child Abuse Reporting law (ORS 419B.005 through 419B.045). If law enforcement is notified, the County shall notify the referring DHS caseworker within 24 hours. County shall immediately contact the local DHS Child Protective Services office if questions arise as to whether or not an incident meets the definition of child abuse or neglect.
- d. If known, the abuse report should contain the following:
 - (1) The name and address of the abused person and any people responsible for their care;
 - (2) The abused person’s age;
 - (3) The nature and the extent of the abuse, including any evidence of previous abuse;
 - (4) The explanation given for the abuse;
 - (5) The date of the incident; and
 - (6) Any other information that might be helpful in establishing the cause of the abuse and the identity of the abuser.

4. Background Checks for Employees and Volunteers.

- a. The County shall ensure that all employees and volunteers who perform work related to this Agreement, or who have access to any information about clients served under this Agreement, are approved by the Department of Human Services Background Check Unit (BCU) in accordance with Oregon Administrative Rules 407-007-0200 through 407-007-0370.
- b. In addition to potentially disqualifying conditions under OAR 407-007-0290, the following is a potentially disqualifying condition: abuse as determined from child protective services investigation reports held by the Department regardless of the

date of initial report or outcome which have an outcome of founded, substantiated, or valid and in which the Subject Individual (SI) is determined to have been responsible for the abuse.

- c. An employee or volunteer may be hired on a preliminary basis, in accordance with the requirements and limits described in OAR 407-007-0315, prior to being approved by DHS's Background Check Unit. An employee or volunteer hired on a preliminary basis may not have unsupervised contact with individuals receiving services under this contract and may only participate in the limited activities described in OAR 407-007-0315. An employee or volunteer hired on a preliminary basis must be actively supervised at all times as described in OAR 407-007-0315.
 - d. Any current employee or volunteer hired for a new position with the County must be approved by the BCU at the time the employee or volunteer accepts the new position. Notwithstanding the requirements of paragraph b. of this section, a current employee or volunteer who accepts a new position with the County may be hired for a new position on a preliminary basis without active supervision in accordance with the limits and requirements described in OAR 407-007-0315.
 - e. There are only two possible outcomes of a background check: approval or denial. If the employee or volunteer is denied, she or he may not have contact with DHS clients referred for service under this contract and may not have access to information about DHS clients. Employees or volunteers who are denied do have the right to contest the denial. The process for contesting a denial is described in OARs 407-007-0330 and 407-007-0335.
 - f. For purposes of compliance with OAR 407-007-0200 through 407-007-0370, the County is a "Qualified Entity", as that term is defined in OAR 407-007-210, and must comply with all the provisions pertaining to Qualified Entities contained in OAR 407-007-0200 through 407-007-0370.
5. **Equal Access to Services.** County shall provide equal access to covered services for both males and females under 18 years of age, including access to appropriate facilities, services and treatment, to achieve the policy in ORS 417.270.
6. **Media Disclosure.** The County will not provide information to the media regarding a recipient of services purchased under this Agreement without first consulting the DHS office that referred the child or family. The County will make immediate contact with the DHS office when media contact occurs. The DHS office will assist the County with an appropriate follow-up response for the media.
7. **Nondiscrimination.** The County must provide services to DHS clients without regard to race, religion, national origin, sex, age, marital status, sexual orientation or disability (as defined under the Americans with Disabilities Act). Contracted services must reasonably accommodate the cultural, language and other special needs of clients.

EXHIBIT B

Standard Terms and Conditions

1. **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 the parties that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within a circuit court for the State of Oregon of proper jurisdiction. THE PARTIES, BY EXECUTION OF THIS AGREEMENT, HEREBY CONSENT TO THE IN PERSONAM JURISDICTION OF SAID COURTS. Except as provided in this section, neither party waives any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the eleventh amendment to the Constitution of the United States or otherwise, from any Claim or from the jurisdiction of any court. The parties acknowledge that this is a binding and enforceable agreement and, to the extent permitted by law, expressly waive any defense alleging that either party does not have the right to seek judicial enforcement of this Agreement.
2. **Compliance with Law.** Both parties shall comply with laws, regulations, and executive orders to which they are subject and which are applicable to the Agreement or to the Work. Without limiting the generality of the foregoing, both parties expressly agree to comply with the following laws, regulations and executive orders to the extent they are applicable to the Agreement: (a) all applicable requirements of state civil rights and rehabilitation statutes, rules and regulations; (b) all state laws requiring reporting of Client abuse; (c) ORS 659A.400 to 659A.409, ORS 659A.145 and all regulations and administrative rules established pursuant to those laws in the construction, remodeling, maintenance and operation of any structures and facilities, and in the conduct of all programs, services and training associated with the Work. These laws, regulations and executive orders are incorporated by reference herein to the extent that they are applicable to the Agreement and required by law to be so incorporated. All employers, including County and DHS, 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.
3. **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.
4. **Representations and Warranties.**
 - a. County represents and warrants as follows:
 - (1) **Organization and Authority.** County is a political subdivision of the State of Oregon duly organized and validly existing under the laws of the State of Oregon. County has full power, authority and legal right to make this Agreement and to incur and perform its obligations hereunder.
 - (2) **Due Authorization.** The making and performance by County of this Agreement (a) have been duly authorized by all necessary action by

County and (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 a party or by which County 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 County of this Agreement.

- (3) Binding Obligation. 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 subject to the laws of bankruptcy, insolvency, or other similar laws affecting the enforcement of creditors' rights generally.
- (4) County has the skill and knowledge possessed by well-informed members of its industry, trade or profession and County will apply that skill and knowledge with care and diligence to perform the Work in a professional manner and in accordance with standards prevalent in County's industry, trade or profession;
- (5) County shall, at all times during the term of this Agreement, be qualified, professionally competent, and duly licensed to perform the Work; and
- (6) County prepared its proposal related to this Agreement, if any, independently from all other proposers, and without collusion, fraud, or other dishonesty.

b. DHS represents and warrants as follows:

- (1) Organization and Authority. DHS has full power, authority, and legal right to make this Agreement and to incur and perform its obligations hereunder.
- (2) Due Authorization. The making and performance by DHS of this Agreement (a) have been duly authorized by all necessary action by DHS and (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 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 DHS is a party or by which DHS 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 DHS of this Agreement, other than approval by the Department of Justice if required by law.

(3) **Binding Obligation.** This Agreement has been duly executed and delivered by DHS and constitutes a legal, valid and binding obligation of DHS, 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. **Warranties Cumulative.** The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.

5. Funds Available and Authorized Clause.

a. The State of Oregon's payment obligations under this Agreement are conditioned upon DHS receiving funding, appropriations, limitations, allotment, or other expenditure authority sufficient to allow DHS, in the exercise of its reasonable administrative discretion, to meet its payment obligations under this Agreement. County is not entitled to receive payment under this Agreement from any part of Oregon state government other than DHS. Nothing in this Agreement is to be construed as permitting any violation of Article XI, section 7 of the Oregon Constitution or any other law regulating liabilities or monetary obligations of the State of Oregon. DHS represents that as of the date it executes this Agreement, it has sufficient appropriations and limitation for the current biennium to make payments under this Agreement.

b. **Payment Method.** Payments under this Agreement will be made by Electronic Funds Transfer (EFT), unless otherwise mutually agreed, and shall be processed in accordance with the provisions of OAR 407-120-0100 through 407-120-0380 or OAR 410-120-1260 through OAR 410-120-1460, as applicable, and any other Oregon Administrative Rules that are program-specific to the billings and payments. Upon request, County shall provide its taxpayer identification number (TIN) and other necessary banking information to receive EFT payment. County shall maintain at its own expense a single financial institution or authorized payment agent capable of receiving and processing EFT using the Automated Clearing House (ACH) transfer method. The most current designation and EFT information will be used for all payments under this Agreement. County shall provide this designation and information on a form provided by DHS. In the event that EFT information changes or the County elects to designate a different financial institution for the receipt of any payment made using EFT procedures, the County shall provide the changed information or designation to DHS on a DHS-approved form. DHS is not required to make any payment under this Agreement until receipt of the correct EFT designation and payment information from the County.

6. **Recovery of Overpayments.** If billings under this Agreement, or under any other Agreement between County and DHS, result in payments to County to which County is not entitled, DHS, after giving to County written notification and an opportunity to object, may withhold from payments due to County such amounts, over such periods of time, as are necessary to recover the amount of the overpayment, subject to Section 7 below. Prior to withholding, if County objects to the withholding or the amount proposed

to be withheld, County shall notify DHS that it wishes to engage in dispute resolution in accordance with Section 19 of this Agreement.

7. **Compliance with Law.** Nothing in this Agreement shall require County or DHS to act in violation of state or federal law or the Constitution of the State of Oregon.

8. **Ownership of Intellectual Property.**

a. **Definitions.** As used in this Section 8 and elsewhere in this Agreement, the following terms have the meanings set forth below:

(1) "County Intellectual Property" means any intellectual property owned by County and developed independently from the Work.

(2) "Third Party Intellectual Property" means any intellectual property owned by parties other than DHS or County.

b. Except as otherwise expressly provided herein, or as otherwise required by state or federal law, DHS will not own the right, title and interest in any intellectual property created or delivered by County or a subcontractor in connection with the Work. With respect to that portion of the intellectual property that the County owns, County grants to DHS a perpetual, worldwide, non-exclusive, royalty-free and irrevocable license, subject to any provisions in the Agreement that restrict or prohibit dissemination or disclosure of information, to (1) use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the intellectual property, (2) authorize third parties to exercise the rights set forth in Section 8.b.(1) on DHS' behalf, and (3) sublicense to third parties the rights set forth in Section 8.b.(1).

c. If state or federal law requires that DHS or County grant to the United States a license to any intellectual property, or if state or federal law requires that the DHS or the United States own the intellectual property, then County shall execute such further documents and instruments as DHS may reasonably request in order to make any such grant or to assign ownership in the intellectual property to the United States or DHS. To the extent that DHS becomes the owner of any intellectual property created or delivered by County in connection with the Work, DHS will grant a perpetual, worldwide, non-exclusive, royalty-free and irrevocable license, subject to any provisions in the Agreement that restrict or prohibit dissemination or disclosure of information, to County to use, copy, distribute, display, build upon and improve the intellectual property.

d. County shall include in its subcontracts terms and conditions necessary to require that subcontractors execute such further documents and instruments as DHS may reasonably request in order to make any grant of license or assignment of ownership that may be required by federal or state law.

9. **County Default.** County shall be in default under this Agreement upon the occurrence of any of the following events:

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

- b. Any representation, warranty or statement made by County herein or in any documents or reports relied upon by DHS to measure the delivery of Work, the expenditure of payments or the performance by County is untrue in any material respect when made;
 - c. County (1) 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, (2) admits in writing its inability, or is generally unable, to pay its debts as they become due, (3) makes a general assignment for the benefit of its creditors, (4) is adjudicated a bankrupt or insolvent, (5) commences a voluntary case under the Federal Bankruptcy Code (as now or hereafter in effect), (6) files a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, (7) 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 (8) takes any action for the purpose of effecting any of the foregoing; or
 - d. A proceeding or case is commenced, without the application or consent of County, in any court of competent jurisdiction, seeking (1) the liquidation, dissolution or winding-up, or the composition or readjustment of debts, of County, (2) the appointment of a trustee, receiver, custodian, liquidator, or the like of County or of all or any substantial part of its assets, or (3) 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).
10. **DHS Default.** DHS shall be in default under this Agreement upon the occurrence of any of the following events:
- a. DHS 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 DHS herein or in any documents or reports relied upon by County to measure performance by DHS is untrue in any material respect when made.
11. **Termination.**
- a. **County Termination.** County may terminate this Agreement:
 - (1) For its convenience, upon at least 30 days advance written notice to DHS;
 - (2) Upon 45 days advance written notice to DHS, if County does not obtain funding, appropriations and other expenditure authorizations from County's governing body, federal, state or other sources sufficient to permit County to satisfy its performance obligations under this Agreement,

as determined by County in the reasonable exercise of its administrative discretion;

- (3) Upon 30 days advance written notice to DHS, if DHS is in default under this Agreement and such default remains uncured at the end of said 30 day period or such longer period, if any, as County may specify in the notice; or
- (4) Immediately upon written notice to DHS, if Oregon statutes or federal laws, regulations or guidelines are modified, changed or interpreted by the Oregon Legislative Assembly, the federal government or a court in such a way that County no longer has the authority to meet its obligations under this Agreement.

b. DHS Termination. DHS may terminate this Agreement:

- (1) For its convenience, upon at least 30 days advance written notice to County;
- (2) Upon 45 days advance written notice to County, if DHS does not obtain funding, appropriations and other expenditure authorizations from federal, state or other sources sufficient to meet the payment obligations of DHS under this Agreement, as determined by DHS in the reasonable exercise of its administrative discretion. Notwithstanding the preceding sentence, DHS may terminate this Agreement, immediately upon written notice to County or at such other time as it may determine if action by the Oregon Legislative Assembly or Emergency Board reduces DHS' legislative authorization for expenditure of funds to such a degree that DHS will no longer have sufficient expenditure authority to meet its payment obligations under this Agreement, as determined by DHS in the reasonable exercise of its administrative discretion, and the effective date for such reduction in expenditure authorization is less than 45 days from the date the action is taken;
- (3) Immediately upon written notice to County if Oregon statutes or federal laws, regulations or guidelines are modified, changed or interpreted by the Oregon Legislative Assembly, the federal government or a court in such a way that DHS no longer has the authority to meet its obligations under this Agreement or no longer has the authority to provide payment from the funding source it had planned to use;
- (4) Upon 30 days advance written notice to County, if County is in default under this Agreement and such default remains uncured at the end of said 30 day period or such longer period, if any, as DHS may specify in the notice;
- (5) Immediately upon written notice to County, if any license or certificate required by law or regulation to be held by County or a subcontractor to perform the Work is for any reason denied, revoked, suspended, not renewed or changed in such a way that County or a subcontractor no

longer meets requirements to perform the Work. This termination right may only be exercised with respect to the particular part of the Work impacted by loss of necessary licensure or certification;

- (6) Immediately upon written notice to County, if DHS determines that County or any of its subcontractors have endangered or are endangering the health or safety of a client or others in performing work covered by this Agreement.

- c. **Mutual Termination.** The Agreement may be terminated immediately upon mutual written consent of the parties or at such time as the parties may agree in the written consent.

12. Effect of Termination

a. Entire Agreement.

- (1) Upon termination of this Agreement, DHS shall have no further obligation to pay County under this Agreement.
- (2) Upon termination of this Agreement, County shall have no further obligation to perform Work under this Agreement.

- b. **Obligations and Liabilities.** Notwithstanding Section 12.a., any termination of this Agreement shall not prejudice any obligations or liabilities of either party accrued prior to such termination.

13. Limitation of Liabilities. NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT. NEITHER PARTY SHALL BE LIABLE FOR ANY DAMAGES OF ANY SORT ARISING SOLELY FROM THE TERMINATION OF THIS AGREEMENT OR ANY PART HEREOF IN ACCORDANCE WITH ITS TERMS.

14. Insurance. County shall require subcontractors to maintain insurance as set forth in Exhibit C, which is attached hereto.

15. Records Maintenance; 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 DHS and the Oregon Secretary of State's Office and the federal government and their duly authorized representatives shall 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 years, or such longer period as may be required by applicable law, following final payment and termination of this Agreement, or until the conclusion of any audit,

controversy or litigation arising out of or related to this Agreement, whichever date is later. County shall maintain Records in accordance with the records retention schedules set forth in OAR Chapter 166.

16. **Information Privacy/Security/Access.** If the Work performed under this Agreement requires County or its subcontractor(s) to have access to or use of any DHS computer system or other DHS Information Asset for which DHS imposes security requirements, and DHS grants County or its subcontractor(s) access to such DHS Information Assets or Network and Information Systems, County shall comply and require all subcontractor(s) to which such access has been granted to comply with OAR 407-014-0300 through OAR 407-014-0320, as such rules may be revised from time to time. For purposes of this section, "Information Asset" and "Network and Information System" have the meaning set forth in OAR 407-014-0305, as such rule may be revised from time to time.
17. **Force Majeure.** Neither DHS nor County shall be held responsible for delay or default caused by fire, civil unrest, labor unrest, natural causes, or war which is beyond the reasonable control of DHS or County, respectively. Each party shall, however, make all reasonable efforts to remove or eliminate such cause of delay or default and shall, upon the cessation of the cause, diligently pursue performance of its obligations under this Agreement. DHS may terminate this Agreement upon written notice to the other party after reasonably determining that the delay or breach will likely prevent successful performance of this Agreement.
18. **Assignment of Agreement, Successors in Interest.**
 - a. County shall not assign or transfer its interest in this Agreement without prior written approval of DHS. Any such assignment or transfer, if approved, is subject to such conditions and provisions as DHS may deem necessary. No approval by DHS of any assignment or transfer of interest shall be deemed to create any obligation of DHS in addition to those set forth in the Agreement.
 - b. The provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto, and their respective successors and permitted assigns.
19. **Alternative Dispute Resolution.** The parties should attempt in good faith to resolve any dispute arising out of this agreement. This may be done at any management level, including at a level higher than persons directly responsible for administration of the agreement. In addition, the parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation.
20. **Subcontracts.** County shall not enter into any subcontracts for any of the Work required by this Agreement without DHS' prior written consent. In addition to any other provisions DHS may require, County shall include in any permitted subcontract under this Agreement provisions to require that DHS will receive the benefit of subcontractor performance as if the subcontractor were the County with respect to Sections 1, 2, 3, 4, 8, 15, 16, 18, 21, and 23 of this Exhibit B. DHS' consent to any subcontract shall not relieve County of any of its duties or obligations under this Agreement.
21. **No Third Party Beneficiaries.** DHS and County are the only parties to this Agreement and are the only parties entitled to enforce its terms. The parties agree that County's

performance under this Agreement is solely for the benefit of DHS to assist and enable DHS to accomplish its statutory mission. 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 any greater than the rights and benefits enjoyed by the general public unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.

22. **Amendments.** No amendment, modification or change of terms of this Agreement shall bind either party unless in writing and signed by both parties and when required the Department of Justice. Such amendment, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given.
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 shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.
24. **Survival.** Sections 1, 4, 5, 6, 7, 8, 12, 13, 14, 15, 16, 19, 21, 22, 23, 24, 25, 26, 28, 29, 30 and 31 of this Exhibit B shall survive Agreement expiration or termination as well as those the provisions of this Agreement that by their context are meant to survive. Agreement expiration or termination shall not extinguish or prejudice either party's right to enforce this Agreement with respect to any default by the other party that has not been cured.
25. **Notice.** Except as otherwise expressly provided in this Agreement, any communications between the parties hereto or notices to be given hereunder shall be given in writing by personal delivery, facsimile, or mailing the same, postage prepaid to County or DHS at the address or number set forth in this Agreement, or to such other addresses or numbers as either party may indicate pursuant to this section. Any communication or notice so addressed and mailed by regular mail shall be deemed received and effective five days after the date of mailing. Any communication or notice delivered by facsimile shall be deemed received and effective on the day the transmitting machine generates a receipt of the successful transmission, if transmission was during normal business hours of the recipient, or on the next business day, if transmission was outside normal business hours of the recipient. Notwithstanding the forgoing, to be effective against the other party, any notice transmitted by facsimile must be confirmed by telephone notice to the other party at number listed below. Any communication or notice given by personal delivery shall be deemed effective when actually delivered to the addressee.

DHS: Office of Contracts & Procurement
250 Winter St NE, Room 306
Salem, OR 97301
Telephone: 503-945-5818
Facsimile: 503-378-4324

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

27. **Counterparts.** This Agreement and any subsequent amendments may be executed in several counterparts, all of which when taken together shall constitute one agreement binding on all parties, notwithstanding that all parties are not signatories to the same counterpart. Each copy of this Agreement and any amendments so executed shall constitute an original.
28. **Waiver.** The 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. No waiver or consent shall be effective unless in writing and signed by the party against whom it is asserted.
29. **Construction.** *[Reserved]*
30. **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 a party (the "Notified Party") with respect to which the other party ("Other Party") may have liability, the Notified Party must promptly notify the Other Party in writing of the Third Party Claim and deliver to the Other Party a copy of the claim, process, and all legal pleadings with respect to the Third Party Claim. Either party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with counsel of its own choosing. Receipt by the Other Party of the notice and copies required in this paragraph and meaningful opportunity for the Other Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to the Other Party's liability with respect to the Third Party Claim.

With respect to a Third Party Claim for which the State is jointly liable with the County (or would be if joined in the Third Party Claim), the State shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by the County in such proportion as is appropriate to reflect the relative fault of the State on the one hand and of the County on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of the State on the one hand and of the 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. The State's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law if the State had sole liability in the proceeding.

With respect to a Third Party Claim for which the County is jointly liable with the State (or would be if joined in the Third Party Claim), the 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 the State in such proportion as is appropriate to reflect the relative fault of the County on the one hand and of the State on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of the County on the one hand and of the State on the other hand shall be determined by reference to, among other things, the parties' relative

intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. The 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.

- 31. Indemnification by Subcontractors.** 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 contractor from and against any and all Claims.
- 32. Stop-Work Order.** DHS may, at any time, by written notice to the County, require the County to stop all, or any part of the work required by this Agreement for a period of up to 90 days after the date of the notice, or for any further period to which the parties may agree through a duly executed amendment. Upon receipt of the notice, County shall immediately comply with the Stop-Work Order terms and take all necessary steps to minimize the incurrence of costs allocable to the work affected by the stop work order notice. Within a period of 90 days after issuance of the written notice, or within any extension of that period to which the parties have agreed, DHS shall either:
- a. Cancel or modify the stop work order by a supplementary written notice; or
 - b. Terminate the work as permitted by either the Default or the Convenience provisions of Section 11. Termination.

If the Stop Work Order is canceled, DHS may, after receiving and evaluating a request by the County, make an adjustment in the time required to complete this Agreement and the Agreement price by a duly executed amendment.

EXHIBIT C

Subcontractor Insurance Requirements

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

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

2. **Professional Liability.**

Required by DHS Not required by DHS.

Professional Liability Insurance covering any damages caused by an error, omission or negligent act related to the services to be provided under the Subcontract, with limits not less than the following, as determined by DHS:

Per occurrence limit for any single claimant:

From commencement of the Agreement term through June 30, 2015:.... \$2,000,000.

From July 1, 2015 and every year thereafter, the adjusted limitation as determined by the State Court Administrator pursuant to ORS 30.271(4).

Per occurrence limit for multiple claimants:

From commencement of the Agreement term through June 30, 2015:.... \$4,000,000.

From July 1, 2015 and every year thereafter, the adjusted limitation as determined by the State Court Administrator pursuant to ORS 30.271(4).

3. Commercial General Liability.

Required by DHS Not required by DHS.

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

Bodily Injury/Death:

Per occurrence limit for any single claimant:

From commencement of the Agreement term through June 30, 2015:.....\$2,000,000.

From July 1, 2015 and every year thereafter the adjusted limitation as determined by the State Court Administrator pursuant to ORS 30.271(4).

Per occurrence limit for multiple claimants:

From commencement of the Agreement term through June 30, 2015: ...\$4,000,000.

From July 1, 2015 and every year thereafter the adjusted limitation as determined by the State Court Administrator pursuant to ORS 30.271(4).

AND

Property Damage:

Per occurrence limit for any single claimant:

From commencement of the Agreement term through June 30, 2014:.....\$200,000.

From July 1, 2014 and every year thereafter the adjusted limitation as determined by the State Court Administrator pursuant to ORS 30.273(3).

Per occurrence limit for multiple claimants:

From commencement of the Agreement term through June 30, 2014:.....\$600,000.

From July 1, 2014 and every year thereafter the adjusted limitation as determined by the State Court Administrator pursuant to ORS 30.273(3).

4. Automobile Liability.

Required by DHS Not required by DHS.

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

5. Additional Insured. The Commercial General Liability insurance and Automobile Liability insurance must include the State of Oregon, its officers, employees and agents as

Additional Insureds but only with respect to the contractor's activities to be performed under the Subcontract. Coverage must be primary and non-contributory with any other insurance and self-insurance.

6. **“Tail” Coverage.** If any of the required insurance policies is on a "claims made" basis, such as professional liability insurance, the contractor shall maintain either “tail” coverage or continuous "claims made" liability coverage, provided the effective date of the continuous “claims made” coverage is on or before the effective date of the Subcontract, for a minimum of 24 months following the later of: (i) the contractor’s completion and County’s acceptance of all services required under the Subcontract or, (ii) the expiration of all warranty periods provided under the Subcontract. Notwithstanding the foregoing 24-month requirement, if the contractor elects to maintain “tail” coverage and if the maximum time period “tail” coverage reasonably available in the marketplace is less than the 24-month period described above, then the contractor may request and DHS may grant approval of the maximum “tail” coverage period reasonably available in the marketplace. If DHS approval is granted, the contractor shall maintain “tail” coverage for the maximum time period that “tail” coverage is reasonably available in the marketplace.
7. **Notice of Cancellation or Change.** The contractor or its insurer must provide 30 days’ written notice to County before cancellation of, material change to, potential exhaustion of aggregate limits of, or non-renewal of the required insurance coverage(s).
8. **Certificate(s) of Insurance.** County shall obtain from the contractor a certificate(s) of insurance for all required insurance before the contractor performs under the Subcontract. The certificate(s) or an attached endorsement must specify: (i) all entities and individuals who are endorsed on the policy as Additional Insured and (ii) for insurance on a “claims made” basis, the extended reporting period applicable to “tail” or continuous “claims made” coverage.

EXHIBIT D

Required Federal Terms and Conditions

General Applicability and Compliance. Unless exempt under 45CFR Part 87 for Faith-Based Organizations (Federal Register, July 16, 2004, Volume 69, #136), or other federal provisions, County shall comply and, as indicated, require all subcontractors to comply with the following federal requirements to the extent that they are applicable to this Agreement, to County, or to the Work, or to any combination of the foregoing. For purposes of this Agreement, all references to federal and state laws are references to federal and state laws as they may be amended from time to time.

- 1. Miscellaneous Federal Provisions.** County shall comply and require all subcontractors to comply with all federal laws, regulations, and executive orders applicable to the Agreement or to the delivery of Work. Without limiting the generality of the foregoing, County expressly agrees to comply and require all subcontractors to comply with the following laws, regulations and executive orders to the extent they are applicable to the Agreement: (a) Title VI and VII of the Civil Rights Act of 1964, as amended, (b) Sections 503 and 504 of the Rehabilitation Act of 1973, as amended, (c) the Americans with Disabilities Act of 1990, as amended, (d) Executive Order 11246, as amended, (e) the Health Insurance Portability and Accountability Act of 1996, as amended, (f) the Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended, (g) the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, (h) all regulations and administrative rules established pursuant to the foregoing laws, (i) all other applicable requirements of federal civil rights and rehabilitation statutes, rules and regulations, and (j) all federal laws requiring reporting of Client abuse. These laws, regulations and executive orders are incorporated by reference herein to the extent that they are applicable to the Agreement and required by law to be so incorporated. No federal funds may be used to provide Work in violation of 42 U.S.C. 14402.
- 2. Equal Employment Opportunity.** If this Agreement, including amendments, is for more than \$10,000, then County shall comply and require all subcontractors to comply with Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR Part 60).
- 3. Clean Air, Clean Water, EPA Regulations.** If this Agreement, including amendments, exceeds \$100,000 then County shall comply and require all subcontractors to comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 7606), the Federal Water Pollution Control Act as amended (commonly known as the Clean Water Act) (33 U.S.C. 1251 to 1387), specifically including, but not limited to Section 508 (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (2 CFR Part 1532), which prohibit the use under non-exempt Federal contracts, grants or loans of facilities included on the EPA List of Violating Facilities. Violations shall be reported to DHS, United States Department of Health and Human Services and the appropriate Regional Office of the Environmental

Protection Agency. County shall include and require all subcontractors to include in all contracts with subcontractors receiving more than \$100,000, language requiring the subcontractor to comply with the federal laws identified in this section.

4. **Energy Efficiency.** County shall comply and require all subcontractors to comply with applicable mandatory standards and policies relating to energy efficiency that are contained in the Oregon energy conservation plan issued in compliance with the Energy Policy and Conservation Act 42 U.S.C. 6201 et. seq. (Pub. L. 94-163).
5. **Truth in Lobbying.** By signing this Agreement, the County certifies, to the best of the County's knowledge and belief that:
 - a. No federal appropriated funds have been paid or will be paid, by or on behalf of County, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any federal contract, grant, loan or cooperative agreement.
 - b. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan or cooperative agreement, the County shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying" in accordance with its instructions.
 - c. The County shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients and subcontractors shall certify and disclose accordingly.
 - d. This certification is a material representation of fact upon which reliance was placed when this Agreement was made or entered into. Submission of this certification is a prerequisite for making or entering into this Agreement imposed by section 1352, Title 31 of the U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
 - e. No part of any federal funds paid to County under this Agreement shall be used other than for normal and recognized executive legislative relationships, for publicity or propaganda purposes, for the preparation, distribution, or use of any kit, pamphlet, booklet, publication, electronic communication, radio, television, or video presentation designed to support or defeat the enactment of legislation before the United States Congress or any State or local legislature itself, or designed to support or defeat any proposed or pending regulation, administrative

action, or order issued by the executive branch of any State or local government itself.

- f. No part of any federal funds paid to County under this Agreement shall be used to pay the salary or expenses of any grant or contract recipient, or agent acting for such recipient, related to any activity designed to influence the enactment of legislation, appropriations, regulation, administrative action, or Executive order proposed or pending before the United States Congress or any State government, State legislature or local legislature or legislative body, other than for normal and recognized executive-legislative relationships or participation by an agency or officer of a State, local or tribal government in policymaking and administrative processes within the executive branch of that government.
- g. The prohibitions in subsections (e) and (f) of this section shall include any activity to advocate or promote any proposed, pending or future Federal, State or local tax increase, or any proposed, pending, or future requirement or restriction on any legal consumer product, including its sale or marketing, including but not limited to the advocacy or promotion of gun control.
- h. No part of any federal funds paid to County under this Agreement may be used for any activity that promotes the legalization of any drug or other substance included in schedule I of the schedules of controlled substances established under section 202 of the Controlled Substances Act except for normal and recognized executive congressional communications. This limitation shall not apply when there is significant medical evidence of a therapeutic advantage to the use of such drug or other substance of that federally sponsored clinical trials are being conducted to determine therapeutic advantage.

6. **HIPAA Compliance.** As a Business Associate of a Covered Entity, DHS must comply with the Health Insurance Portability and Accountability Act and the federal regulations implementing the Act (collectively referred to as HIPAA), and DHS must also comply with OAR 125-055-0100 through OAR 125-055-0130 to the extent that any Work or obligations of DHS related to this Agreement are covered by HIPAA. County shall determine if County will have access to, or create any protected health information in the performance of any Work or other obligations under this Agreement. To the extent that County will have access to, or create any protected health information to perform functions, activities, or services for, or on behalf of, DHS as specified in the Agreement, County shall comply and cause all subcontractors to comply with the following:

- a. Privacy and Security of Individually Identifiable Health Information. Individually Identifiable Health Information about specific individuals is confidential. Individually Identifiable Health Information relating to specific individuals may be exchanged between County and DHS for purposes directly related to the provision of services to Clients which are funded in whole or in part under this Agreement. To the extent that County is performing functions, activities, or services for, or on behalf of DHS, in the performance of any Work required by this Agreement, County shall not use or disclose any Individually Identifiable Health Information about specific individuals in a manner that would violate DHS

Privacy Rules, OAR 407-014-0000 et. seq., or DHS Notice of Privacy Practices. A copy of the most recent DHS Notice of Privacy Practices may be obtained by contacting DHS or by looking up form number 2090 on the DHS web site at <https://apps.state.or.us/cf1/FORMS/>.

- b. Data Transactions Systems. If County intends to exchange electronic data transactions with DHS or the Oregon Health Authority (OHA) in connection with claims or encounter data, eligibility or enrollment information, authorizations or other electronic transaction, County shall execute an EDI Trading Partner Agreement and shall comply with EDI Rules.
- c. Consultation and Testing. If County reasonably believes that the County's or DHS' data transactions system or other application of HIPAA privacy or security compliance policy may result in a violation of HIPAA requirements, County shall promptly consult the DHS Information Security Office. County or DHS may initiate a request for testing of HIPAA transaction requirements, subject to available resources and the DHS testing schedule.
- d. Business Associate Requirements. County and all subcontractors shall comply with the same requirements for Business Associates set forth in OAR 125-055-0100 through OAR 125-055-0130 as a contractor of a Business Associate.

7. **Resource Conservation and Recovery.** County shall comply and require all subcontractors to comply with all mandatory standards and policies that relate to resource conservation and recovery pursuant to the Resource Conservation and Recovery Act (codified at 42 U.S.C. 6901 et. seq.). Section 6002 of that Act (codified at 42 U.S.C. 6962) requires that preference be given in procurement programs to the purchase of specific products containing recycled materials identified in guidelines developed by the Environmental Protection Agency. Current guidelines are set forth in 40 CFR Part 247.

8. **Audits.**

- a. County shall comply, and require any subcontractor to comply, with applicable audit requirements and responsibilities set forth in this Agreement and applicable state or federal law.
- b. Sub-recipients shall also comply with applicable Code of Federal Regulations (CFR) and OMB Circulars governing expenditure of federal funds including, but not limited, to OMB A-133 Audits of States, Local Governments and Non-Profit Organizations.

9. **Debarment and Suspension.** County shall not permit any person or entity to be a subcontractor if the person or entity is listed on the non-procurement portion of the General Service Administration's "List of Parties Excluded from Federal Procurement or Non-procurement Programs" in accordance with Executive Orders No. 12549 and No. 12689, "Debarment and Suspension". (See 2 CFR Part 180.) This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory authority other than Executive Order No. 12549. Subcontractors with awards that exceed the simplified acquisition threshold shall provide

the required certification regarding their exclusion status and that of their principals prior to award.

- 10. Drug-Free Workplace.** County shall comply and require all subcontractors to comply with the following provisions to maintain a drug-free workplace: (i) County certifies that it will provide a drug-free workplace by publishing a statement notifying its employees that the unlawful manufacture, distribution, dispensation, possession or use of a controlled substance, except as may be present in lawfully prescribed or over-the-counter medications, is prohibited in County's workplace or while providing services to DHS clients. County's notice shall specify the actions that will be taken by County against its employees for violation of such prohibitions; (ii) Establish a drug-free awareness program to inform its employees about: The dangers of drug abuse in the workplace, County's policy of maintaining a drug-free workplace, any available drug counseling, rehabilitation, and employee assistance programs, and the penalties that may be imposed upon employees for drug abuse violations; (iii) Provide each employee to be engaged in the performance of services under this Agreement a copy of the statement mentioned in paragraph (i) above; (iv) Notify each employee in the statement required by paragraph (i) above that, as a condition of employment to provide services under this Agreement, the employee will: abide by the terms of the statement, and notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction; (v) Notify DHS within ten (10) days after receiving notice under subparagraph (iv) above from an employee or otherwise receiving actual notice of such conviction; (vi) Impose a sanction on, or require the satisfactory participation in a drug abuse assistance or rehabilitation program by any employee who is so convicted as required by Section 5154 of the Drug-Free Workplace Act of 1988; (vii) Make a good-faith effort to continue a drug-free workplace through implementation of subparagraphs (i) through (vi) above; (viii) Require any subcontractor to comply with subparagraphs (i) through (vii) above; (ix) Neither County, or any of County's employees, officers, agents or subcontractors may provide any service required under this Agreement while under the influence of drugs. For purposes of this provision, "under the influence" means: observed abnormal behavior or impairments in mental or physical performance leading a reasonable person to believe the County or County's employee, officer, agent or subcontractor has used a controlled substance, prescription or non-prescription medication that impairs the County or County's employee, officer, agent or subcontractor's performance of essential job function or creates a direct threat to DHS clients or others. Examples of abnormal behavior include, but are not limited to: hallucinations, paranoia or violent outbursts. Examples of impairments in physical or mental performance include, but are not limited to: slurred speech, difficulty walking or performing job activities; (x) Violation of any provision of this subsection may result in termination of this Agreement.
- 11. Pro-Children Act.** County shall comply and require all subcontractors to comply with the Pro-Children Act of 1994 (codified at 20 U.S.C. section 6081 et. seq.).
- 12. Medicaid Services.** County shall comply with all applicable federal and state laws and regulation pertaining to the provision of Medicaid Services under the Medicaid Act, Title XIX, 42 U.S.C. Section 1396 et. seq., including without limitation:

- a. Keep such records as are necessary to fully disclose the extent of the services provided to individuals receiving Medicaid assistance and shall furnish such information to any state or federal agency responsible for administering the Medicaid program regarding any payments claimed by such person or institution for providing Medicaid Services as the state or federal agency may from time to time request. 42 U.S.C. Section 1396a(a)(27); 42 CFR 431.107(b)(1) & (2).
 - b. Comply with all disclosure requirements of 42 CFR 1002.3(a) and 42 CFR 455 Subpart (B).
 - c. Maintain written notices and procedures respecting advance directives in compliance with 42 U.S.C. Section 1396(a)(57) and (w), 42 CFR 431.107(b)(4), and 42 CFR 489 subpart I.
 - d. Certify when submitting any claim for the provision of Medicaid Services that the information submitted is true, accurate and complete. County shall acknowledge County's understanding that payment of the claim will be from federal and state funds and that any falsification or concealment of a material fact may be prosecuted under federal and state laws.
 - e. Entities receiving \$5 million or more annually (under this Agreement and any other Medicaid Agreement) for furnishing Medicaid health care items or services shall, as a condition of receiving such payments, adopt written fraud, waste and abuse policies and procedures and inform employees, contractors and agents about the policies and procedures in compliance with Section 6032 of the Deficit Reduction Act of 2005, 42 U.S.C. § 1396a(a)(68).
13. **Agency-based Voter Registration.** County shall comply with the Agency-based Voter Registration sections of the National Voter Registration Act of 1993 that require voter registration opportunities be offered where an individual may apply for or receive an application for public assistance.
14. **Disclosure.**
- a. 42 CFR 455.104 requires the State Medicaid agency to obtain the following information from any provider of Medicaid or CHIP services, including fiscal agents of providers and managed care entities: (1) the name and address (including the primary business address, every business location and P.O. Box address) of any person (individual or corporation) with an ownership or control interest in the provider, fiscal agent or managed care entity; (2) in the case of an individual, the date of birth and Social Security Number, or, in the case of a corporation, the tax identification number of the entity, with an ownership interest in the provider, fiscal agent or managed care entity or of any subcontractor in which the provider, fiscal agent or managed care entity has a 5% or more interest; (3) whether the person (individual or corporation) with an ownership or control interest in the provider, fiscal agent or managed care entity is related to another person with ownership or control interest in the provider, fiscal agent or managed care entity as a spouse, parent, child or sibling, or whether the person (individual or corporation) with an ownership or control interest in any subcontractor in

which the provider, fiscal agent or managed care entity has a 5% or more interest is related to another person with ownership or control interest in the provider, fiscal agent or managed care entity as a spouse, parent, child or sibling; (4) the name of any other provider, fiscal agent or managed care entity in which an owner of the provider, fiscal agent or managed care entity has an ownership or control interest; and, (5) the name, address, date of birth and Social Security Number of any managing employee of the provider, fiscal agent or managed care entity.

- b. 42 CFR 455.434 requires as a condition of enrollment as a Medicaid or CHIP provider, to consent to criminal background checks, including fingerprinting when required to do so under state law, or by the category of the provider based on risk of fraud, waste and abuse under federal law.
- c. As such, a provider must disclose any person with a 5% or greater direct or indirect ownership interest in the provider whom has been convicted of a criminal offense related to that person's involvement with the Medicare, Medicaid, or title XXI program in the last 10 years.
- d. County shall make the disclosures required by this Section 14. To DHS. DHS reserves the right to take such action required by law, or where DHS has discretion, it deems appropriate, based on the information received (or the failure to receive information) from the provider, fiscal agent or managed care entity.

15. Federal Intellectual Property Rights Notice. The federal funding agency, as the awarding agency of the funds used, at least in part, for the Work under this Agreement, may have certain rights as set forth in the federal requirements pertinent to these funds. For purposes of this subsection, the terms “grant” and “award” refer to funding issued by the federal funding agency to the State of Oregon. The County agrees that it has been provided the following notice:

- a. The federal funding agency reserves a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use the Work, and to authorize others to do so, for Federal Government purposes with respect to:
 - (1) The copyright in any Work developed under a grant, subgrant or agreement under a grant or subgrant; and
 - (2) Any rights of copyright to which a grantee, subgrantee or a county purchases ownership with grant support.
- b. The parties are subject to applicable federal regulations governing patents and inventions, including government-wide regulations issued by the Department of Commerce at 37 CFR part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements.”
- c. The parties are subject to applicable requirements and regulations of the federal funding agency regarding rights in data first produced under a grant, subgrant or agreement under a grant or subgrant.



COPY

7

DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT

DEVELOPMENT SERVICES BUILDING

150 BEAVERCREEK ROAD | OREGON CITY, OR 97045

December 19, 2013

Board of County Commissioners
Clackamas County

Members of the Board:

**Approval of Amendment No. 2
Resolution Amending the Declaration of Public Necessity and Purpose
for Acquisition of Rights of Way and Easements
for the Barlow/Zimmerman Intersection Improvement Project and
Authorizing Negotiations and Eminent Domain Actions**

Purpose/Outcomes	Under ORS 35.235 and the federal Uniform Act, a local governmental agency is required to declare by resolution or ordinance the necessity and the purpose for which the project is required by enacting a Condemnation Resolution or amending a previously approved Condemnation Resolution prior to initiating acquisition of the easements or other property rights from abutters to the project.
Dollar Amount and Fiscal Impact	The right of way budget for the project is \$166,833 and is included within the \$2,300,000 total approved project budget.
Funding Source	Total Project Budget: Federal Revenue: \$1,697,886 High Risk Rural Roads Program: \$356,012 County Road Fund: \$246,102
Safety Impact	The project will improve the sight distance south of the intersection of Barlow Road and Zimmerman Road in Clackamas County.
Duration	The Resolution remains active throughout the project's duration and terminates upon completion of the project or when all litigation associated with the project is concluded.
Previous Board Action	ODOT/County High Risk Rural Roads Program Supplemental Project Agreement No. 25070 Barlow Road/Zimmerman Road Intersection (Clackamas County): executed by the County on 09/10/09 and by ODOT on 10/15/09. ODOT/County High Risk Rural Roads Program Supplemental Project Agreement No. 25070 Barlow Road/Zimmerman Road Intersection (Clackamas County): Amendment No. 1 executed by the County on 02/10/11 and by ODOT on 02/22/11. ODOT/County High Risk Rural Roads Program Supplemental Project Agreement No. 25070 Barlow Road/Zimmerman Road Intersection (Clackamas County): Amendment No. 2 executed by the County on 04/26/12 and by ODOT on 05/11/12. Agreement No. 25070 Barlow Road/Zimmerman Road Intersection (Clackamas County): Amendment No. 3 executed by the County on 04/25/13 and by ODOT on 05/10/13. ODOT/County Intergovernmental Agreement for Right of Way Services No. 25595: executed by the County on 01/07/10 and by ODOT on 01/19/10. Resolution Declaring the Necessity and Purpose for Acquisition of Easements

<i>(continued)</i>	and Rights of Way for the Barlow Road/Zimmerman Road Intersection Project executed by the County on 4/25/13. Amendment No. 1 to the Resolution Declaring the Necessity and Purpose for Acquisition of Easements and Rights of Way for the Barlow Road/Zimmerman Road Intersection Project executed by the County on 8/01/13.
Contact Person	Joel Howie, DTD Project Mgr @ 503-742-4658 Kath Rose, DTD Sr. Right of Way Agent @ 503-742-4713

BACKGROUND:

The Board of County Commissioners has approved funding for the Barlow/ Zimmerman Intersection Improvement Project No. 22171, which will provide for the re-construction of 600 feet of Barlow Road south of its intersection with Zimmerman Road. This project is one of the County's top safety projects and will improve the existing sight distance at the intersection. The Board has authority under ORS Chapter 35 to acquire rights of way and easements by purchase or condemnation proceedings.

The project has been planned and located in a manner which is most compatible with the greatest public good and which causes the least private injury. The Department of Transportation and Development (Department) shall negotiate in good faith in an attempt to reach agreement as to the amount of just compensation owed each affected property owner. To fairly determine the amount of just compensation, staff will utilize the expertise of authorized real estate appraisers and other such experts.

The Department has amended the final legal descriptions for Property No. 2, reducing the project impacts on that parcel and brings these revisions to the Board for authorization. If during the course of the project additional design/construction modifications should effect acquisitions, staff will bring subsequent revisions to the Board for authorization.

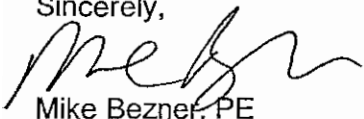
The resolution directs the Department to resolve issues of just compensation through good faith negotiations. It requires the Director of the Department to notify the Board if exercise of the power of eminent domain becomes necessary. Only after this process is completed does it authorize the Office of County Counsel to file a condemnation action.

Staff respectfully requests that the Board approve the Resolution Amending that Declaration of Necessity and Purpose for the Barlow/ Zimmerman Intersection Improvement Project for the acquisition of necessary rights of way and easements to provide for construction of the project. The Resolution has been reviewed and approved by County Counsel.

RECOMMENDATION:

Staff respectfully recommends that the Board of County Commissioners approves the Resolution authorizing the acquisition of rights of way and easements by negotiation if possible, or condemnation, if necessary.

Sincerely,



Mike Bezner, PE
Transportation Engineering Manager

Attachment

For information on this issue or copies of attachments please contact Kath Rose, Sr. Right of Way Agent at (503) 742-4713
--

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

In the Matter of the Barlow/Zimmerman Intersection Improvement Project, Declaring the Necessity and Purpose for Acquisition of Rights of Way and Easements, and Authorizing Negotiations and Eminent Domain Actions:
Board Order No. 2013-25, dated April 25th, 2013



Order No. _____
(Page 1 of 2)

This matter comes before the Board of County Commissioners of Clackamas County, Oregon (the "Board") at its regularly scheduled meeting on December 19, 2013; and,

It appearing that the Board previously approved funding for the Barlow/Zimmerman Intersection Improvement Project No. 22171 ("Project"), which will provide for the re-construction of Barlow Road south of its intersection with Zimmerman road, that the Project is consistent with the powers and purposes of County government, and that the Project is necessary for the continued growth, safety and welfare of the community; and,

It further appearing to the Board that the Project has been planned and located in a manner which is most compatible with the greatest public good and causes the least private injury; and,

It further appearing that the Acting Director of the Department of Transportation and Development (the "Acting Director") has determined that changes to the design of the Project make it necessary and desirable to modify that Exhibit "A" of record contained in Board Order No. 2013-25, dated April 25th, 2013, which shall reduce the overall size of the project impacts on Property No. 2, as described in "Amendment No. 2 – Exhibit A", attached, which is necessary to the Project and therefore is also consistent with the powers and purposes of County government, and necessary for the continued growth, safety and welfare of the community; and

It further appearing to the Board that immediate possession of the rights of way and easements described in "Amendment No. 2 – Exhibit A" may be necessary and will be in the public interest in order to complete the Project in a timely manner; and,

It further appearing that the Board has authority under ORS Chapter 35 to acquire rights of way and easements by purchase or eminent domain proceedings.

NOW, THEREFORE, IT IS HEREBY RESOLVED that this Board declares it necessary and in the public interest that the County immediately start acquisition of rights of way and easements described in "Amendment No. 2 – Exhibit A", either through negotiation and agreement, purchase, or, if necessary, by commencement of eminent domain proceedings.

IT IS FURTHER ORDERED THAT:

1). The Department of Transportation and Development immediately, and in good faith, attempt to negotiate agreements as to amount of just compensation owed each owner of each property identified in "Amendment No. 2 – Exhibit A". In so doing, the department is authorized to retain real estate appraisers, negotiators, and other such experts deemed necessary to fairly determine the amount of just compensation owed; and,

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

In the Matter of the Barlow/Zimmerman
Intersection Improvement Project, Declaring
the Necessity and Purpose for Acquisition of
Rights of Way and Easements, and
Authorizing Negotiations and
Eminent Domain Actions:
Board Order No. 2013-25, dated
April 25th, 2013



Order No. _____
(Page 2 of 2)

2). If the Acting Director determines that changes to the design of the Project or unanticipated field conditions makes it necessary or desirable to modify the rights of way and easements required for the Project, the Acting Director shall promptly bring before the Board, and the Board shall promptly consider a resolution amending "Amendment No. 2 Exhibit A"; and,

3). It is the intention of the Board that the required rights of way and easements identified in "Amendment No.2 – Exhibit A" be obtained through good faith negotiation. The Board acknowledges that the exercise of the power of eminent domain may be necessary. The Acting Director shall inform the Board when the Acting Director deems eminent domain necessary. Thereafter, the Office of County Counsel is authorized to file complaints in condemnation and take such other steps as it determines necessary for the immediate possession of required rights of way and easements and the successful litigation of the condemnation action, including the retention of real estate appraisers, experts and other consultants deemed necessary to the successful conclusion of that litigation.

Dated this _____ day of _____, 2013.

John Ludlow, Chair

Mary Raethke, Recording Secretary

Amendment No. 2 - Exhibit A
Project Legal Descriptions
Barlow/Zimmerman Intersection Improvement

Property No. 02; Tax Lot 41E29 00400

TRACT 1 (Permanent Right Of Way Easement for Road Purposes)

A tract of land being a portion of that property described in Warranty Deed Document Number 1993-040121, Clackamas County Deed Records. Said tract of land being situated in the northwest quarter of Section 29, Township 4 South, Range 1 East of the Willamette Meridian, Clackamas County, Oregon, and more particularly described as follows:

Commencing at the southwest corner of said northwest quarter of said legal subdivision, said point also being on the centerline of Barlow Road, County Road No. 2094; Thence, leaving said centerline and along the south line of said northwest quarter, South 89°04'44" East, 30.01 feet to a point on the east right of way line of said Barlow Road, said point also being the southwest corner of said Document Number 1993-040121 tract, said point also being the true point of beginning of the herein described tract; Thence, leaving said south line and along the east right of way line of said Barlow Road, North 0°20'30" West, 886.46 feet to the intersection of said east line with the south right of way line of Zimmerman Road, County Road No. 273; Thence, leaving said east line and along said south line, South 89°13'13" East, 89.63 feet; Thence, leaving said south line, South 0°46'47" West, 5.00 feet; Thence, North 89°13'13" West, 64.80 feet; Thence, South 40°05'28" West, 25.77 feet to a point of non-tangent curve, the radius of which bears North 85°45'11" East, 1470.00 feet; Thence, along the arc of a non-tangent curve to the left, having a radius of 1470.00 feet, through a central angle of 1°22'34", an arc distance of 35.30 feet, the chord of which bears South 4°56'06" East, 35.30 feet to a point of tangency; Thence, South 5°37'23" East, 240.49 feet; Thence, North 84°22'13" East, 10.13 feet; Thence, South 7°28'18" East, 110.20 feet; Thence, South 87°52'51" West, 16.60 feet to a point of non-tangent curve, the radius of which bears South 87°52'51" West, 1540.00 feet; Thence, along the arc of a non-tangent curve to the right, having a radius of 1540.00 feet, through a central angle of 7°08'14", an arc distance of 191.83 feet, the chord of which bears South 1°26'58" West, 191.71 feet to a point of tangency; Thence, South 5°01'05" West, 255.72 feet to a point of tangent curve; Thence, along the arc of a tangent curve to the left, having a radius of 1470.00 feet, through a central angle of 1°14'28", an arc distance of 31.84 feet, the chord of which bears South 4°23'51" West, 31.84 feet to a point on the south line of said Document Number 1993-040121 tract; Thence, along said south line, North 89°04'44" West, 7.64 feet to the true point of beginning.

Said tract of land contains 25,230 square feet more or less.

Basis of bearings for this description is held from SN 2013-047, Clackamas County Surveyor's Office.

TRACT 2 (Permanent Retaining Wall Easement)

A tract of land being a portion of that property described in Warranty Deed Document Number 1993-040121, Clackamas County Deed Records. Said tract of land being situated in the northwest quarter of Section 29, Township 4 South, Range 1 East of the Willamette Meridian, Clackamas County, Oregon, and more particularly described as follows:

Commencing at the southwest corner of said northwest quarter of said legal subdivision, said point also being on the centerline of Barlow Road, County Road No. 2094; Thence, North $0^{\circ}20'30''$ West, 477.63 feet; Thence, leaving said centerline, North $89^{\circ}39'30''$ East, 86.74 feet to the Point of Beginning of the herein described tract; Thence, North $7^{\circ}28'18''$ West, 110.20 feet; Thence, North $84^{\circ}22'13''$ East, 10.00 feet; Thence, South $7^{\circ}28'18''$ East, 110.81 feet; Thence, South $87^{\circ}52'51''$ West, 10.04 feet to the true point of beginning.

Said tract of land contains 1,105 square feet more or less.

Basis of bearings for this description is held from SN 2013-047, Clackamas County Surveyor's Office.

TRACT 3 (Permanent Slope Easement)

A tract of land being a portion of that property described in Warranty Deed Document Number 1993-040121, Clackamas County Deed Records. Said tract of land being situated in the northwest quarter of Section 29, Township 4 South, Range 1 East of the Willamette Meridian, Clackamas County, Oregon, and more particularly described as follows:

Commencing at the southwest corner of said northwest quarter of said legal subdivision, said point also being on the centerline of Barlow Road, County Road No. 2094; Thence, along said centerline, North $0^{\circ}20'30''$ West 916.39 feet to the intersection of said Barlow Road and Zimmerman Road, County Road No. 273; Thence, leaving said centerline and along the centerline of said Zimmerman Road, South $89^{\circ}13'13''$ East, 120.22 feet; Thence, leaving said centerline, South $0^{\circ}46'47''$ West, 35.00 feet to the point of beginning of the herein described tract; Thence, South $0^{\circ}46'47''$ West, 10.00 feet; Thence, North $89^{\circ}13'13''$ West, 60.07 feet; Thence, South $40^{\circ}05'28''$ West, 26.18 feet; Thence, South $8^{\circ}38'18''$ East, 265.41 feet; Thence, South $84^{\circ}22'13''$ West, 17.69 feet; Thence, North $5^{\circ}37'23''$ West, 240.49 feet to the beginning of a tangent curve to the right; Thence along the arc of a tangent curve to the right, having a radius of 1470.00 feet, through a delta angle of $1^{\circ}22'34''$, an arc distance of 35.30 feet, the chord of which bears North $4^{\circ}56'06''$ West, 35.30 feet; Thence, North $40^{\circ}05'28''$ East, 25.77 feet; Thence, South $89^{\circ}13'13''$ East, 64.80 feet to the point of beginning.

Said tract of land contains 3,739 square feet more or less.

Basis of bearings for this description is held from SN 2013-047, Clackamas County Surveyor's Office.

TRACT 4 (Permanent Slope Easement)

A tract of land being a portion of that property described in Warranty Deed Document Number 1993-040121, Clackamas County Deed Records. Said tract of land being situated in the northwest quarter of Section 29, Township 4 South, Range 1 East of the Willamette Meridian, Clackamas County, Oregon, and more particularly described as follows:

Commencing at the southwest corner of said northwest quarter of said legal subdivision, said point also being on the centerline of Barlow Road, County Road No. 2094; Thence, along said centerline, North $0^{\circ}20'30''$ West, 162.84 feet; Thence, leaving the centerline of said Barlow Road, North $89^{\circ}39'30''$ East, 52.65 feet to the true point of beginning of the herein described tract; Thence, North $5^{\circ}01'05''$ East 123.20 feet to the beginning of a tangent curve to the left; Thence, along the arc of a tangent curve to the left, having a radius of 1540.00 feet, through a central angle of $7^{\circ}08'14''$, an arc distance of 191.83 feet, the chord of which bears North $1^{\circ}26'58''$ East, 191.71 feet; Thence, North $87^{\circ}52'51''$ East, 24.88 feet; Thence, South $4^{\circ}41'24''$ East 57.63 feet; Thence, South $3^{\circ}31'43''$ East, 76.74 feet; Thence, South $1^{\circ}48'49''$ West, 76.09 feet; Thence, South $28^{\circ}23'40''$ West, 58.33 feet; Thence, South $20^{\circ}09'05''$ West, 57.40 feet to the true point of beginning.

Said tract of land contains 8,469 square feet more or less.

Basis of bearings for this description is held from SN 2013-047, Clackamas County Surveyor's Office.

TRACT 5 (Permanent Slope Easement)

A tract of land being a portion of that property described in Warranty Deed Document Number 1993-040121, Clackamas County Deed Records. Said tract of land being situated in the northwest quarter of Section 29, Township 4 South, Range 1 East of the Willamette Meridian, Clackamas County, Oregon, and more particularly described as follows:

Commencing at the southwest corner of said northwest quarter of said legal subdivision, said point also being on the centerline of Barlow Road, County Road No. 2094; Thence, along the south line of said northwest quarter, South $89^{\circ}04'44''$ East, 37.65 feet to the true point of beginning of the herein described tract; Thence, along the arc of a non-tangent curve to the right, the radius of which bears South $86^{\circ}13'23''$ East, having a radius of 1470.00 feet, through a central angle of $1^{\circ}14'28''$, an arc distance of 31.84 feet, the chord of which bears North $4^{\circ}23'51''$ East, 31.84 feet; Thence, North $5^{\circ}01'05''$ East, 76.28 feet; Thence, South $28^{\circ}52'23''$ East, 16.69 feet; Thence, South $5^{\circ}07'52''$ East, 38.45 feet; Thence, South $8^{\circ}48'05''$ West, 56.07 feet to a point on the south line of said Document Number 1993-040121 tract; Thence, along said south line, North $89^{\circ}04'44''$ West, 13.74 feet to the true point of beginning.

Said tract of land contains 1,526 square feet more or less.

Basis of bearings for this description is held from SN 2013-047, Clackamas County Surveyor's Office.

TRACT 6 (Temporary Construction Easement)

A tract of land being a portion of that property described in Warranty Deed Document Number 1993-040121, Clackamas County Deed Records. Said tract of land being situated in the northwest quarter of Section 29, Township 4 South, Range 1 East of the Willamette Meridian, Clackamas County, Oregon, and more particularly described as follows:

Commencing at the southwest corner of said northwest quarter of said legal subdivision, said point also being on the centerline of Barlow Road, County Road No. 2094; Thence, along said centerline, North 0°20'30" West, 916.39 feet to the intersection of said centerline and the centerline of Zimmerman Road, County Road No. 274; Thence, leaving the centerline of said Barlow Road and along the centerline of said Zimmerman Road, South 89°13'13" East, 120.22 feet; Thence, leaving said centerline, South 0°46'47" West, 30.00 feet to a point on the south right of way line of said Zimmerman Road, said point also being the true point of beginning of the herein described tract, Thence, along said south line, South 89°13'13" East, 77.99 feet; Thence, leaving said south line, South 0°46'47" West, 25.00 feet; Thence, North 89°13'13" West, 133.32 feet; Thence, South 40°05'18" West, 16.91 feet; Thence, South 8°38'18" East, 271.42 feet; Thence, South 8°03'25" East, 91.33 feet; Thence, South 4°23'39" East, 58.33 feet; Thence, South 3°31'43" East, 77.31 feet; Thence, South 1°48'49" West, 78.92 feet; Thence South 28°23'39" West, 59.97 feet; Thence, South 20°09'05" West, 55.36 feet; Thence, South 5°01'05" West, 48.87 feet; Thence, South 28°52'23" East, 18.74 feet; Thence, South 5°07'52" East, 41.77 feet; Thence, South 8°48'05" West, 55.90 feet to a point on the south line of said Document Number 1993-040121 tract; Thence, along said south line, North 89°04'44" West 10.10 feet; Thence, leaving said south line, North 8°48'05" East, 56.07 feet; Thence, North 5°07'52" West, 38.45 feet; Thence, North 28°52'23" West, 19.69 feet; Thence, North 5°01'05" East, 53.25 feet; Thence, North 20°09'05" East, 57.40 feet; Thence, North 28°23'39" East, 58.33 feet; Thence, North 1°48'49" East, 76.09 feet; Thence, North 3°31'43" West, 76.74 feet; Thence, North 4°41'23" West, 57.63 feet; Thence, North 87°52'51" East, 1.76 feet; Thence, North 7°28'18" West, 110.81 feet; Thence, South 84°22'13" West, 2.45 feet; Thence, North 8°38'18" West, 265.41 feet; Thence, North 40°05'28" East, 26.18 feet; Thence, South 89°13'13" East, 60.07 feet; Thence, North 0°46'47" East, 15.00 feet to the true point of beginning.

Said tract of land contains 11,226 square feet more or less.

Basis of bearings for this description is held from SN 2013-047, Clackamas County Surveyor's Office.

TRACT 7 (Temporary Construction Easement, Driveway Area)

A tract of land being a portion of that property described in Warranty Deed Document Number 1993-040121, Clackamas County Deed Records. Said tract of land being situated in the northwest quarter of Section 29, Township 4 South, Range 1 East of the Willamette Meridian, Clackamas County, Oregon, and more particularly described as follows:

Commencing at the southwest corner of said northwest quarter of said legal subdivision, said point also being on the centerline of Barlow Road, County Road No. 2094; Thence, along said

centerline, North 0°20'30" West, 916.39 feet to the intersection of said centerline and the centerline of Zimmerman Road, County Road No. 274; Thence, leaving the centerline of said Barlow Road and along the centerline of said Zimmerman Road, South 89°13'13" East, 198.21 feet; Thence, leaving said centerline, South 0°46'47" West, 55.00 feet to the true point of beginning of the herein described tract, Thence, South 0°46'26" East, 296.32 feet; Thence, North 88°18'56" West, 42.72 feet; Thence, South 83°20'24" West, 61.93 feet; Thence, North 8°03'25" West, 20.51 feet; Thence, North 86°58'43" East, 76.94 feet; Thence, North 43°05'28" East, 14.41 feet; Thence, North 0°47'47" West, 267.63 feet; Thence, South 89°13'13" East, 20.13 feet to the true point of beginning.

Said tract of land contains 7,551 square feet more or less.

Basis of bearings for this description is held from SN 2013-047, Clackamas County Surveyor's Office.



COPY
3

DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT

December 19, 2013

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

Board of Commissioners
Clackamas County

Members of the Board:

Approval of an Intergovernmental Agreement between Clackamas County and the City of Lake Oswego to Transfer Permitting Authority, Maintenance Responsibility and Road Standards for Portions of Upper Drive (County Road #1009, DTD #21199) to the City

Purpose/Outcomes	Transfers permitting authority, maintenance responsibility and road standards for construction on portions of Upper Drive that are outside the city limits, to the City of Lake Oswego.
Dollar Amount and Fiscal Impact	Cost savings in the form of staff time and materials related to the permitting, maintenance and oversight of this roadway.
Funding Source	Road Fund
Safety Impact	Transferring permitting, maintenance and road standard oversight to the City will allow future development on Upper Drive to be consistent throughout, and will alleviate confusion on the part of the public.
Duration	Upon execution; permanent.
Previous Board Action	N/A
Contact Person	Rick Maxwell, Engineering Tech; 503-742-4671

BACKGROUND

Clackamas County currently has jurisdiction, including permitting authority, enforcement of road standards, and maintenance responsibility of Upper Drive. Property annexations in Lake Oswego have fractured the jurisdictional boundary of the road, some now within the city limits of Lake Oswego and some outside the city limits. Lake Oswego has passed a resolution to transfer jurisdiction of the roadway that is within their city limits, which will come before the Board of County Commissioners for acceptance as a separate instrument on December 19, 2013. This intergovernmental agreement addresses transferring rights and duties as "road authority," including permitting authority, enforcement of road standards, and maintenance responsibility to the City for the portions of Upper Drive that are outside the city limits.

Transferring rights and duties as road authority for these portions of Upper Drive that are outside the city limits to the City of Lake Oswego will eliminate confusion and improve efficiencies of maintenance and public service. The City will perform all construction and reconstruction; improvement or repair and maintenance; review and issuance of access permits; establishment of roadway standards; acquisition of right of way; storm water and drainage facility repair and

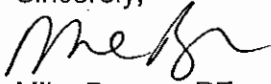
maintenance; and review and issuance of street opening permits. The County will retain official jurisdiction of these portions of the roadway.

This agreement has been reviewed and approved by County Counsel.

Recommendation:

Staff respectfully recommends that the Board approve this Intergovernmental Agreement with the City of Lake Oswego to transfer rights and duties as road authority for portions of Upper Drive to the City.

Sincerely,



Mike Bezner, PE
Transportation Engineering Manager

For information on this issue or copies of attachments
please contact Rick Maxwell at (503) 742-4671

INTERGOVERNMENTAL AGREEMENT BETWEEN CLACKAMAS COUNTY AND THE CITY OF LAKE OSWEGO FOR RIGHTS AND DUTIES AS "ROAD AUTHORITY," REGARDING PORTIONS OF UPPER DRIVE THAT ARE OUTSIDE CITY LIMITS, INCLUDING MAINTENANCE, PERMITTING AUTHORITY, AND ROAD STANDARDS.

Whereas, the City of Lake Oswego has authorized entering into this Intergovernmental Agreement pursuant to Resolution 13-38; and

Whereas, Clackamas County has authorized entering into this Intergovernmental Agreement pursuant to Order _____; and

Whereas, this Intergovernmental Agreement concerns the following portions of Upper Drive (Clackamas County Rd. No. 1009 and DTD Maint. No. 21199) (hereafter collectively referred to as "roadway"):

The Portions of Road That are Outside of City Limits (See Attached Exhibit A)			
Road	County No.	DTD No.	General Location
Upper Drive	1009	21199	<p>Segment 1: Entire Upper Drive from the northerly extension of the west property line of 5022 Upper Drive westerly to the existing City of Lake Oswego road jurisdiction line of Boones Ferry Road.</p> <p>Segment 2: North 1/2 of Upper Drive right-of-way from the northerly extension of the west property line of 5022 Upper Drive easterly to the southerly extension of the east property line of 16766 Upper Drive.</p> <p>Segment 3: Entire Upper Drive right-of-way from the northerly extension of the west property line of 4680 Upper Drive easterly to the northern extension of the east property line of 4650 Upper Drive.</p>

Whereas, ORS 373.260(1)(b) authorizes an intergovernmental agreement between the City and Clackamas County for the construction, improvement or repair of, and the acquisition of right-of-way for County roads located outside of the City but leading directly to it, and said roadway leads directly to the City, as shown on Exhibit A; and

Whereas, ORS 190.010 authorizes intergovernmental agreements for the performance of any or all functions and activities that Clackamas County, its officers or agencies, have authority to perform as "road authority" relating to County roads, including maintenance, review and issuance of access permits, and the development and maintenance of road standards;

NOW, THEREFORE, THE CITY OF LAKE OSWEGO ("CITY") AND CLACKAMAS COUNTY ("COUNTY") AGREE AS FOLLOWS:

1. Except as hereafter provided, upon the effective date of this Agreement, the County transfers to the City, and the City accepts and assumes all rights and duties of the County as a road authority for the portions of roadway located outside of the City limits, including but not limited to:
 - a. Construction and reconstruction,
 - b. Improvement or repair, and maintenance,
 - c. Review of applications for access permits to the roadway, and the issuance of access permits,
 - d. Establishing roadway standards,
 - e. Acquisition of right-of-way, if necessary or convenient,
 - f. Maintenance and repair of related facilities within the roadway, including storm water drainage facilities, and
 - g. Review of application of street opening permits for improvements such as public and private utility installations.
2. All costs incurred in carrying out the right and duties stated in Section 1 above shall be the responsibility of the City.
3. Upon the effective date of this agreement, the roadway standards for future access to, work in, or development of the roadway shall be the City roadway standards, as generally applicable to streets of the same classification within the City.
4. County Responsibilities.
 - a. Maintenance Records. Within 180 days following the effective date of this Agreement, the County shall provide all existing records, at the County's expense, related to the maintenance of the roadway to City in both a hard copy and electronic format.
 - b. Unacceptable Conditions. If City determines in its discretion that the striping, reflective pavement markers or signage on the roadway is in an unacceptable condition, City may, within 60 days of the effective date of this Agreement, provide the County with written notice of the unacceptable conditions. Within 180 days following receipt of the written notice, the County shall, at the County's expense, perform the striping, replace reflective pavement markers and replace signs on the roadway as listed in the notice.
 - c. Permit Documentation. Within 180 days of the effective date of this Agreement, the County shall supply City with all documents and other information in the County's possession relating to all past as well as pending permits for any road-related work that would impact, or that has impacted the roadway.

d. Permitting Authority. The County shall retain responsibility for administering all permits pending on the effective date of this Agreement, or for which work authorized by issued permits has not been completed as of the effective date of this Agreement, and that impact the roadway. The County shall complete administration of these permits and supply City with documentation that work authorized by the permits has been completed, along with all relevant inspection reports and records. Responsibility for administering individual pending permits may be transferred to the City pursuant to mutual agreement between the parties.

e. As-built Information, Maintenance and Operation Records. Within 180 days of the date of this Agreement, the County shall, at the County's expense, provide City existing as-built information for the roadway in both hard copy and electronic format, and shall provide City all existing correspondence files, plans, maps and all other information related to the daily maintenance and operation of the roadway.

f. Future Fees and Permitting. The County waives all rights to future fees and/or permitting associated with the roadway.

g. Transition of Maintenance. The County shall work with City's Public Works Operations Division personnel in providing a smooth transition for the maintenance of the roadway.

h. Matters Impacting Roadway; City's Right to Comment. The County shall inform City in writing of any land use actions, decisions or permits that are pending or that become pending on or after the date of this Agreement that may impact the roadway, and shall consider City's input prior to making any decisions or recommendations related to such actions or prior to issuing any such permits.

i. Surface Water Drainage Facilities. City and County staff will conduct an on-site review of the drainage system and verify if any items need to be addressed prior to the transfer of the surface water system facilities within the roadway. Prior to acceptance of any existing surface water facilities within the roadway to be transferred, the County will clean and map all existing surface water facilities (including underground injection control (UIC) systems) and provide the City with details such as, but not limited to, location, depth, inlet and outlet elevations and pipe size.

5. City Responsibilities.

a. Future Fees and Permitting Authority. City shall collect fees and issue and administer permits, as deemed appropriate by City, for work performed on the roadway. Fees shall be retained by City.

b. Future Matters Impacting Roads; Good Faith and Timely Comments. City shall work in good faith to provide pertinent, timely feedback to the County with respect to matters noted in paragraph 4.h of this Agreement.

6. General Provisions.

a. Obey All Laws; Non-Discrimination. The County and the City agree to comply with all applicable local, state, and federal ordinances, statutes, laws and regulations; and rules and regulations on non-discrimination in employment because of race, color, ancestry, national origin, religion, sex,

marital status, age, medical condition or handicap.

b. Public Contracting Requirements. To the extent applicable, the provisions of ORS ORS 279B.220, 279B.230, 279B.235 and 279C.500 through 279C.870 are incorporated by this reference as though fully set forth.

c. Insurance. Each party agrees to maintain insurance levels, or self-insurance in accordance with ORS 30.282, for the duration of this Agreement at levels necessary to protect against public body liability as specified in ORS 30.272.

d. Debt Limitation. This Agreement is expressly subject to the debt limitation of Oregon Counties set forth in Article XI, Section 10 of the Oregon Constitution, and is contingent upon funds being appropriated therefore.

e. Mutual Indemnification. The County and City, subject to the limitations and provisions of the Oregon Constitution and the Oregon Tort Claims Act, shall each indemnify, defend and hold harmless the other party, its officers, agents and employees, from all liability, loss or expenses, including attorney's fees, and against all claims or actions based upon or arising out of damage or injury (including death) to persons or property caused by or sustained by the indemnifying party's intentional or negligent act or omission, related to the terms, covenants and obligations of this Agreement. This contractual indemnity provision does not abrogate common law or statutory liability and indemnification, but is in addition to such common law or statutory provisions.

f. Severability. Any provisions herein which would conflict with law are deemed inoperative to that extent.

g. Amendment. This Agreement may be amended in writing by mutual consent of the parties.

h. Effective Date. This Agreement shall be effective as of the date of the last signature below.

City of Lake Oswego

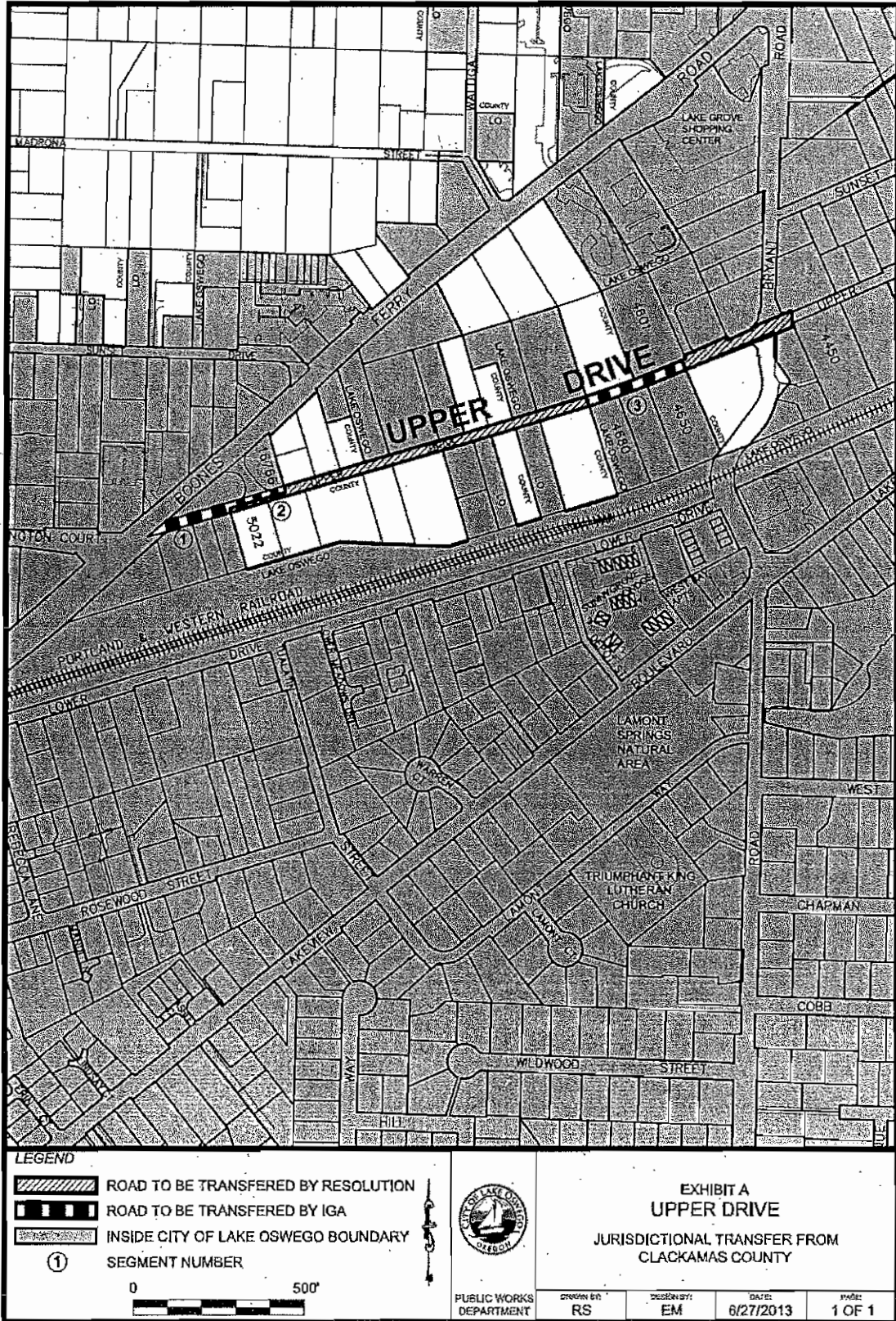
By: Kent Studebaker
Kent Studebaker, Mayor

APPROVED AS TO FORM:
David D. Powell
Deputy City Attorney, for
David D. Powell, City Attorney

Clackamas County

By: _____
Chair, County Board of Commissioners

APPROVED AS TO FORM:
[Signature]
County Counsel



RESOLUTION 13-38

A RESOLUTION OF THE LAKE OSWEGO CITY COUNCIL REQUESTING CLACKAMAS COUNTY TRANSFER JURISDICTION OF PORTIONS OF UPPER DRIVE INSIDE THE CITY LIMITS AND TRANSFER BY INTERGOVERNMENTAL AGREEMENT THE RIGHTS AND DUTIES OF "ROAD AUTHORITY" FOR PORTIONS OF UPPER DRIVE OUTSIDE OF THE CITY LIMITS, INCLUDING MAINTENANCE AND PERMITTING AUTHORITY.

WHEREAS, the following parcel annexation brought 1 property into the City limits:

- 4601 Upper Drive, AN 13-0002, April 16, 2013; and

WHEREAS, pursuant to Section 1 of the Urban Services Agreement – Roads entered into by the City of Lake Oswego and Clackamas County, dated July 15, 2003, "the City shall, within 60 days of the effective date of the annexation, initiate proceedings for the transfer of jurisdiction to the City of all County roads within the annexed areas"; and

WHEREAS:

1. Portions of County Roads within City limits: ORS 373.270 authorizes the City to request that Clackamas County transfer jurisdiction of a County road such as Upper Drive that is within the City limits, and provides that upon the County Board of Commissioners' adoption of an order meeting the City's resolution, the jurisdiction of Clackamas County over the portions of Upper Drive as a County road that is inside the City limits shall cease, and the full and absolute jurisdiction over the portions of Upper Drive within the City limits shall for all purposes of repair, construction, improvement and the levying and collection of assessments including maintenance and permitting authority therefore shall vest in the City, except for any transfer reservations stated in the resolution; and

2. Portions of County Roads outside City limits:

a. ORS 373.260(1)(b) authorizes an intergovernmental agreement between the City and Clackamas County for the construction, improvement or repair of, and the acquisition of right-of-way for County roads located outside of the City but leading directly to it. Upper Drive leads directly to the City, as shown on Exhibit A. ORS 373.260(1)(b) requires that the City and Clackamas County agree upon the proportion that each shall contribute toward such acquisition, construction, improvement or repair and upon the method and kind of acquisition, construction, improvement or repair to be made.

b. ORS 190.010 authorizes an intergovernmental agreement between the City and Clackamas County for the performance of any or all functions and activities that Clackamas County, its officers or agencies, have authority to perform. The functions and activities relating to County roads include maintenance, review and issuance of access permits, and the development and maintenance of road standards; and

WHEREAS, fragmented jurisdiction, maintenance, permitting, and road standards over the portions of Upper Drive results in confusion on the part of the public;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Lake Oswego that:

Section 1. County Roads Inside City Limits. The City of Lake Oswego requests that Clackamas County transfer all jurisdiction over the portions of the following roadway that is within the City limits, pursuant to ORS 373.270:

- a. Upper Drive (Clackamas County Rd. No. 1009 and DTD Maint. No. 21199) from the existing City of Lake Oswego road jurisdiction line near the northern extension of the west property line of 4450 Upper Drive westerly to the existing City of Lake Oswego road jurisdiction line of Boones Ferry Road excluding the segments referred to in Section 2 below (See also attached Exhibit A).

Section 2. County Roads Outside City Limits. The Mayor is hereby authorized to sign an Intergovernmental Agreement with Clackamas County substantially in the form attached as Exhibit B, for the transfer of the rights and duties as "road authority" for the portions of the below described County road that is outside the City limits:





- a. Segment 1: Entire Upper Drive (Clackamas County Rd. No. 1009 and DTD Maint. No. 21199) right-of-way from the northerly extension of the west property line of 5022 Upper Drive westerly to the existing City of Lake Oswego road jurisdiction line of Boones Ferry Road (See attached Exhibit A);
- b. Segment 2: North 1/2 of Upper Drive (Clackamas County Rd. No. 1009 and DTD Maint. No. 21199) right-of-way from the northerly extension of the west property line of 5022 Upper Drive easterly to the southerly extension of the east property line of 16766 Upper Drive (See attached Exhibit A); and
- c. Segment 3: Entire Upper Drive (Clackamas County Rd. No. 1009 and DTD Maint. No. 21199) right-of-way from the northerly extension of the west property line of 4680 Upper Drive easterly to the northern extension of the east property line of 4650 Upper Drive (See attached Exhibit A),

as authorized under Oregon law, including but not limited to the construction, improvement or repair of, acquisition of right of way (if necessary), maintenance, review and issuance of access permits, and the development and maintenance of road standards.

Section 3. Effective Date. This Resolution shall take effect upon passage.



LEGEND

-  ROAD TO BE TRANSFERRED BY RESOLUTION
-  ROAD TO BE TRANSFERRED BY IGA
-  INSIDE CITY OF LAKE OSWEGO BOUNDARY
-  SEGMENT NUMBER



PUBLIC WORKS
DEPARTMENT

EXHIBIT A
UPPER DRIVE
JURISDICTIONAL TRANSFER FROM
CLACKAMAS COUNTY

DRAWN BY: RS	DESIGN BY: EM	DATE: 6/27/2013	PAGE: 1 OF 1
-----------------	------------------	--------------------	-----------------

Considered and enacted at the regular meeting of the City Council of the City of Lake Oswego on the 16th day of July, 2013.

AYES: Mayor Studebaker, Bowerman, Gudman, Gustafson, Jordan, Kehoe, O'Neill

NOES: None

EXCUSED: None

ABSTAIN: None



Kent Studebaker, Mayor

ATTEST:



Catherine Schneider, City Recorder

APPROVED AS TO FORM:



Evan P. Boone, Deputy City Attorney

RESOLUTION 13-38

A RESOLUTION OF THE LAKE OSWEGO CITY COUNCIL REQUESTING CLACKAMAS COUNTY TRANSFER JURISDICTION OF PORTIONS OF UPPER DRIVE INSIDE THE CITY LIMITS AND TRANSFER BY INTERGOVERNMENTAL AGREEMENT THE RIGHTS AND DUTIES OF "ROAD AUTHORITY" FOR PORTIONS OF UPPER DRIVE OUTSIDE OF THE CITY LIMITS, INCLUDING MAINTENANCE AND PERMITTING AUTHORITY.

WHEREAS, the following parcel annexation brought 1 property into the City limits:

- 4601 Upper Drive, AN 13-0002, April 16, 2013; and

WHEREAS, pursuant to Section 1 of the Urban Services Agreement – Roads entered into by the City of Lake Oswego and Clackamas County, dated July 15, 2003, "the City shall, within 60 days of the effective date of the annexation, initiate proceedings for the transfer of jurisdiction to the City of all County roads within the annexed areas"; and

WHEREAS:

1. Portions of County Roads within City limits: ORS 373.270 authorizes the City to request that Clackamas County transfer jurisdiction of a County road such as Upper Drive that is within the City limits, and provides that upon the County Board of Commissioners' adoption of an order meeting the City's resolution, the jurisdiction of Clackamas County over the portions of Upper Drive as a County road that is inside the City limits shall cease, and the full and absolute jurisdiction over the portions of Upper Drive within the City limits shall for all purposes of repair, construction, improvement and the levying and collection of assessments including maintenance and permitting authority therefore shall vest in the City, except for any transfer reservations stated in the resolution; and

2. Portions of County Roads outside City limits:

a. ORS 373.260(1)(b) authorizes an intergovernmental agreement between the City and Clackamas County for the construction, improvement or repair of, and the acquisition of right-of-way for County roads located outside of the City but leading directly to it. Upper Drive leads directly to the City, as shown on Exhibit A. ORS 373.260(1)(b) requires that the City and Clackamas County agree upon the proportion that each shall contribute toward such acquisition, construction, improvement or repair and upon the method and kind of acquisition, construction, improvement or repair to be made.

b. ORS 190.010 authorizes an intergovernmental agreement between the City and Clackamas County for the performance of any or all functions and activities that Clackamas County, its officers or agencies, have authority to perform. The functions and activities relating to County roads include maintenance, review and issuance of access permits, and the development and maintenance of road standards; and

WHEREAS, fragmented jurisdiction, maintenance, permitting, and road standards over the portions of Upper Drive results in confusion on the part of the public;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Lake Oswego that:

Section 1. County Roads Inside City Limits. The City of Lake Oswego requests that Clackamas County transfer all jurisdiction over the portions of the following roadway that is within the City limits, pursuant to ORS 373.270:

- a. Upper Drive (Clackamas County Rd. No. 1009 and DTD Maint. No. 21199) from the existing City of Lake Oswego road jurisdiction line near the northern extension of the west property line of 4450 Upper Drive westerly to the existing City of Lake Oswego road jurisdiction line of Boones Ferry Road excluding the segments referred to in Section 2 below (See also attached Exhibit A).

Section 2. County Roads Outside City Limits. The Mayor is hereby authorized to sign an Intergovernmental Agreement with Clackamas County substantially in the form attached as Exhibit B, for the transfer of the rights and duties as "road authority" for the portions of the below described County road that is outside the City limits:

- a. Segment 1: Entire Upper Drive (Clackamas County Rd. No. 1009 and DTD Maint. No. 21199) right-of-way from the northerly extension of the west property line of 5022 Upper Drive westerly to the existing City of Lake Oswego road jurisdiction line of Boones Ferry Road (See attached Exhibit A);
- b. Segment 2: North 1/2 of Upper Drive (Clackamas County Rd. No. 1009 and DTD Maint. No. 21199) right-of-way from the northerly extension of the west property line of 5022 Upper Drive easterly to the southerly extension of the east property line of 16766 Upper Drive (See attached Exhibit A); and
- c. Segment 3: Entire Upper Drive (Clackamas County Rd. No. 1009 and DTD Maint. No. 21199) right-of-way from the northerly extension of the west property line of 4680 Upper Drive easterly to the northern extension of the east property line of 4650 Upper Drive (See attached Exhibit A),

as authorized under Oregon law, including but not limited to the construction, improvement or repair of, acquisition of right of way (if necessary), maintenance, review and issuance of access permits, and the development and maintenance of road standards.

Section 3. Effective Date. This Resolution shall take effect upon passage.



COPY

9

DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT

December 19, 2013

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

Board of County Commissioners
Clackamas County

Members of the Board:

**Approval of an Intergovernmental Agreement with
Metro for the Clackamas Regional Center (CRC) Way-finding System Project**

Purpose/Outcomes	This agreement allows for partnering with Metro to develop and implement a comprehensive way-finding system for the CRC area. This includes completing a final way-finding system plan and construction and installation of these signs within the CRC area.
Dollar Amount and Fiscal Impact	The total agreement amount is \$150,000.00. This includes Federal Transit Administration funds of \$134,595.00 and the County's match through the County Road fund of \$15,405.00.
Funding Source	Federal Transit Administration: \$134,595.00 County Road Fund: \$15,405.00
Safety Impact	Providing appropriate signage will enhance safety as pedestrian and cyclists will easily locate the various destinations in the area. Completing the sign plan and installing the signs will improve safety for all modes of travel.
Duration	Effective July 1, 2013 and expires June 30, 2015.
Previous Board Action	The Board of County Commissioners approved moving forward with the application at their meeting February 12, 2013 and submitted a letter of support of the application to Metro at that time.
Contact Person	Lori Mastrantonio-Meuser, Senior Planner – DTD Engineering 503-742-4511.

BACKGROUND:

The Clackamas Regional Center is a hub for commercial activity and home to the largest employer in the County, Kaiser Permanente. An increasing number of pedestrians and cyclists use facilities in this area to access home, work, and businesses. The Clackamas Regional Center Pedestrian/Bicycle Plan, adopted in September 2012, identifies the need to implement the sign plan to support way-finding for pedestrians and bicyclists. This action was unanimously supported by the Project Advisory Committee that included the general manager of the Town Center, the communication and external affairs manager at Kaiser Permanente, the Dean of College Advancement at Clackamas Community College (Harmony Campus) and others.

Clackamas County submitted the application for the 2013-2015 Regional Transportation Options (RTO) grant program to develop and construct pedestrian and bicycle way-finding signs in the Clackamas Regional Center area in the winter of 2013 and was awarded the grant in the summer of 2013. Access to this funding presents a significant opportunity for the County to complete this high priority project in the pedestrian and bicycle plan for this major economic center.

RTO grant funds pay for 89.73% of the total project cost of \$150,000.00. A match of 10.27%, equaling \$15,405.00, is required of Clackamas County. The proposed matching funds will be provided by the Road Fund. The grant amount to be received by the County is \$134,595.00.

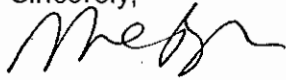
Y 1000

This agreement has been reviewed and approved by County Counsel.

RECOMMENDATION:

Staff respectfully recommends that the Board of County Commissioners approve the Intergovernmental Agreement with Metro to complete a final way-finding system plan and the construction and installation of these signs within the CRC area.

Sincerely,



Mike Bezner, PE
Transportation Engineering Manager



Intergovernmental Grant Agreement

Metro Grant 931973

Project: Clackamas Regional Center (CRC) Way-finding System

THIS AGREEMENT is between **Metro**, a metropolitan service district organized under the laws of the State of Oregon and the Metro Charter, located at 600 NE Grand Avenue, Portland, OR 97232-2736, and **Clackamas County** referred to herein as "Grantee," located at 150 Beavercreek Road, Oregon City, OR 97045.

A. Recitals

1. Metro is the recipient of Federal Transit Administration ("FTA") Congestion Mitigation and Air Quality (CMAQ) and Surface Transportation Program (STP) grant funds, and wishes to enter into this Agreement with the Grantee, utilizing these federal funds.
2. Metro considers the Grantee to be a **subrecipient** of federal funds. Funding for this project is obtained from a Grant Agreement between Metro and the FTA, utilizing Congestion Mitigation and Air Quality (CMAQ) or Surface Transportation Program (STP) funds, CFDA No. 20.507. As federal funds are involved in the Agreement, Exhibit C – Federal Clauses, Attachments A and B and Exhibit D – Department of Labor Clauses are attached hereto and by this reference made a part of this Agreement as if set forth in full.
3. The Regional Travel Options Program, hereinafter referred to as the "RTO Program" is a program of Metro designed to assist local governments and non-profit agencies in managing demand on the transportation system and increasing use of travel options.
4. Metro selected Grantee, through a competitive process, to receive partial funding for the purpose of supporting Clackamas County's project to develop and implement a comprehensive way-finding system for the Clackamas Regional Center (CRC) area. This project is expected to further the RTO effort toward accomplishing Regional Transportation Plan modal target of 40% non-SOV trips or higher, by the year 2040. The work plan elements outlined here are elements of a much larger Grantee work plan that is being partially funded using requested METRO RTO grant dollars for Metro fiscal years 13-14 and 14-15.

B. Effective Date and Duration

The beginning date of this Agreement is July 1, 2013, and shall remain in effect until and including June 30, 2015 unless terminated or extended as provided in this Agreement. Costs incurred on or after July 1, 2013 which are deemed allowable costs for this project, will be reimbursed once all parties have signed this Agreement and Metro has been presented with the appropriate invoice and documentation.

C. Scope of Work

Grantee shall provide all services and materials specified in the attached "Exhibit A – Scope of Work," which is incorporated into this Agreement by this reference as if set forth in full. Grantee in accordance with the Scope of Work shall provide all services and materials, in a competent and professional manner. To the extent that the Scope of Work contains additional Agreement provisions or waives any provision in the body of this Agreement, the Scope of Work shall control.

D. Compensation

The total Agreement amount is **ONE HUNDRED FIFTY THOUSAND AND NO/100th's DOLLARS (\$150,000.00)**. This amount includes (1) FTA funds to be dispersed to Grantee not to exceed **ONE HUNDRED THIRTY FOUR THOUSAND FIVE HUNDRED NINETY FIVE AND NO/100th's DOLLARS (\$134,595.00)**; and (2) Grantee's non federal local match of **FIFTEEN THOUSAND FOUR HUNDRED FIVE AND NO/100th's DOLLARS (\$15,405.00)**.



600 NE Grand Avenue
Portland, OR 97232-2736
503-797-1700

Intergovernmental Grant Agreement

Metro Grant 931973

E. Payment

1. All invoice payments are conditional upon Metro's Project Manager approval of the Quarterly Progress Reports. Grantee shall present cost reports, reimbursement requests and progress reports to Metro's RTO Project Manager on a quarterly basis.
2. Qualified costs are direct project costs, incurred by the Grantee and personal services contractor(s) during the term of this Agreement that are eligible for federal funds. Metro shall reimburse Grantee for qualified costs for work described in Exhibit A, in accordance with:
 - OMB Circular 2 CFR 225 (formerly A-87), Cost Principles for State, Local, and Indian Tribal Governments
3. Invoices shall display one hundred percent (100%) of the total project costs incurred during the period of the invoice, and identify any required matching amounts, if applicable. If Metro requests documentation, including without limitation copies of receipts for expenditures, timesheets, or system-generated accounting reports documenting the actual expense, Metro must receive the documentation before Metro makes payment.

F. Subcontracts

1. Grantee shall not enter into any subcontract for any of the Services required by this Agreement without Metro's prior written consent. Upon approval by Metro of a subcontract, the parties will amend the Agreement to include provisions related to the subcontract.
2. Metro's consent to any subcontract shall not relieve Grantee of any of its duties or obligations under this Agreement. Payment under the terms of this Agreement will be made to the Grantee and subcontractors have no right to payment directly from the Metro.
3. Grantee is solely responsible for paying Grantee's subcontractors and nothing contained herein shall create or be construed to create any contractual relationship between any subcontractor and Metro.

G. Records Maintenance – Access

1. Grantee shall maintain all fiscal records relating to this Agreement in accordance with generally accepted accounting principles ("GAAP"). In addition, Grantee shall maintain any other records pertinent to this Agreement in such a manner as to clearly document Grantee's performance.
2. Grantee acknowledges and agrees that Metro, the FTA, the Comptroller General of the United States and/or their duly authorized representatives shall have access to such fiscal records and other books, documents, timesheets, papers, plans and writings of Grantee that are pertinent to this Agreement to perform examinations and audits and make excerpts and transcripts.
3. Grantee shall retain and keep accessible all such fiscal records, books, documents, timesheets, papers, plans, and writings for a minimum of six (6) years, or such longer period as may be required by applicable law, following final payment and termination of this Agreement, or until the conclusion of any audit, controversy or litigation arising out of or related to this Agreement, whichever date is later.



Intergovernmental Grant Agreement

Metro Grant 931973

H. Indemnity

Grantee is an independent contractor and assumes full responsibility for the performance of the Scope of Work and the content of its work and performance. Grantee agrees to indemnify and defend Metro and hold Metro, its agents, employees and elected officials harmless from any and all claims, demands, damages, actions, losses, and expenses, including attorney's fees at trial and on appeal, arising out of or in any way connected with its performance of this Agreement.

I. Termination

Metro may terminate this Agreement after providing Grantee seven (7) days' written notice. In the event of termination, Grantee shall be entitled to payment for qualified costs incurred before the date of termination. Metro shall not be liable for indirect or consequential damages. Termination by Metro shall not waive any claim or remedies it may have against Grantee.

J. Insurance

1. Grantee shall purchase and maintain at Grantee's expense, a self insurance program or the following types of insurance covering Grantee, its employees, and agents:

- a) The most recently approved ISO (Insurance Services Office) Commercial General Liability policy, or its equivalent, written on an occurrence basis, with limits not less than \$1,000,000.00 per occurrence and \$1,000,000.00 aggregate. The policy will include coverage for bodily injury, property damage, personal injury, contractual liability, premises and products/completed operations. Grantee's coverage will be primary as respects Metro.
- b) Automobile insurance with coverage for bodily injury and property damage and with limits not less than minimum of \$1,000,000.00 per occurrence.
- c) Workers' Compensation insurance meeting Oregon statutory requirements including Employer's Liability with limits not less than \$500,000.00 per accident or disease.

2. Metro, its elected officials, departments, employees, and agents shall be named as ADDITIONAL INSUREDS on Commercial General Liability and Automobile policies.

3. Grantee shall provide to Metro thirty (30) days' written notice of any material change or policy cancellation.

4. Grantee shall provide Metro with a Certificate of Insurance complying with this article upon return of the Grantee's signed Agreement to Metro. The Certificate of Insurance shall identify the Metro Grant number (931973).

K. Right to Withhold Payments

Metro shall have the right to withhold from payments due Grantee such sums as necessary, in Metro's sole opinion, to protect Metro against any loss, damage or claim which may result from Grantee's performance or failure to perform under this Agreement or the failure of Grantee to make proper payment to any suppliers or subcontractors.

L. Federal, State, and Local Law Compliance

1. Grantee shall comply with the public contracting provisions of ORS chapters 279A, 279B and 279C and the recycling provisions of ORS 279B.025 to the extent those provisions apply to this Agreement. All such provisions required to be included in this Agreement are incorporated herein by reference. Grantee shall comply with all applicable requirements of state civil rights and rehabilitation statutes, rules and regulations.



600 NE Grand Avenue
Portland, OR 97232-2736
503-797-1700

Intergovernmental Grant Agreement

Metro Grant 931973

2. This Agreement is subject to a financial assistance agreement between Metro and the Federal Transit Administration (FTA). Grantee shall comply with all applicable federal laws, regulations, executive orders, 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:

- the terms and conditions applicable to a "recipient" set forth in the October 1, 2012 FTA Master Agreement [FTA MA 19] between Metro and the FTA
- Circular A-133, Audits of States, Local Governments, and Nonprofit Organizations
- OMB Circular A-102, Grants and Cooperative Agreements with State and, Local Governments
- OMB Circular 2 CFR 225, Cost Principles for State, Local and Indian Tribal Governments (formerly A-87)
- FTA Circular 5010.1D, Grant Management Requirements
- FTA Circular 4220.1F, 3rd Party Procurement Requirements

3. Grantee also shall comply with federal, state, and local laws, statutes, and ordinances relative to, but is not limited to, non-discrimination, safety and health, environmental protection, waste reduction and recycling, fire protection, permits, fees and similar subjects.

M. Discrimination Prohibited

No recipient or proposed recipient of any services or other assistance under the provisions of this Agreement or any program related to this Agreement may be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with the funds made available through this Agreement on the grounds of race, color, or national origin, 42 U.S.C. §2000d (Title VI), or on the grounds of religion, sex, ancestry, age, or disability as that term is defined in the Americans with Disabilities Act. For purposes of this section, "program or activity" is defined as any function conducted by an identifiable administrative unit of the Grantee receiving funds pursuant to this Agreement.

N. Ownership of Documents and Credit to Metro

1. All documents of any nature including, but not limited to, reports, drawings, works of art and photographs, produced by Grantee pursuant to this Agreement are the property of Metro, and it is agreed by the parties that such documents are works made for hire. Grantee hereby conveys, transfers, and grants to Metro all rights of reproduction and the copyright to all such documents.

2. Grantee shall ensure that all communications tools related to work performed under this Agreement including without limitation brochures and advertisements, include language found in Exhibit B – "Partnership Requirements" which is attached hereto and by this reference made a part of this Agreement as if set forth in full.

O. Project Information

Grantee shall share all project information and fully cooperate with Metro, informing Metro of all aspects of the project including actual or potential problems or defects. Grantee shall abstain from releasing any information or project news without the prior and specific written approval of Metro.



Intergovernmental Grant Agreement

Metro Grant 931973

P. Independent Contractor Status

1. Grantee shall be an independent Contractor for all purposes and shall be entitled only to the compensation provided for in this Agreement. Under no circumstances shall Grantee be considered an employee of Metro.
2. Grantee shall provide all tools or equipment necessary to carry out this Agreement, and shall exercise complete control in achieving the results specified in the Scope of Work.
3. Grantee is solely responsible for its performance under this Agreement and the quality of its work; for obtaining and maintaining all licenses and certifications necessary to carry out this Agreement; for payment of any fees, taxes, royalties, or other expenses necessary to complete the work except as otherwise specified in the Scope of Work; and for meeting all other requirements of law in carrying out this Agreement.
4. Grantee shall identify and certify tax status and identification number through execution of IRS form W-9 prior to submitting any request for payment to Metro.

Q. Assignment

Grantee may not assign or transfer this Agreement without written permission from Metro.

R. Choice of Law

The situs of this Agreement is Portland, Oregon. Any litigation over this Agreement shall be governed by the laws of the State of Oregon and shall be conducted in the Circuit Court of the State of Oregon for Multnomah County, or, if jurisdiction is proper, in the U.S. District Court for the District of Oregon.

S. No Waiver of Claims

The failure to enforce any provision of this Agreement shall not constitute a waiver by Metro of that or any other provision.

T. Modification

Notwithstanding and succeeding any and all prior agreements or practices, this Agreement constitutes the entire Agreement between the parties, and may only be expressly modified in writing, signed by both parties.

U. Severability

If any clause, sentence or any other portion of the terms and conditions of this Grant Agreement becomes illegal, null or void for any reason, the remaining portions will remain in full force and effect to the fullest extent permitted by law.

V. No Special or Consequential Damages

Grantee expressly waives any claims against Metro regarding the Scope of Work under this Agreement. Metro's liability under this Agreement shall be limited to payment of the Grant Funds, to the extent that Grantee has fully and completely complied with all terms and conditions of this Agreement. In no event shall Metro be liable for and the Grantee specifically releases Metro from any liability for special, punitive, exemplary, consequential, incidental or indirect losses or damages (in tort, contract or otherwise) under or in respect of this Agreement or for any failure of performance related to the Scope of Work or this Agreement, however caused, whether or not arising from Metro's sole, joint or concurrent negligence.



600 NE Grand Avenue
Portland, OR 97232-2736
503-797-1700

Intergovernmental Grant Agreement

Metro Grant 931973

GRANTEE, BY EXECUTION OF THIS AGREEMENT TO AGREE, HEREBY ACKNOWLEDGES THAT GRANTEE HAS READ THIS AGREEMENT TO AGREE, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

Clackamas County

By: _____

Printed: _____

Title: _____

Date: _____

Metro

By: _____

Printed: _____

Title: _____

Date: _____

DUNS #: 096992656

Federal ID # (EIN): 93600286

Grantee Congressional District: 5th Congressional District

Grantee Geographic location: Clackamas County, Oregon

Non Profit Status: Local Government

Name of Title VI Officer: _____

Fiscal Year: July 1 through June 30

Accounting Software: PeopleSoft

Percentage of annual revenue (previous FY) from all federal sources: 17.5%

Provide:

Articles of Incorporation and/or Bylaws/written policies by which the organization operates - **N/A**

Procurement Policy

Personnel Policy

Copy of most recent filed State of Oregon annual financial report - **N/A**

Copy of State of Oregon non-profit annual renewal - **N/A**

Copy of most recent A-133 audit - **received**

Exhibit A – Scope of Work

Project Description

The project will develop and implement a comprehensive way-finding system for the Clackamas Regional Center (CRC) area. The major objective is to increase connections from the Transit Stations at the north end of the Clackamas Town Center and below the Max Green Line, the Max Green Line Station and I-205 multiuse path for pedestrians, bicyclists and transit users to major employers and services in the area including Clackamas Promenade, Kaiser Permanente Sunnyside Medical Center, Clackamas Community College Harmony Campus, housing, various businesses along 82nd Avenue, Clackamas Middle College, North Clackamas Aquatic Park and others.

The Way-finding signage will include several types of signs:

- Pole
- Map-based
- Bike
- Directional
- Others as deemed appropriate

The Way-finding signage will include key origins and destinations such as: residential neighborhoods, schools, two transit centers within the Clackamas Town Center, Max Green Line Town Center Station, a community college and major employers and businesses.

This project will include the boundaries of the Clackamas Regional Center area described in general as, Fuller Road to the west, Causey Road to the north, Kaiser Permanente property to the east, and the areas just south of Sunnyside Boulevard and Harmony Road (See Map X-CRC-1).

Project Goals/Expected Outcomes

The specific targeted outcomes of this project include:

- Increase walking and bicycle trips throughout the CRC area by educating nearby residents, employees, and transit users about the numerous services within walking distance of the Town Center, Promenade and major nearby employers
- Reduce vehicle trips and parking demand within the CRC area by encouraging people who currently drive to choose walking and biking instead
- Integrate the two Transit Centers, the Max Green Line Station and I-205 multiuse path by informing transit riders, pedestrians and cyclists about services and businesses available in the CRC within a relatively short walking and biking distance
- Increase bicycle and pedestrian use of the I-205 multiuse path and multiuse path along SE Sunnyside Road between SE 82nd Avenue and the I-205 overpass at Sunnyside Road for nearby residents and employees and other users by installing signage to improve and clarify connections to available destinations

We hope to achieve these by overcoming pedestrian and bicycle barriers into and out of the CRC area, highlighting the I-205 multiuse path, numerous services and businesses within the CRC area as well as the regional transit connections including bus and light rail.

Overcoming Pedestrian and Bicycle Barriers within the CRC area

Making connections to the I-205 multiuse path, transit centers, light rail station and the major businesses can be challenging. The Way-finding System is intended to clarify options for walking and biking trips into and around the CRC area and help make connections to services and businesses.

The TriMet Pedestrian Network analysis indicated that getting to and from the various employers, shopping areas, residential neighborhoods and other destinations from the transit centers and light rail station is challenging. Some of the barriers include Sunnyside Road, 82nd Avenue and the I-205 overpass at Sunnyside Road. The intersections at Sunnyside Road and the I-205 overpass, 82nd Avenue and Sunnyside Road, the limited crosswalks along Sunnyside Road between 82nd Avenue and the I-205 overpass, and the limited transit amenities along 82nd Avenue between

Exhibit A – Scope of Work

Metro Grant 931973

Sunnyside Road and Causey Avenue, especially where there are high TriMet customer boarding's, are all current barriers that need to be addressed. In addition, there are numerous driveways and sidewalk gaps along 82nd Avenue. Adding signage in key locations will help to direct pedestrians and cyclists to better and more efficient routes in order to get to the many destinations in the area mitigating the impediments that currently exist in these problem areas.

The I-205 multiuse path is next to the Max Green Line and there is a connection north of the station platform, however, this is not readily apparent to pedestrians and cyclists. Directional signage indicating the path and distance to the path in conjunction with a pole sign indicating the location of major businesses and distances will help with this connection.

Enhance Path Connections

The I-205 multiuse path provides off-street connections to the CRC area including the transit center, light rail station, major employers, and collector streets connecting to residential areas and to retail/commercial uses; however, there is little to no signing indicating the direction or distances of possible destinations. The proposed Way-finding System includes signage for the path near the Max Green Line Station and at the intersection of the path and Sunnyside Road just before the I-205 overpass.

The County proposes to complete a Way-finding system that includes various sign types and designs. This project will provide a Way-finding system that connects pedestrians, cyclists and transit users to the major employers in the area.

Evaluation Plan

The Way-finding system will be evaluated using surveys to be conducted after implementation of the project. The evaluations will track perceptions of pedestrian and cyclist conditions in the CRC area.

Project Staff:

Name - Title	Project Role	Years Experience	% of time on Project
Lori Mastrantonio-Meuser, Senior Planner	Project Manager	28	15-20
Joe Marek, Civil Engineering Supervisor	Sign Specifications, Locations	25	8
Rick Nys, Senior Civil Engineer	Sign and Sign Location Review	15	8
Ellen Rogalin, Community Relations Specialist	Public Outreach	25	8
Randall Gray, GIS Specialist	GIS Work	17	8
Dave Queener, Senior Planner	Assist with RFQ/Coordination	18	8
Scott Hoelscher, Senior Planner	Assist with Sign Plan Review	18	8
Consultant	Sign Design/Type/Location		

In addition to the County staff indicated above, a portion of the sign design and production will be done by a consultant.

Note: Grantee shall notify Metro in writing of any staffing change(s) within ten (10) business days of such change.

Agreement to any staff changes shall be at Metro's discretion. Metro shall notify Grantee in writing of acceptance of staff changes.

Major Project Tasks

Task 1. Project Management

The project management team (PMT) will include County Engineering, Transportation Planning, Geographical Information System (GIS) and Community Relations staff. This team will be involved with the ongoing management of the project throughout the duration of the project. The Clackamas Regional Center (CRC) Pedestrian/Bicycle Connection project that

Exhibit A – Scope of Work

Metro Grant 931973

included this study area also included a Wayfinding Sign plan for this area. Staff and the consultant will build upon this work to complete a coordinated Wayfinding Sign system for the CRC area. This includes coordinating this project with the manager of the Clackamas Town Center as a sign program has been established for the Town Center area. As needed, additional stakeholders especially those who were involved with the CRC Pedestrian/Bicycle Connection project, e.g. TriMet, will be contacted for further coordination of the Wayfinding System project.

There will be a kick-off PMT meeting to explain the project; identify priorities and review the timeline and schedule.

Deliverables:

- a. PMT meeting
- b. Project Purpose/Summary; including list of project staff, community members, and other agency participants
- c. Project Schedule

Task 2. Pedestrian/Bicycle Perceptions Data – “Before” Conditions

Staff has already conducted “Before” surveys asking participants such as Clackamas Community college students, transit riders and Kaiser Permanente employee’s questions regarding pedestrian and bicycle barriers, improvements needed to enhance pedestrian and bicycle connections, etc. This will establish a baseline for transit, pedestrian and bicycle activity in the study area. The County will utilize the existing survey data from the previous TriMet and County CRC Pedestrian/Bicycle Connection projects. Staff will summarize this data as it relates to this project.

Deliverables:

- a. Synthesize survey results from previous projects within the study area, establishing a “Before” scenario and baseline for program evaluation

Task 3. Pedestrian/Bicycle System Data Collection

Data collection for the Wayfinding System will include use of the County’s GIS mapping system and field work. It will also build on work completed for the Clackamas Regional Center Pedestrian/Bicycle Connection Project and the TriMet Pedestrian Network Analysis project. Examples of signs will be discussed at a project management team (PMT) meeting to get early ideas of options and preferences.

Deliverables:

- a. PMT Meeting
- b. Determination of key origins and destinations; formal and informal transit, pedestrian and bicycle routes

Task 4. Create Draft and Final Way-finding System

The County will hire a consultant to assist with this task. Work will include signage concepts/designs/types and locations. The County’s GIS division will be used to create maps with sign locations and important transit, pedestrian and bicycle routes. Additional PMT meetings are expected. Additional feedback opportunities may include the County’s web site and the County Pedestrian/Bikeway Advisory Committee. Signage will be coordinated with the Clackamas Town Center’s general manager and others.

This project will build on work completed for the Clackamas Regional Center Pedestrian/Bicycle Connection Project specifically, the Clackamas Regional Center Pedestrian/Bicycle Plan that includes the Pedestrian and Bicycle Sign Plan. The Pedestrian and Bicycle Sign Plan proposes two types of pedestrian signs; map-based and pole signs and bicycle signs. Twenty-one pedestrian map-based and pole signs and 16 bicycle signs have been proposed. The number, location and design of the signs may change as this work will be finalized as part of this project. Signs that guide users along off-street regional trails and on-street bicycle and pedestrian facilities that serve as the primary routes connecting one trail segment to the next shall be designed and installed according to specifications found in Metro’s Regional Trails Signage Guidelines, dated May 17, 2012.

Exhibit A – Scope of Work

Metro Grant 931973

Deliverables:

- a. PMT meeting(s)
- b. Select consultant to complete signage concepts and locations
- c. Draft and Final Signage Design Types
- d. Draft and Final Signage System Plan that includes sign locations

Task 5. Production and Installation

The sign production and installation will be handled by staff and/or contracted out to a private company or likely a combination of the two.

Deliverables:

- a. Sign Production
- b. Sign Installation

Task 6. Modify Survey Instrument and Administer – “After” Conditions

The “Before” survey results will serve as the base of the “After” survey. Some modifications might be warranted based on lessons from the project process or due to changing conditions in the field. The survey will also assess awareness of this signage project. We will use a modified version of the “Before” survey and data for the “After” survey with questions added to capture the impact of the signage, enabling an “apples to apples” comparison.

Deliverables:

- a. Survey instrument, modified as needed
- b. Distribute survey forms and/or complete surveys in the field
- c. May use SurveyMonkey for major businesses

Task 7. Final Report

A final report will summarize the findings of the “Before” and “After” surveys, the final outcomes and lessons learned.

Project Timeline and Budget

The project will be completed in about 18 months.

Task	Task Description	Schedule	Metro Grant Dollars by task (est.)	10.27% Federal Match	Totals
1	Project Management, Establish PMT, Summary, Schedule	Ongoing; Months 1-2	\$0.00	0.00	\$0.00
2	“Before” Conditions Data Summary	Months 2-3	\$0.00	0.00	\$0.00
3	System Data Collection	Months 1-3	\$5,500.00	\$630.00	\$6,130.00
4	Create Draft and Final Wayfinding System	Months 4-9	\$21,000.00	\$2,404.00	\$23,404.00
5	Production and Installation	Months 10-13	\$97,095.00	\$11,113.00	\$108,208.00

Exhibit A – Scope of Work

Metro Grant 931973

Task	Task Description	Schedule	Metro Grant Dollars by task (est.)	10.27% Federal Match	Totals
6	Modify Survey Instrument and Administer – “After” Conditions	Months 13-15	\$7,000.00	\$800.00	\$7,800.00
7	Final Report		\$4,000.00	\$458.00	\$4,458.00
Totals			\$134,595.00	\$15,405.00	\$150,000.00

Note: Metro acknowledges the schedule of the project timeline and budget is an approximation used for initial planning and budgeting purposes. Any significant changes to the above schedule must be made in writing and approved in writing by the Metro project manager.

Project Marketing Materials

Project marketing materials (web and print) will include the Drive Less.Save More logo.

Grantee’s invoices shall include:

- Metro Grant number (931973)
- Grantee name
- remittance address
- invoice date
- invoice number
- invoice amount
- Local Match amount
- itemized statement of work performed and expenses incurred during the invoice period
- not be submitted more frequently than quarterly

Grantee’s invoice shall be sent to:

Metro
 Daniel Kaempff – Project Manager
 600 NE Grand Avenue
 Portland, OR 97232-2736

Or:

daniel.kaempff@oregonmetro.gov.

The Metro Grant number (931973) shall be referenced in the email subject line.

Pursuant to Metro’s fiscal year end, Grantee’s invoices for services through June 30 of each year of the grant period shall be submitted to Metro no later than July 15. Payment shall be made by Metro on a Net (thirty) 30 day basis upon approval of Grantee’s invoice.

Exhibit B – Partnership Requirements

Metro Grant 931973

Partnership Requirements

The purpose of the following partnership requirements are for Regional Travel Options (RTO) partners to gain productivity and reduce expense by using tools developed through regional collaborative efforts. Partnership will multiply the benefits of the RTO grant by applying current strategies and brands while incorporating past lessons learned. Partnership will save public dollars by avoiding paying for the same thing twice.

Grantee will engage in a partnership with Metro, RTO staff and other RTO program partners. Partnership requirements apply to anything included in the Grant Agreement or made possible by the Grant Agreement. Exceptions to the following requirements can be requested by writing to RTO staff and must receive confirmation in writing by RTO staff.

Applying Strategies and Collaborating with RTO Partners

Grantee will:

- Review 2012-2017 RTO Strategic Plan
- Review RTO Marketing Strategy and use messages with applicable audiences
- Participate in the RTO Collaborative Marketing Group
- Because the RTO program and partners have made a major investment over time to encourage employment sites around the region to start and grow their travel options programs and benefits to employees:
 - Coordination of employer outreach efforts is required between TriMet, Wilsonville SMART, TMAs or other employer outreach partners affected by this project scope or located in the project geographic area. Coordination includes clear, frequent and timely communication between partners with the goal of providing effective consulting for employers on how to grow their travel options programs. Examples of efficiencies that come from coordination include shared use of existing tools, campaigns and survey support. Employer outreach coordination efforts will be discussed at various Collaborative Marketing Group meetings

Tools

Grantee will use existing tools and resources:

- For promotional photo needs, browse the existing collection of RTO photos (currently located on Flickr) to see if any work for this project. Refer to each photo's guidance for determining who to credit. RTO will provide login and access to the photo website. Project photos that have potential value to partners should be shared by uploading them to the photo website
- For rideshare promotion, highlight Drive Less Connect. Contact RTO staff to set up a network and for other assistance. A Spanish version of the Drive Less Connect tool can be accessed by clicking on "Spanish" in the top, left corner of the screen
- For promotions or competitions that ask participants to log their trips, use Drive Less Connect, unless it is for the September Bicycle Transportation Alliance Bike Commute Challenge. RTO can provide training for using the Drive Less Connect tool upon request
- For incentives or rewards offered to participants, contact RTO staff for recent experience (e.g., pricing for items, incentive language and tax forms)

Exhibit B – Partnership Requirements

Metro Grant 931973

- For vanpool formation, contact Daniel.Kaempff@oregonmetro.gov to discuss start-up incentives and strategies to build ridership
- For personalized bike, walk, transit, or combination trip plans, use the TriMet Map Trip Planner (<http://trimet.org/howtoride/maptripplanner.htm>) and highlight the tool. Contact TriMet (Adriana Britton (BrittonA@trimet.org)) for related language or logos to use while highlighting the tool
- For web-based resources needed for biking and walking info, include a link to Metro's Sustainable Living – Getting Around web pages (current URL is <http://www.oregonmetro.gov/gettingaround>)

Marketing Materials Attribution

- All projects shall attribute credit to the Federal Transit Administration and Metro. Print attribution on project materials (such as booklets, brochures, ads, banners, flyers, posters, signage, and web pages) must read:
 - Made possible with support from Metro and the Federal Transit Administration
- If marketing is done with audio only, spoken attribution language must be:
 - In partnership with Metro, with support by the Federal Transit Administration
- All marketing materials created or printed for the purposes of the project, including both printed and web-based information, shall include the Drive Less Save More logotype. Drive Less Save More is the marketing “umbrella” campaign for RTO projects and programs
- Include the Metro logo on all marketing and advertising materials, both print and online. Metro will provide partners with Metro logos and usage guidelines. Grantees must seek Metro approval through the grant manager of any materials where the Metro logo is included to ensure proper logo design and placement
- If the project designs wayfinding signage, apply The Intertwine design guidelines (http://library.oregonmetro.gov/files//intertwine_regional_trail_signage_guidelines.pdf)

Events and Media

- Provide Metro with a visual presence at any public events. An example is a Metro banner which can be loaned by Metro (contact Marne.Duke@oregonmetro.gov) to consider options
- Inform RTO grant manager of any event needs 90 days in advance. Examples of needed help from partners may include cross-promotion or recruiting volunteers
- Mention support provided by Metro and the Federal Transit Administration in press releases, and social media
- For projects that include a ceremony (e.g., ribbon-cutting, unveiling), please contact the RTO grant manager to consider partnership highlights and discuss if a Metro official should attend and speak
- If a reporter or media outlet inquires about this grant project, please notify the RTO grant manager immediately

Exhibit B – Partnership Requirements

Metro Grant 931973

Measurement and Evaluation

- If the project includes conducting a survey (collecting primary data), involve RTO staff in refining the method, design and RFP (if applicable). Provide a report to RTO grant manager at least two weeks before official release
- If the project collects background data (secondary sources), refer to Metro sources whenever possible (contact Caleb.Winter@oregonmetro.gov). This is especially important for travel behavior, mode splits and average distances by modes
- If the project presents vehicle miles reduced, emissions reduced, gas savings or similar metrics, work with RTO staff to use consistent methods

Exhibit C – Federal Clauses

\$100,000 and above

Metro Grant 931973

The Grantee agrees to comply with all applicable Federal Clauses as outlined in the **October 1, 2012 FTA Master Agreement [FTA MA 19]** including, but not limited to, the following:

A. Application of Federal, State, and Local Laws, Regulations and Guidance.

For purposes of this Master Agreement:

(1) Federal requirement. A Federal requirement includes, but is not limited to a:

- (a) An applicable Federal law,
- (b) Applicable Federal regulation,
- (c) Provision of the Recipient's Underlying Agreement, or
- (d) Provision of this Master Agreement,

(2) Federal guidance. Federal guidance includes, but is not limited to:

(a) Federal guidance such as a:

- 1 Presidential Executive Order,
- 2 Federal order that applies to entities other than the Federal Government,
- 3 Federal published policy,
- 4 Federal administrative practice,
- 5 Federal guideline,
- 6 Letter signed by an authorized Federal official, and
- 7 Other applicable Federal guidance as defined at section 1.j of this Master Agreement, or

(b) Other Federal publications or documents providing official instructions or advice about a Federal program that:

- 1 Are not designated as a "Federal Requirement" in section 2.c (1) of this Master Agreement, and
- 2 Are signed by an authorized Federal official,

(3) Compliance. The Recipient understands and agrees that:

(a) Federal Requirements. It must comply with all Federal requirements that apply to itself and its Project,

(b) Federal Guidance. FTA strongly encourages the Recipient and each of its Third Party Participants to follow Federal guidance as described in the preceding section 2.c(2) of this Master Agreement to ensure satisfactory compliance with Federal requirements,

(c) Alternative Actions. It may violate Federal requirements if it:

- 1 Adopts an alternative course of action not expressly authorized by the Federal Government in writing, and
- 2 Has not first secured FTA's approval of that alternative in writing,

[FTA Master Agreement §2.c (1) (2) (3)]

B. No Federal Government Obligations to Third Parties.

Except as the Federal; Government expressly consents in writing, the Recipient agrees that:

- (1) The Federal Government shall not be subject to any obligations or liabilities related to:
 - (a) The Project,
 - (b) Any Third Party Participant at any tier, or
 - (c) Any other person or entity that is not a party (Recipient or FTA) to the underlying Agreement for the Project, and

(2) Notwithstanding that the Federal Government may have concurred in or approved any solicitation or third party agreement at any tier that has affected the Project, the Federal Government shall not have obligation or liability to any:

- (a) Third Party Participant, or
- (b) Other entity or person that is not a party (Recipient or FTA) to the Underlying Agreement.

[FTA Master Agreement, §2.f]

C. False or Fraudulent Statements or Claims.

(1) Civil Fraud. The Recipient acknowledges and agrees that:

(a) Federal law and regulations apply to itself and its Project, including:

- (1) The Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 *et seq.*, and
- (2) U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31,

(b) By executing the Underlying Agreement, the Recipient certifies and affirms the:

(1) Truthfulness and accuracy of any

- (a) Claim,
- (b) Statement,
- (c) Submission,
- (d) Certification,
- (e) Assurance, or
- (f) Representation, and

(2) For which the Recipient has made, makes, or will make to the Federal Government, and

(c) The Recipient acknowledges that the Federal Government may impose the penalties of the Program Fraud Civil Remedies Act of 1986, as amended, and other applicable penalties if the Recipient:

(1) Presents, submits, or makes available any information in connection with any:

- (a) Claim
- (b) Statement
- (c) Submission
- (d) Certification
- (e) Assurance, or
- (f) Representation, and

(2) That information is false, fictitious, or fraudulent,

(2) Criminal Fraud. The Recipient acknowledges that 49 U.S.C. § 5323 (1) (1), authorizes the Federal Government to impose the penalties authorized by 18 U.S.C. § 1001 if the Recipient:

(1) Presents, submits, or makes available any information in connection with any:

- (a) Claim
- (b) Statement
- (c) Submission
- (d) Certification
- (e) Assurance, or
- (f) Representation, and

(2) That information is false, fictitious, or fraudulent,

[FTA Master Agreement §3.f]

D. Procurement.

Access to Third Party Contract Records. The Recipient agrees to require, and assures that its Subrecipients will require, its Third Party Contractors at each tier, to provide:

(1) The U.S. Secretary of Transportation and the Comptroller General of the United States, the State, or their duly authorized representatives, access to all third party contract records (at any tier) as required by 49 U.S.C. § 5325(g), and

(2) Sufficient access to all third party contract records (at any tier) as needed for compliance with applicable Federal laws and regulations or to assure proper Project management as determined by FTA.

[FTA Master Agreement §17(u)]

E. Project Implementation.

Changes to Federal Requirements and Guidance.

(1) Requirements and Guidance. New Federal Requirements and Guidance may:

a. Become effective after the FTA Authorized Official signs the Recipient's Underlying Agreement awarding funds for the Project, and

b. Apply to the Recipient or its Project,

[FTA Master Agreement, §2.d (1)]

F. Civil Rights.

The Recipient understands and agrees that it must comply with applicable Federal civil rights laws and regulations, and follow applicable Federal guidance, except as the Federal Government determines otherwise in writing. Specifically:

a. Nondiscrimination – Title VI of the Civil Rights Act. The Recipient agrees to, and assures that each Third Party Participant will:

(1) prohibit discrimination based on:

- (a) race,
- (b) color, or
- (c) national origin

(2) Comply with:

- (a) Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000d *et seq.*,
- (b) U.S. DOT regulations, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act of 1964," 49 C.F.R. Part 21 and
- (c) Federal transit law, specifically 49 U.S.C. § 5332, as stated in the previous section 13.a of this Master Agreement, and

(3) Except as FTA determines otherwise in writing, follow

- (a) The most recent edition of FTA Circular 4702.1A, "Title VI and Title VI-Dependent Guidelines for Federal Transit Administration Recipients," to the extent consistent with applicable Federal laws, regulations, and guidance.
- (b) U.S. DOJ, "Guidelines for the enforcement of Title VI, Civil Rights Act of 1964, 28 C.F.R. § 50.3, and
- (c) other applicable Federal guidance that may be issued,

c. Equal Employment Opportunity.

(1) Federal Requirements and Directives. The Recipient agrees to, and assures that each Third Party Participant will, prohibit discrimination on the basis of race, color, religion, sex, or national origin, and:

- (a) Comply with Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e *et seq.*
- (b) Facilitate compliance with Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order No. 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note,
- (c) Comply with Federal transit law, specifically 49 U.S.C. § 5332, as stated in Section 13.a of this Master Agreement, and,
- (d) Comply with other applicable EEO laws and regulations, as provided in Federal guidance, including laws and regulations prohibiting discrimination on the basis of disability, except as the Federal Government determines otherwise in writing.

(2) General. Recipient agrees to

(a) Ensure that applicants for employment and employees are treated during employment without discrimination on the basis of their:

- 1 Race,
- 2 Color,
- 3 Religion,
- 4 Sex,
- 5 Disability,
- 6 Age, or
- 7 National origin.

(b) Take affirmative action that includes, but is not limited to:

- 1 Recruitment advertising,
- 2 Recruitment,
- 3 Employment,
- 4 Rates of pay,
- 5 Other forms of compensation,
- 6 Selection for training, including apprenticeship,
- 7 Upgrading,
- 8 Transfers,
- 9 Demotions,
- 10 Layoffs, and
- 11 Terminations.

(3) Equal Employment Opportunity Requirements for Construction Activities. In addition to the foregoing, when undertaking "construction" as recognized by the U.S. Department of Labor (U.S. DOL), the Recipient agrees to comply, and assures the compliance of each Third Party Participant, with:

(a) U.S. DOL regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. chapter 60, and

(b) Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order No. 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note,

d. Disadvantaged Business Enterprise. To the extent authorized by Federal law, the Recipient agrees to facilitate, and assures that each Third Party Participant will facilitate, participation by small business concerns owned and controlled by socially and economically disadvantaged individuals, also referred to as "Disadvantaged Business Enterprises" (DBEs), in the Project as follows:

(1) Requirements. The Recipient agrees to comply with:

- (a) Section 1101(b) of MAP-21, 23 U.S.C. § 101 note,
- (b) U.S. DOT regulations, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs," 49 C.F.R. Part 26 and
- (c) Federal transit law, specifically 49 U.S.C. § 5332, as stated in Section 13a. of this Master Agreement,

(2) Assurance. As required by 49 C.F.R. § 26.13(a), the Recipient provides assurance that:

The Recipient shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT-assisted contract or in the administration of its DBE program or the requirements of 49 C.F.R. part 26. The Recipient shall take all necessary and reasonable steps under 49 C.F.R. part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts. The Recipient's DBE program, as required by 49 C.F.R. part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the Recipient of its failure to carry out its approved program, the Department may impose sanctions as provided for under 49 C.F.R. part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. § 1001 and/or the Program Fraud Civil Remedies Act of 1986, 31 U.S.C. § 3801 *et seq.*,

g. Nondiscrimination on the Basis of Disability. The Recipient agrees to comply with the following Federal prohibitions pertaining to discrimination against seniors or individuals with disabilities:

(1) Federal laws, including:

(a) Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of disability in the administration of federally funded programs or activities,

(b) The Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. 12101 *et seq.*, which requires that accessible facilities and services be made available to individuals with disabilities;

(c) The Architectural Barriers Act of 1968, as amended, 42 U.S.C. 4151 *et seq.*, which requires that buildings and public accommodations be accessible to individuals with disabilities;

(d) Federal transit law, specifically 49 U.S.C. § 5332, which now includes disability as a prohibited basis for discrimination, and

(e) Other applicable laws and amendments pertaining to access for elderly individuals or individuals with disabilities,

(2) The following Federal regulations including:

(a) U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. Part 37,

(b) U.S. DOT regulations, "Nondiscrimination on the Basis of Disability in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 C.F.R. part 27,

(c) U. S. DOT regulations "Transportation for Individuals with Disabilities: Passenger Vessels," 49 C.F.R. part 39,

(d) Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB) and U.S. DOT regulations, "Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 C.F.R. part 1192 and

(e) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. part 35,

- (f) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 C.F.R. part 36,
- (g) U.S. EEOC, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. part 1630,
- (h) U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for Persons with Disabilities," 47 C.F.R. part 64, Subpart F,
- (i) U.S. ATBCB regulations, "Electronic and Information Technology Accessibility Standards," 36 C.F.R. part 1194, and
- (j) FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 C.F.R. part 609, and

(1) Other applicable Federal civil rights and nondiscrimination guidance,
[FTA Master Agreement §13(b) (c) (d) (g)]

G. Private Enterprise.

The Recipient agrees to protect the interests of private enterprise affected by Federal public transportation programs by:

- a. Participation. Encouraging private enterprise to participate in the planning of public transportation and the programs that provide public transportation, to the extent permitted by
(1) 49 U.S.C. § 5306,
[FTA Master Agreement §15(a)]

H. Right of the Federal Government to Terminate.

a. Justification. After providing notice, the Federal Government may suspend, suspend then terminate, or terminate all or any part of the Federal funding awarded for the Project if:

- (1) The Recipient has violated the Underlying Agreement or this Master Agreement, especially if that violation would endanger substantial performance of the Project,
- (2) The Recipient has failed to make reasonable progress on the Project,
- (3) The Federal Government determines that the continuation of the Federal funding for the Project does not adequately serve the purposes of the law authorizing the Project.

b. Financial Implications.

- (1) In general, termination of Federal funding for the Project will not invalidate obligations properly incurred before the termination date to the extent those obligations cannot be canceled, and
- (2) The Federal Government may:
 - (a) Recover Federal funds it has provided for the Project if it determines that the Recipient has willfully misused Federal funds by:

- 1 Failing to make adequate progress,
- 2 Failing to make appropriate use of Project property, or
- 3 Failing to comply with the underlying Agreement or this Master Agreement

(b) Require the Recipient to refund

- 1 The entire amount of Federal funds provided for the Project, or
- 2 Any lesser amount as the Federal Government may determine, and

c. Expiration of Project Time Period. Except for a Full Funding Grant Agreements, expiration of any Project time period established for the Project does not, by itself, constitute an expiration or termination of the underlying Agreement.

[FTA Master Agreement §12]

I. Debarment and Suspension.

The Recipient agrees that:

(1) It will not engage Third Party Participants that are debarred or suspended except as authorized by:

- (a) U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 C.F.R. Part 1200,
- (b) U.S. OMB, "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement), 2 C.F.R. Part 180, including any amendments thereto, and
- (c) Executive Orders Nos. 12549 and 12689. "Debarment and Suspension," 31 U.S.C. § 6101 note,

(2) It will review the "Excluded Parties Listing System" at <http://epls.gov/> (to be transferred to <https://www.sam.gov>), if required by U.S. DOT regulations, 2 C.F.R. Part 1200, and

(3) It will include, and require its Third Party Participants to include a similar condition in each lower tier covered transaction, assuring that all lower tier Third Party Participants:

- (a) Will comply with Federal debarment and suspension requirements, and
- (b) Review the "Excluded Parties Listing System" at <http://www.epls.gov/> (to be transferred to <https://www.sam.gov>), if necessary to comply with U.S. DOT regulations 2 C.F.R. part 1200.

[FTA Master Agreement §3.b]

J. Preference for United States Products and Services.

Except as the Federal Government determines otherwise in writing, the Recipient agrees to comply with FTA's U. S. domestic preference requirements and follow Federal guidance, including:

- a. Buy America. Domestic preference procurement requirements of:
 - (1) 5323 (j), as amended by MAP-21, and
 - (2) FTA regulations, "Buy America Requirements," 49 C.F.R. part 661, to the extent consistent with MAP-21
- b. Fly America. Air transportation requirements of:
 - (1) Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974, as amended, 49 U.S.C. § 40118, and
 - (2) U.S. GSA regulations, "Use of United States Flag Air Carriers," 41 C.F.R. §§ 301-10.131 - 301-10.143.

[FTA Master Agreement §16(a)(c)]

K. Disputes, Breaches, Defaults or Other Litigation.

The Recipient understands and agrees that:

a. FTA Interest. FTA has a vested interest in the settlement of any disagreement involving the Project including, but not limited to:

- (1) a major dispute,
- (2) A breach,
- (3) A default, or
- (4) Litigation,

b. Notification to FTA. If a current or prospective legal matter that may affect the Federal Government emerges:

- (1) The Recipient agrees to notify immediately:
 - (a) The FTA Chief Counsel, or
 - (b) The FTA Regional Counsel for the Region in which the Recipient is located, (2)

The types of legal matters that require notification include, but are not limited to:

- (a) A major dispute,
- (b) A breach,
- (c) A default,
- (d) Litigation, or
- (e) Naming the Federal Government as a party to litigation or a legal disagreement in any forum for any reason, and(3) The types of matters that may affect the Federal Government include, but are not limited to:
 - (a) The Federal Government's interests in the Project, or
 - (b) The Federal Government's administration or enforcement of Federal laws or regulations,

c. Federal Interest in Recovery.

- (1) General. The Federal Government retains the right to a proportionate share of any proceeds recovered from any third party, based on the percentage of the Federal share for the Project, but

Exhibit C – Federal Clauses

\$100,000 and above

Metro Grant 931973

(1) Liquidated Damages. Notwithstanding the preceding section 96.c(1) of this Master Agreement, the Recipient may return all liquidated damages it receives to its Project Account rather than return the Federal share of those liquidated damages to the Federal Government,

d. Enforcement. The Recipient agrees to pursue its legal rights and remedies available under:

- (1) Any third party agreement,
- (2) Any Federal law or regulation,
- (3) Any State law or regulation, or
- (4) Any local law or regulation,

e. FTA Concurrence. If a legal matter described in section 96(2) and (3) of this Master Agreement involves the Project or the Recipient, FTA reserves the right to concur in any:

- (1) Compromise, or
- (2) Settlement, and

f. Alternative Dispute Resolution. FTA encourages the Recipient to use alternative dispute resolution procedures, as may be appropriate.

[FTA Master Agreement §96

L. Lobbying Restrictions

The Recipient agrees that, as provided by 31 U.S.C. §1352(a):

(1) Prohibition on Use of Federal Funds. It will not use Federal funds

(a) To influence any:

1. Officer or employee of a Federal Agency
2. Member of Congress,
3. Officer or employee of Congress, or
4. Employee of a Member of Congress

(b) To take any action involving the Project or the Underlying Agreement for the Project, including any:

1. Award,
2. Extension, or
3. Modification

(2) Laws and Regulations. It will comply, and will assure that each Third Party Participant complies with:

- (a) 31 U.S.C. § 1352 as amended,
- (b) U.S. DOT regulations, "New Restrictions on Lobbying," 49 C.F.R. part 20, to the extent consistent with as necessary by 31 U.S.C. § 1352, as amended, and
- (c) Other applicable Federal laws and regulations prohibiting the use of Federal funds for any activity concerning legislation or appropriations designed to influence:

- 1. The U.S. Congress, or
 - 2. A State legislature, but
- (3) Exception. The prohibitions of the preceding section 3.d(1) – (2) of this Master Agreement do not apply to any activity that is undertaken through proper official channels, if permitted by the underlying law or regulations,
[FTA Master Agreement §3.d (1)(2)]

M. Environmental Protections.

a. Air Quality. The Recipient agrees to, and assures that its Third Party Participants will, comply with the Clean Air Act, as amended, 42 U.S.C. §§ 7401 - 7671q, and implementing Federal regulations, as provided in Federal guidance, except as the Federal Government determines otherwise in writing. Among its responsibilities, the Recipient agrees that:

(1) Public Transportation Operators. It will comply with:

- (a) U.S. EPA regulations, "Control of Air Pollution from Mobile Sources," 40 C.F.R. Part 85;
- (b) U.S. EPA regulations "Control of Emissions from New and In-Use Highway Vehicles and Engines," 40 C.F.R. Part 86, and
- (c) U.S. EPA regulations "Fuel Economy and Greenhouse Gas Exhaust Emissions of Motor Vehicles," 40 C.F.R. Part 600 and any revisions to these regulations.

(2) State Implementation Plans. It will support State Implementation Plans by:

- (a) Implementing each air quality mitigation or control measure incorporated in the documents accompanying the approval of the Project,
- (b) Assuring that any Project identified as a Transportation Control Measure in its State Implementation Plan will be wholly consistent with the design concept and scope of the Project described in the State Implementation Plan, and
- (c) Complying with:
 - 1. Subsection 176(c) of the Clean Air Act, 42 U.S.C. § 7506(c),
 - 2. U.S. EPA regulations, "Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects developed, Funded or Approved Under Title 23, U. S. C. or the Federal Transit Laws," 40 C.F.R. Part 93, subpart A, and
 - 3. Other applicable Federal conformity regulations that may be promulgated at a later date, and

(3) Violating Facilities. It will:

- (a) Comply with the notice of violating facility provisions of section 306 in the Clean Air Act, as amended, 42 U.S.C. § 7414, and
- (b) Facilitate compliance with Executive Order No. 11738, " Providing for Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants, or Loans," 42 U.S.C. § 7606 note.

b. Clean Water. The Recipient agrees to, and assures that its Third Party Participants will, comply with the Clean Water Act, as amended, 33 U.S.C. §§ 1251 – 1377, and implementing Federal regulations, and

follow Federal implementing guidance, except as the Federal Government determines otherwise in writing. Among its responsibilities, the Recipient agrees that:

(2) Drinking Water. It will protect underground sources of drinking water in compliance with the Safe Drinking Water Act of 1974, as amended, 42 U.S.C. §§ 300f - 300j-6.

(3) Violating Facilities. It will.

(a) Comply with the notice of violating facility provisions in section 508 of the Clean Water Act, as amended, 33 U.S.C. § 1368, and

(b) Facilitate compliance with Executive Order No. 11738, "Providing for Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants, or Loans," 42 U.S.C. § 7606 note.

[FTA Master Agreement §29(c),(d)]

N. Employee Protections.

The Recipient agrees to comply, and assures that each Third Party Participant will comply, with all of the following:

a. Construction Activities. Federal laws and regulations providing protections for construction employees involved in Project activities, including:

(1) Prevailing Wage Requirements.

(a) Federal transit laws, specifically 49 U.S.C. § 5333(a), (FTA's "Davis-Bacon Related Act"),

(b) The Davis-Bacon Act, 40 U.S.C. §§ 3141 – 3144, 3146, and 3147, and

(c) U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 C.F.R. part 5,

(2) Wage and Hour Requirements.

(a) Section 102 of the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. § 3702, and other relevant parts of that Act, 40 U.S.C. § 3701 *et seq.*, and

(b) U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 C.F.R. part 5,

(3) "Anti-Kickback" Prohibitions.

(a) Section 1 of the Copeland "Anti-Kickback" Act, as amended, 18 U.S.C. § 874,

(b) Section 2 of the Copeland "Anti-Kickback" Act, as amended, 40 U.S.C. § 3145, and

(c) U.S. DOL regulations, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in part by Loans or Grants from the United States," 29 C.F.R. part 3,

(4) Safety at the Construction Site.

(a) Section 107 of that Contract Work Hours and Safety Standards Act, as amended, U. S.C. § 3704, and other relevant parts of that Act, 40 U.S.C. § 3701 et seq., and

(b) U.S. DOL regulations, "Safety and Health Regulations for Construction," 29 C.F.R. part 1926,

[FTA Master Agreement §28.a]

O. Energy Conservation.

The Recipient agrees to and assures its Subrecipients will:

a. State Energy Conservation Plans. Comply with the mandatory energy standards and policies of its State energy conservation plans under the Energy Policy and Conservation Act, as amended, 42 U.S.C. 6321 et seq., except as the Federal Government determines otherwise in writing, and

b. Energy Assessment. Perform an energy assessment for any building constructed, reconstructed, or modified with FTA funds required under FTA regulations, "Requirements for Energy Assessments," 49 C.F.R. Part 622, Subpart C.

[FTA Master Agreement §30]

Exhibit C, Attachment A

Debarment Certification

Metro Grant 931973

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION - LOWER TIER COVERED TRANSACTION

This Agreement is a covered transaction for purposes of 49 CFR Part 29. As such, the Grantee is required to verify that none of the Grantee, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.

The Grantee is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into.

By signing and submitting this Agreement, the Grantee certifies as follows:

The certification in this clause is a material representation of fact relied upon by **Metro**. If it is later determined that the Grantee knowingly rendered an erroneous certification, in addition to remedies available to **Metro**, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The Grantee agrees to comply with the requirements of 49 CFR 29, Subpart C throughout the period of this Agreement. The Grantee further agrees to include a provision requiring such compliance in its lower tier covered transactions.

Signature _____

Name _____

Title _____

Organization _____

Date _____

CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans and Cooperative Agreements

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

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

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, *et seq.*)]

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000.00 and not more than \$100,000.00 for each such failure.

Note: Pursuant to 31 U.S.C. § 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000.00 and not more than \$100,000.00 for each such expenditure or failure.

The Grantee, **Clackamas County**, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Grantee understands and agrees that the provisions of 31 U.S.C. A 3801, *et seq.*, apply to this certification and disclosure, if any.

Signature of Grantee's Authorized Official

Name (Printed)

Title

Date

UNIFIED PROTECTIVE ARRANGEMENT

For Application to Capital and Operating Assistance Projects

PURSUANT TO SECTION 5333(b) OF TITLE 49

OF THE U.S. CODE, CHAPTER 53

January 3, 2011

The following language shall be made part of the Department of Transportation's contract of assistance with the Grantee, by reference;

The terms and conditions set forth below shall apply for the protection of the transportation related employees in the transportation service area of the Project. As a precondition of the release of assistance by the Grantee to any additional Recipient under the grant, the Grantee shall incorporate this arrangement into the contract of assistance between the Grantee and the Recipient, by reference, binding the Recipient to these arrangements.

These protective arrangements are intended for the benefit of transit employees in the service area of the project, who are considered as third-party beneficiaries to the employee protective arrangements incorporated by reference in the grant contract between the U.S. Department of Transportation and the Grantee, and the parties to the contract so signify by executing that contract. Transit employees are also third-party beneficiaries to the protective arrangements incorporated in subsequent contracts of assistance, pursuant to the Department's certification, between the Grantee and any Recipient. Employees may assert claims through their representative with respect to the protective arrangements under this provision. This clause creates no independent cause of action against the United States Government.

The term "service area," as used herein, includes the geographic area over which the Project is operated and the area whose population is served by the Project, including adjacent areas affected by the Project. The term "Union," as used herein, refers to any labor organization representing employees providing public transportation services in the service area of a Project assisted under the grant, including both employees of the Recipient and employees of other public transportation providers. The term "Recipient," as used herein, shall refer to any employer(s) receiving transportation assistance under the grant. The term "Grantee," as used herein, shall refer to the applicant for assistance; a Grantee which receives assistance is also a Recipient.

(1) The Project shall be carried out in such a manner and upon such terms and conditions as will not adversely affect employees of the Recipient and of any other surface public transportation provider in the transportation service area of the Project. It shall be an obligation of the Recipient to assure that any and all transportation services assisted by the Project are contracted for and operated in such a manner that they do not impair the rights and interests of affected employees. The term "Project," as used herein, shall not be limited to the particular facility, service, or operation assisted by Federal funds, but shall include any changes, whether organizational, operational, technological, or otherwise, which are a result of the assistance provided. The phrase "as a result of the Project," shall, when used in this arrangement, include events related to the Project occurring in anticipation of, during, and subsequent to the Project and any program of efficiencies or economies related thereto; provided, however, that volume rises and falls of business, or changes in volume and character of employment brought about solely by causes other than the Project (including any economies or efficiencies unrelated to the Project) are not within the purview of this arrangement.

An employee covered by this arrangement, who is not dismissed, displaced or otherwise worsened in his/her position with regard to employment as a result of the Project, but who is dismissed, displaced or otherwise worsened solely because of the total or partial termination of the Project or exhaustion of Project funding shall not be deemed eligible for a dismissal or displacement allowance within the meaning of paragraphs (6) and (7) of this arrangement.

(2) Where employees of a Recipient are represented for collective bargaining purposes, all Project services provided by that Recipient shall be provided under and in accordance with any collective

Exhibit D

Department of Labor Clauses

Metro Grant 931973

bargaining agreement applicable to such employees which is then in effect. This Arrangement does not create any collective bargaining relationship where one does not already exist or between any Recipient and the employees of another employer. Where the Recipient has no collective bargaining relationship with the Unions representing employees in the service area, the Recipient will not take any action which impairs or interferes with the rights, privileges, and benefits and/ or the preservation or continuation of the collective bargaining rights of such employees.

(3) All rights, privileges, and benefits (including pension rights and benefits) of employees covered by this arrangement (including employees having already retired) under existing collective bargaining agreements or otherwise, or under any revision or renewal thereof, shall be preserved and continued; provided, however, that such rights, privileges and benefits which are not foreclosed from further bargaining under applicable law or contract may be modified by collective bargaining and agreement by the Recipient and the Union involved to substitute other rights, privileges and benefits. Unless otherwise provided, nothing in this arrangement shall be deemed to restrict any rights the Recipient may otherwise have to direct the working forces and manage its business as it deems best, in accordance with the applicable collective bargaining agreement.

(4) The collective bargaining rights of employees covered by this arrangement, including the right to arbitrate labor disputes and to maintain union security and check off arrangements, as provided by applicable laws, policies and/ or existing collective bargaining agreements, shall be preserved and continued. Provided, however, that this provision shall not be interpreted so as to require the Recipient to retain any such rights which exist by virtue of a collective bargaining agreement after such agreement is no longer in effect.

The Recipient agrees that it will bargain collectively with the Union or otherwise arrange for the continuation of collective bargaining, and that it will enter into agreements with the Union or arrange for such agreements to be entered into, relative to all subjects which are or may be proper subjects of collective bargaining. If, at any time, applicable law or contracts permit or grant to employees covered by this arrangement the right to utilize any economic measures, nothing in this arrangement shall be deemed to foreclose the exercise of such right.

(5)(a) The Recipient shall provide to all affected employees sixty (60) days' notice of intended actions which may result in displacements or dismissals or rearrangements of the working forces as a result of the Project. In the case of employees represented by a Union, such notice shall be provided by certified mail through their representatives. The notice shall contain a full and adequate statement of the proposed changes, and an estimate of the number of employees affected by the intended changes, and the number and classifications of any jobs within the jurisdiction and control of the Recipient, including those in the employment of any entity bound by this arrangement pursuant to paragraph (21), available to be filled by such affected employees.

(5)(b) The procedures of this subparagraph shall apply to cases where notices, provided under subparagraph S (a), involve employees represented by a Union for collective bargaining purposes. At the request of either the Recipient or the representatives of such employees, negotiations for the purposes of reaching agreement with respect to the application of the terms and conditions of this arrangement shall commence immediately. These negotiations shall include determining the selection of forces from among the mass transportation employees who may be affected as a result of the Project, to establish which such employees shall be offered employment for which they are qualified or can be trained. If no agreement is reached within twenty (20) days from the commencement of negotiations, any party to the dispute may submit the matter to dispute settlement procedures in accordance with paragraph (15) of this arrangement. Unless the parties otherwise mutually agree in writing, no change in operations, services, facilities or equipment within the purview of this paragraph (5) shall occur until after either:

- 1) an agreement with respect to the application of the terms and conditions of this arrangement to the intended change(s) is reached;
- 2) the decision has been rendered pursuant to the dispute resolution procedures in accordance with paragraph (15) of this arrangement; or

Exhibit D

Department of Labor Clauses

Metro Grant 931973

3) an arbitrator selected pursuant to Paragraph (15) of this arrangement determines that the intended change(s) may be instituted prior to the finalization of implementing arrangements.

(5)(c) In the event of a dispute as to whether an intended change within the purview of this paragraph (5) may be instituted at the end of the 60-day notice period and before an implementing agreement is reached or a final dispute resolution determination is rendered pursuant to subparagraph (b), any involved party may immediately submit that issue to the dispute resolution process under paragraph (15) of this arrangement. In any such dispute resolution procedure, the neutral shall rely upon the standards and criteria utilized by the Surface Transportation Board (and its predecessor agency, the Interstate Commerce Commission) to address the "preconsummation" issue in cases involving employee protections pursuant to 49 U.S.C. Section 11326 (or its predecessor, Section 5(2)(f) of the Interstate Commerce Act, as amended). If the Recipient demonstrates, as a threshold matter in any such dispute resolution process, that the intended action is a trackage rights, lease proceeding or similar transaction, and not a merger, acquisition, consolidation, or other similar transaction, the burden shall then shift to the involved labor organization(s) to prove that under the standards and criteria referenced above, the intended action should not be permitted to be instituted prior to the effective date of a negotiated or arbitrated implementing agreement. If the Recipient fails to demonstrate that the intended action is a trackage rights, lease proceeding, or similar transaction, it shall be the burden of the Recipient to prove that under the standards and criteria referenced above, the intended action should be permitted to be instituted prior to the effective date of a negotiated or arbitrated implementing agreement. For purposes of any such dispute resolution procedure, the time period within which the parties are to respond to the list of potential neutrals submitted by the American Arbitration Association shall be five (5) days, the notice of hearing may be given orally or by facsimile, the hearing will be held promptly, and the award of the neutral shall be rendered promptly and, unless otherwise agreed to by the parties, no later than fourteen (14) days from the date of closing the hearings, with five (5) additional days if post hearing briefs are submitted by either party. The intended change shall not be instituted during the pendency of any dispute resolution proceedings under this subparagraph (c).

(5)(d) If an intended change within the purview of this paragraph (5) is instituted before an implementing agreement is reached or a final decision is rendered pursuant to subparagraph (b), all employees affected shall be kept financially whole, as if the noticed and implemented action has not taken place, from the time they are affected until the effective date of an implementing agreement or final decision. This protection shall be in addition to the protective period defined in paragraph (14) of this arrangement, which period shall begin on the effective date of the implementing agreement or final dispute resolution determination rendered pursuant to subparagraph (b).

An employee selecting, bidding on, or hired to fill any position established as a result of a noticed and implemented action prior to the consummation of an implementing agreement or final dispute resolution determination shall accumulate no benefits under this arrangement as a result thereof during that period prior to the consummation of an implementing agreement or final decision pursuant to subparagraph (b).

(6)(a) Whenever an employee retained in service, recalled to service, or employed by the Recipient pursuant to paragraphs (5), (7) (e), or (18) hereof is placed in a worse position with respect to compensation as a result of the Project, the employee shall be considered a "displaced employee", and shall be paid a monthly "displacement allowance" to be determined in accordance with this paragraph. Said displacement allowance shall be paid to each displaced employee during the protective period SQ long as the employee is unable, in the exercise of his/her seniority rights, to obtain a position producing compensation equal to or exceeding the compensation the employee received in the position from which the employee was displaced, adjusted to reflect subsequent general wage adjustments, including cost of living adjustments where provided for.

(6)(b) The displacement allowance shall be a monthly allowance determined by computing the total compensation received by the employee, including vacation allowances and monthly compensation guarantees, and his/her total time paid for during the last twelve (12) months in which the employee performed compensated service more than fifty per centum of each such months, based upon the employee's normal work schedule, immediately preceding the date of his/her displacement as a result of the Project, and by dividing separately the total compensation and the total time paid for by twelve,

Exhibit D

Department of Labor Clauses

Metro Grant 931973

thereby producing the average monthly compensation and the average monthly time paid for. Such allowance shall be adjusted to reflect subsequent general wage adjustments, including cost of living adjustments where provided for. If the displaced employee's compensation in his/her current position is less in any month during his/her protective period than the aforesaid average compensation (adjusted to reflect subsequent general wage adjustments, including cost of living adjustments where provided for), the employee shall be paid the difference, less compensation for any time lost on account of voluntary absences to the extent that the employee is not available for service equivalent to his/her average monthly time, but the employee shall be compensated in addition thereto at the rate of the current position for any time worked in excess of the average monthly time paid for. If a displaced employee fails to exercise his/her seniority rights to secure another position to which the employee is entitled under the then existing collective bargaining agreement, and which carries a wage rate and compensation exceeding that of the position which the employee elects to retain, the employee shall thereafter be treated, for the purposes of this paragraph, as occupying the position the employee elects to decline.

(6)(c) The displacement allowance shall cease prior to the expiration of the protective period in the event of the displaced employee's resignation, death, retirement, or dismissal for cause in accordance with any labor agreement applicable to his/her employment.

(7)(a) Whenever any employee is laid off or otherwise deprived of employment as a result of the Project, in accordance with any collective bargaining agreement applicable to his/her employment, the employee shall be considered a "dismissed employee" and shall be paid a monthly dismissal allowance to be determined in accordance with this paragraph. Said dismissal allowance shall first be paid to each dismissed employee on the thirtieth (30th) day following the day on which the employee is "dismissed" and shall continue during the protective period, as follow:

Employee's length of service Prior to adverse effect	Period of protection
1 day to 6 years	equivalent period
6 years or more	6 years

The monthly dismissal allowance shall be equivalent to one-twelfth (1/ 12th) of the total compensation received by the employee in the last twelve (12) months of his/her employment in which the employee performed compensation service more than fifty per centum of each such month based on the employee's normal work schedule to the date on which the employee was first deprived of employment as a result of the Project. Such allowance shall be adjusted to reflect subsequent general wage adjustments, including cost of living adjustments where provided for.

(7)(b) An employee shall be regarded as deprived of employment and entitled to a dismissal allowance when the position the employee holds is abolished as a result of the Project, or when the position the employee holds is not abolished but the employee loses that position as a result of the exercise of seniority rights by an employee whose position is abolished as a result of the Project or as a result of the exercise of seniority rights by other employees brought about as a result of the Project, and the employee is unable to obtain another position, either by the exercise of the employee's seniority rights, or through the Recipient, in accordance with subparagraph (e). In the absence of proper notice followed by an agreement or decision pursuant to paragraph (5) hereof, no employee who has been deprived of employment as a result of the Project shall be required to exercise his/her seniority rights to secure another position in order to qualify for a dismissal allowance hereunder.

(7)(c) Each employee receiving a dismissal allowance shall keep the Recipient informed as to his/her current address and the current name and address of any other person by whom the employee may be regularly employed, or if the employee is self-employed.

(7)(d) The dismissal allowance shall be paid to the regularly assigned incumbent of the position abolished. If the position of an employee is abolished when the employee is absent from service, the employee will be entitled to the dismissal allowance when the employee is available for service. The employee temporarily filling said position at the time it was abolished will be given a dismissal allowance

Exhibit D

Department of Labor Clauses

Metro Grant 931973

on the basis of that position, until the regular employee is available for service, and thereafter shall revert to the employee's previous status and will be given the protections of the agreement in said position, if any are due him/her.

(7)(e) An employee receiving a dismissal allowance shall be subject to call to return to service by the employee's former employer, after being notified in accordance with the terms of the then-existing collective bargaining agreement. Prior to such call to return to work by his/her employer, the employee may be required by the Recipient to accept reasonably comparable employment for which the employee is physically and mentally qualified, or for which the employee can become qualified after a reasonable training or retraining period, provided it does not require a change in residence or infringe upon the employment rights of other employees under then-existing collective bargaining agreements.

(7)(f) When an employee who is receiving a dismissal allowance again commences employment in accordance with subparagraph (e) above, said allowance shall cease while the employee is so reemployed, and the period of time during which the employee is so reemployed shall be deducted from the total period for which the employee is entitled to receive a dismissal allowance. During the time of such reemployment, the employee shall be entitled to the protections of this arrangement to the extent they are applicable.

(7)(g) The dismissal allowance of any employee who is otherwise employed shall be reduced to the extent that the employee's combined monthly earnings from such other employment or self-employment, any benefits received from any unemployment insurance law, and his/her dismissal allowance exceed the amount upon which the employee's dismissal allowance is based. Such employee, or his/her union representative, and the Recipient shall agree upon a procedure by which the Recipient shall be kept currently informed of the earnings of such employee in employment other than with the employee's former employer, including self-employment, and the benefits received.

(7)(h) The dismissal allowance shall cease prior to the expiration of the protective period in the event of the failure of the employee without good cause to return to service in accordance with the applicable labor agreement, or to accept employment as provided under subparagraph (e) above, or in the event of the employee's resignation, death, retirement, or dismissal for cause in accordance with any labor agreement applicable to his/her employment.

(7)(i) A dismissed employee receiving a dismissal allowance shall actively seek and not refuse other reasonably comparable employment offered him/her for which the employee is physically and mentally qualified and does not require a change in the employee's place of residence. Failure of the dismissed employee to comply with this obligation shall be grounds for discontinuance of the employee's allowance; provided that said dismissal allowance shall not be discontinued until final determination is made either by agreement between the Recipient and the employee or his/her representative, or by final and binding dispute resolution determination rendered in accordance with paragraph (15) of this arrangement that such employee did not comply with this obligation.

(8) In determining length of service of a displaced or dismissed employee for purposes of this arrangement, such employee shall be given full service credits in accordance with the records and labor agreements applicable to him/her and the employee shall be given additional service credits for each month in which the employee receives a dismissal or displacement allowance as if the employee were continuing to perform services in his/her former position.

(9) No employee shall be entitled to either a displacement or dismissal allowance under paragraphs (6) or (7) hereof because of the abolishment of a position to which, at some future time, the employee could have bid, been transferred, or promoted.

(10) No employee receiving a dismissal or displacement allowance shall be deprived, during the employee's protected period, of any rights, privileges, or benefits attaching to his/her employment, including, without limitation, group life insurance, hospitalization and medical care, free transportation for the employee and the employee's family, sick leave, continued status and participation under any

Exhibit D

Department of Labor Clauses

Metro Grant 931973

disability or retirement program, and such other employee benefits as Railroad Retirement, Social Security, Workmen's Compensation, and unemployment compensation, as well as any other benefits to which the employee may be entitled under the same conditions and so long as such benefits continue to be accorded to other employees of the bargaining unit, in active service or furloughed as the case may be.

(11)(a) Any employee covered by this arrangement who is retained in the service of his/her employer, or who is later restored to service after being entitled to receive a dismissal allowance, and who is required to change the point of his/her employment in order to retain or secure active employment with the Recipient in accordance with this arrangement, and who is required to move his/her place of residence, shall be reimbursed for all expenses of moving his/her household and other personal effects, for the traveling expenses for the employee and members of the employee's immediate family, including living expenses for the employee and the employee's immediate family, and for his/her own actual wage loss during the time necessary for such transfer and for a reasonable time thereafter, not to exceed five (5) working days. The exact extent of the responsibility of the Recipient under this paragraph, and the ways and means of transportation, shall be agreed upon in advance between the Recipient and the affected employee or the employee's representatives.

(11)(b) If any such employee is laid off within three (3) years after changing his/her point of employment in accordance with paragraph (a) hereof, and elects to move his/her place of residence back to the original point of employment, the Recipient shall assume the expenses, losses and costs of moving to the same extent provided in subparagraph (a) of this paragraph (11) and paragraph (12) (a) hereof.

(11)(c) No claim for reimbursement shall be paid under the provisions of this paragraph unless such claim is presented to the Recipient in writing within ninety (90) days after the date on which the expenses were incurred.

(11)(d) Except as otherwise provided in subparagraph (b), changes in place of residence, subsequent to the initial changes as a result of the Project, which are not a result of the Project but grow out of the normal exercise of seniority rights, shall not be considered within the purview of this paragraph.

(12)(a) The following conditions shall apply to the extent they are applicable in each instance to any employee who is retained in the service of the employer (or who is later restored to service after being entitled to receive a dismissal allowance), who is required to change the point of his/her employment as a result of the Project, and is thereby required to move his/her place of residence.

If the employee owns his/her own home in the locality from which the employee is required to move, the employee shall, at the employee's option, be reimbursed by the Recipient for any loss suffered in the sale of the employee's home for less than its fair market value, plus conventional fees and closing costs, such loss to be paid within thirty (30) days of settlement or closing on the sale of the home. In each case, the fair market value of the home in question shall be determined, as of a date sufficiently prior to the date of the Project, so as to be unaffected thereby. The Recipient shall, in each instance, be afforded an opportunity to purchase the home at such fair market value before it is sold by the employee to any other person and to reimburse the seller for his/her conventional fees and closing costs.

If the employee is under a contract to purchase his/her home, the Recipient shall protect the employee against loss under such contract, and in addition, shall relieve the employee from any further obligation there under.

If the employee holds an unexpired lease of a dwelling occupied as the employee's home, the Recipient shall protect the employee from all loss and cost in securing the cancellation of said lease.

(12)(b) No claim for loss shall be paid under the provisions of this paragraph unless such claim is presented to the Recipient in writing within one year after the effective date of the change in residence.

(12)(c) Should a controversy arise in respect to the value of the home, the loss sustained in its sale, the loss under a contract for purchase, loss and cost in securing termination of a lease, or any other question

Exhibit D

Department of Labor Clauses

Metro Grant 931973

in connection with these matters, it shall be decided through a joint conference between the employee, or his/her union, and the Recipient. In the event they are unable to agree, the dispute or controversy may be referred by the Recipient or the union to a board of competent real estate appraisers selected in the following manner: one (1) to be selected by the representatives of the employee, and one (1) by the Recipient, and these two, if unable to agree within thirty (30) days upon the valuation, shall endeavor by agreement with ten (10) days thereafter to select a third appraiser, or to agree to a method by which a third appraiser shall be selected, and failing such agreement, either party may request the State and local Board of Real Estate Commissioners to designate within ten (10) days a third appraiser, whose designation will be binding upon the parties and whose jurisdiction shall be limited to determination of the issues raised in this paragraph only. A decision of a majority of the appraisers shall be required and said decision shall be final, binding, and conclusive. The compensation and expenses of the neutral appraiser including expenses of the appraisal board shall be borne equally by the parties to the proceedings. All other expenses shall be paid by the party incurring them, including the compensation of the appraiser selected by such party.

(12)(d) Except as otherwise provided in paragraph (11)(b) hereof, changes in place of residence, subsequent to the initial changes as a result of the Project, which are not a result of the Project but grow out of the normal exercise of seniority rights, shall not be considered within the purview of this paragraph.

(12)(e) "Change in residence" means transfer to a work location which is either:

(A) outside a radius of twenty (20) miles of the employee's former work location and farther from the employee's residence than was his/her former work location, or

(B) is more than thirty (30) normal highway route miles from the employee's residence and also farther from his/her residence than was the employee's former work location.

(13)(a) A dismissed employee entitled to protection under this arrangement may, at the employee's option within twenty-one (21) days of his/her dismissal, resign and (in lieu of all other benefits and protections provided in this arrangement) accept a lump sum payment computed in accordance with section (9) of the Washington Job Protection Agreement of May 1936:

<u>Length of Service</u>	<u>Separation Allowance</u>
1 year and less than 2 years	3 month's pay
2 years and less than 3 years	6 month's pay
3 years and less than 5 years	9 month's pay
5 years and less than 10 years	12 month's pay
10 years and less than 15 years	12 month's pay
15 years and over	12 month's pay

In the case of an employee with less than one year's service, five days' pay, computed by multiplying by 5 the normal daily earnings (including regularly scheduled overtime, but excluding other overtime payments) received by the employee in the position last occupied, for each month in which the employee performed service, will be paid as the lump sum.

Length of service shall be computed as provided in Section 7(b) of the Washington Job Protection Agreement, as follows:

For the purposes of this arrangement, the length of service of the employee shall be determined from the date the employee last acquired an employment status with the employing carrier and the employee shall be given credit for one month's service for each month in which the employee performed any service (in any capacity whatsoever) and twelve (12) such months shall be credited as one year's service. The employment status of an employee shall not be interrupted by furlough in instances where the employee has a right to and does return to service when called. In determining length of service of an employee acting as an officer or other official representative of an employee organization, the employee will be given credit for performing service while so engaged on leave of absence from the service of a carrier.

(13)(b) One month's pay shall be computed by multiplying by 30 the normal daily earnings (including regularly scheduled overtime, but excluding other overtime payments) received by the employee in the position last occupied prior to time of the employee's dismissal as a result of the Project.

(14) Whenever used herein, unless the context requires otherwise, the term "protective period" means that period of time during which a displaced or dismissed employee is to be provided protection hereunder and extends from the date on which an employee is displaced or dismissed to the expiration of six (6) years there from, provided, however, that the protective period for any particular employee during which the employee is entitled to receive the benefits of these provisions shall not continue for a longer period following the date the employee was displaced or dismissed than the employee's length of service, as shown by the records and labor agreements applicable to his/her employment prior to the date of the employee's displacement or dismissal.

(15) Any dispute, claim, or grievance arising from or relating to the interpretation, application or enforcement of the provisions of this arrangement, not otherwise governed by paragraph 12(c) of this arrangement, the Labor-Management Relations Act, as amended, the Railway Labor Act, as amended, or by impasse resolution provisions in a collective bargaining or protective arrangement involving the Recipient(s) and the Union(s), which cannot be settled by the parties thereto within thirty (30) days after the dispute or controversy arises, may be submitted at the written request of the Recipient(s) or the Union(s) in accordance with a final and binding resolution procedure mutually acceptable to the parties. Failing agreement within ten (10) days on the selection of such a procedure, any party to the dispute may request the American Arbitration Association to furnish an arbitrator and administer a final and binding arbitration under its Labor Arbitration Rules. The parties further agree to accept the arbitrator's award as final and binding.

The compensation and expenses of the neutral arbitrator, and any other jointly incurred expenses, shall be borne equally by the Union(s) and Recipient(s), and all other expenses shall be paid by the party incurring them.

In the event of any dispute as to whether or not a particular employee was affected by the Project, it shall be the employee's obligation to identify the Project and specify the pertinent facts of the Project relied upon. It shall then be the burden of the Recipient to prove that factors other than the Project affected the employee. The claiming employee shall prevail if it is established that the Project had an effect upon the employee even if other factors may also have affected the employee (See Hodgson's Affidavit in Civil Action No. 825-71).

(16) The Recipient will be financially responsible for the application of these conditions and will make the necessary arrangements so that any employee affected, as a result of the project, may file a written claim through his/her Union representative with the Recipient within sixty (60) days of the date the employee is terminated or laid off as a result of the Project, or within eighteen (18) months of the date the employee's position with respect to his/her employment is otherwise worsened as a result of the Project. In the latter case, if the events giving rise to the claim have occurred over an extended period, the 18-month limitation shall be measured from the last such event. No benefits shall be payable for any period prior to six (6) months from the date of the filing of any claim. Unless the claim is filed with the Recipient within said time limitations, the Recipient shall thereafter be relieved of all liabilities and obligations related to the claims.

The Recipient will fully honor the claim, making appropriate payments, or will give written notice to the claimant and his/her representative of the basis for denying or modifying such claim, giving reasons therefore. In the event the Recipient fails to honor such claim, the Union may invoke the following procedures for further joint investigation of the claim by giving notice in writing of its desire to pursue such procedures. Within ten (10) days from the receipt of such notice, the parties shall exchange such factual material as may be requested of them relevant to the disposition of the claim and shall jointly take such steps as may be necessary or desirable to obtain from any third party such additional factual materials as may be relevant. In the event the claim is so rejected by the Recipient, the claim may be processed in accordance with the final and binding resolution procedures described in paragraph (15).

Exhibit D

Department of Labor Clauses

Metro Grant 931973

(17) Nothing in this arrangement shall be construed as depriving any employee of any rights or benefits which such employee may have under existing employment or collective bargaining agreements or otherwise; provided that there shall be no duplication of benefits to any employee, and, provided further, that any benefit under this arrangement shall be construed to include the conditions, responsibilities, and obligations accompanying such benefit. This arrangement shall not be deemed a waiver of any rights derived from any other agreement or provision of federal, state or local law.

(18) During the employee's protective period, a dismissed employee shall, if the employee so requests, in writing, be granted priority of employment or reemployment to fill any vacant position within the jurisdiction and control of the Recipient reasonably comparable to that which the employee held when dismissed, including those in the employment of any entity bound by this arrangement pursuant to paragraph (21) hereof, for which the employee is, or by training or retraining can become, qualified; not, however, in contravention of collective bargaining agreements related thereto. In the event such employee requests such training or re-training to fill such vacant position, the Recipient shall provide for such training or re-training at no cost to the employee. The employee shall be paid the salary or hourly rate provided for in the applicable collective bargaining agreement for such position, plus any displacement allowance to which the employee may be otherwise entitled. If such dismissed employee who has made such request fails, without good cause, within ten (10) days to accept an offer of a position comparable to that which the employee held when dismissed for which the employee is qualified, or for which the employee has satisfactorily completed such training, the employee shall, effective at the expiration of such ten-day period, forfeit all rights and benefits under this arrangement.

As between employees who request employment pursuant to this paragraph, the following order where applicable shall prevail in hiring such employees:

(a) Employees in the craft or class of the vacancy shall be given priority over employees without seniority in such craft or class;

(b) As between employees having seniority in the craft or class of the vacancy, the senior employees, based upon their service in that craft or class, as shown on the appropriate seniority roster, shall prevail over junior employees;

(c) As between employees not having seniority in the craft or class of the vacancy, the senior employees, based upon their service in the crafts or classes in which they do have seniority as shown on the appropriate seniority rosters, shall prevail over junior employees.

(19) The Recipient will post, in a prominent and accessible place, a notice stating that the Recipient has received federal assistance under the Federal Transit statute and has agreed to comply with the provisions of 49 U.S.C., Section 5333(b). This notice shall also specify the terms and conditions set forth herein for the protection of employees. The Recipient shall maintain and keep on file all relevant books and records in sufficient detail as to provide the basic information necessary to the proper application, administration, and enforcement of this arrangement and to the proper determination of any claims arising there under.

(20) In the event the Project is approved for assistance under the statute, the foregoing terms and conditions shall be made part of the contract of assistance between the federal government and the Grantee and between the Grantee and any Recipient; provided, however, that this arrangement shall not merge into the contract of assistance, but shall be independently binding and enforceable by and upon the parties thereto, and by any covered employee or his/her representative, in accordance with its terms, nor shall any other employee protective agreement merge into this arrangement, but each shall be independently binding and enforceable by and upon the parties thereto, in accordance with its terms.

(21) This arrangement shall be binding upon the successors and assigns of the parties hereto, and no provisions, terms, or obligations herein contained shall be affected, modified, altered, or changed in any respect whatsoever by reason of the arrangements made by or for the Recipient to manage and operate the system.

Any person, enterprise, body, or agency, whether publicly or privately owned, which shall undertake the management, provision and/ or operation of the Project services or the Recipient's transit system, or any part or portion thereof, under contractual arrangements of any form with the Recipient, its successors or assigns, shall agree to be bound by the terms of this arrangement and accept the responsibility with the Recipient for full performance of these conditions. As a condition precedent to any such contractual arrangements, the Recipient shall require such person, enterprise, body or agency to so agree in writing. Transit employees in the service area of the project are third-party beneficiaries to the terms of this protective arrangement, as incorporated by reference in the contractual agreement.

(22) In the event of the acquisition, assisted with Federal funds, of any transportation system or services, or any part or portion thereof, the employees of the acquired entity shall be assured employment, in comparable positions, within the jurisdiction and control of the acquiring entity, including positions in the employment of any entity bound by this arrangement pursuant to paragraph (21). All persons employed under the provisions of this paragraph shall be appointed to such comparable positions without examination, other than that required by applicable federal, state or local law or collective bargaining agreement, and shall be credited with their years of service for purposes of seniority, vacations, and pensions in accordance with the records of their former employer and/ or any applicable collective bargaining agreements.

(23) The employees covered by this arrangement shall continue to receive any applicable coverage under Social Security, Railroad Retirement, Workmen's Compensation, unemployment compensation, and the like. In no event shall these benefits be worsened as a result of the Project.

(24) In the event any provision of this arrangement is held to be invalid, or otherwise unenforceable under federal, state, or local law, in the context of a particular Project, the remaining provisions of this arrangement shall not be affected and the invalid or unenforceable provision shall be renegotiated by the Recipient and the interested Union representatives of the employees involved for purpose of adequate replacement under Section 5333(b). If such negotiation shall not result in mutually satisfactory agreement any party may invoke the jurisdiction of the Secretary of Labor to determine substitute fair and equitable employee protective arrangements for application only to the particular Project, which shall be incorporated in this arrangement only as applied to that Project, and any other appropriate action, remedy, or relief.

(25) If any employer of the employees covered by this arrangement shall have rearranged or adjusted its work force(s) in anticipation of the Project, with the effect of depriving an employee of benefits to which the employee should be entitled under this arrangement, the provisions of this arrangement shall apply to such employee as of the date when the employee was so affected.

Previously Approve Business Meeting Minutes:

November 7, 2013

(minutes attached)

BOARD OF COUNTY COMMISSIONERS BUSINESS MEETING MINUTES

A complete video copy and packet including staff reports of this meeting can be viewed at <http://www.clackamas.us/bcc/business.html>

Thursday, November 7, 2013 - 10:00 AM

Public Services Building

2051 Kaen Rd., Oregon City, OR 97045

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

EXCUSED: Commissioner Jim Bernard

I. CALL TO ORDER

- Roll Call
- Pledge of Allegiance (lead by Commander Kraft)

Chair Ludlow began the meeting with a tribute and a moment of silence in honor of Oregon City Police Officer Robert Libke.

II. PRESENTATION

1. Veteran's Day Presentation

Cindy Becker, Director of Health, Housing and Human Services presented the staff report. She introduced Erika Silver, CC Social Services and Ken Kraft, Retired Armor Commander and National Veterans Officer who spoke about the Clackamas County Veterans' Services Office and the upcoming events in support of Military families.

~Board Discussion~

III. CITIZEN COMMUNICATION

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

1. Pat Russell, Milwaukie – spoke regarding the Happy Valley UGMA.
2. Barbara Kemper, Clackamas – spoke regarding the Happy Valley UGMA.

~Board Discussion~

3. Tena Olson, Oregon City – spoke about Veteran's.
4. Cyndi Lewis Wolfram, Milwaukie – spoke regarding Veteran's Day and the Happy Valley UGMA.
5. Mack Woods, Canby – supports the Veteran's Services Office.
6. Herb Chow, Clackamas – spoke regarding the transportation model.

~Board Discussion~

7. Brian Johnson, Gladstone – spoke regarding issues with Water Environmental Services.

~Board Discussion~

IV. PUBLIC HEARING

1. Resolution No. **2013-85** Approving a Clackamas County Supplemental Budget (Greater than Ten Percent and Budget Reduction) for Fiscal Year 2013-2014

Diane Padilla, Budget Manager presented the staff report.

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

MOTION:

Commissioner Smith: I move we approve the Resolution approving a Clackamas County Supplemental budget (greater than ten percent and budget reduction) for fiscal year 2013-2014.

Commissioner Bernard: Second.

Clerk to call the poll:

Commissioner Smith: Aye.

Commissioner Savas: Aye.

Commissioner Schrader: Aye.

Commissioner Bernard: Aye.

Chair Ludlow: Aye – the motion is approved 5-0.

V. BOARD DISCUSSION ITEMS

Administration

1. Resolution No. **2013-86** Concurring with the City of Wilsonville's Proposed Revenue Sharing Formula in New Tax Increment Finance Zones (Urban Renewal Areas)
Laurel Butman, County Administration and Chris Storey, County Counsel presented the staff report for the three discussion items.
Kristen Rutherford, City of Wilsonville – spoke in support of these items.
Chair Ludlow asked for a motion.

MOTION:

Commissioner Bernard: I move we approve the Resolution Concurring with the City of Wilsonville's Proposed Revenue Sharing Formula in New Tax Increment Finance Zones.

Commissioner Schrader: Second.

~Board Discussion~

MOTION:

Commissioner Smith: I call for the question.

Chair Ludlow: Second.

Chair Ludlow: The question is to stop the debate and move on to the primary question.

Clerk to call the poll:

Commissioner Bernard: Aye.

Commissioner Smith: Aye.

Commissioner Schrader: Aye.

Commissioner Savas: Aye.

Chair Ludlow: Aye – it passes 5-0 now the poll for the primary question.

The Clerk repeated the motion: I move we approve the Resolution Concurring with the City of Wilsonville's Proposed Revenue Sharing Formula in New Tax Increment Finance Zones.

Clerk to call the poll:

Commissioner Bernard: Aye.

Commissioner Smith: No.

Commissioner Schrader: Aye.

Commissioner Savas: Aye.

Chair Ludlow: No – the motion passes 3-2.

The Board will adjourn as the Board of County Commissioners and convene as the Library District of Clackamas County for this action.

LIBRARY DISTRICT OF CLACKAMAS COUNTY

2. Resolution No. **2013-87** Concurring with the City of Wilsonville’s Proposed Revenue Sharing Formula in New Tax Increment Finance Zones, (Urban Renewal Areas)

Chair Ludlow asked for a motion.

MOTION:

Commissioner Bemard: I move the Board, Acting as the Library District of Clackamas County approve the Resolution Concurring with the City of Wilsonville’s Proposed Revenue Sharing Formula in New Tax Increment Finance Zones.

Commissioner Savas: Second.

~Board Discussion~

Clerk to call the poll:

Commissioner Smith: No.

Commissioner Schrader: Aye.

Commissioner Savas: Aye.

Commissioner Bemard: Aye.

Chair Ludlow: No – the motion passes 3-0.

The Board will adjourn as the Library District of Clackamas County and convene as the Extension Service and 4-H District for this action.

EXTENSION SERVICE AND 4-H SERVICE DISTRICT

3. Resolution No. **2013-88** Concurring with the City of Wilsonville’s Proposed Revenue Sharing Formula in New Tax Increment Finance Zones, (Urban Renewal Areas)

Chair Ludlow asked for a motion.

MOTION:

Commissioner Bemard: I move the Board, Acting as the Extension Service and 4-H District approve the Resolution Concurring with the City of Wilsonville’s Proposed Revenue Sharing Formula in New Tax Increment Finance Zones.

Commissioner Schrader: Second.

~Board Discussion~

Clerk to call the poll:

Commissioner Schrader: Aye.

Commissioner Savas: Aye.

Commissioner Bemard: Aye.

Commissioner Smith: No.

Chair Ludlow: No – the motion passes 3-0.

The Board will adjourn as the Library District of Clackamas County and re-convene as the Board of County Commissioners for the remainder of the meeting.

VI. CONSENT AGENDA

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

~Board Discussion~

MOTION:

Commissioner Smith: I move we approve the consent agenda.
Commissioner Schrader: Second.
Clerk to call the poll:
Commissioner Savas: Aye.
Commissioner Bernard: Aye.
Commissioner Smith: Aye.
Commissioner Schrader: Aye.
Chair Ludlow: Aye - the motion is approved 5-0.

A. Health, Housing & Human Services

1. Approval of a Contract with Northwest Family Services for Family Reunification Services – *Children, Youth & Families*
2. Approval of an Amendment to the Sub-Recipient Agreement with Northwest Family Services for Drug and Alcohol Prevention Specialist Services – *Children, Youth & Families*
3. Approval of an Amendment with Washington County for Alcohol and Drug Treatment Services – *Behavioral Health*

B. Department of Emergency Management

1. Approval of Fiscal Year 2011 Urban Area Security Initiative Local Grant Agreement with the City of Oregon City

C. Finance Department

1. Resolution No. **2013-89** for the Approval of a Supplemental Budget (Less than Ten Percent) for Fiscal Year 2013-2014
2. Resolution No. **2013-90** for the Approval of Budgeting of New Specific Purpose Revenue for Fiscal Year 2013-2014
3. Resolution No. **2013-91** for the Approval of a Transfer of Appropriation for Fiscal Year 2013-2014

D. Elected Officials

1. Approval of Previous Business Meeting Minutes – *BCC*
2. Approval of an Intergovernmental Agreement between Clackamas County District Attorney's Office and the State of Oregon Department of Justice for the Juvenile Dependency Litigation Program - *DA*
3. Approval of an Intergovernmental Agreement between Clackamas County District Attorney's Office and the State of Oregon Department of Justice for the Child Abuse Multidisciplinary Intervention (CAMI) Program - *DA*

E. Juvenile Department

1. Approval of a Contract with Justice Benefits Inc. to Design, Develop, and Implement an Integrated Work Plan and Systems Process for Clackamas County to Secure Title IV-E Funding

F. Community Corrections

1. Approval of Intergovernmental Agreement No. 4800 between Clackamas County and the State of Oregon Department of Corrections

G. Business & Community Services

1. Approval of the Contract with Mackenzie Inc. for the Revised Clackamas County Strategically Significant Employment Lands Project-Phase II – *Purchasing*

***H. Department of Transportation & Development**

1. Approval of an Urban Growth Management Agreement between Clackamas County and the City of Happy Valley

VII. DEVELOPMENT AGENCY

1. ~~Approval of an Urban Growth Management Agreement between Clackamas County and the City of Happy Valley (see H.1.)~~

VIII. COUNTY ADMINISTRATOR UPDATE

IX. COMMISSIONERS COMMUNICATION

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

MEETING ADJOURNED – 12:15 PM

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

www.clackamas.us/bcc/business.html



REMOVED

Lauren MacNeill
Director

11

RESOLUTION SERVICES

Public Services Building

2051 Kaen Road, #210 / Oregon City, OR 97045

December 19, 2013

Board of County Commissioners
Clackamas County

Members of the Board:

**A Board Order Approving Fees for Small Claims Mediation Services
through Clackamas County Resolution Services**

Purpose/Outcome	To establish a fee for small claims mediation.
Dollar Amount and Fiscal Impact	We request that the Board set the following fees for small claims mediation: \$50 per side - For matters where the amount of the claim is less than or equal to \$2500.00; and \$90 per side – For matters where the amount of the claim is greater than \$2500.00 (and up to \$10,000.00). With fee waivers available if the parties' court filing fees were waived due to indigence. Setting this fee supports sustainable funding for these services into the future. The estimate for one year of staff time to manage Small Claims mediation services is \$54,709.
Funding Source	By charging a user fee to county citizens and businesses, the program will be funded by those who use it.
Safety Impact	Small Claims Mediationservices increase public safety and enhance healthy communities by allowing parties to peaceably resolve their disputes and build constructive conflict resolution skills.
Duration	Once approved, these fees will be ongoing.
Previous Board Action/Review	Consensus support for Option A BCC Study Session held November 26, 2013
Contact Person	Amy Cleary, Mediation Services Supervisor Lauren Mac Neill, Director, CC Resolution Services
Contract No.	N/A

BACKGROUND: A 2012 Small Claims Mediation Pilot Program with Clackamas County Circuit Court was implemented to determine the effectiveness of adding small claims mediation to our department's array of dispute resolution services. In the pilot project, the majority of the cases referred to mediation were resolved, greatly reducing the number of cases on the court docket and assisting residents to effectively and constructively resolve their disputes. Given this, a Supplementary Local Rule was enacted in February 2013 requiring all parties to a small claims action to mediate in advance of trial. Since the inception of small claims mediation services, of the 596 total cases referred, 70% (417) were resolved at the mediation stage, with only 30% (179) moving to trial.

After a thorough exploration of funding mechanisms for ongoing services, we determined that a user fee was the most viable option. We presented four options to the Board of County Commissioners at study session, and recommended Option A, which was subsequently approved by consensus.

RECOMMENDATION: Staff recommends the Board approve the attached Board Resolution adopting fees for Clackamas County Resolution Services for Small Claims Mediation services.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Lauren Mac Neill', written in a cursive style.

Lauren Mac Neill, Director

Clackamas County Resolution Services

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

**A Resolution in the Matter of
Adopting Fees for Small Claims
Mediation Service through Clackamas
County Resolution Services Office**



Resolution No.

NOW, THEREFORE; be it Resolved by the Board of County Commissioners that:

Section 1: Pursuant to Section 1.01.090 of the Clackamas County Code, the Board adopts the following fees:

- \$50 per side - For matters where the amount of the claim is less than or equal to \$2500.00; and
- \$90 per side – For matters where the amount of the claim is greater than \$2500.00 (and up to \$10,000.00).

With fee waivers available if the parties' court filing fees were waived due to indigence. Setting this fee supports funding for these services.

Section 2: The Board hereby directs that the adoption of fees shown above shall be included in Appendix A of the Clackamas County Code.

Section 3: Pursuant to ORS 310.145, the Board classifies the fees adopted by this resolution as fees not subject to the limits of section 11b, Article XI of the Oregon Constitution.

Section 4: Effective Date. The adoption of fees authorized by Section 1 of this resolution and shown above shall become effective immediately upon passage of this resolution.

DATED this 19th day of December, 2013.

CLACKAMAS COUNTY BOARD OF COMMISSIONERS

Chair

Recording Secretary



12

Dave Cummings
Chief Information Officer

INFORMATION SERVICES

December 19, 2013

INFORMATION SERVICES BUILDING
121 LIBRARY COURT | OREGON CITY, OR 97045

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of ORMAP Intergovernmental Agreement Contract # 3064
with the Oregon Department of Revenue for
Digital GIS Tax Lot Conversion

Purpose/Outcomes	This IGA will provide funding to continue the conversion of paper survey documents and Assessment maps to a digital GIS database as required under ORS 306.135.
Dollar Amount and Fiscal Impact	This semi-annual IGA Contract is \$28,000 for this funding period. Amount varies with each ORMAP grant request due to funding availability. The County matches \$35,000 annually, typically 35% of the amount the State provides.
Funding Source	State of Oregon, Department of Revenue
Safety Impact	Provides emergency/first responders with more accurate property boundary mapping capabilities and location services through GIS applications
Duration	Terminates December 31, 2014
Previous Board Action/Review	The County has participated in this program since 1999 with the BCC approval of IGA Contracts with the Dept. of Revenue twice a year in varying amounts.
Contact Person	Eric Bohard, Tech. Services Mgr. – Technology Services 503-723-4814

BACKGROUND:

This program, legislated in 1999 as ORS 306.135, provides for the funding of GIS digital tax lot capture and the creation of digital Assessor's tax lot maps. The ORMAP program collects \$1.00 for each recorded land related document from all Oregon Counties. These funds go into a pool administered by the Oregon State Department of Revenue. Funds are distributed to Counties based on competitive grant applications twice a year. This contract represents our Fall 2013 award of our grant request for continuing work on the capture of tax lot lines and annotation from survey documents and converting that information to a digital GIS database as spelled out by Oregon Department of Revenue standards.

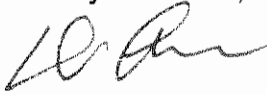
The product created by funds from this IGA contract benefits the County, the State, and most importantly, the public. Having an accurate ownership GIS layer allows uses of the data to make more informed decisions and provides a more accurate base map for other GIS map data.

This project is a collaborative effort between the Clackamas County's Assessor's Office and the GIS Division of the Technology Services Department. Also assisting in this effort is the County's Surveyor. County Counsel has reviewed these on-going ORMAP contracts and has approved as to form.

RECOMMENDATION:

Staff respectfully recommends that the Board of County Commissioners approves Intergovernmental Agreement Contract # 3064 with the State of Oregon Department of Revenue for the continued conversion of paper survey documents and Assessment maps to a digital GIS database.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'D. Cummings', is written over the typed name.

David Cummings
Chief Information Officer

**DEPARTMENT OF REVENUE
ORMAP INTERGOVERNMENTAL AGREEMENT
CONTRACT # 3064**

This Agreement is entered into by and between the State of Oregon, acting by and through the Department of Revenue ("Department") and Clackamas County ("County").

WHEREAS, under ORS 306.135 the Department is charged with developing a base map system to facilitate and improve the administration of the ad valorem property tax system;

WHEREAS, pursuant to ORS 190.110, the Department may cooperate, by agreement or otherwise, with a unit of local government in performing the duties imposed upon it by ORS 306.135.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Department and the County agree to the following:

I. **EFFECTIVE DATE OF AGREEMENT; AWARD; PROJECT COMPLETION**

- A. Effective Date of Agreement. This Agreement shall become effective on the date this Agreement has been signed by every party and all approvals required by the State have been obtained.
- B. Award. The Department shall provide funds in the amount of \$28,000.00 to the County to fund all or part of the activities set forth in Exhibit A ("Proposal") which is attached hereto and by this reference made a part hereof. The part of the activities set forth in the Proposal which is funded by the Award shall be called the "Project". All of the activities set forth in the Proposal, whether funded by the Department or by other sources, shall be referred to as the "Total Project". (If there are no other funders beside the Department for the activities described in the Proposal, the Total Project is the same as the Project.) The Department shall not be obligated to provide to the County, and the County shall not use, any funds described in this Section other than for costs for the Project.
- C. Project Completion. County agrees to complete the Total Project in accordance with the terms and specifications of the Proposal by *December 31, 2014* ("Project Completion Date"). Final billing for the Project shall be submitted to the Department on or before *January 31, 2015*.

II. **DISBURSEMENTS.**

- A. Disbursement of Funds by the Department. Subject to Section IV, upon receipt of the County's request for disbursement, the Department shall disburse funds to the County on a cost reimbursement basis. The Department may, in its sole discretion, impose a minimum or maximum dollar amount for each disbursement request or limit the frequency of disbursement requests.
- B. Overpayment. In the event that the aggregate amount of the Department's disbursements hereunder exceeds the costs of the County for the Project, the

County agrees to refund to the Department the amount paid in excess of such costs within thirty (30) days of final billing by the County or the Project Completion Date, whichever is earlier.

- C. Disallowed Costs. The County agrees that payment(s) under this Agreement shall be subject to offset or reduction for amounts previously paid hereunder which are found by the Department not to constitute allowable costs under this Agreement. If such disallowed amount exceeds the payment(s); the County shall immediately upon demand pay the Department the amount of such excess.
- D. Cost Savings. Any cost savings realized on the Total Project shall be prorated between the funding sources based on the percentage of their respective cash contributions as set forth in the Proposal. In no event shall the Department pay for more than its pro rata share of the County's actual out-of-pocket cost of the Total Project.
- E. No Duplicate Payment. The County shall not be compensated for, or receive any other duplicate, overlapping or multiple payments for the same work performed under this Agreement from any agency of the State of Oregon or the United States of America or any other party.

III. REPRESENTATIONS AND WARRANTIES

County represents and warrants to the Department that (1) it has the power and authority to enter into and perform this Agreement, (2) this Agreement, when executed and delivered, shall be a valid and binding obligation of County enforceable in accordance with its terms, (3) the Total Project shall be performed in a good and workmanlike manner and in accordance with the highest professional standards, (4) those persons performing work on the Total Project shall, at all times during the term of this Agreement, be qualified, professionally competent and duly licensed to perform work on the Total Project, and (5) Exhibit A presents a good faith estimate of the costs of the Total Project and the Project and accurately states the amount of other funds, whether in cash or through binding commitment(s), available for payment of the costs of the Total Project.

IV. CONDITIONS TO DISBURSEMENT

- A. Conditions Precedent to Disbursement. The Department shall not be obligated to disburse any funds hereunder for Project costs unless (1) there exists no event of default or default which with notice or lapse of time or both will become an event of default hereunder, and (2) the Department has received from the County (i) a request for disbursement signed by a duly authorized representative of the County (which shall, among other things, state that the County has or will have sufficient funds to complete the Total Project by the Project Completion Date), (ii) an itemized invoice and (iii) such other documentation as the Department may require, all in form and substance satisfactory to the Department; further, the Department shall only be obligated to disburse Award funds to the extent that the portion of the Award represented by the aggregate amount of all disbursements made through the date of the disbursement request (including the amount of the disbursement request) does not exceed the percentage of the Project completed through the date of the disbursement request, as determined by the Department.

- B. Conditions Precedent to Final Disbursement. The Department shall not be obligated to make final disbursement hereunder until a final payment request and such documentation as may be required by the Department, all in form and substance satisfactory to the Department, shall be submitted by the County to the Department. Final payment will be made to the County within forty-five (45) days of approval by the Department.

V. COVENANTS

- A. Assignment. If the County hires a contractor(s) to do all or part of the Project, the County shall remain liable for compliance with the terms and conditions of this Agreement and shall not in any way be relieved of any of its obligations under this Agreement. The County shall be responsible for all cost overruns.
- B. Payments. To the extent required by state and federal law, the County agrees to:
1. Make payment promptly as due to all contractors, subcontractors, vendors and other persons supplying labor and/or materials for the Project; and
 2. All employers, including County, that employ subject workers, as defined in ORS 656.027, shall comply with ORS 656.017 and shall provide workers' compensation insurance coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). County shall require and ensure that each of its subcontractors complies with these requirements.
- C. Liabilities. County shall perform its obligations under this Agreement as an independent contractor. Each party shall be responsible exclusively with respect to its employees, for providing for 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.

Each party shall be responsible, to the extent required by law (including the Oregon Tort Claims Act, ORS 30.260-30.300), only for the acts, omissions or negligence of its own officers, employees or agents.

- D. Compliance with Applicable Law. The County shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to this Agreement. The Department's performance under this Agreement is conditioned upon the County's compliance with the provisions of ORS 279B.220, 279B.235, 279B.230 and 279B.270, as amended from time to time, which are incorporated by reference herein. The parties shall, to the maximum extent economically feasible in the performance of this Agreement, use recycled paper (as defined in ORS 279A.010(ee)), recycled PETE products (as defined in ORS 279A.010(ff)), and other recycled products (as "recycled product" is defined in ORS 279A.010(gg))
- E. Records Maintenance. The County shall maintain all fiscal records relating to this Agreement in accordance with generally accepted accounting principles. In

addition, the County shall maintain any other records pertinent to this Agreement in such a manner as to clearly document the County's performance. The County's accounting procedures shall provide for an accurate and timely recording of receipt of funds by source, of expenditures made from such funds, and of unexpended balances. Controls shall be established which are adequate to ensure that all expenditures reimbursed under this Agreement are for allowable purposes and that documentation is readily available to verify that such charges are accurate.

- F. Access. The County acknowledges and agrees that the Department and the Oregon Secretary of State's Office and the federal government and their duly authorized representatives shall have access to such fiscal records and other books, documents, papers, plans and writings of the County that are pertinent to this Agreement to perform examinations and audits and make copies, excerpts and transcripts. The County shall retain and keep accessible all such fiscal records, books, documents, papers, plans and writings for a minimum of five (5) years, or such longer period as may be required by applicable law, following final payment under this Agreement, or until the conclusion of any audit, controversy, or litigation arising out of or related to this Agreement, whichever date is later.
- G. Project Ownership. The Department acknowledges and agrees that the Project is the exclusive property of the County. The County acknowledges and agrees that the Department is not responsible or liable in any manner for the completion or maintenance of the Project or Total Project.

VI. TERMINATION; REMEDIES

- A. Termination for Convenience. Either party may terminate this Agreement at any time upon thirty (30) days prior written notice to the other party; provided, however, that the County shall, within thirty (30) days of such termination, reimburse the Department for all funds disbursed by the Department hereunder to the extent that the amount of funds disbursed exceeds the amount of the Award multiplied by the percentage of the Project completed to the satisfaction of the Department; provided further that until the County has fully reimbursed the Department for such funds, the County shall comply with the terms of this Agreement.
- B. Termination Because of Non-Appropriation or Project Ineligibility.
1. The Department, at any time upon prior written notice to the County, may terminate this Agreement if the Department fails to receive funding or appropriations, limitations, or other expenditure authority at levels sufficient to allow Agency, in the exercise of its reasonable administrative discretion, to pay for the allowable costs of the Project to be funded hereunder or any state law, regulation or guideline is modified, changed or interpreted in such a way that the Total Project, or any portion of the Total Project, is no longer eligible for Award funds.
 2. In the event insufficient funds are appropriated by the County for its share of the costs of the Total Project and the County has no other lawfully available funds, then the County may terminate this Agreement at the end of its current fiscal year, with no further liability to the Department. The County

shall deliver to the Department written notice of such termination within thirty (30) days of its determination of such shortfall.

- C. Termination for Default. The Department may, at any time upon thirty (30) days prior written notice to the County, terminate this Agreement if:
1. The design and implementation of the Total Project is not pursued with due diligence; or
 2. The cadastral portions of the Total Project do not conform to the Department of Revenue Oregon Cadastral Map System; or
 3. The County fails to receive funding for portions of the Total Project from outside sources as described in its Proposal; or
 4. The County, without the prior written approval of the Department, uses the funds provided by the Department hereunder in a way other than the Project described in the Proposal.
 5. The County violates any other provision of this Agreement.
- D. Rights and Remedies. The County shall, within thirty (30) days of its receipt of the notice described in Section VI.C above, reimburse the Department for all funds disbursed hereunder to the extent that the funds disbursed exceed the amount of the Award multiplied by the percentage of the Project completed to the satisfaction of the Department as of the date of County's receipt of the notice described in Section VI.C above. Further, the Department shall have any and all rights and remedies available at law or in equity.

VII. GENERAL PROVISIONS

- A. Force Majeure. Neither the Department nor the County shall be held responsible for delay or failure to perform when such delay or failure is due to fire, flood, epidemic, strike, public carrier, act of God, act of a public enemy or a public authority or a cause which cannot be reasonably foreseen or provided against.
- B. Persons Not to Benefit. No member of or delegate to Congress, resident commissioner, officer, agent or employee of the United States of America, member of the Oregon Legislative Assembly, elected official of the State of Oregon, or official, agent, or employee of the State of Oregon, or elected member, officer, agent, or employee of any political subdivision, municipality or municipal corporation of the State of Oregon shall derive any unfair knowledge or financial benefit from this Agreement that is not offered to others in a competitive process.
- C. No Third Party Beneficiaries. The Department 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.

- D. Successors and Assigns. The provisions of this Agreement shall be binding upon and shall inure to the benefit of the Department and County and their respective successors and assigns; provided however that the County may not assign this Agreement or any interest therein without the prior written consent of the Department, which consent may be withheld for any reason.
- E. Severability. The Department and the County agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular term or provisions held to be invalid.
- F. Notice. Except as otherwise expressly provided in this Agreement, any communications between the parties hereto or notices to be given hereunder shall be given in writing by personal delivery, facsimile, or mailing the same, postage prepaid, to the Department or the County 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. Any communication or notice so addressed and mailed shall be deemed to be given five (5) days after mailing. Any communication or notice delivered by facsimile shall be deemed to be given when receipt of the transmission is generated by the transmitting machine. Any communication or notice by personal delivery shall be deemed to be given when actually delivered.
- G. Counterparts. This Agreement may be executed in several counterparts, all of which when taken together shall constitute one agreement binding all parties, notwithstanding that all parties are not signatories to the same counterpart. Each copy of the Agreement so executed shall constitute an original.
- H. Governing Law; Venue. 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 the Department and/or other agency or department of the State of Oregon and the 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 it is 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. COUNTY, BY EXECUTION OF THIS CONTRACT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS.
- I. Merger Clause; Amendment; Waiver. THIS AGREEMENT CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE DEPARTMENT AND THE COUNTY ON

THE SUBJECT MATTER HEREOF. NO MODIFICATION OR CHANGE OF TERMS OF THIS AGREEMENT SHALL BIND EITHER PARTY UNLESS IN WRITING AND SIGNED BY BOTH THE DEPARTMENT AND THE COUNTY, AND NO CONSENT OR WAIVER SHALL BE EFFECTIVE UNLESS IN WRITING AND SIGNED BY THE PARTY AGAINST WHOM SUCH CONSENT OR WAIVER IS BEING ENFORCED. SUCH WAIVER, CONSENT, MODIFICATION OR CHANGE, IF MADE, SHALL BE EFFECTIVE ONLY IN THE SPECIFIC INSTANCE AND FOR THE SPECIFIC PURPOSE GIVEN. THERE ARE NO UNDERSTANDINGS, AGREEMENTS, OR REPRESENTATIONS, ORAL OR WRITTEN, NOT SPECIFIED HEREIN REGARDING THIS AGREEMENT. THE DELAY OR FAILURE OF THE DEPARTMENT TO ENFORCE ANY PROVISION OF THIS AGREEMENT SHALL NOT CONSTITUTE A WAIVER BY THE DEPARTMENT OF THAT PROVISION OR ANY OTHER PROVISION. THE COUNTY, 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.

DEPARTMENT:

State of Oregon, acting by and through its
Department of Revenue

By: _____
Jennifer Jolley, Contracts Administrator

Date: _____

Telephone: (503) 945-8403
Fax No: (503) 945-8382

Authorized Agency Signature

By: _____
Stephanie Lehman, Contracts Manager

Date: _____

COUNTY:

Clackamas County

By: _____

Title: _____

Date: _____

Telephone: _____

Fax No: _____

EXHIBIT A

COUNTY PROPOSAL FOLLOWS

ORMAP Grant Application

Section I. County and Grant Information			
A. County: Clackamas		B. Funding Cycle: Fall 2013	
C. Project will help meet ORMAP Goal(s): 1 <input type="checkbox"/> 2 <input type="checkbox"/> 3 <input type="checkbox"/> 4 <input checked="" type="checkbox"/> 5 <input type="checkbox"/> 6 <input type="checkbox"/>		D. Fund Request: \$28,000	
Section II. Summary of Project			Department Assessment
A. Brief Overview of the Request			<input checked="" type="checkbox"/> Pass <input type="checkbox"/> Fail
This project is a continuation of Clackamas County's ORMAP tax lot re-mapping project. The funds requested for this period will be used to digitally capture, rectify, annotate, and prepare tax lots for map production using COGO techniques. With full funding, 1,000 rural tax lots will be completed to ORMAP standards for this project period.			
Scope and Deliverables			
<i>Check</i>	<i>Deliverables</i>	<i>Brief description of the deliverables</i>	
<input checked="" type="checkbox"/>	Tax Lot Conversion	Conversion of paper plats and surveys using COGO or digitizing techniques for rural tax lots to a GIS layer.	
<input type="checkbox"/>	Tax Map Conversion		
<input type="checkbox"/>	Control Points		
<input type="checkbox"/>	Development		
<input type="checkbox"/>	Other Assistance		
<input type="checkbox"/>	Other Deliverable		
<input type="checkbox"/>	Hardware/Software		
B. Projected Project Completion Date (projects should not exceed one year)			
December 31,2014			
C. Total Costs of Project (add lines as necessary)			
Deliverable	Number of Items	Cost per Item	Total Cost
Tax Lot Conversion (COGO/ Annotate)	1000	\$28	\$28,000
County contribution (Detailed below)			\$50,000
Total for project			\$78,000
D. Partnerships and Contributions (add lines as necessary)			
Partner	Contribution		
Clackamas County Surveyor	\$10,000 – Control points		
Clackamas County Assessor's Office	\$15,000 - New plat maintenance, plat and deed research, quality control, cartographic QC.		
Clackamas County GIS	\$25,000 –QC/ prep for map production/rectify to control/project management/problem tax lot conversion		
E. Assessor's Signature & Date:			
F. Fiscal Coordinator – Name & Contact Number:	Eric Bohard 503-723-4814		
G. Project Coordinator – Name & Title:	Eric Bohard, Technical Services Division Manager		

E-mail address:	ericboh@co.clackamas.or.us
Phone Number:	503-723-4814
Mailing Address:	Clackamas County Technical Services 121 Library Court Oregon City, OR 97045

Section III. Detail Project Information – *Answer all questions*

A. Overview

1. Describe what the project is trying to accomplish.

Clackamas County is continuing to undergo a tax lot enhancement project to increase the relative precision of our current tax lot GIS data layer. Though Clackamas County has a complete digital GIS tax lot layer, some of the previous GIS mapping efforts are simply cartoon representations of ownership tax lots and have a wide level of accuracy confidence. Hence, the focus of this project is to complete re-mapping tax lots in the County to meet the accuracy levels described in ORMAP technical specifications.

2. What part(s) of the county does this project cover (Township, Range, and Sections, if applicable)?

The project will cover only rural and resource tax lots in selected parts of the County where acceptable survey ground control exists. Urban tax lots are already completed.

3. What is the status/outcome of all previously funded ORMAP projects? (Please include funding cycles and a “status map” of your county.)

Prior to the Fall 2006 ORMAP contract, all efforts were to re-map urban tax lots. Since then, beginning with the Spring 2007 contract, the efforts have shifted to rural tax lots. A breakdown of our status of the funded projects is as follows:

Urban/UGB Tax Lots: (\$270,500 approved funding - previous contracts since the inception of ORMAP not including the contracts below)

Total Urban Tax Lots:	108,791
Tax Lots Completed (COGO, rectified, and annotated)	108,791 (100%)

Rural Tax Lots: (\$238,967 approved funding, contracts 1801, 1849, 1922, 2295, 2351, 2421, 2467, 2507, 2876, 2966, 2995, 3036)

Total Rural Tax Lots:	45,602
Tax Lots Completed*:	27,720 (61%)

*6,466 additional parcels are in progress and waiting for annotation
(11,416 tax lots have not been started)

Resource Tax Lots: (no funding specifically requested)

Total Resource Tax Lots:	932
Tax Lot Completed*:	360 (39%)

*572 additional parcels are in progress and waiting for annotation

4. Describe, in detail, your technical approach to the project (e.g. mapping methodology).

We will use COGO tools to re-map those areas that have suitable data. Trying to re-map every rural tax lot using COGO tools is not practical since actual surveys and plats are widely scattered in the rural area. In those areas where COGO tax lot capture is practical, high quality surveyed ground control will be acquired. The process and criteria used to COGO capture rural plats is modeled on the urban tax lot capture design we developed. These captured platted areas will act as “anchors” or a foundation as areas with known accuracy. Next, deeds, surveys, orthophotography, and existing tax lot maps are used to “fill in” the areas in-between the anchors. As we build the rural tax lots between the anchors, ground control will be acquired more sparsely to insure the non-platted rural tax lots are within ORMAP accuracy standards. COGO methods will be used whenever practical. The use of ESRI’s Parcel Fabric will be used whenever possible.

5. Describe the project deliverables.

This project will deliver 1000 additional re-mapped tax lots, fully annotated, using our technical approach and rectified to control meeting ORMAP rural tax lot standards.

6. Who will be doing the work (county staff, contractor, DOR staff, etc.)? Please define their role(s).

County staff will be used to complete 100% of this project. They will capture, annotate, and QC tax lots to ORMAP standards.

7. How will the county cartographer integrate the deliverables into the County's maintenance plan?

This project develops the base digital GIS base layer for tax lots. Once created, the County Cartographer will use various tools developed for tax lot maintenance to update any changes that might occur for the tax lots re-mapped in this project. The projects deliverables will be part of the overall countywide GIS tax lot layer. The deliverables from this project will be used to create the tax maps, directed exclusively by the County Cartographer.

8. Provide a project timeline with milestones or completion dates.

To date, all urban tax lots are completed. This project deals only with rural tax lots, of which 58% are completed. Based on current resources and anticipated ORMAP funding, we estimate completion of Goal 4 in December 2018. Thus far, we have remapped to ORMAP specifications 88% of the total. To date, 136,871 tax lots have been captured and annotated in our GIS, leaving approximately 18,454 tax lots comprising rural and resource level tax lots to complete.

Milestones are defined as the completion of each of these tasks within each phase.

- Plats are gathered from source County offices
- Capture plats and surveys with the most appropriate method (COGO or digitizing)
- Plats and surveys are quality controlled
- Work with the County Surveyor to acquire ground control
- Tie plats and surveys to ground control
- Annotation
- Final quality control

9. Does this project have any partnerships? If yes, please identify them.

The deliverables from this project are used by many agencies as a base to map infrastructure and other details. Typical agencies outside the County who have entered into partnership agreements include cities, water districts, utilities providers, school districts, community planning organizations, and a variety of state and federal agencies. Additionally, Clackamas County has developed boundary agreements with all our County neighbors. We have agreements covering 100% of the area that bounds our county.

10. Describe any innovations utilized by this project.

We use the tools developed by the ORMAP tools group and have participated in that group from its inception either to be part of the application develop team or as a test group. We are also using the latest tools developed by ESRI to stay current with ArcGIS releases. Finally, the deliverables from this project are allowing the Assessor's Cartographers to retire the old mylar tax maps and completely replace them with a digital product. Recently, we started utilizing ESRI's Parcel Fabric schema.

11. Detail Costs (who is paying for what).

Approximately 40% of this project is paid by ORMAP funding. The remaining will come from County resources. The County's Survey Office is providing ground control at county expense. The County Assessor's Office provides labor to input new plats for the maintenance portion of the over-all ORMAP project plus QC. Direct staff time on the ORMAP project will comprise the bulk of expenses for this project and will be evenly split between the County and ORMAP.

B. Quality Control

1. Who will be responsible for quality control (QC)?

All Quality Control is the responsibility of Clackamas County's Departments of Assessment and Taxation and Technology Services, GIS Division.

2. Will county cartography staff review the deliverables?

Yes. The cartography staff in the Assessor's Office performs the final QC. They insure all components are present and correct for map production to DOR standards and Clackamas County standards.

3. Will there be a review by Department of Revenue's cartography staff?

That is arranged by A&T cartographers. DOR Cartography staff has come to the county to review our technique and process and are always welcome to see what we are doing with tax lot capture.

4. Describe QC procedures.

The quality control process is very extensive. A quality control checklist has been developed for those entering COGO information and for those checking it. Ground control is evaluated as to its level of survey accuracy for the plat rectification process. If customary ground control is not available, rectified orthophotos are used. Plats controlled in this manner will be revisited when better ground control is obtained. Plats are never rubber sheeted. The County Surveyor resolves any errors that occur when rectifying to ground control (i.e. gaps and overlaps). In summary, all quality control efforts will meet or exceed ORMAP Technical Specifications.

C. Project Detail

1. Is this project an "edge matching project"? If so, how much of the county boundary will be completed?

This project will not be used for edge matching. Edge matching has been completed with surrounding counties with prior projects and we have agreements with all our neighbors. A potential disagreement on County boundary may exist with Marion County, however, according to our Surveyor and Legal Counsel, an adjustment is not required and all boundaries are complete.

2. Is this project part of an ongoing or multi-phased remapping project?

Yes, this project is a continuation of our re-mapping project as outlined in our Business Plan.

3. What percentage of the county tax lots and tax maps meet the ORMAP technical specifications?

	Total Countywide	Meet Tech Specs	Percent Complete
Tax Lots	155325	136871	88%
Tax Maps	3360	1310	39%

(as of September 9, 2013)

4. Upon completion of this project will your county meet goal 6 (100% of tax maps meeting technical specification)?

No, our anticipated completion date is December 2018, perhaps sooner.

5. Is this project part of a multi-county effort? If so, please explain.

No

6. Will the project cost be affected if it is not fully funding this cycle?

Yes. It will delay our overall completion time.

D. Data Availability

1. Does the county have a data sharing agreement with the State?

Yes

2. Identify any data restrictions or licensing issues.

All data produced under the ORMAP program is freely available through a Data Sharing Agreement to other government agencies. Clackamas County has entered into an IGA with the State for data sharing. All publication of this data, particularly via the Internet, must comply with all Clackamas County policies and disclaimers as adopted by County Administration or the Board of County Commissioners. All data is governed by a data licensing agreement.

E. Background Information

Any other information that you feel may help support the project.

G. Other Issues - Please identify.

Price per tax lot increase due to loss of our contractor, L-3

Submit completed forms to:

Mail	Contact Information
ORMAP Project Coordinator Oregon Department of Revenue Property Tax Division - CDOT 955 Center St. NE Salem OR 97301-2555	Tel: 503-586-8128 Fax: 503-945-8737 or.map@state.or.us



NORTH CLACKAMAS PARKS & RECREATION DISTRICT

Administration

150 Beaver Creek Rd.
Oregon City, OR 97045
503.742.4348 phone 503.742.4349 fax
ncprd.com

13

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

Members of the Board:

Approval of a Purchase and Sale Agreement between the North Clackamas Parks and Recreation District and the Tri-County Metropolitan Transportation District of Oregon regarding real property for the Trolley Trail Project.

Purpose/Outcomes	Approval of a purchase and sale agreement to complete a land transaction for Segment 2 of the Trolley Trail.
Dollar Amount and Fiscal Impact	\$515,260.00 net proceeds (gain) to NCPRD
Funding Source	Because the funds utilized to purchase the Trolley Trail parcels which are being sold to TriMet were originally funded by Metro Greenspaces Bonds, by prior agreement with Metro, NCPRD will be compelled to purchase replacement property that satisfies Greenspaces acquisition criteria with the net proceeds.
Safety Impact	None
Duration	The land transactions will close sequentially, with completion anticipated by 12/1/2014.
Previous Board Action/Review	BCC adoption of the Design & Construction Agreement which contemplated this transaction, and executive session discussions with BCC on the proposed terms and conditions.
Contact Person	Jeroen Kok, NCPRD Planning, Development and Resource Manager, 503-742-4421

BACKGROUND:

Under the terms of the Funding Agreement between Clackamas County, NCPRD and TriMet entered into in 2010 ("Funding Agreement"), NCPRD has an obligation to negotiate in good faith towards any transactions necessary to accomplish the construction of Portland-Milwaukie Light Rail ("PMLR"). As part of that Funding Agreement, the parties agreed to the "Locally Preferred Alternative" for the route of PMLR, which included locating the final segment of the track on land currently intended for use as part of the Trolley Trail.

After preliminary negotiations in 2010, the general outline of the proposed transaction contemplated that TriMet would pay NCPRD for the fair market value of the land conveyed, and would sell to NCPRD replacement land immediately to the west on which the Trolley Trail would be located. As part of that negotiation, NCPRD and TriMet executed a Design and Construction Agreement in May 2012 that allowed TriMet access to current NCPRD property for certain construction-related activities, and obligated TriMet to build Segment 2 of the Trolley Trail at TriMet's expense, saving NCPRD over \$400,000.

TriMet's successful lawsuit against Clackamas County and NCPRD require completion of the contemplated transaction. The District Court has directed NCPRD and Tri-Met to negotiate in good faith toward a mutually agreeable resolution, and NCPRD staff and County Counsel have continued to

negotiate the terms and conditions of the attached purchase and sale agreement, under the direction of the NCPRD Board. The transactions are both for fee simple ownership; however, TriMet will receive an access easement to allow for maintenance of its property on either side of the new Trail properties, and the purchase price has been adjusted downward to reflect the easement. TriMet originally offered \$825,000 for the NCPRD-owned property, and staff has negotiated a final price of \$1,113,855. NCPRD will purchase the replacement land from TriMet, after it has completed the construction of all Trolley Trail segment improvements, at TriMet's own expense, for \$598,595. The difference, a net gain of \$515,260 to NCPRD, will be restricted use funds, subject to negotiation with Metro on their use and acquisition. Staff is actively involved in talks with Metro on options for the use of the proceeds from the transaction.

RECOMMENDATION:

Staff and the NCPRD Advisory Board respectfully recommend, consistent with court direction, that the Board of Commissioners, acting as the Governing Body of the North Clackamas Parks and Recreation District, approve and execute the above mentioned Purchase and Sale Agreement between NCPRD and TriMet regarding real property.

Respectfully submitted,



Gary Barth
Director

Placed on the Discussion agenda by the North Clackamas Parks and Recreation District

**PURCHASE AND SALE AGREEMENT BETWEEN THE NORTH
CLACKAMAS PARKS AND RECREATION DISTRICT AND THE TRI-
COUNTY METROPOLITAN TRANSPORTATION DISTRICT OF
OREGON REGARDING REAL PROPERTY FOR THE PORTLAND-
MILWAUKIE LIGHT RAIL TRANSIT PROJECT**

THIS AGREEMENT (“Agreement”) is made by and between the Tri-County Metropolitan Transportation District of Oregon (“TriMet”) and North Clackamas Parks and Recreation District (“NCPRD”) (collectively “Parties”).

Recitals

A. TriMet is constructing the Portland-Milwaukie Light Rail Project (“Project”), which is a 7.3 mile light rail project between Portland State University and north Clackamas County. The Project will terminate at Park Avenue in unincorporated Clackamas County.

B. NCPRD is the owner of certain real property, known as the Trolley Trail, a portion of which is necessary for the construction and operation of the Project. TriMet will also be acquiring property adjacent to the Trolley Trail from third parties to be used for the Project. NCPRD had planned to construct a hard surface trail for public use (“Trail”) along a portion of the Trolley Trail property. Due to TriMet’s construction of the Project, the location of the Trail will be moved slightly from the location previously envisioned by NCPRD, and the Trail will be constructed by TriMet. The new Trail location will utilize a portion of the Trolley Trail property, and a portion of the property that TriMet is acquiring from third parties.

C. In order to facilitate the design and construction of both the Trail and the Project, NCPRD desires to transfer to TriMet a fee interest in the real property described in Exhibit A (“Transit Property”), which is attached hereto and incorporated herein for all purposes; and TriMet desires to transfer to NCPRD a fee interest in the real property described in Exhibit B, including the area required for the Trail and trail amenities such as landscaping, stormwater pipes and drainage (“Trail Property”).

NOW, THEREFORE, in consideration of the agreements of the parties hereto, to be by them respectively kept and performed as hereinafter set forth, it is agreed as follows:

Agreement

Article 1. Property Transfers

A. Pursuant to this Agreement, NCPRD agrees to transfer fee title in the Transit Property to TriMet, subject to all current encumbrances, via Warranty Deed in the form attached hereto as Exhibit C. At the time of Closing, TriMet agrees to pay NCPRD \$1,113,855 for the Transit Property. TriMet may, but is not obligated to, purchase an owner’s policy of title insurance at TriMet’s expense.

B. Pursuant to this Agreement, TriMet agrees to transfer fee title in the Trail Property to NCPRD, subject to all current encumbrances and an easement to be granted by NCPRD to TriMet in the form attached as Exhibit F for the purposes of accessing and maintaining Project infrastructure and meeting TriMet's obligations under the Maintenance Agreement discussed in Article 1(G) below, as follows: Parcels 1, 4, 5 and 6 via Warranty Deed in the form attached hereto as Exhibit D and Parcels 2 and 3 via Bargain and Sale Deed in the form attached hereto as Exhibit E, for purposes of establishing a public Trail. NCPRD agrees to pay TriMet \$598,595 for the Trail Property.

C. The Parties shall each pay half of any escrow, closing, and records costs and fees relating to all transactions contemplated in this Agreement.

D. These transactions and all appraisals will conform to the requirements of the Uniform Real Estate Acquisition and Relocation Act of 1970 and subsequent revisions, and corresponding federal and state law. FTA concurrence in TriMet's purchase of the Transit Property and disposition of the Trail Property will be required prior to Closing.

E. The Parties understand that the Transit Property was purchased with the assistance of a grant from Metro under Metro's Open Spaces program. NCPRD will be responsible for all obligations related to that grant, the Open Spaces program, or any other agreement between NCPRD and Metro related to the Transit Property.

F. TriMet and NCPRD have entered into a separate Design and Construction Agreement which sets out each Party's obligations regarding the design and construction of the Trail.

G. The Parties also agree to enter into a Maintenance Agreement for the Trail area (the "Maintenance Agreement"). The Parties shall make a good faith effort to complete the Maintenance Agreement by September 30, 2014. The details of the Maintenance Agreement will be negotiated in good faith by the Parties. However, the basic understanding is that NCPRD will be responsible for all maintenance and repair in the Trail Property, including all landscaping and improvements thereon, to a level similar to the level of effort devoted to other areas of the Trail. TriMet will be responsible for all maintenance and repair of items on the Trail beyond what is included on other areas of the Trail (such as lighting or public art), TriMet's property, shared improvements such as storm drainage, and all improvements outside of the Trail Property, including retaining walls and barriers between the light rail line and the Trail. Graffiti removal will be the responsibility of the Party having the underlying maintenance responsibility for the item upon which the graffiti was placed.

Article 2. Representations and Warranties

A. NCPRD represents and warrants that it is vested with fee title, subject to certain easements and other restrictions, to the Transit Property, and has the full power and authority to enter into this Agreement and convey such property interests to TriMet in accordance with this Agreement.

- B. NCPRD represents and warrants that the conveyance of the Transit Property in accordance with this Agreement will not violate any provision of federal, state or local law, or constitute a breach or default under any agreement to which NCPRD is bound or to which the Transit Property is subject, including but not limited to: suits, actions, arbitrations, or legal, administrative, or other proceedings or inquiries pending or threatened against the Transit Property that could affect NCPRD's title to the Property; intended public improvements or private rights that could result in the creation of any liens upon the Property; mechanics liens; leases, licenses, permits, options, rental agreements, rights of first refusal or other agreements, written or oral, that affect the Transit Property, and that NCPRD is duly authorized and has full authority to convey the Transit Property to TriMet.
- C. TriMet represents and warrants that the Transit Property is needed and will be used by TriMet for constructing and/or operating the Project.
- D. TriMet represents and warrants that it is or will be, at the time of Closing of the Trail Property, vested with fee title, subject to certain easements and other restrictions, to the Trail Property and has the full power and authority to enter into this Agreement and convey such property interests to NCPRD in accordance with this Agreement.
- E. TriMet represents and warrants that the conveyance of the Trail Property in accordance with this Agreement will not violate any provision of federal, state or local law, or constitute a breach or default under any agreement to which TriMet is bound or to which the Trail Property is subject, including but not limited to: suits, actions, arbitrations, or legal, administrative, or other proceedings or inquiries pending or threatened against the Trail Property that could affect TriMet's title to the Property; intended public improvements or private rights that could result in the creation of any liens upon the Property; mechanics liens; leases, licenses, permits, options, rental agreements, rights of first refusal or other agreements, written or oral, that affect the Trail Property, and that TriMet is duly authorized and has full authority to convey the Trail Property to NCPRD.

Article 3. Environmental

- A. NCPRD agrees that it is taking the Trail Property in as-is condition, and that TriMet is not in any way indemnifying, guaranteeing, or addressing any environmental issues, including but not limited to: (i) the release of hazardous substances at, to, on, or from the Trail Property ("Environmental Conditions") except for any Environmental Conditions discovered during TriMet's ownership or arising from or relating to general construction activities on the Trail Property (a "Construction Environmental Condition"). Except as provided above, NCPRD acknowledges that it is purchasing the Trail Property without any assurances, representation, or warranties regarding environmental conditions and that it is NCPRD's sole responsibility to research, identify, classify, address and as necessary remediate any environmental conditions on the site. TriMet covenants and agrees to remedy any Construction Environmental Condition prior to the sale of the Trail Property to NCPRD.
- B. TriMet agrees that it is taking the Transit Property in as-is condition, and that NCPRD is not in any way indemnifying, guaranteeing, or addressing any environmental issues,

including but not limited to: (i) the release of hazardous substances at, to, on, or from the Transit Property (“Environmental Conditions”). TriMet acknowledges that it is purchasing the Transit Property without any assurances, representation, or warranties regarding environmental conditions and that it is TriMet’s sole responsibility to research, identify, classify, address and as necessary remediate any environmental conditions on the site.

Article 4. Relationship between NCPRD and TriMet

A. This Agreement and Exhibits, the Design and Construction Agreement, and the anticipated Maintenance Agreement constitute the only promises, consideration, and conditions of this conveyance, and no other promises, consideration, or conditions have been signified or implied.

Article 5. Conditions Precedent to Closing for Each Property

A. Conditions Precedent to Transit Property Closing. The Parties agree to complete the sale and purchase of the Transit Property within 30 days of the occurrence of all of the following conditions precedent. The conditions precedent are:

- i) *FTA Concurrence.* TriMet has obtained the required FTA concurrence in the transaction.
- ii) *Representations, Warranties, and Covenants of Seller.* Each party’s representations, warranties, and covenants set forth in Article 2 of this Agreement relating to the Transit Property shall be true and correct as of the date of Closing.
- iii) *No Material Changes.* At the Closing, there shall have been no material adverse changes related to or connected with the Transit Property.

B. Conditions Precedent to Trail Property Closing. The Parties agree to complete the sale and purchase of the Trail Property within 30 days of the occurrence of all of the following conditions precedent. The conditions precedent are:

- i) *TriMet Ownership.* TriMet has obtained ownership of all portions of the Trail Property to be transferred to NCPRD.
- ii) *FTA Concurrence.* TriMet has obtained the required FTA concurrence in the transaction.
- iii) *Representations, Warranties, and Covenants of Seller.* Each party’s representations, warranties, and covenants set forth in Article 2 of this Agreement relating to the Trail Property shall be true and correct as of the date of Closing.
- iv) *Execution of Easement.* The Easement shall be executed in the form set out in Exhibit F as part of closing and immediately after transfer of the Trail Property to NCPRD.

- v) *Maintenance Agreement.* Prior to Closing NCPRD and TriMet must have entered into an agreement regarding the maintenance and operation of the Trail Property and surrounding parcels owned by TriMet, as described in Article 2(G).
- vi) *Construction.* Completion of construction of Segment 2 of the Trail pursuant to the Design and Construction Agreement.

C. Within 30 days of TriMet's receipt of FTA concurrence in the Transit Property transaction, TriMet shall deposit into escrow \$515,260 which consists of \$1,113,855 as the purchase price of the Transit Property less \$598,595 as the purchase price of the Trail Property. The order of transactions is that the sale of the Transit Property must take place before the sale of the Trail Property. The sale of the Transit Property will occur upon the occurrence of all Conditions Precedent to Transit Property Closing in Article 5(B). At that time, NCPRD may withdraw \$515,260, and title to the Transit Property will be transferred to TriMet in the manner set forth in this Agreement. Upon the occurrence of all Conditions Precedent to Trail Property Closing in Article 5(C), title to the Trail Property will be transferred to NCPRD in the manner set forth in this Agreement.

D. Performance. If the Conditions Precedent to Trail Property Closing in Article 5(B)(i) through (v) have occurred and, by December 31, 2016 TriMet either has not (1) completed construction of the Trail or (2) transferred ownership of the Trail Property to NCPRD, TriMet agrees (i) that specific performance is an appropriate remedy and consents to enter a notice of default in support of NCPRD's claim asserting the same, (ii) to pay NCPRD's direct and indirect costs, including attorney and other professional fees, related to NCPRD's completion of construction of Trail Segment 2 and assembly and conveyance of the Trail Property, and (iii) to pay \$50,000 liquidated damages for delayed utilization of Segment 2 of the Trolley Trail.

The Performance obligations set forth in this Paragraph are excused where delays or defaults are due to war; insurrection; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; governmental restrictions or priorities; delays of any contractor or subcontractor or supplier; acts of the other party; acts or failures to act of any public or governmental agency or entities (except that TriMet's own acts or failure to act will not excuse performance by TriMet); or any other cause beyond the control or without the fault of the party claiming an excuse to performance.

Article 6. Availability of Information

- A. This Agreement is a public record and will be furnished to a party making a request under Oregon's Public Records law in accordance with the Public Records law.

Article 7. Miscellaneous

- A. TriMet is currently performing construction activities on the Transit Property pursuant to a Permit of Entry granted by NCPRD ("Construction Work"). The Parties agree that the Permit of Entry will be extended as long as necessary for TriMet to complete work on the

Project if the Transit Property is not transferred as set forth herein by the current expiration date of the Permit of Entry, and further that TriMet may continue construction activities on the Transit Property prior to the transfer of the Transit Property to TriMet. TriMet shall hold NCPRD and its employees, agents and elected officials harmless from and against all claims, demands, judgments, assessments, damages, penalties, fines, costs, liabilities, or losses including without limitation settlement payments and attorney's, expert's and consultant's fees ("Claims") arising from the Construction Work prior to transfer of the Transit Property, except to the extent caused by NCPRD's gross negligence or willful misconduct. Any claims, demands, judgments, assessments, damages, penalties, fines, costs, liabilities, or losses, including without limitation settlement payments and attorney's, expert's and consultant's fees, arising from this Agreement but not from the Construction Work on the Property, shall be governed by Article 6(F), below.

- B. This Agreement is intended to be performed in accordance with, and only to the extent permitted by, all applicable laws, ordinances, rules, and regulations. If any term or provision of this Agreement or the application thereof to any person or circumstance is for any reason and to any extent held invalid or unenforceable, then that term or provision will be ignored, and to the maximum extent possible, this Agreement will continue in full force and effect, but without giving effect to the offending term or provision.
- C. This Agreement will be governed by and construed in accordance with the laws of the State of Oregon, without reference to the conflicts of laws or choice of law provisions thereof.
- D. This Agreement and any referenced attachments, exhibits, or schedules (which are incorporated herein by this reference) are the entire agreement between the parties and supersede all previous agreements or understandings between them. This Agreement may be modified only in writing, signed by both parties.
- E. Issue Resolution. In the event of any issue or dispute between NCPRD and TriMet, the Parties agree that they shall negotiate in good faith in an effort to resolve it. It is understood by both Parties that the dispute shall be referred for resolution as follows:
 - 1. Refer the dispute to Jeroen Kok, NCPRD Manager, and Leah Robbins, TriMet Project Manager, who shall make a good faith effort to resolve it;
 - 2. If unresolved, refer it to the NCPRD Director and TriMet's Executive Director of Capital Projects;
 - 3. If unresolved, the Parties agree to submit the dispute to mediation prior to any party commencing litigation. In such an event, the parties to this agreement agree to participate in good faith in a non-binding mediation process. The mediation shall take place in Portland, Oregon. The mediator shall be selected by mutual agreement of the parties, but in the absence of such agreement each party shall select a temporary mediator and those mediators shall jointly select the permanent mediator. Each party shall bear its own costs and expenses, but the mediator's fees and costs shall be borne equally by the Parties. In

the event mediation is unsuccessful, the Parties are free to pursue any legal remedies that may be available.

- F. Within the limits of the Oregon Constitution and the Oregon Tort Claims Act, codified at ORS 30.260 through 30.300, each of the Parties shall hold harmless, indemnify and defend the other and its directors, officers, employees and agents from and against all claims, demands, penalties, and causes of action of any kind or character relating to or arising from this Agreement (including the cost of defense thereof, including attorney fees) in favor of any person on account of personal injury, death, damage to property, or violation of law, which arises out of, or results from, the negligent acts or omissions of the indemnitor, its officers, employees, or agents.
- G. The titles and sections herein have been inserted as a matter of convenience of reference only and do not control or affect the meaning or construction of any of the terms or provisions herein. All references to the singular will include the plural, and vice versa.
- H. All routine correspondence and communication regarding this Agreement shall be between the following representatives of the Parties:

TriMet: Leah Robbins
TriMet Capital Projects
1800 SW First Avenue, Ste. 300
Portland, OR 97211
Telephone: (503) 962-2264
Fax: (503) 962-2282

With a copy to: TriMet Legal Department
1800 SW First Avenue, Ste. 300
Portland, OR 97211
Attn: Lance Erz
Telephone: (503) 962-2108
Fax: (503) 962-2299

NCPRD: Jeroen Kok
Deputy Manager
North Clackamas Parks and Recreation District
150 Beavercreek Road
Oregon City, OR 97045

With a copy to: Chris Storey
Assistant County Counsel
2051 Kaen Road, 4th Floor
Oregon City, OR 97045

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

J. Each party represents that it has the authority to enter into this Agreement on its behalf and the individual signatory for a party represents that it has been authorized by that party to execute and deliver this Agreement.

NORTH CLACKAMAS PARKS AND RECREATION DISTRICT

By: _____

Date: _____

APPROVED AS TO FORM:

Clackamas County Counsel

TRI-COUNTY METROPOLITAN TRANSPORTATION DISTRICT OF OREGON

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

Date: _____

APPROVED AS TO FORM:

TriMet Legal Department

Exhibit A

Transit Property

[See attached]

Exhibit B

Trail Property

[Legal being prepared and to be attached prior to closing
representing 54,957 square feet in multiple parcels]

Exhibit C

Warranty Deed – NCPRD To TriMet

Grantor's Name and Address:

North Clackamas Parks and Recreation District
150 Beaver Creek Road
Oregon City, OR 97045

Grantee's Name and Address:

Tri-County Metropolitan Transportation
District of Oregon (TriMet)
Real Property Department
1800 SW First Avenue, Ste. 300
Portland, OR 97201

After Recording Return To:

Tri-County Metropolitan Transportation
District of Oregon (TriMet)
Real Property Department
1800 SW First Avenue, Ste. 300
Portland, OR 97201

Unless a change is requested all taxes shall be sent to:

Tri-County Metropolitan Transportation
District of Oregon (TriMet)
Real Property Department
1800 SW First Avenue, Ste. 300
Portland, OR 97201

WARRANTY DEED

North Clackamas Parks and Recreation District, Grantor, conveys and warrants to the Tri-County Metropolitan Transportation District of Oregon, Grantee, the following described real property free of encumbrances except as specifically set forth herein:

(Describe the property conveyed.)

The true consideration for this conveyance is \$1,113,850.

BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010. THIS INSTRUMENT DOES NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE

LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010.

Dated this _____ day of _____, _____.

NORTH CLACKAMAS PARKS AND RECREATION DISTRICT

Name Title

STATE OF OREGON)
)ss.
County of Clackamas)

On this _____ day of _____, 20____, before me _____, the undersigned Notary Public, personally appeared _____, as _____ of the North Clackamas Parks and Recreation District, personally known to me to be the person whose name is subscribed to this instrument, and acknowledged that he executed it.

NOTARY PUBLIC FOR OREGON
My Commission Expires:_____

**ACCEPTED FOR THE TRI-COUNTY METROPOLITAN
TRANSPORTATION DISTRICT OF OREGON:**

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

State of Oregon)
)ss.

County of Multnomah)

On this _____ day of _____, 20____, before me _____, the undersigned Notary Public, personally appeared _____, as _____ of the Tri-County Metropolitan Transportation District of Oregon, personally known to me to be the person whose name is subscribed to this instrument, and acknowledged that he executed it.

Notary Public for the State of Oregon
My Commission Expires:

Exhibit D

Warranty Deed – TriMet to NCPRD

Grantor's Name:

Tri-County Metropolitan Transportation
District of Oregon (TriMet)
Real Property Department
1800 SW First Avenue, Ste. 300
Portland, OR 97201

Grantee's Name:

North Clackamas Parks and Recreation District
150 Beavercreek Road
Oregon City, OR 97045

After Recording Return To:

North Clackamas Parks and Recreation District
150 Beavercreek Road
Oregon City, OR 97045

Unless a change is requested all taxes shall be sent to:

North Clackamas Parks and Recreation District
150 Beavercreek Road
Oregon City, OR 97045

WARRANTY DEED

Tri-County Metropolitan Transportation District of Oregon, Grantor, conveys and warrants to the North Clackamas Parks and Recreation District, Grantee, the following described real property free of encumbrances except as specifically set forth herein:

(Describe the property conveyed.)

The true consideration for this conveyance is \$_____.

BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010. THIS INSTRUMENT DOES NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST

PRACTICES, AS DEFINED IN ORS 30.930, AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010.

GRANTOR

IN WITNESS WHEREOF, Grantor has caused this instrument to be executed this _____ day of _____, 2013.

Tri-County Metropolitan Transportation District of Oregon
By: _____
Title: _____

State of Oregon)
)ss.
County of Multnomah)

On this _____ day of _____, 20____, before me _____, the undersigned Notary Public, personally appeared _____, as _____ of the Tri-County Metropolitan Transportation District of Oregon, personally known to me to be the person whose name is subscribed to this instrument, and acknowledged that he executed it.

Notary Public for the State of Oregon
My Commission Expires:

ACCEPTED FOR THE NORTH CLACKAMAS PARKS AND RECREATION DISTRICT:

Name _____
Title: _____

On this _____ day of _____, 20____, before me _____, the undersigned Notary Public, personally appeared _____, as _____ of the North Clackamas Parks and Recreation District, personally known to me to be the person whose name is subscribed to this instrument, and acknowledged that he executed it.

NOTARY PUBLIC FOR OREGON
My Commission Expires: _____

Exhibit E

Bargain and Sale Deed – TriMet to NCPRD

Grantor's Name:

Tri-County Metropolitan Transportation
District of Oregon (TriMet)
Real Property Department
1800 SW First Avenue, Ste. 300
Portland, OR 97201

Grantee's Name:

North Clackamas Parks and Recreation District
150 Beaver Creek Road
Oregon City, OR 97045

After Recording Return To:

North Clackamas Parks and Recreation District
150 Beaver Creek Road
Oregon City, OR 97045

Unless a change is requested all taxes shall be sent to:

North Clackamas Parks and Recreation District
150 Beaver Creek Road
Oregon City, OR 97045

BARGAIN AND SALE DEED

Tri-County Metropolitan Transportation District of Oregon, Grantor, conveys to North Clackamas Parks and Recreation District, Grantee, the following described real property:

(Describe the property conveyed.)

The true consideration for this conveyance is \$ _____.

BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010. THIS INSTRUMENT DOES NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT

OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010.

GRANTOR

IN WITNESS WHEREOF, Grantor has caused this instrument to be executed this _____ day of _____, 2013.

Tri-County Metropolitan Transportation District of Oregon
By: _____
Title: _____

State of Oregon)
)ss.
County of Multnomah)

On this _____ day of _____, 20____, before me _____, the undersigned Notary Public, personally appeared _____, as _____ of the Tri-County Metropolitan Transportation District of Oregon, personally known to me to be the person whose name is subscribed to this instrument, and acknowledged that he executed it.

Notary Public for the State of Oregon
My Commission Expires:

ACCEPTED FOR THE NORTH CLACKAMAS PARKS AND RECREATION DISTRICT:

Name _____
Title: _____

On this _____ day of _____, 20____, before me _____, the undersigned Notary Public, personally appeared _____, as _____ of the North Clackamas Parks and Recreation District, personally known to me to be the person whose name is subscribed to this instrument, and acknowledged that he executed it.

NOTARY PUBLIC FOR OREGON
My Commission Expires: _____

EXHIBIT F

EASEMENT – NCPRD To TriMet

Grantor’s Name and Address:

North Clackamas Parks and Recreation District
150 Beaver Creek Road
Oregon City, OR 97045

Grantee’s Name and Address:

Tri-County Metropolitan Transportation
District of Oregon (TriMet)
Real Property Department
1800 SW First Avenue, Ste. 300
Portland, OR 97201

After Recording Return To:

North Clackamas Parks and Recreation District
150 Beaver Creek Road
Oregon City, OR 97045

Unless a change is requested all taxes shall be sent to:

North Clackamas Parks and Recreation District
150 Beaver Creek Road
Oregon City, OR 97045

EASEMENT FOR UTILITIES, ACCESS AND MAINTENANCE

For good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the North Clackamas Parks and Recreation District (“NCPRD” or “Grantor”) grants and conveys to the Tri-County Metropolitan Transportation District of Oregon (“TriMet” or “Grantee”) the right to enter upon, use and maintain the Easement Area further described and shown below and in Exhibits _____ (the “Easement Area”), in accordance with the terms of this Easement.

RECITALS

A. TriMet is constructing the Portland-Milwaukie Light Rail Transit Project (“Project”), which is a 7.3 mile light rail project between Portland State University and north Clackamas County. The Project will terminate at Park Avenue in unincorporated Clackamas County.

B. The Parties have entered into a separate agreement, known as the “Purchase and Sale Agreement between the North Clackamas Parks and Recreation District and the Tri-County Metropolitan Transportation District of Oregon Regarding Real Property for the Portland-Milwaukie Light Rail Transit Project,” pursuant to which NCPRD is selling to TriMet certain real property necessary for the operation of the light rail line, and TriMet is selling to NCPRD certain real property needed for public use as a hard surface trail (“Trolley Trail”). A portion of the Trolley Trail is located in the Easement Area. The Parties have also entered into a separate agreement known as the “Intergovernmental Agreement between TriMet and the North Clackamas Parks and Recreation District for Design and Construction Services for Trolley Trail Segment 2,” pursuant to which TriMet is constructing a portion of the Trolley Trail, known as Segment 2, for NCPRD as part of the Project.

C. The Parties have also entered into a Maintenance Agreement in order to describe the maintenance responsibilities of each Party with regard to the facilities constructed as part of the Project, including but not limited to the Trolley Trail, retaining walls, and landscaping.

TERMS, CONDITIONS, AND COVENANTS

1. Perpetual Easement: The permanent easement shall become effective upon the last date of signature hereon (“Effective Date”).

2. Grantee’s Use: Grantee shall have the non-exclusive right to enter upon the Easement Area for the purposes of (a) installing, repairing and maintaining any subsurface infrastructure, including but not limited to sewer, water, electrical, fiber optic, light rail signals and systems, any other utility lines and appurtenances installed as part of the Portland-Milwaukie Light Rail project (“Subsurface Infrastructure”); (b) maintaining and repairing any items required to be maintained or repaired by TriMet in accordance with the Maintenance Agreement between the Parties; and (c) repairing or maintaining the adjacent light rail alignment, but only if no other means of access to the light rail line for the necessary repairs or maintenance is reasonably available. Repair or maintenance of the light rail line from the Easement Area is intended and expected to be a rare occurrence.

Grantee, at its expense, shall repair any damage to the Easement Area caused by Grantee's use of the Easement Area and, after any use of the Easement Area, shall leave it in at least as good a condition as prior to the use.

3. Cooperation and Notice: Given the use of the Easement Area by the public as a multiuse trail, Grantee shall, prior to accessing the Easement Area for any activity that would interfere with such public use, provide Grantor written notice at least three business days prior to the planned activity. If the proposed activity would interfere with public use for more than four hours, TriMet shall include a traffic control plan and schedule reasonably acceptable to NCPRD. Such notice shall not be required prior to activity in cases of emergency but shall be delivered promptly and TriMet will exercise best efforts to mitigate the impact of the emergency work in accordance with a NCPRD-approved mitigation plan.

Given the proximity of the Trolley Trail to TriMet’s light rail alignment, Grantor shall coordinate all maintenance or repair work on and about the Easement Area with Grantee, and shall not perform any maintenance work that would interfere in any way with the operation of Grantor’s light rail line without the approval of TriMet.

4. Grantor’s Use: Grantor reserves the right to use the Easement Area for any purposes not materially inconsistent with the rights granted to Grantee by this instrument. Grantor shall not interfere in any way with any Subsurface Infrastructure installed in the Easement Area.

5. Indemnification: Within the limits of the Oregon Constitution and the Oregon Tort Claims Act, codified at ORS 30.260 through 30.300, TriMet shall hold harmless, indemnify and defend NCPRD and its elected officials, officers, directors, employees and agents from and against all claims, demands, penalties, and causes of action of any kind or character relating to or arising from this Easement (including the cost of defense thereof, including attorney fees) in favor of any person on account of personal injury, death, damage to property, or violation of law, to the extent arising out of, or resulting from, the negligent acts or omissions of TriMet, its officers, employees, or agents.

6. No Third Party Beneficiaries: Grantor and Grantee are the only parties to this Easement and as such are the only parties entitled to enforce its terms. Nothing in this Easement gives or shall be construed to give or provide any benefit, direct, indirect or otherwise, to third parties unless third parties are expressly described as intended to be beneficiaries of its terms. However, Grantor understands that some Subsurface Infrastructure, though installed as part of the Project, is owned and maintained by third parties, for example PGE, Integra, Time Warner, Comcast, and City of Milwaukie.

7. Laws and Regulations. The Parties shall comply with all applicable state, federal, and local laws, including but not limited to, laws related to the environment, zoning ordinances and laws, rules, regulations, and policies concerning equal opportunity, nondiscrimination, Workers' Compensation, and minimum and prevailing wage requirements.

8. Successors and Assigns. This easement inures to the benefit of and binds the parties hereto, their heirs, devisees, administrators, executors, successors and assigns.

9. Notice. Routine correspondence and communication regarding this Agreement shall be given as follows, and may be given to the appropriate person via email:

If to TriMet:
Manager, Maintenance of Way
TriMet
2222 NE Eleven Mile Avenue
Gresham, OR 97030

If to NCPRD:
Director
North Clackamas Parks & Recreation District
150 Beaver Creek Road
Oregon City, OR 97045

And to
Manager, Real Property
TriMet
1800 SW First Ave., Ste. 300
Portland, OR 97201

And to
Senior Legal Counsel to NCPRD
2051 Kaen Road, 4th Floor
Oregon City, OR 97045

Either party may designate a different representative or contact address for notice purposes by giving written notification to the other party as provided in this paragraph.

GRANTEE:

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

By: _____

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

Date: _____

APPROVED AS TO FORM

TriMet Legal Department

GRANTOR:

**NORTH CLACKAMAS PARKS
AND RECREATION DISTRICT**

By: _____

Name: _____

Title: _____

Date: _____

APPROVED AS TO FORM

Clackamas County Counsel



COPY

14

**DAN JOHNSON
MANAGER**

DEVELOPMENT AGENCY

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

December 19, 2013

Development Agency Board
Clackamas County

Members of the Board:

Approval of a Disposition and Development Agreement with RPS Venture #2, LLC

Purpose/ Outcomes	Disposition and Development Agreement to convey real property from the Clackamas County Development Agency to RPS Venture #2, LLC
Dollar Amount and Fiscal Impact	The agreement stipulates sale of the property for the appraised value of \$1,415,000.00
Funding Source	Not Applicable. No funding considered as a part of this property transaction
Safety Impact	Not Applicable
Duration	Conveyance within approximately 180 days of execution of this agreement.
Previous Action	Executive Session on February 12, 2013
Contact Person	Dan Johnson, Manager – Development Agency 503-742-4325 or danjoh@co.clackamas.or.us
Contract No.	Not Applicable

BACKGROUND:

Four parcels located at the northwest corner of 122nd Avenue and Sunnyside Road were acquired to facilitate construction of Sunnyside Road improvements. Approximately 2.4 acres of developable land remained following construction.

RPS Development presented a proposal to the Agency to acquire the property for redevelopment purposes. An updated appraisal of the property was initiated by the Agency, which determined an appraised value of \$1,415,000 for the four parcels.

On February 12, 2013, the Agency presented the proposed development and terms of acquisition to the Board in an Executive Session. The Board directed staff to proceed with negotiations for disposition of the property to RPS Development.

The Disposition Agreement, which the Board is being asked to approve today, is the result of preceding negotiations and is contingent on subsequent terms. Terms of the Disposition

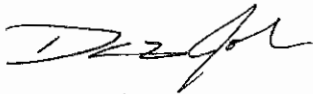
Agreement dictate purchase for the appraised value of \$1,415,000.00, annexation of the property into the city of Happy Valley and consistency with the development proposal as presented at the Executive Session.

RECOMMENDATION:

Staff respectfully recommends that the Board, as the governing body of the Clackamas County Development Agency, move by consent to:

- Approve the Disposition Agreement with the RPS Venture #2, LLC.
- Delegate authority to the Chair to execute the Agreement and any other necessary documents on behalf of the Development Agency Board.
- Delegate staff authority to act on behalf of the Agency at closing.
- Record the Disposition Agreement in the Deed Records of Clackamas County at no cost to the Development Agency.

Respectfully submitted,



Dan Johnson
Development Agency Manager

For information on this issue or copies of attachments, please contact
Dan Johnson @ 503-742-4325

DISPOSITION AND DEVELOPMENT AGREEMENT

THIS DISPOSITION AND DEVELOPMENT AGREEMENT (this "Agreement") is entered into as of the ____ day of _____, 2013 by and between the CLACKAMAS COUNTY DEVELOPMENT AGENCY, the Urban Renewal Agency of Clackamas County, a corporate body politic (the "Agency"), and RPS VENTURE #2 LLC, an Oregon limited liability company (the "Developer"). The Agency and the Developer hereby agree as follows:

ARTICLE 1: SUBJECT OF AGREEMENT

Section 1.1: Purpose of Agreement.

The purpose of this Agreement is to effectuate the Clackamas Town Center Urban Renewal Plan ("Plan") by providing for the disposition of certain real property and the development of the "Developer Improvements" on the "Property" (as such terms are hereinafter defined). The Agency has found that the development of the Property pursuant to this Agreement, and the fulfillment generally of this Agreement, are in the vital and best interests of the County of Clackamas, Oregon (the "County") and the Plan and the health safety, morals and welfare of its residents, and in accord with the public purposes and provisions of applicable federal, state and local laws and requirements.

Section 1.2: The Plan.

The Plan was approved and adopted on December 30, 1980 by Resolution and Order No. 80-2685 of the Clackamas County Commission, as amended from time to time, and the Plan, together with such amendments are incorporated herein by this reference. This Agreement is subject to the provisions of the Plan. Any further amendment to the Plan, which changes the uses or development permitted on the Property (as hereinafter defined), or otherwise changes the restrictions or controls that apply to the Property, or otherwise affects the Developer's obligations or rights with respect to the Property, shall require the written consent of Developer, which consent may be withheld at Developer's sole discretion. Agency represents and warrants that the Plan, as it presently exists, is in full force and effect and that this Agreement, and the obligations of Agency set forth in this Agreement, are all in accordance with the Plan. A copy of the Plan is on file in the Clackamas County Department of Transportation and Development.

Section 1.3: The Property.

The "Property" consists of certain real property owned by the Agency located in Clackamas County, shown on the map attached hereto as **Exhibit "A"** and more particularly described in the legal description attached hereto as **Exhibit "B"**.

Section 1.4: The Project or Developer Improvements.

The term "Project" or "Developer Improvements" shall mean the improvements required to be constructed by Developer on the Property pursuant to this Agreement. The Developer Improvements will be completed as further identified in **Exhibit "F,"** Scope of Development.

Section 1.5: The Agency.

The Agency is a corporate body politic of the State of Oregon, as the duly designated Urban Renewal Agency of Clackamas County, Oregon, exercising governmental functions and powers and organized and existing under Oregon Revised Statutes, Chapter 457. The term "Agency" as used in this Agreement includes the Urban Renewal Agency of Clackamas County, Oregon and any assignee of or successor to its rights, powers, duties and responsibilities. The principal offices and mailing address of the Agency for purposes of this Agreement is:

Clackamas County Development Agency
c/o Development Agency Manager
150 Beaver Creek Road
Oregon City, OR 97045

Section 1.6: The Developer.

The Developer is RPS Venture #2 LLC, an Oregon limited liability company, an affiliate of RPS Development Company, Inc.. The term "Developer" as used in this Agreement is RPS Venture #2 LLC and any affiliate of Developer, and any permitted assignee of Developer, as provided in Section 1.7 below, and any permitted assignee of or successor to its rights, powers, duties and responsibilities. The principal office and mailing address of the Developer for purposes of this Agreement is:

RPS Venture #2 LLC
c/o RPS Development Company, Inc.
2653 NW High Heaven Road
McMinnville, Oregon 97128
Attn: Alan M. Roodhouse, President

Section 1.7: Prohibition Against Change in Ownership, Management and Control of Developer.

The qualifications and identity of Developer and its President are of particular concern to Agency and were essential to the selection of Developer by Agency for development of the Property. No voluntary or involuntary successor in interest of Developer shall acquire any rights or powers under this Agreement, except as expressly set forth herein. All assignments of this Agreement shall require written consent of Agency, which consent shall not be unreasonably withheld, conditioned or delayed. Subject to the notice and opportunity to cure provisions set

forth in Section 6 below, this Agreement may be terminated by Agency at its option before Closing if there is any change (voluntary or involuntary) in the ownership, management or control of Developer or any successor-in-interest of Developer not consistent with this Agreement. The restrictions contained in this section shall cease and terminate upon completion of Phase 1 of the Developer Improvements on the Property, as herein provided, and upon the issuance of a final "Certificate of Completion" (as defined in Section 4.12). Notwithstanding the foregoing, subject to the requirement that Developer obtain the written consent of Agency, which consent shall not be unreasonably withheld, conditioned or delayed, Developer may assign (1) this Agreement, or (2) if after Closing, this Agreement and/or the Property, to an entity which contains Developer's principal and is for the purpose of financing the Project.

ARTICLE 2: ASSEMBLY OF THE SITE

The Agency owns fee title to the Property and shall convey the Property to Developer subject only to those title and survey exceptions agreed to by both parties pursuant to this Article 2 ("Permitted Exceptions").

Section 2.1 Title Commitment.

Within ten (10) days after the Effective Date, Agency, at Agency's cost and expense, will cause the Title Company to furnish to Developer its preliminary title report on the Property (the "Preliminary Commitment"), along with copies of all documents that give rise to exceptions listed in the report (the "Underlying Documents"). Within ten (10) days of receiving the Preliminary Commitment and the Underlying Documents, Developer will give Agency written notice setting forth the exceptions that are not acceptable to Developer (the "Unacceptable Exceptions"). All exceptions other than those timely objected to will be deemed acceptable to Developer as Permitted Exceptions. Agency will have ten (10) days after receiving Developer's notice within which to notify Developer in writing whether Agency is willing or able to eliminate the Unacceptable Exceptions. If Agency agrees to eliminate the Unacceptable Exceptions, Agency will be obligated to do so at its cost and as of the Closing Date. If Agency is unwilling or unable to eliminate the Unacceptable Exceptions, Developer may terminate this Agreement or elect to accept the Unacceptable Exceptions and proceed to close escrow by giving written notice to Agency within ten (10) days of receiving notice from Agency. If Agency does not timely provide notice to Developer of its determination whether it is willing and able to eliminate the Unacceptable Exceptions, it will be deemed to have elected to eliminate the Unacceptable Exceptions. If Developer does not provide timely written notice of its election to terminate this Agreement, it will be deemed to have waived its objections to the Unacceptable Exceptions and all of the Unacceptable Exceptions shall become Permitted Exceptions.

Section 2.2 Survey.

Within five (5) days after the Effective Date, Agency shall deliver the most recent survey, if any, in its possession to Developer (the "Existing Survey"). At its expense, Developer may order an update to the Existing Survey (or if there is no Existing Survey, a new survey) (the Existing Survey, as updated, or a new survey, the "Survey"). If applicable, Developer shall

deliver a copy of the Survey to Agency promptly upon receipt. Within ten (10) days after receipt of the Survey, Developer may deliver to Agency, in writing, any objections to any matters shown on the Survey (the "Objections"). Developer's failure to timely object to any such matters shall be deemed to constitute Developer's approval thereof and such shall then become Permitted Exceptions, as defined in Article 2. If Developer timely objects to any matters shown on the Survey, then Agency shall have the right, but not the obligation, to agree in writing to cure before Closing such Objections, or to decline to cure such Objections. Agency will have ten (10) days after receiving Developer's Objections within which to notify Developer in writing whether Agency is willing or able to cure the Objections. If Agency agrees to cure the Objections, Agency will be obligated to do so at its cost and as of the Closing Date. If Agency is unwilling or unable to cure the Objections, Developer may terminate this Agreement or elect to accept the Objections and proceed to close escrow by giving written notice to Agency within ten (10) days of receiving notice from Agency. If Agency does not timely provide notice to Developer of its determination whether it is willing and able to cure the Objections, it will be deemed to have elected to cure the Objections. If Developer does not provide timely written notice of its election to terminate this Agreement, it will be deemed to have waived its Objections and all of the Objections shall become Permitted Exceptions. Notwithstanding anything to the contrary above, although Developer may elect to obtain a Survey, Developer is not obligated to obtain a Survey.

ARTICLE 3: DISPOSITION OF PROPERTY

Section 3.1: Sale and Purchase.

In accordance with, and subject to all the terms, covenants, and conditions of this Agreement, the Agency agrees to sell to Developer, or Developer's permitted assignee of this Agreement, and Developer agrees to purchase from Agency, the Property, for the amount of ONE MILLION FOUR HUNDRED FIFTEEN THOUSAND and 00/100 DOLLARS (\$1,415,000.00) (the "Purchase Price") in the manner as hereinafter provided.

Section 3.2: Conveyance.

Conveyance of the Property shall be made on or before the date established in Section 3.4.5 below, in an escrow account at Oregon Title Insurance Company (the "Title Company"), 1515 SW Fifth Avenue, Portland, Oregon established by the Agency. The Developer agrees, upon satisfaction of the conditions precedent for conveyance of the Property, to accept conveyance of the Property and pay to Agency at the close of escrow the Purchase Price for the Property in the amount set forth above in the form of cash or immediately available funds. The Agency and the Developer agree to perform all acts necessary for conveyance of title in sufficient time for title to be conveyed in accordance with the foregoing provisions and will execute escrow instructions consistent with this Agreement and close the transaction as provided herein. The escrow shall close and the conveyance of the Property ("Closing") shall be made in accordance with Section 3.4.5 below after satisfaction or written waiver of the conditions precedent to conveyance contained in this Agreement and on or before the date set forth pursuant to Section 3.4.5 below.

Possession of the Property shall be delivered to the Developer concurrently with the conveyance of title. The Developer shall accept title and possession on or before the date referred to above, unless such date is extended as provided herein.

Section 3.3: Developer's Due Diligence; Annexation to Happy Valley.

The Developer shall have up to one hundred twenty (120) days after the execution of this Agreement (the "Effective Date") to complete its due diligence and approve of the subject property. During this period, the Agency will provide Developer access to the Property as is reasonably necessary to complete its due diligence. The Developer hereby indemnifies and holds the Agency and the County, and their elected officials, officers, agents and employees harmless from any injury or damages arising out of any activity of Developer, its agents, employees and contractors performed and conducted on the Property for the purposes of completing its due diligence. Due diligence shall include, without limitations, physical inspections of the Property; soils investigations and coring; Phase I and, as necessary, Phase II environmental assessments; and examination of survey and title exceptions. Upon request, Developer agrees to provide the Agency with copies of all materials obtained or produced as a result of its due diligence investigation. If Developer provides notice of its election to terminate this Agreement within five (5) days of completing the due diligence period, except as expressly provided, neither party shall have any further rights, duties or obligations hereunder.

The Developer and Agency acknowledge that the specific method of development chosen by Developer requires the Property to be annexed into the City of Happy Valley ("City") and the Comprehensive Plan and Zoning designations to be converted to City zoning accordingly (together, the "Annexation"). Furthermore, the Project must be approved by the Happy Valley Design Review Board ("Design Approval" as further defined in Section 3.4.1 below). As long as the Developer is pursuing the Annexation and Design Approval in good faith and with due diligence, the time periods for submittal of Design Drawings and commencement of Developer Improvements, as defined in Article 4 set forth in this Agreement, shall be measured from the date upon which Annexation and the Design Approval are completed and no longer subject to appeal under Oregon land use law. Irrespective of any terms to the contrary, the time period for Annexation and Design Approval must occur within six (6) months after the Effective Date of this Agreement, subject to the provisions of Section 7.4. The Agency shall cooperate with the Developer in pursuing the Annexation and shall sign reasonable documentation and take other formal actions as necessary to complete the Annexation.

Section 3.4: Conditions Precedent to Agency's Obligation to Convey.

Agency's obligation to convey the Property is subject to satisfaction or occurrence of the following conditions precedent to the satisfaction of the Agency. The Developer must satisfy all of the following conditions precedent listed below or obtain waiver of them within the time periods set below:

3.4.1 Design Drawings (as defined in Section 4.2) for the Developer Improvements have been prepared and submitted by Developer in accordance with the terms of this

Agreement and have been reviewed and approved by Agency, not to be unreasonably withheld and within twenty (20) days of receipt of such Design Drawings, as being in accordance with the Plan and this Agreement; and Developer shall have completed its design review process with and been approved by the Happy Valley Design Review Board or any subsequent appellate body and such approval is not subject to further appeal under Oregon land use law. The time period for completing this task shall be however long the process takes with the Happy Valley Design Review Board, or subsequent appellate body in the case of an appeal ("Design Approval"), provided the Developer is pursuing such approvals in good faith and with due diligence, but in any case no longer than six (6) months, subject to Section 7.4. Design Drawings for the purpose of Agency's review shall mean architectural design development drawings of the site improvements.

3.4.2 The Developer has provided Agency evidence, satisfactory to Agency on a reasonable basis, that Developer has the financial capacity to cause the Developer Improvements to be constructed. The Developer shall provide such evidence within thirty (30) days of Closing.

3.4.3 Annexation and Design Approval have been completed, which shall include completion of all appeals under Oregon land use law.

3.4.4 The Purchase Price required for conveyance of the Property has been tendered to the Title Company at or before Closing.

3.4.5 A written notice to convey the Property has been made by Developer at least thirty (30) days prior to the date requested for Closing.

Section 3.5: Conditions Precedent to Developer's Obligation to Purchase.

Developer's obligation to purchase the Property is subject to the satisfaction or occurrence of the following conditions precedent to the reasonable satisfaction of Developer:

3.5.1 The Annexation must be completed and not subject to further appeal under Oregon land use law.

3.5.2 The Annexation must include conversion to a City zoning designation that permits the Project.

3.5.3 The Project must successfully complete the Design Approval, not subject to further appeal under Oregon law, required by the City of Happy Valley.

3.5.4 There shall be no material breach of this Agreement by the Agency.

3.5.5 The owner of the 3.0 acre parcel immediately north of Property (the "Mather Property") shall have entered an agreement to sell, or provide a permanent access

easement with respect to, that certain portion of the Mather Property necessary for access to the Property in accordance with the Project as illustrated in **Exhibit "G."**

3.5.6 The major tenant lease for Phase 1 shall be fully executed within 60 days of execution of this Agreement.

3.5.7 All required building permit(s) for Phase 1 improvements must be approved and issued.

Section 3.6: Deed Form.

The Agency shall convey to Developer fee simple title to the Property in the condition provided in Section 3.7 of this Agreement, and subject to the covenants described in Article 5, by Special Warranty Deed, duly executed, acknowledged and delivered in the form of **Exhibit "E"** attached hereto (the "Deed"). Conveyance of title to the Property to Developer shall conclusively establish compliance by Developer with all conditions precedent to the conveyance of the Property as contained herein.

Section 3.7: Condition of Title.

The Agency shall convey to the Developer fee simple title to the Property free and clear of all liens and encumbrances except:

3.7.1 The Permitted Exceptions, as defined in Article 2 and listed in **Exhibit "C"**; and

3.7.2 Such regulations and controls, covenants and restrictions that may be imposed on the Property by the Developer and Agency consistent with this Agreement or land use approvals obtained by Developer for development of the Property and the Developer Improvements.

Section 3.8: Title Insurance, Property Taxes and Closing Costs.

3.8.1 The Developer shall be responsible for obtaining title insurance for the Property.

3.8.2 Recording costs will be paid by the Developer. Real property taxes for the current year (if any) shall be prorated as of the date of the delivery of the Deed to the Developer. All real property taxes subsequently assessed and levied against the Property shall be paid by Developer. Agency shall be responsible for any and all real property taxes for the period of time prior to the recording of the Deed and the Developer subsequent thereto. Escrow fees, and any excise or conveyance tax that may be imposed, shall be shared equally by Developer and the Agency.

Section 3.9: Conditions of the Property.

The Developer acknowledges that it is purchasing the Property "As Is," except as provided otherwise herein.

Section 3.10: Earnest Money and Security Deposit.

Developer shall, within ten (10) days of either Annexation or Design Approval, final and no longer subject to appeal, deliver into escrow the sum of \$40,000.00 as earnest money in the form of cash, a certified check, or an irrevocable letter of credit reasonably satisfactory to the Agency (the "Earnest Money"). If Developer fails to timely deposit the Earnest Money as provided above, this Agreement shall terminate and neither Developer nor Agency shall have any further obligations to one another. Provided Developer is not in default under this Agreement, the Earnest Money shall be fully refundable to Developer so long as Developer's election to terminate is received in writing by the Agency prior to the expiration of Developer's Due Diligence period, described in Section 3.3 above. Upon expiration of Developer's Due Diligence period, the Earnest Money shall become nonrefundable. At closing, the Earnest Money shall be credited toward payment of the Purchase Price.

Developer shall, within ten (10) days of completion of both Design Approval and Annexation, final and no longer subject to appeal, deliver into escrow a Security Deposit in the form of cash, a certified check, or an irrevocable letter of credit reasonably satisfactory to the Agency in an amount equal to \$60,000.00 as security for the performance of the obligations of the Developer to be performed in accordance with this Agreement. The Security Deposit is separate from and in addition to the obligation of Developer to deliver the Purchase Price upon Closing. Any cash delivered as the Security Deposit shall be deposited in an insured, interest-bearing account in a bank or other financial institution selected by the Escrow Agent. Pursuant to the Scope of Development in **Exhibit "F,"** as defined below in Section 4.1, the Agency agrees to return the entire Security Deposit to Developer upon Developer's completion of Phase 1. Any interest earned upon the Security Deposit will be paid to the Developer on return of the Security Deposit. If Developer fails to timely deposit the Security Deposit as provided above, this Agreement shall terminate and neither Developer nor Agency shall have any further obligations to one another.

ARTICLE 4: DEVELOPMENT OF THE PROPERTY

Section 4.1: Scope of Development.

The Property shall be developed by Developer in accordance with and within the limitations specified in **Exhibit "F,"** "Scope of Development," attached hereto and made a part hereof, and plans approved by the Agency pursuant to this Agreement ("the Developer Improvements"). The Developer Improvements shall be constructed within the time limits set forth in the Schedule of Performance, attached hereto as **Exhibit "D."** The Developer agrees, at its own cost and expense, to install or construct, or cause to be installed or constructed, the

required Developer Improvements in accordance with the terms of this Agreement and with all applicable specifications, standards and codes and requirements, including those of the City of Happy Valley, the County and the State of Oregon.

Section 4.2: Design Drawings and Related Documents.

The Developer shall prepare and submit to the Agency architectural design development drawings of the Developer Improvements ("Design Drawings") for Agency review and written approval prior to construction of the Developer Improvements involved. The Design Drawings shall be generally consistent with the Preliminary Plans submitted by the Developer, as described in the Scope of Development. The plans and documents as may be required shall also be submitted to the Happy Valley Design Review Board and other appropriate City of Happy Valley departments for the purposes of compliance with all codes, regulations and other requirements of the County in connection with the construction of the Developer Improvements. Agency shall diligently, in good faith, review the Design Drawings to determine whether they are in substantial conformance with the Scope of Development as proposed by the Developer and shall issue its decision within twenty (20) days of receipt of same. Failure of Agency to notify Developer within such period of time shall be deemed to be approval by Agency. If Agency does not approve the Design Drawings, Agency shall specify, in writing, its specific objections to same. Agency approval shall not be deemed approval by the Happy Valley Design Review Board or any other agency or department.

Section 4.3: Construction Schedule.

Developer shall begin and complete all construction and development of the Developer Improvements within the time specified in the Schedule of Performance, except as otherwise permitted herein.

Section 4.4: Omitted

Section 4.5: Governmental Permits.

Before commencement of construction or development of any buildings, structures or other works or improvements in connection with the Developer's Improvements upon the Property, the Developer shall, at its own expense, secure or cause to be secured, any and all land use, construction, and other permits which may be required by any governmental agency. The Agency shall cooperate with the Developer and permitting agencies in obtaining the necessary permits.

Section 4.6: Local, State and Federal Laws.

Developer shall carry out the construction of the Developer Improvements in conformity with all applicable local, state and federal laws.

Section 4.7: Taxes, Assessments, Encumbrances and Liens.

Prior to Closing, the Developer shall not place or allow to be placed on the Property or any part thereof any mortgage, trust deed, encumbrance or lien, unless specifically pre-approved in writing by the Agency. The Developer shall remove or have removed any levy, lien or attachment made on the Property, or any part thereof, or provide assurance of the satisfaction therein within a reasonable time, but in any case no later than thirty (30) days of such levy, lien or attachment coming into existence without permission. Developer may contest or challenge the validity or amount of any such lien or encumbrance provided such challenge or contest is taken in accordance with applicable law and within a reasonable time, so long as Developer provides security satisfactory to Agency protecting the Agency's interests, or (in the case of construction liens) bonds against the liens as permitted by statute.

Section 4.8: Prohibition Against Transfer of the Property and the Buildings or Structures Thereon.

Prior to the issuance by the Agency of a final Certificate of Completion with respect to Phase 1, Developer shall not, without the prior approval of the Agency, make any total or partial sale, transfer, conveyance, assignment or lease of the whole or any part of the Property or the buildings or structures on the Property as to which a Certificate of Completion has not been issued. At the time of any permitted or approved transfer, the transferee must have agreed, either in the instrument conveying title, or by separate recorded instrument to construct or to cause to be constructed the Developer Improvements upon the Property, as provided in the Scope of Development. Notwithstanding the foregoing, this prohibition shall not apply to:

4.8.1 The transfer of the Property subsequent to the issuance of a Certificate of Completion with respect to Phase 1;

4.8.2 The leasing of space in the Developer Improvements, provided that without prior written approval from the Agency, the tenant shall not be permitted to conduct business in the leased space prior to the issuance of a Certificate of Completion with respect to the Developer Improvements involved, except the tenant shall be allowed access to the leased space for the purpose of performing work to the interior portions thereof;

4.8.3 The sale of the Property at foreclosure (or to conveyance thereof in lieu of foreclosure) pursuant to foreclosure thereof by a lender. .

4.8.4 The permitted assignment of this Agreement, pursuant to Section 1.7 above, prior to Closing of the sale by the Agency.

In the event the Agency approves a transfer, the Agency shall be entitled to require such conditions to the transfer as it deems necessary or proper to ensure that the Property will be developed in accordance with the terms of this Agreement. In the absence of specific written agreement by the Agency, no such transfer, assignment or approval by the Agency shall be deemed to relieve the Developer or any other subsequent party from any obligations under this

Agreement until completion of the Development Improvements as evidenced by a Certificate of Completion.

Section 4.9: Holder Not Obligated to Construct Improvements.

Notwithstanding Section 4.8, mortgages, deeds of trust, assignment of leases and rents for security purposes, or any other form of conveyance required for any reasonable method of financing (collectively "Mortgage(s)") are permitted before issuance of a Certificate of Completion for the construction of the Developer Improvements, but only for the purpose of securing loans of funds to be used for financing the acquisition of the Property, for the construction of Developer Improvements thereon, and for any other expenditures necessary and appropriate to develop the Property under this Agreement. The holder of any Mortgage authorized by this Agreement, a purchaser at foreclosure, in bankruptcy, or by deed in lieu thereof, and their successors or assigns ("Holder"), shall not be obligated by the provisions of this Agreement to construct or complete the improvements or to guaranty such construction or completion, unless there is a subrogation. Nothing in this Agreement, however, shall be deemed to construe, permit or authorize any such Holder to devote the Property or any part thereof to any uses, or to construct any improvements thereon, other than those uses or improvements provided for or authorized by this Agreement and the holder shall hold such Property subject to any covenants, conditions and restrictions imposed upon and relating to the development, maintenance and use of the Property.

Section 4.10: Notice of Default to Holders; Right to Cure.

Unless otherwise provided herein, the terms, conditions, covenants, restrictions and reservations of this Agreement shall be binding and effective against the Holder of any such Mortgage or any owner of the Property or any part thereof, whose title thereto is acquired by foreclosure, trustee sale or otherwise.

Section 4.11: Omitted

Section 4.12: Certificate of Completion.

Promptly after an Agency determination of substantial completion of all material elements of construction of the Developer Improvements of Phase 1, as defined below, required by this Agreement to be completed by the Developer on the Property, the Agency shall furnish Developer with a Certificate of Completion upon written request therefore by the Developer. Upon completion of all Developer Improvements on the Property required for Phase 1 and the issuance of the Certificate of Completion, Developer shall be fully relieved of all obligations under this Agreement, except as provided in Article 5. Such Certificate of Completion shall be a conclusive determination of satisfactory completion of the construction of Phase 1 as required by this Agreement and such Certificate shall so state. After recordation of the Certificate of Completion, any party then owning or thereafter purchasing, leasing or otherwise acquiring any interest therein shall not (because of such ownership, purchase, lease or acquisition) incur any obligation or liability related to the phase completed under this Agreement with respect to the

Property. After issuance of the Certificate of Completion for Phase 1, neither Agency nor any other person shall have the rights, remedies or controls with respect to the Property covered by the Certificate of Completion that it would otherwise have or be entitled to exercise under this Agreement and such control shall cease. Under this Agreement, substantial completion of Phase 1 shall mean completion of all rough grading of Phase 1, all retaining walls and systems, all utility systems required for the development of vertical improvements in Phase 1, all parking lot and landscaping areas necessary for one (1) large tenant, and completion of a building for one (1) large tenant on the Phase 1 portion of the Property, as identified in the Scope of Development (“Phase 1 Substantial Completion”).

The Certificate of Completion shall be in such form as to permit it to be recorded in the Offices of the County Clerk in Clackamas County, Oregon. The Agency shall provide such certificate within ten (10) days of Developer’s request therefore, or if the Agency determines not to furnish such certificate after request therefore, the Agency shall, within such ten (10) day period, provide Developer with a written statement of the reasons the Agency refused or failed to furnish such Certificate of Completion. The statement shall also contain Agency's opinion of the actions the Developer must take to obtain such Certificate of Completion. No Certificate of Completion shall constitute evidence of compliance with or satisfaction of any obligation of the Developer to any Holder of any mortgage, or any insurer of mortgage securing money loans to financing improvements or any part thereof, nor shall it constitute a certificate of occupancy or evidence thereof under the building permit or codes of the City of Happy Valley or Clackamas County, Oregon.

ARTICLE 5: USE OF THE PROPERTY

Section 5.1: Discrimination.

The Developer covenants for itself and its successors and assigns that it will not discriminate against any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin, ancestry or disability, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property. The foregoing covenant shall run with the land.

Section 5.2: Effect of Covenants.

The covenants established in this Agreement shall, without regard to technical classification and designation, be binding on and for the benefit of the Agency, the County, Developer and Developer's successors and assigns, and further successors-in-interest to the Property or any part thereof. After issuance of the Certificate of Completion of Phase 1 pursuant to Section 4.12, all of the terms, covenants, agreements and conditions set forth in this Agreement shall cease and terminate with respect to such Property, except for Sections 5.1 and 5.2, which shall remain in effect unless and until the Agency or its successor and the then current owner of the applicable Phase agree otherwise.

Section 5.4: Breach of Covenants.

In the event the Developer or an Owner, or their lessee, licensee, agent or other occupant, uses the Property in a manner inconsistent with Article 5 of this agreement, the Agency may bring all appropriate legal and equitable actions.

ARTICLE 6: DEFAULTS AND REMEDIES

Section 6.1: Default/General.

Subject to the extensions of time set forth in Section 7.4, and subject to the notice and opportunity to cure provisions contained in this Agreement, the failure or delay by any party to perform any term or provision of this Agreement constitutes a default under this Agreement. The injured party shall give written notice of default to the party in default, specifying the default and giving the other party thirty (30) days to cure the default or, if the default is not reasonably capable of being cured within such 30 day period, the other party shall commence to cure the default within such 30 day period and shall complete such cure within ninety (90) days from the initial notification of default. The injured party may not institute proceedings, whether judicial or otherwise, against the party in default until thirty (30) days after giving such notice. Any failure or delay by any party in asserting any of its rights or remedies as to any default shall not operate as a waiver of any default or of any rights or remedies to enforce a term or provision of this Agreement.

Section 6.2: Specific Defaults.

In the event the Developer is in default of its obligations under this Agreement, and the transaction does not close, as provided herein, Developer shall forfeit the Earnest Money and Security Deposit to Agency as liquidated damages and this Agreement shall be of no further effect and neither Developer nor Agency shall have any further obligation to the other. If the transaction closes and the Property is conveyed to Developer as provided herein, the Agency shall continue to hold the Security Deposit until completion of Phase 1 Developer Improvements and the issuance of a Certificate of Completion with respect to Phase 1 Developer Improvements as provided in Section 4.12 hereof. In the event Developer fails to complete such improvements as provided herein, the Developer shall forfeit the Security Deposit to Agency as liquidated damages.

In the event that the conditions described in Section 3.4 of this Agreement are not satisfied or waived, after the Developer has made a reasonable effort to satisfy such conditions, and in the event the transaction does not close, through no fault of Developer, the Security Deposit and any accrued interest shall be refunded to Developer. In the event that the conditions described in Section 3.4 of this Agreement are not satisfied or waived, after the Developer has made a reasonable effort to satisfy such conditions, and in the event the transaction does not close, through no fault of Developer within 120 days of the execution of this Agreement, the Earnest Money shall also be refunded to Developer.

If Agency fails to deliver the Deed after all conditions precedent in favor of Agency have been met or if Agency otherwise fails to consummate the transaction, the Earnest Money and Security Deposit (and any interest earned thereon) shall be refunded to Developer and Developer shall have such additional remedies as are available in law and at equity.

Section 6.3: Applicable Law.

The law of the State of Oregon shall govern the interpretation and enforcement of this Agreement without giving effect to the conflicts of law provision thereof.

Section 6.4: Acceptance of Service of Process.

In the event that any legal or equitable action is commenced by the Developer against the Agency, service of process on the Agency shall be made by personal service on the Manager of the Agency, or in such other manner as may be provided by law.

In the event that any legal or equitable action is commenced by the Agency against the Developer, service of process on the Developer shall be made in such manner as may be provided by law.

Section 6.5: Rights and Remedies Are Cumulative.

Except as otherwise expressly stated in this Agreement, the rights and remedies of the parties are cumulative, and the exercise by any party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different time, of any other rights or remedies for the same default or any other default by the other party.

Section 6.6: Termination by Agency Prior to Conveyance.

In the event that any of the following occur prior to the conveyance of title to the Property, then this Agreement, and any rights of the Developer, or any assignee or transferee, in this Agreement, or the Property, or any portion thereof, shall, at the option of the Agency, be terminated by the Agency, in which event the Security Deposit shall be retained by the Agency as liquidated damages and as its property without any deduction, offset or recoupment whatsoever, and neither the Developer nor the Agency shall have further rights against or liability to the other under this Agreement:

- 6.6.1 Developer (or any successor in interest thereto) assigns or attempts to assign this Agreement or any rights therein, or to the Property, in violation of this Agreement;
- 6.6.2 There is a change in the ownership of the Developer contrary to the provisions of Section 1.7 hereof;
- 6.6.3 The Developer does not submit Design Drawings as required by this Agreement in the manner and by the dates respectively provided in this Agreement therefore;

6.6.4 If Developer has been unable to obtain financing as provided in Section 3.4.2; or

6.6.5 The Developer does not tender the Purchase Price or take title to the Property on tender of conveyance by the Agency pursuant to this Agreement after Developer has satisfied or obtained waiver of all conditions precedent set forth in Section 3.4.

ARTICLE 7: GENERAL PROVISIONS

Section 7.1: Attorneys Fees.

The parties shall bear their own costs and attorney fees in the event an action is brought to enforce, modify or interpret the provisions of this Agreement.

Section 7.2: Notice, Demands and Communications Between the Parties.

Formal notices, demands and communications between the Agency and the Developer shall be in writing to the addresses shown in Section 1.5 and Section 1.6 of this Agreement and to the attention of the person indicated.

Section 7.3: Nonliability of Officials and Employees.

No member, official or employee of any of the parties shall be personally liable to the other party or any successor-in-interest thereto, in the event of any default or breach by either party or for any amount that may become due to either party or its successor, or any obligations under the terms of this Agreement.

Section 7.4: Unavoidable Delay; Extension of Time of Performance.

In addition to specific provisions of this Agreement, performance by either party hereunder shall not be deemed to be in default where delays or defaults are due to causes that are unforeseeable, beyond its control and without its fault or negligence, including, but not limited to, war, insurrection, strikes, lockouts, labor disputes, riots, volcanoes, floods, earthquakes, fires, casualties, acts of God, acts of the public enemy, epidemic, acts of the state, federal government, or local jurisdictions, including administrative and/or judicial appeals by such agencies or third parties, litigation or arbitration involving a Party or others relating to zoning or other governmental action or inaction pertaining to the Project, and quarantine restrictions. In the event of such delay, the party delayed shall give written notice of the delay and the reason therefore to the other party within thirty (30) days after the delayed party learns of the delaying event. An extension of time for any such cause shall be for the period of duration of the cause.

Section 7.5: Merger.

None of the provisions of this Agreement are intended to or shall be merged by reason of any deed referred to herein and any such deed shall not be deemed to affect or impair the provisions and covenants of this Agreement, but shall be deemed made pursuant to this Agreement.

Section 7.6: Headings.

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

Section 7.7: Time of Essence.

Time is of the essence of this Agreement. All obligations of the Agency and the Developer to each other shall be due at the time specified by the Agreement, or as the same may be extended by mutual agreement of the parties in writing.

Section 7.8: Severability.

Except for the provisions of Article 5, if any clause, sentence or any other portion of the terms and conditions of this Agreement become illegal, null or void for any reason, or held by any court of competent jurisdiction to be so, the remaining portion will remain in full force and effect.

Section 7.9: No Partnership.

Neither anything in this Agreement nor any acts of the parties hereto shall be deemed or construed by the parties hereto, or any of them, or by any third person, to create the relationship of principal and agent, or of partnership, or of joint venture, or of any association between any of the parties to this Agreement.

Section 7.10: Nonwaiver of Government Rights.

Subject to the terms and conditions of this Agreement, by making this Agreement, the Agency is specifically not obligating itself, the County, or any other agency with respect to any discretionary action relating to the acquisition of the Property or development, operation and use of the improvements to be constructed on the Property, including, but not limited to, condemnation, comprehensive planning, rezoning, variances, environmental clearances or any other governmental agency approvals that are or may be required.

Section 7.11: Entire Agreement; Waivers.

This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto and supersedes all negotiations or previous agreements between the parties or the predecessors in interest with respect to all or any part of the subject matter hereof. All waivers of the provisions of this Agreement must be in writing by the appropriate authorities of the

Agency and the Developer, and all amendments thereto must be in writing by the appropriate authorities by the Agency and the Developer.

Section 7.12: Counterparts

This Agreement may be executed in counterparts.

Section 7.13: Non-Foreign Persons.

The parties agree to comply with the terms of Internal Revenue Code Section 1445 and upon the conveyance of the Property, Agency shall execute and deliver to Developer a non-foreign person affidavit in form mutually acceptable to the Parties. Agency is not a “foreign person” as that term is used in Internal Revenue Code Section 1445 and Agency agrees to furnish Developer with any necessary documentation to that effect.

ARTICLE 8: SUCCESSOR INTEREST

This Agreement shall be binding upon and inure to the benefit of the parties, their successors and assigns.

ARTICLE 9: STATUTORY DISCLAIMER

THE PROPERTY DESCRIBED IN THIS INSTRUMENT MAY NOT BE WITHIN A FIRE PROTECTION DISTRICT PROTECTING STRUCTURES. THE PROPERTY IS SUBJECT TO LAND USE LAWS AND REGULATIONS THAT, IN FARM OR FOREST ZONES, MAY NOT AUTHORIZE CONSTRUCTION OR SITING OF A RESIDENCE AND THAT LIMIT LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, IN ALL ZONES. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON’S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010.

BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO VERIFY THE EXISTENCE OF FIRE PROTECTION FOR STRUCTURES AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

"AGENCY"

CLACKAMAS COUNTY DEVELOPMENT
AGENCY, a corporate body politic

By: _____
Chair

"DEVELOPER"

RPS VENTURE #2 LLC, an Oregon limited
liability company

By: _____
Alan M. Roodhouse, Member

By: _____
Ulysses Sherman, Member

STATE OF OREGON)
) ss.
County of Clackamas)

On this ____ day of _____, 2013, before me the undersigned, a notary public in and for such state, personally appeared _____, personally known to be (or proved to me on the basis of satisfactory evidence) to be the person who executed the within instrument as the Chair of the Clackamas County Development Agency, a corporate body politic, and acknowledged to me that said Agency executed the within instrument.

NOTARY PUBLIC FOR OREGON
My Commission Expires: _____

STATE OF OREGON)
) ss.
County of _____)

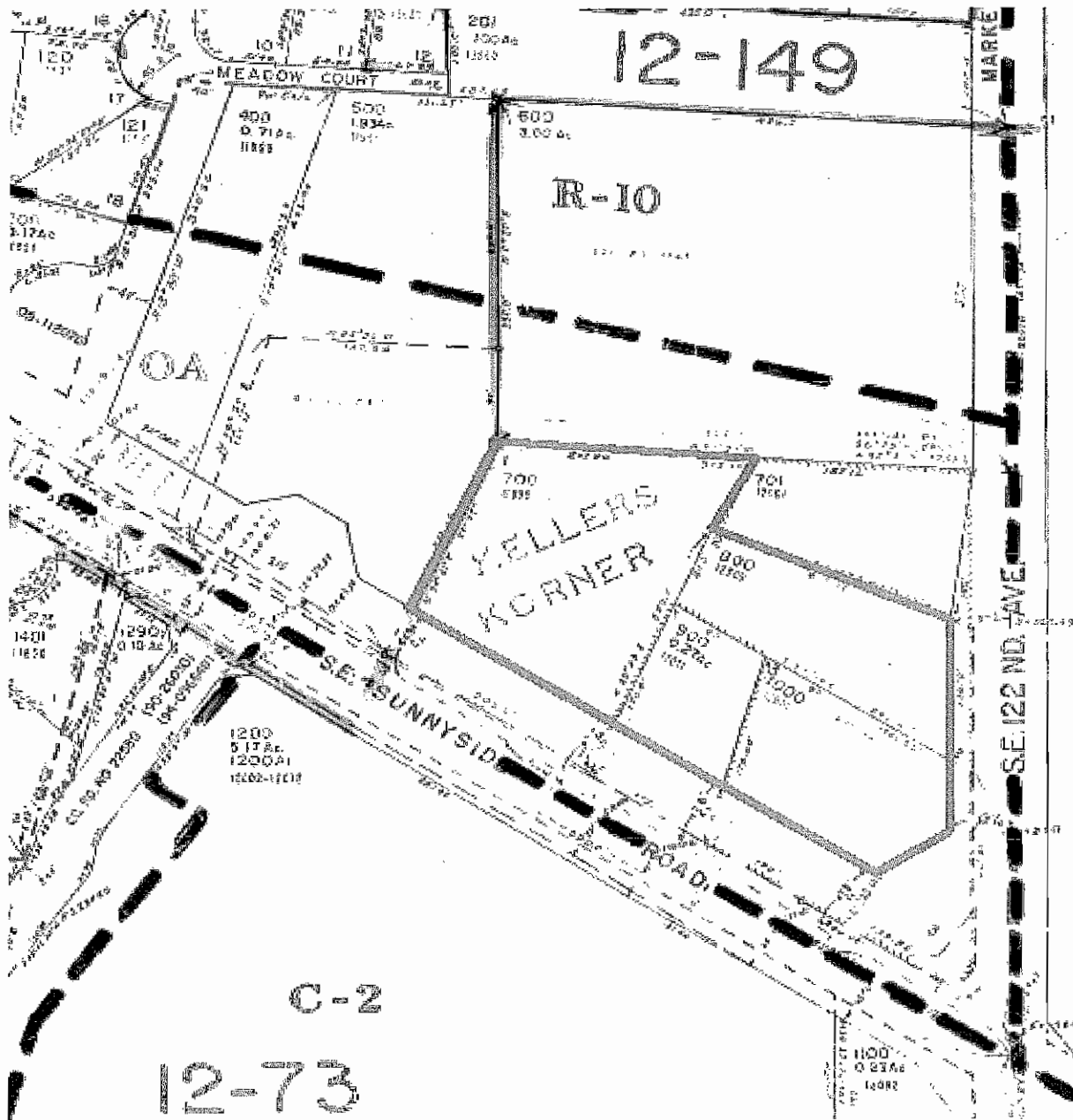
On this ____ day of _____, 2013, before me the undersigned, a notary public in and for such state, personally appeared _____ and _____, personally known to be (or proved to me on the basis of satisfactory evidence) to be the persons who executed the within instrument as members of RPS Venture #2 LLC, and acknowledged to me that said company executed the within documents.

NOTARY PUBLIC FOR OREGON
My Commission Expires: _____

LIST OF EXHIBITS

EXHIBIT A	Map
EXHIBIT B	Legal Description - Property
EXHIBIT C	Exceptions to Title as Contained in Preliminary Title Report
EXHIBIT D	Schedule of Performance
EXHIBIT E	Form of Special Warranty Deed
EXHIBIT F	Scope of Development
EXHIBIT G	Map of Mather Property

EXHIBIT A
PROPERTY MAP



C-2

12-73

EXHIBIT B

LEGAL DESCRIPTION

Tax lots 700, 800, 900 and 1000 located in the Northeast $\frac{1}{4}$ of Section 3, Township 2 South, Range 2 East of the Willamette Meridian, Clackamas County, Oregon.

Exhibit D
To
Disposition and Development Agreement

Schedule of Performance

The below periods for performance shall be measured from the date on which both parties have signed the Disposition and Development Agreement between Clackamas County Development Agency and RPS Venture #2 (unless measured otherwise as provided below), and such date shall be entered on page one of the Agreement. The below periods shall be subject to extension as set forth in the Agreement.

1. Major Tenant Lease for Phase 1 Fully Executed—sixty (60) days.
2. Due Diligence—one hundred twenty (120) days.
3. Annexation—one hundred eighty (180) days, subject to appeals.
4. Design Approval by City of Happy Valley—one hundred eighty (180) days, subject to appeals.
5. Written Notice to Convey the Property by Developer to Agency—at least thirty (30) days prior to the date requested for closing.
6. Issuance of Building Permits—within ninety (90) days of the completion of the later of #3 and #4 above.
7. Commencement of Construction of Phase 1—within forty-five (45) days of completion of #6 above.
8. Completion of Construction of Phase 1—within one hundred eighty (180) days of #7 above.
9. Issuance of County's Certificate of Completion for Phase 1—within thirty (30) days of #8 and Developer's request for such certificate.

EXHIBIT F

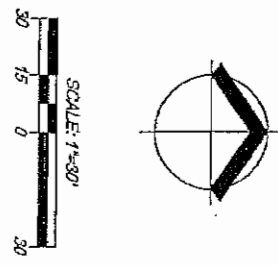
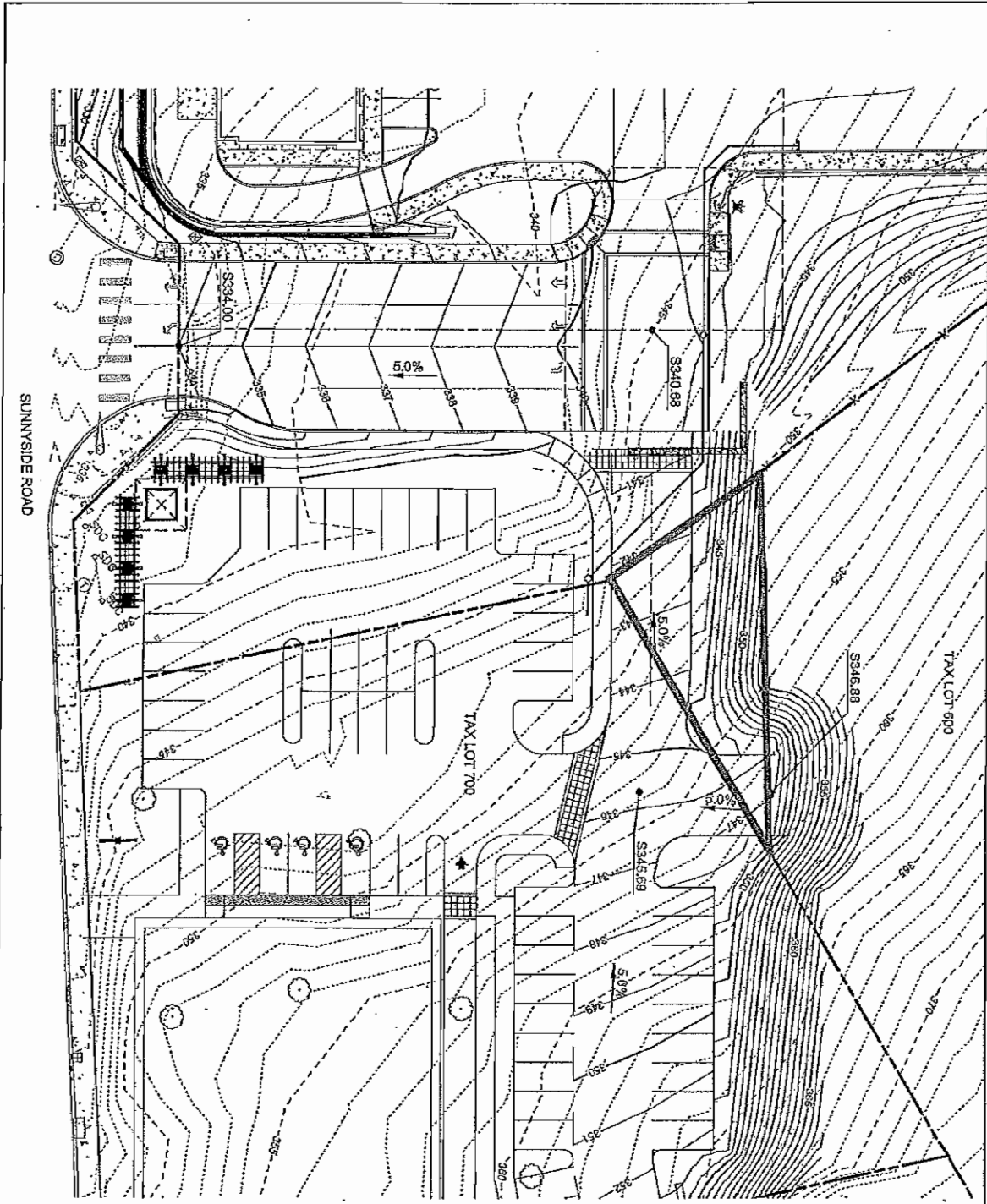
SCOPE OF DEVELOPMENT

PHASE ONE

Elements of Phase One of the Project include:

- Rough grading of the entire property
- Retaining walls and systems required for the entire property
- Utility systems required for the entire property
- Parking lot, sidewalks, lighting and landscaping for one large tenant
- Building for one large tenant

EXHIBIT G



PROJECT NO. 21303450
 DATE: 08/29/13
 BY: RPM
 SHEET NO. 1 OF 1

MATHER EASEMENT EXHIBIT
 SUNNYSIDE PLAZA
 RPS DEVELOPMENT COMPANY, INC.
 Happy Valley, Oregon

Cardno
 Shaping the Future
 PORTLAND
 815 SW AVENUE SUITE 400 PORTLAND, OR 97201
 TEL: 503 419-8600 FAX: 503 419-3600
 www.cardno.com